

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

The Hon'ble Mr. Justice Sabyasachi Bhattacharyya

And

The Hon'ble Mr. Justice Uday Kumar

FMA. No. 1230 of 2025

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CAN 1 of 2025

Sabina Yesmin Begum

- Versus -

The State of West Bengal and Others

For the appellants : Mr. Piyush Chaturvedi, Sr. Adv.,
Mr. Mir Anowar

For the State : Mr. Soumitra Bandyopadhyay, Sr. Adv.,
Mr. Priyabrata Batabyal

For the respondent no. 6: Mr. Sanjay Saha,
Mr. Raju Mondal

Heard & Reserved on : 16.09.2025

Judgment on : 24.09.2025

Sabyasachi Bhattacharyya, J.:-

1. The appellant was granted a long-term mining lease on May 16, 2008 (registered on July 3, 2008) under the provisions of the West Bengal

Minor Mineral Rules, 2002 (hereinafter referred to as “the 2002 Rules”) for extracting sand from the concerned plot *vide* Deed No. 446, by the Government of West Bengal, through the Governor. Subsequently, in terms of the renewal clause of the lease, that is, Clause 3 thereof, the petitioner made an application in appropriate format for renewal of the said mining lease. By an order dated November 2, 2012, the Additional District Magistrate-cum-DL & LRO, Burdwan rejected the said application on the ground that *vide* Notification No. 809/CI/0/MM-84/11 dated December 1, 2011, Rules 5 to 16 of the 2002 Rules had been amended with effect from December 5, 2011, thereby introducing a total change in the procedure for grant of mining lease in respect of river-bed materials.

2. Such rejection order was challenged by the writ petitioner by filing a writ petition bearing WP No. 24961 (W) of 2012. A learned Single Judge of this Bench, *vide* judgment dated July 24, 2023, set aside the said order of rejection, directing the DL & LRO to consider and dispose of the petitioner’s application for renewal of mining lease in accordance with Rule 12 of the 2002 Rules. While disposing of the writ petition, the learned Single Judge observed, *inter alia*, that the *vires* of the amended provisions of Rules 5 to 16 of the 2002 Rules was challenged before a Division Bench of this Court in WP No. 16526 (W) of 2013, where, by a judgment dated July 4, 2014, the said Division Bench was pleased to hold that the impugned decision taken by the concerned authority refusing to grant renewal of lease was illegal and liable to be

set aside. On such premise, the learned Single Judge passed the order dated July 24, 2023.

3. Subsequently, upon reconsideration pursuant to the order of the learned Single Judge, the DL & LRO again rejected the said application for renewal *vide* Order No. 5 dated September 19, 2023, this time on the ground that the West Bengal Minor Mineral Concession Rules, 2016 (for short, “the 2016 Rules”) as well as the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 (in brief, “the 2021 Rules”) had come into force, none of which had provisions for extension/renewal of sand mining leases. As per Rule 13 of the 2016 Rules and Rule 4 of the 2021 Rules, there had to be an auction process for grant of sand mining leases.
4. The said order was challenged in WPA No. 26226 of 2023 by the petitioner. Vide judgment dated May 6, 2025, a learned Single Judge of this Court dismissed the writ petition, thereby confirming the order of rejection on the premise that in view of the new regime introduced by the 2016 Rules, there was no provision for renewal of lease.
5. Being aggrieved by the said order, the present appeal has been preferred.
6. Learned senior counsel appearing for the appellant contends that under Rule 62 of the 2016 Rules, although the 2002 Rules had been repealed, anything done, any action taken or any prosecution started under the 2002 Rules were protected, deeming them to have been done validly under the corresponding provisions of the 2016 Rules.

7. Moreover, it is argued that Clause 3 of the lease deed itself contained a renewal clause, on the strength of which a right had accrued in favour of the writ petitioner for having a renewal once, for the period as specified in Rule 12 of the 2002 Rules.
8. Learned senior counsel further submits that Rule 61 of the 2016 Rules is not attracted to the present case, as it deals with fresh applications for mining lease. The proviso to Rule 61 stipulates that if the applicant has been issued a Grant Order or Letter of Intent (LoI) or any other Government Order (GO), requiring alteration of the applicant's position, then his mining lease application may be considered after due compliance of all the necessary conditions. In the present case, since no alteration of the applicant's position has been necessitated by any such Grant Order, LoI or GO, the said proviso is not applicable as well.
9. Learned senior counsel next argues that the State is barred by the principle of constructive *res judicata* from taking any objection as to applicability of the 2016 Rules, in view of such objection having not been raised before the learned Single Judge in WP No. 24961 (W) of 2012. The said writ petition was disposed of on July 24, 2023, when the 2016 Rules had already come into force. The learned Single Judge directed the renewal application of the petitioner to be disposed of in accordance with Rule 12 of the 2002 Rules, which order was never assailed before any higher forum and has attained finality.
10. Learned senior counsel points out that the renewal now sought is not under any provision of the 2016 Rules but for a period of five years,

within the contemplation of the 2002 Rules. Thus, the rejection order is not governed by the 2016 Rules at all, in view of the saving clause under Rule 62 of the 2016 Rules.

11. Learned senior counsel appearing for the appellant cites a co-ordinate Bench judgment in the matter of *Swapan Sarkar – Versus – State of West Bengal & Ors.*, reported at *2014 SCC OnLine Cal 13995*, as well as an unreported judgment of this Bench in the matter of *Nitya Nanda Pal – Versus – District Magistrate, Purba Bardhaman and others [FMA No. 152 of 2018]*, for the proposition that in cases governed by a lease granted under the 2002 Rules, the subsequent amendment of 2011 or the 2016 Rules would not debar a renewal if such a clause existed in the lease deed originally granted.
12. Learned senior counsel appearing for the State, on the other hand, places reliance on Rule 38(1) of the 2016 Rules, which provides that the grant of prospecting licence-cum-mining lease for exploitation of minor minerals shall be made through the competitive bidding process and separate rules shall be framed by the State Government for conducting such bidding. It is submitted that there is no provision for renewal in the 2016 Rules, which had come into force when the application for renewal of lease was lastly decided.
13. Secondly, it is argued, the writ petition was not maintainable due to the availability of an equally efficacious alternative remedy in the form of Rule 51 of the 2016 Rules, which provides for an appeal against any order made by the District Authority under the 2016 Rules.

14. Thirdly, it is argued that since the 2016 Rules does not have any provision for renewal of mining lease or grant of lease without a competitive bidding process to ensure transparency. The entire purpose of the 2016 Rules would be frustrated if a renewal is granted under the old regime of the 2002 Rules even after promulgation of the 2016 Rules.
15. Learned counsel for the respondent no. 6, the Nodal Agency of sand mining, transportation, etc., entrusted by the State Government, contends that a leasehold land, upon expiry of the lease, vests in the State Government.
16. Rule 61 of the 2016 Rules, it is argued, contemplates “all applications” for mining lease which includes renewal applications as well. Thus, learned counsel prays for dismissal of the appeal.
17. While considering the present case, the moot question which falls for consideration is whether the writ petitioner is entitled to the renewal of her mining lease, granted under the 2002 Rules, in view of the advent of the new competitive bidding regime under the 2016 Rules.
18. Although the DL & LRO had relied on the 2021 Rules, the same is not applicable, since it was not operative when the renewal application was filed, nor has any of the parties argued that the said Rules are applicable in the present case.
19. The objection as to maintainability of the appeal due to the bar under Rule 51 of the 2016 Rules cannot be accepted, since Rule 51(1) provides for an appeal by any person aggrieved by an order made by the District Authority or any officer duly authorised by the District

Authority, in exercise of the powers conferred on him by the 2016 Rules. In the present case, since there is no provision in the 2016 Rules for renewal, the impugned order was not made under any of the provisions of the 2016 Rules and, as such, no appeal is available under Rule 51 against the impugned order of rejection by the DL & LRO.

- 20.** Leaned senior counsel appearing for the State has relied on Rule 38 of the 2016 Rules, which stipulates, under the new regime of the 2016 Rules, a process of competitive bidding, for which separate rules are to be framed by the State Government, for the grant of prospecting licence-cum-mining lease. Sub-rule (1) (a) provides so, whereas sub-rule (1) (b) contemplates the grant of mining lease for exploitation of minor minerals also through competitive bidding by a similar process. However, it is not in doubt that the new regime does not provide for any option of renewal, whereas the 2002 Rules did have such provision.
- 21.** One of the bones of contention in the instant *lis* is whether the term “all applications” in Rule 61 of the 2016 Rules takes within its sweep applications for renewal of mining lease as well, apart from original applications for grant of new lease.
- 22.** There cannot be any manner of doubt that original applications fall within the expression “applications”. To consider whether renewal applications also come within such ambit, it is the provisions of the 2002 Rules regarding filing of applications which is to be looked at, since even Section 61 provides for all applications for mining lease of minor minerals received *prior* to giving effect to the 2016 Rules. Prior to

such date, it was the 2002 Rules which prevailed, which carried separate provisions in respect of applications for grant of mining lease and renewal of mining lease.

- 23.** Rule 5(1) of the 2002 Rules provides that a mining lease shall be granted by the State Government or by an authorised officer in this behalf, whereas sub-rule (2) thereof stipulates that an “application for mining lease” shall be made as per the provisions thereof.
- 24.** As opposed thereto, Rule 12(1) of the 2002 Rules provides the modalities for filing an “applications for renewal of a mining lease’.
- 25.** Thus, Rules 5 and 12 of the 2002 Rules, among themselves, distinguish clearly between an application “for mining lease” (meaning thereby, original mining lease) and applications for “renewal of” mining leases. Thus, the expression “all applications for mining lease” in Rule 61 of the 2016 Rules, which refers to pre-2016 Rules applications, takes into account only “applications for mining lease” under Section 5(1), which pertains to original leases, and excludes “application for renewal of a mining lease”, as provided in Rule 12 thereof, by its specific language.
- 26.** Hence, the parent provision of Section 61 does not apply to renewal applications.
- 27.** The proviso to Section 61 envisages cases where the applicant has already been issued a Grant Order or Letter of Intent (LoI) or any other Government Order (GO) requiring alteration of the applicant’s position, in which case the mining lease application may be considered after due compliance of such conditions.

- 28.** It is nobody's case that any such Order or LoI has been issued in the present case.
- 29.** Thus, Rule 61 of the 2016 Rules, in its entirety, does not apply to the present case.
- 30.** Rule 62(1), which provides that the 2002 Rules are thereby repealed, is circumscribed by Rule 62(2) which is preceded by a *non obstante* clause and stipulates that despite the repeal contemplated in sub-rule (1), "anything done, any action taken, ..." under the 2002 Rules shall be deemed to have been validly done or taken under the corresponding provisions of the 2016 Rules.
- 31.** Thus, "anything done" or "any action taken" under the 2002 Rules are saved from the repeal and are deemed to have been validly done or taken under the 2016 Rules. Although there is no corresponding provision in the 2016 Rules for renewal, the saving clause protects the acts done or actions taken under the 2002 Rules from the rigours of the 2016 Rules.
- 32.** Looked at from such perspective, the original mining lease entered into between the writ petitioner and the State Government definitely comes within the purview of "act done" or "action taken" under the 2002 Rules, which vested accrued right of renewal in favour of the writ petitioner by dint of the renewal clause in the original lease deed dated May 16, 2008 executed in favour of the writ petitioner. The said Clause is set out below:

“3. The mining lease shall be renewable for one period not exceeding the period specified in sub – rule (2) of the rule 12 of the said rules at the option of the Lessee.

Previous, however, that the State Government may refuse to renew a Mining lease over the whole or part of the area covered by the original lease, for which renewal is prayed for.

If the Lessee be desirous of taking a renewed lease of the premises hereby demised or of any part or parts of them for a further term from the expiration of the term hereby granted and is otherwise eligible, he shall prior to the expiration of the last mentioned terms give to the State Government six calendar month’s previous notice in writing and shall pay the rents, rates and royalties hereby reserved and shall observe and perform the several covenants and agreements here – in – contained and on the part of the Lessee to be observed and performed up to the expiration of the term hereby granted. The State Government on receipt of application for renewal shall consider it in accordance with Rule 12 of the said Rules and shall pass under as it deed fit. If renewal is granted, the State Government will at the expenses of the Lessee and upon his executing and delivering to the State Government, if required a counter part thereof execute and deliver to the Lessee a renewal lease of the said premises or part thereof for the further term of five years at such rents, rates and royalties and on such terms and subject to such covenants and agreements, including this presents Covenants to renewal as shall be in accordance with the West Bengal minor Minerals Rules, 2002 on the next following the expiration of the term here by granted.”

- 33.** A careful consideration of the same shows that although the riders and the language of Rule 12 of the 2002 Rules have imported, either verbatim or by paraphrasing, in the said clause, those have been given an independent footing, as a contractual clause. Clause 3 of the lease deed does not provide that the mining lease shall be renewable “under” Rule 12, but borrows the language of the said provision and makes it an independent clause of the contract itself, thereby giving rise to a contractual right of renewal, which comes within the purview of an “act done” and “action taken” under the 2002 Rules. Thus, irrespective of the applicability of Rule 12 of the 2002 Rules, there is a vested contractual right accrued in favour of the writ petitioner by dint of the

said renewal clause, entitling the lessee to apply for renewal once, not exceeding the period of the original lease.

- 34.** It is required to be noted here that the period and modalities of leases or prospecting leases to be granted under the 2016 Rules cannot be correlated with the conditions and period of renewal of lease under the 2002 Rules.
- 35.** Rule 12 of the 2002 Rules, as well as Clause 3 of the original sand mining lease of the writ petitioner, restricts the right of renewal, in terms of sub-rule (2) of Rule 12, to a one-time window, for a period not exceeding the period of the original lease. Such renewal is a matter of right for the applicant, unless the grounds for refusal as stipulated in Rule 12, as incorporated in Clause 3 of the contract, are met. In case of such refusal, an order in writing, recording the reasons for refusal, has to be passed by the lessor/State Government. In fact, if an application for renewal is not disposed of before the date of expiry of the lease, the period of the lease is to be deemed to have been extended for a further period of six months, or period ending with the date of receipt of orders of the State Government, whichever is earlier.
- 36.** While considering the applicability of the 2011 Amendments, a Division Bench of this Court, in *Swapan Sarkar (supra)*¹, observed that since the amended Rules were not given effect retrospectively and was introduced with prospective operation, the right which accrued in favour of the petitioner to have the lease renewed as per the terms of the lease deed

1. Swapan Sarkar – Versus – State of West Bengal & Ors., reported at 2014 SCC OnLine Cal 13995

cannot be nullified by applying the amended provisions of the said Rules. It was further held that the Government cannot refuse to renew the lease as a whole, save and except under any of the grounds as mentioned in Rule 12 of the 2002 Rules, to elucidate which proposition sub-rules (1), (2), (3) and (4) of Rule 12 were set out in the said judgment. Moreover, the Division Bench held that in view of the renewal clause provided in the lease deed itself, it cannot be held that no right was vested upon the lessee for renewal of the lease under the contract itself.

- 37.** There is no reason why the same logic should not be applied to the present case vis-à-vis the 2016 Rules as well.
- 38.** This Bench, in *Nitya Nanda Pal (supra)*², reiterated the above proposition in the context of the 2016 Rules, coming to the conclusion that in view of the saving of acts done or actions taken under the 2002 Rules by dint of Rule 62(2) of the 2016 Rules, as well as in view of the contractual right of renewal accrued to the original leaseholder under the 2002 Rules regime, the applicant was entitled to a one-time renewal for a period not exceeding the period of the original lease.
- 39.** Such renewal would not be under the provisions of the 2016 Rules but under the contract entered into under the 2002 Rules, read with Rule 12 of the said Rules, and, thus, would not in any manner be barred by dint of the operation of Rules 61, 62(1) or Rule 38 of the 2016 Rules.

2. *Nitya Nanda Pal – Versus – District Magistrate, Purba Bardhaman and others [FMA No. 152 of 2018]*

- 40.** In view of the above findings, we come to the conclusion that the learned Single Judge, while affirming the order of the concerned authority rejecting the application for renewal of the mining lease of the writ petitioner, acted *de hors* the law and, as such, the impugned judgment of the writ court cannot be sustained.
- 41.** Accordingly, FMA No. 1230 of 2025 is allowed on contest, thereby setting aside the impugned judgment dated May 6, 2025 passed in WPA No. 26226 of 2023 as well as setting aside Order No. 5 dated September 19, 2023 passed by the Additional District Magistrate and District Land & Land Reforms Officer, Purba Bardhaman, rejecting the application for renewal of lease made by the writ petitioner.
- 42.** The District Land & Land Reforms Officer, Purba Bardhaman, is hereby directed to entertain the application for renewal of lease made by the writ petitioner in the light of the above observations and grant such renewal, subject, of course, to the restrictions imposed under Rule 12 of the West Bengal Minor Mineral Rules, 2002 as well as Clause 3 of the original mining lease deed dated May 16, 2008, executed by the State Government through the Governor in favour of the writ petitioner, not being applicable.
- 43.** Such exercise shall be concluded as expeditiously as possible, preferably within November 30, 2025.
- 44.** CAN 1 of 2025 is consequentially disposed of as well.
- 45.** There will be no orders as costs.

- 46.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)