Form No.J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Supratim Bhattacharya

MAT 1304 of 2025
with
CAN 2 of 2025

Dilip Mondal
Vs.
The State of West Bengal and Ors.

For the appellant	:	Mr. Pinaki Ranjan Chakraborti, Mr. Pallav Chatterjee, Mr. Monajit Chakraborti, Advs.
For the respondent no. 2	:	Mr. Sanjay Saha, Mr. Raju Mondal, Advs.
For the State	:	Mr. Chandi Charan De, Ld. Addl. Govt. Pleader, Mr. Anirban Sarkar, Adv.
Heard on	:	November 27, 2025.
Judgment on	:	November 27, 2025.

<u>Sabyasachi Bhattacharyya, J.</u>:

1. The present challenge has been preferred against an order passed in a writ petition whereby the petitioner's challenge to the refusal of the petitioner/appellant's claim for extension of a mining lease deed was turned down by the respondent authorities.
2. Learned Counsel appearing for the appellant submits that in terms of the then prevalent notification dated May 23, 2017, the successful bidders who had deposited 1/3rd of the bid money might be allowed to commence mining operations and a lease deed may be executed.
3. Clause 2 of the said notification provides that the balance amount of money shall be payable in three instalments with a gap of maximum of 45 days each from the date of first instalment, which shall in no case exceed the lease period or the closure of mining operation.
4. In the present case, the balance amount was paid by the appellant within the said period i.e. the tenure of the lease and was duly accepted by issuance of no-dues certificate by the respondent authorities.

5. However, in spite of the same, by an intimation dated September 24, 2019, the Additional District Magistrate and District Land and Land Reforms Officer, Purba Bardhaman instructed the concerned Block Land and Land Reforms Officer to “stop challan” against the lessee (the present appellant) in the then upcoming season until and unless instruction was given from the end of the Additional District Magistrate.
6. It is contended by the appellant that due to such stop order, for the period between September, 2019 and April 22, 2022 (when the amount was ultimately cleared off by the appellant), the appellant was prevented from conducting mining operations on the leasehold land.
7. Accordingly, the appellant contends that the appellant is entitled to extension of the period of lease for the period which was lost between September, 2019 and April, 2022 due to no fault of the appellant.
8. Learned counsel for the appellant places reliance on Clause 5 of the sand mining lease deed entered into between the parties in pursuance of the tender, being successful in which

the appellant was granted the mining lease, which is a *force majeure* clause.

9. It is submitted that there was no fault on the part of the appellant in the mining work being stopped for the relevant period and, as such, by invocation of the said clause, the period of the delay should be added to the period fixed by the lease.

10. It is further argued by learned counsel for the appellant that the respondent no. 2 / designated nodal agency only became so designated in the year 2021, by operation of the Rules which came into force that year.

11. However, it is pointed out that the lease of the appellant was executed much earlier and as such, it is submitted, the said Rules should not be applicable.

12. Furthermore, it is argued that the 2021 Rules do not bar specifically the extension of the lease period.

13. Lastly, learned counsel for the appellant argues that Section 25 of the Mines and Minerals (Development and Regulation) Act, 1957, which was in force at the relevant point of time as well, any rent, royalty, tax, fee or other sum due to the Government under the said Act or the Rules made thereunder

or under the terms and conditions of any reconnaissance permit, prospecting license or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.

14. Accordingly, it is submitted that the only mode of recovery recognized by statute, if the entire amount payable under the mining lease is not paid, is by way of certificate recovery under the Public Demands Recovery Act.

15. Thus, the modality adopted by the respondent/State by stopping the mining work for the relevant period ought to be compensated by extension of the lease by invocation of the *force majeure* clause in the lease deed.

16. Learned Additional Government Pleader, appearing for the State, controverts such submission and places reliance on Clause 2 of the notification dated May 22, 2017, where it is mentioned that the balance amount of bid money, after the payment of the first tranche of 1/3rd of the total amount, shall be payable in three instalments, with a gap of maximum 45 days each from the date of first instalment, which shall in no

case exceed the lease period or the closure of mining operation.

17. By placing particular stress on the expression "from the date of first instalment", it is argued by the State that the first instalment is the payment of the bid amount of 1/3rd and as such, since the payment of the balance amount by the appellant in the present case was made three years thereafter, the timeline stipulated under Clause 2 of the notification was flouted and, as such, the appellant has no right to seek an extension of the lease deed.

18. Learned Additional Government Pleader, as such, contends that the learned Single Judge was justified in refusing the prayer of the appellant.

19. Learned Counsel appearing for the respondent no. 2 / designated nodal agency under the 2021 Rules points out that under the Sand Mining Policy (may it be noted that the present lease pertains to sand mining), which culminated in the 2021 Rules, the mining leases existing at that juncture would automatically not be extended further.

20. As such, it is argued that since the mine lands and mining operations, including the grant of mining leases, have now

vested in the nodal agency, even if the State / respondent no. 1 wanted to extend the lease, law does not permit such extension in any event.

21. Thus, it is argued that the appeal ought to be dismissed.

22. On a careful construction of Clause 5 of the lease deed, which is the *force majeure* clause, we do not find support for the argument advanced by the appellant on such count.

23. A *force majeure* pertains to a natural calamity such as act of God, war, insurrection, riot, civil commotion, strike, earthquake, tide, storm, tidal wave, flood, lightning, explosion, fire and other happenings over which the lessee could not reasonably have any control. We derive the said meaning from Clause 5 i.e. the *force majeure* clause in the lease deed, itself. In the present case, at best it could be argued by the appellant that the stoppage of the mining operation was due to unlawful action on the part of the respondent authorities in violation of the notification dated May 22, 2017, which, though beyond the control of the lessee, does not come within any of the supervening impossibilities or *force majeure* as contemplated under the *force majeure* clause. Thus, the relief of extension of

the lease period, as contemplated in the said clause, could not, in any event, be given to the appellant.

24. Secondly, it is well settled that the court cannot rewrite a contract between the parties.

25. The appellant clearly entered into the mining lease deed, in which, Clause 6 stipulates that the balance amount after payment of the 1/3rd bid amount, i.e. the remaining 2/3rd of bid money, shall be payable by the lessee in three equal instalments with a gap of maximum 45 days each from the date of first instalment "which has already been paid on 27.06.2017". Thus, in the said clause of the lease deed between the parties, it was categorically construed that the first instalment as contemplated in Clause 2 of the 2017 notification would be the payment of the 1/3rd amount of the initial bid amount.

26. We cannot give benefit of doubt to the appellant, since the sand mining lease was a full-fledged commercial contract and the appellant, being in the mining business, entered into the contract with its eyes wide open. Thus, the appellant cannot resile from that position. However, a scope of argument remains as to whether the said clause, being contrary to the

purport of Clause 2 of the notification dated May 22, 2017, the latter having the force of law, could bind the appellant, since there cannot be any estoppel against the statue / law.

27. The language of Clause 2 of the notification-in-question is unambiguous. The first instalment mentioned therein pertains to the three instalments of the balance amount payable. Thus, the 1/3rd bid amount which is initially paid cannot come within the purview of the first instalment for the balance amount of the rest 2/3rd. As such, the construction lent to the said provision in the mining lease deed itself is contrary to the notification.

28. However, in any event, the remedy of the appellant at best lies in a claim for damages which is to be made before a competent civil court having jurisdiction.

29. Even otherwise, learned counsel for the respondent no. 2 is justified in contending that since the entire mining operations and the mining lands have been vested in the said nodal agency at present, after the coming into force of the 2021 Act, there is no scope for the State to extend the period of the lease deed or even the court directing the State to do so.

30. Hence, we are of the opinion that the learned Single Judge was justified in passing the impugned order.

31. Learned counsel appearing for the appellant also seeks to place reliance on Explanation (d) of Rule 21 of the West Bengal Minor Mineral (Concession) Rules, 2016 to argue that as per the said provision, the authorities are to consider orders passed by any statutory or competent authority to come within the purview of the justification for not terminating the mining lease deed.

32. However, the said provision cannot be imported into the present consideration for the simple reason that the scope of operation of the *force majeure* clause in the mining lease deed of the appellant stands on a completely different footing than the explanation to Rule 21 (4).

33. Rule 21(1) of the 2016 Rules contemplates that subject to other conditions mentioned in the Rules, where mining operation has not been commenced within a period of one year from the date of execution of the lease or is discontinued for the above period continuously after the commencement of such operations, the State Government or the lease granting authority shall, after serving notice to the lessee, by an order,

declare the mining lease as lapsed and communicate the said order to the lessee.

34. Thus, the entire scope of operation of Section 21 is for declaration of the mining lease as lapsed.

35. The Explanation to the said Rule carves out an exception in situations where the mining lease would be declared to be lapsed if mining operation is not started or is discontinued for a period of more than one year.

36. One of the mitigating circumstances for not declaring the mining lease as lapsed in case of such discontinuance of mining operations is orders passed by any statutory or competent authority.

37. However, we, in the present case, are not looking at a situation where the mining lease has been declared to be lapsed. Explanation (d) to Rule 21 can only afford grounds for mitigating the circumstances under which a lease deed would be declared as lapsed. In the present case, the lease deed was not declared so and the respondents/ State accepted the late payment of the balance amount and permitted the continuance of the lease during its entire tenure.

38. The question here is whether such mitigating circumstances can be read into the mining lease deed as a *force majeure* clause for the purpose of permitting the appellant to seek an extension of the lease deed. With utmost respect to the submissions of learned counsel for the appellant, we are unable to agree with such contention of the appellant, since comparison of the said Explanation (d) of Rule 21 with the *force majeure* clause would be akin to a comparison between the anecdotal apples and oranges.

39. Whereas Rule 21 operates within the ambit of declaring a mining lease lapsed, the *force majeure* clause in the mining lease deed provides for an opportunity and a second chance for the time lost in mining operations to be added to the period of the lease. The *force majeure* clause itself exhaustively stipulates the situations in which it operates and does not incorporate in any manner the exceptions provided in the Explanation to Rule 21. The two operate in completely different spheres. Hence, Rule 21 or its Explanation does not have any relevant bearing in the present consideration.

40. In view of the above, we are of the opinion that the only remedy which might be available to the appellant would be by

way of damages for the stoppage of mining operations by the respondent / State during the period between September, 2019 and April, 2022.

41. Since the said stoppage or the intimation stopping such mining operation was never challenged by the appellant, we, sitting in appeal within the limited scope of the present matter, cannot look into the validity of the same as well. The prayer of the appellant in his writ petition was only to set aside the refusal of his prayer to extend the lease period, and the prior decision to stop his mining operations was never challenged.

42. Thus, MAT 1304 of 2025 is disposed of on contest without interfering with the impugned order but making it clear that nothing in the order of the learned Single Judge or of this court shall prevent the appellant, if the appellant is otherwise so entitled in law, to claim damages for the stoppage of his mining operations by the respondent / State between the period September, 2019 and April, 2022 before a competent civil court having jurisdiction in the matter.

43. If such a suit is filed, the civil court shall decide the same independently and in accordance with law, without being

unduly influenced by any of the observations made above or in the order impugned before us.

44. CAN 2 of 2025 is also disposed of consequentially.

45. There will be no order as to costs.

46. The parties shall act on the server copy of this order, duly downloaded from the official website of this court.

I agree. (**Sabyasachi Bhattacharyya, J**.)

(**Supratim Bhattacharya, J**.)

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(SSS)