

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 Uday Kumar

MAT 1525 of 2025
With
CAN 1 of 2025
With
MAT 1536 of 2025

Har minder Singh Kapoor
Vs.
The State of West Bengal and Ors.

For the petitioner : Mr. Ayan Banerjee,
Mr. Pradip Das, Advs.

For the respondent no.5 : Mr. Sanjay Saha,
Mr. Raju Mondal, Advs.

For private respondent : Mr. Kaushik Gupta, Adv.

For the State respondents : Mr. Soumitra Bandyopadhyay,
Snr. Govt. Adv.
Mr. Priyabrata Batabyal, Advs.

Heard on : September 16, 2025.

Judgment on : September 16, 2025.

Sabyasachi Bhattacharyya, J.:

1. Leave is granted to the learned advocate for the appellant in both the appeals to amend the memoranda of appeal by incorporating the appropriate date of the impugned order of the writ court.
2. The present appeals have been preferred against an order passed by the learned Single Judge in connection with two writ petitions, one filed by the present appellant and other by the private respondent.
3. The premise of the writ petition of the private respondent was a complaint made by the private respondent to the concerned D.L. and L.R.O. to the effect that the present appellant has been violating the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the West Bengal Minor Minerals Concession Rules, 2016 by carrying on mining activities without proper license.
4. The complaint stated that the plot in question i.e. Plot no. 198 in Mouza –Kallya, J.L. no. 45 under PS – Salanpur was a joint property of the appellant and the private respondent, on which illegal mining activities was being carried on by the appellant.
5. Prior to filing of the present writ petition, the private respondent had moved another writ petition, complaining of

such activities, whereupon a learned Single Judge of this court, by an order dated March 27, 2025 passed in WPA 2583 of 2025, had *inter alia* directed that the jurisdictional Collector, after receiving the copy of the order of the writ court, within a week therefrom, shall issue a prior hearing notice of at least 7 days to the petitioner and the private respondent therein and after granting such opportunity, to decide the issue by passing a reasoned order in accordance with law. It was further recorded, *inter alia*, that if the Collector is of the view that the nature and character of the land has been changed and excavation of mines and minerals are carried out therefrom without due process of law, then the Collector shall be free to decide and pass its reasoned order in accordance with law.

6. The writ court went on to record further that in the event the reasoned order confirms the excavation of mines and minerals being done from the land without due process of law by either of the parties, the jurisdictional Collector and/or other State authorities shall take all necessary and consequential steps against the delinquent, strictly in accordance with law, including directing to restore the subject land to its original state.

7. It was also observed that the order shall not create any right or equity in favour of the petitioner or the private respondent therein if they do not succeed in their respective contentions before the Jurisdictional Collector strictly in accordance with law.
8. Pursuant to the said direction, a proceeding was initiated by the concerned District Land and Land Reforms Officer (D.L. & L.R.O), giving rise to Case no. Misc. 04/MM of 2025, which culminated in an order dated April 25, 2025 whereby, *inter alia*, it was recorded that as per provision laid down under Section 21(1) of the 1957 Act, the present appellant is liable to pay a sum of Rs.5,00,000/- multiplied by 1.044, which equals to Rs.5,22,000/- as penalty for carrying out unauthorized mining over 1.044 hectare of land for which he had obtained Letter of Intent (LOI) from WBMDTCL but mining lease deed has not yet been executed in respect of the same.
9. Furthermore, the appellant was directed to take necessary action in terms of notification no. 5172-LP/417/04-IS (Pt-V) dated 14.12.2022 issued by the Land & Land Reforms and Refugee Relief and Rehabilitation Department, published in the Kolkata Gazette, Extraordinary on 14th December, 2022 for

regularization of the post facto conversion of the land in question immediately after disposal of the aforesaid T.S. Case No. 32 of 2018 (the partition suit pending between the appellant and the private respondent).

10. It was also recorded that the order was passed without prejudice to the rights of the concerned authorities to take appropriate action in accordance with law if further unauthorized mining and/or other illegal activity is noticed in the land in question.
11. The said order was challenged by the appellant before the writ court to the extent that penalty was imposed in respect of three plots of land i.e. not only plot no. 198 but plot nos. 190 and 191 and other plots as well.
12. Moreover, the entire order of the D.L. & L.R.O. was challenged by the appellant on other grounds as well, challenging the very basis of the order whereby the D.L. & L.R.O. had relied on a report dated November 18, 2024 authored purportedly by the B.L. & L.R.O., Salanpur, without service of any copy thereof on the appellant.
13. Be that as it may, the private respondent also preferred a writ petition against the said order, to the limited extent that the writ

petitioner was permitted to obtain post facto regularization of the conversions of the land in question instead of a direction to restore the land to its original condition in terms of the previous order of the writ court.

14. Both writ petitions were taken up together by the learned Single Judge and by the impugned judgment and order dated July 23, 2025, as rectified subsequently on August 4, 2025, the learned Single Judge disposed of the writ petitions, thereby affirming the order of the D.L. & L.R.O. dated April 25, 2025 and directing the respondent nos. 3 and 4 authorities i.e. the concerned D.L. & L.R.O. and S.D. L.R.O to take appropriate steps for restoration of plot no. 198 to its original position, the cost of which would have to be recovered from the present appellant. In case of failure to pay such cost, the said amount was directed to be recovered by initiating a certificate proceeding.
15. Learned counsel appearing for the appellant submits that the learned Single Judge acted without jurisdiction in affirming the order of the D.L. & L.R.O. in respect not only of plot no. 198 but also in respect of the other plots, including plot nos. 190 and 191, of Mouza – Kallya, whereas the representation/complaint

of the private respondent as well as the direction of the writ court on the previous occasion, which was the premise of the exercise conducted by the D.L. & L.R.O., were confined to plot no. 198 only.

16. Insofar as the imposition of penalty is concerned, it is argued by the appellant that if the penalty were to be restricted to plot no. 198, the area of which is merely 0.45 acres, as opposed to total area of 1.044 hectares covered by the order of the D.L. & L.R.O., the quantum of penalty would come down to much less than that awarded.
17. On the issue of imposition of penalty, learned counsel for the appellant also argues that such award was made without any basis. The order of the D.L. & L.R.O. itself records about and is based on a report of the B.L. & L.R.O. dated November 18, 2024, no copy of which was served on the appellant at any point of time, thus violating the basic tenet of *audi alteram partem*.
18. That apart, the D.L. & L.R.O.'s order itself records a further subsequent report dated January 29, 2025 which indicated that the stone mine allegedly being operated by the appellant over the land in question was non-operational at that point of

time. Thus, without any reasonable basis, the D.L. & L.R.O. relied on an earlier report, giving it precedence over a subsequent report, without assigning any reason therefor.

19. A third report dated November 12, 2024 was also before the B.L. & L.R.O., it is submitted, which indicated that pre-mining/mining related activities were going on on the property-in-question, which the appellant was entitled to do in view of the issuance of a prospecting license in his favour.
20. Thus, it is argued that the very premise of the imposition of penalty was bad in law.
21. Learned counsel for the appellant next contends that the writ court's order is contradictory inasmuch as in the same breath, the learned Single Judge affirmed the order of the D.L. & L.R.O. which had permitted the appellant to take steps for regularization of the *post facto* conversion of the land-in-question, whereas, on the other hand, the learned Single Judge directed the restoration of plot no. 198 to its original position at the cost of the appellant.
22. It is argued that in view of such inherent contradiction in the order of the writ court, the same ought to be set aside.

23. Learned counsel appearing for the private respondent controverts the arguments made by the appellant and submits that no copy of the report dated November 18, 2024 was served on the private respondent as well. However, it is argued that such non-service does not vitiate the order of the D.L. & L.R.O., since the D.L. & L.R.O., upon appropriate enquiry and giving opportunity of hearing to both sides, came to reasoned conclusions insofar as the illegal mining activity being carried over the concerned plots by the appellant is concerned.
24. It is further submitted that the learned Single Judge took into consideration all facets of the challenge and came to a reasoned finding regarding ongoing mining activities, which ought not to be interfered with in appeal.
25. Learned counsel for the private respondent seeks to place reliance on certain photographs, apparently indicating that mining activity is still going on over the property-in-question. However, leave is not granted to the learned Advocate for the private respondent to rely on such photographs, since it is doubtful whether those are not part of the records, nor were

they produced before any of the authorities, either the D.L. & L.R.O. and/or the writ court.

26. At this juncture, learned counsel for the private respondent insists that such photographs were produced before both the authorities below.
27. Be that as it may, we do not find from the orders of either the D.L. & L.R.O. or the writ court that such photographs were specifically relied on to come to their findings.
28. Learned counsel for the respondent no.5 points out that although a prospecting license was issued to the appellant, under such license, the appellant was obligated to obtain all necessary permissions/sanctions from the concerned authorities, including the required permission for conversion of the land-in-question, for getting a proper mining license before commencing mining activities. However, under the prospecting license, the appellant was permitted to carry on pre-mining activities.
29. It is further submitted that the fact that the prospecting license was granted to the appellant at the relevant juncture was not adverted to by the D.L. & L.R.O.

30. Upon a consideration of the submissions of the parties, we find certain discrepancies in the order of the learned Single Judge as well as the D.L. & L.R.O.
31. Whereas the learned Single Judge affirmed the order of the D.L. & L.R.O. as a whole, in the same breath, the learned Single Judge directed that plot no. 198 is to be restored to its original position at the cost of the appellant, in case of failure of payment of which the same is to be recovered by initiating a certificate proceeding.
32. However, diametrically contrary to such observations, the order of the D.L. & L.R.O., which was supposedly affirmed by the learned Single Judge, directed the appellant to take appropriate steps in terms of the notification dated December 14, 2022 issued by the appropriate authority for regularization of the post facto conversion of the land-in-question after the disposal of the partition suit pending between the appellant and the private respondent.
33. In any event, such direction to restore the property is *de hors* the law, since it is not within the domain of the D.L. & L.R.O., while considering the imposition of penalties under the 1957 Act and/or the 2016 Rules, to take steps for restoration of the

land for violation of any of the provisions of the Act or the Rules.

34. Under Section 4 of the 1957 Act, no person shall undertake any reconnaissance, prospecting or mining operations in any area except under and in accordance with the terms and conditions of a permit or prospecting license, as the case may be, of a mining license granted under the Act or the Rules made thereunder.
35. The penalty for contravention of such provision is provided in Section 21 of the said Act. Under sub-section (1) of Section 21, anybody contravening the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punished with imprisonment for a term which may extend to two years or with a fine which may extend to Rs. 25,000/- or with both. However, nothing within the four corners of either Section 21 or any other provision of the 1957 Act empowers the authorities to direct restoration of the concerned plot to its original character.
36. In case of illegal conversion of land, certain provisions have been stipulated under the West Bengal Land Reforms Act, 1955 and appropriate remedy is available to anybody

aggrieved or to the authorities to take steps against persons illegally converting the nature and character of a land.

37. However, such a consideration is entirely beyond the ambit of the present *lis*, since at no point of time did either the private respondent make a complaint under any of the provisions of the said statute, or any of the authorities concerned took any step under the 1955 Act. Thus, it would be entirely out of place to consider the provisions of the said statute in a consideration under the 1957 Act or the 2016 Rules.
38. Hence, the direction on the part of the learned Single Judge for reconversion of the land to its original character and the expenses thereof to be borne by the appellant was not only *de hors* the statute but also premature, since the D.L. & L.R.O., whose order the learned Single Judge confirmed, himself passed a direction on the appellant, pursuant to a valid notification dated December 14, 2022, to take steps for regularization of the post facto conversion of the land in question.
39. Insofar as the imposition of penalty is concerned, neither the learned Single Judge nor the D.L. & L.R.O. acted within their jurisdiction in placing reliance on a report dated November 18,

2024, since it was admittedly not circulated either to the appellant or the private respondent, who are the interested parties in the proceedings.

40. Although the private respondent restricted his complaint to plot no. 198, the D.L. & L.R.O. took within the sweep of his consideration other plots, including plot nos. 190 and 191, which were beyond the complaint of the private respondent as well as the direction of the writ court on the earlier occasion.
41. The learned Single Judge, upon being confronted with the issue of non-service of the report dated November 18, 2024 on the parties, proceeded on the premise of an earlier report dated November 12, 2024, in terms of which, apparently some mining activity as well as mining related activity were going on over plot no. 198. However, neither the order of the D.L. & L.R.O. nor the learned Single Judge's order clarifies as to what was the reason for relying on an earlier report dated November 12, 2024, whereas a much recent report dated January 29, 2025, also authored by the same authority, i.e. the B.L. & L.R.O., Salanpur, was available and indicated that the stone mine over the land in question was non-operational at that point of time.

42. Thus, the reliance on an earlier report in the teeth of a subsequent and contemporaneous report, indicating that no mining activity was going on, was perverse.
43. Hence, on such count as well, the order of the D.L. & L.R.O. was illegal and *de hors* the statute as well as perverse. Thus, the learned Single Judge acted without jurisdiction in affirming the order of the D.L. & L.R.O. as well as directing reconversion of the land in question to its original character, more so in the teeth of the fact that a prospecting license has already been issued earlier in favour of the appellant and the appellant has full rights to carry on pre-mining and mining-related activities on the land in question which would be defeated by the direction to reconvert the land to its original character.
44. In such view of the matter, the order of the learned Single Judge as well as the order of the D.L. & L.R.O. cannot be sustained.
45. Accordingly, MAT 1525 of 2025 and MAT 1536 of 2025 are allowed on contest, thereby setting aside the judgment and order dated July 23, 2025, subsequently corrected vide order dated August 4, 2025, passed in WPA 11887 of 2025 with WPA 12981 of 2025 as well as setting aside the order dated

April 25, 2025 passed by the Additional District Magistrate and District Land and Land Reforms Officer, Paschim Bardhaman in Case no. – Misc. 04/MM of 2025.

46. CAN 1 of 2025, filed in connection with MAT 1525 of 2025, also stands disposed of accordingly.
47. The matter is remanded to the D.L. & L.R.O., Paschim Bardhaman for a fresh consideration of the complaint lodged by the private respondent in respect of the alleged illegal mining activity going on at the behest of the appellant on plot no. 198, Mouza Kallya in J.L. No. 45, under P.S- Salanpur.
48. While doing so, the D.L. & L.R.O. shall grant fresh opportunity to both parties to rely on all documentary and other evidence which they want to rely on, as well as advance their respective arguments on the issues involved.
49. The D.L. & L.R.O., in completing such exercise, shall take into consideration all relevant reports, if necessary calling for a further contemporary report from the appropriate authority, including the B.L. & L.R.O., Salanpur as well as take into consideration the effect of the prospecting license issued in favour of the appellant while deciding the question as to

whether the activities being carried on by the appellant on the plot in question is illegal or not.

50. It is made clear that it will be open to the D.L. & L.R.O., while conducting such exercise as directed by us, to arrive at his own independent findings on the basis of the materials on record and in accordance with law, without being influenced in any manner by any of the observations made at any stage of the proceedings including by us, the learned Single Judge as well as the earlier order of the D.L. & L.R.O. himself.
51. It is made clear that since we have not directed any affidavits to be filed in connection with the application filed in the present appeals, it is deemed that none of the allegations made in the said application are admitted.
52. There will be no order as to costs.
53. 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.)

(Uday Kumar, J.)