

S/L 15
12.09.2025
Court. No. 19
Suwayan

WPA 24673 of 2024

**Probhat Bauri
Vs.
The State of West Bengal & Ors.**

*Mr. Pinaki Ranjan Chakraborti
Mr. Pallav Chatterjee
Mr. Manojit Chakraborti*

...for the petitioner.

*Mr. Chandi Charan De, AGP
Mr. Soumitra Bandyopadhyay
Mr. Anirban Sarkar
Mr. Priyobrata Batabyal*

...for the State.

*Mr. Sanjay Saha
Mr. Raju Mondal*

...for the respondent no. 2.

1. On behalf of the writ petitioner an affidavit-of-service is filed and the same is taken on record.
2. On behalf of the respondents/State Mr. De, learned AGP has filed a report dated NIL as prepared by the respondent no. 5/authority and the same is also taken on record.
3. The writ petitioner, the respondents/State and its instrumentalities and the respondent no. 2 are represented by their respective Counsels.
4. By filing the instant writ petition the writ petitioner has prayed for issuance of appropriate writ/writs for quashing the order dated 18.01.2023 as passed by the respondent no. 5/authority as well as the order dated 01.07.2024 as passed by the respondent no. 3/authority along with other ancillary reliefs.

5. At the time of hearing, Mr. Chakraborti, learned Advocate for the writ petitioner at the very outset draws attention of this Court to page nos. 43 to 92 of the instant writ petition being a copy of the registered deed of lease dated 16.10.2017 as has been registered on 09.03.2018 in favour of the writ petitioner for excavation of sand from river bed of Damodar situated in Plot no. 735(P), JL no. 85, Mouza – Amirpur, area 3.51 acres under P.S. – Burdwan-II, District – Purba Bardhaman.
6. It is submitted by Mr. Chakraborti that though the said deed of lease was registered on 09.03.2018, however, the leased out plot was handed over to the writ petitioner on 12.12.2019 which would be evident from page no. 94 of the instant writ petition being a copy of the possession certificate. It is thus submitted by Mr. Chakraborti that there occurred a delay of 1 year 9 months in handing over the leased out area on the part of the respondents/authorities for no fault of the writ petitioner and thus under cover of his letter dated 25.04.2022 the writ petitioner requested the respondents/authorities for extension of the period of mining lease for a period of 1 year 9 months which was, however, disallowed by the respondent no. 5/authority under cover of his order dated 18.01.2023 which is under challenge in the instant writ petition.
7. In course of his submission Mr. Chakraborti draws attention of this Court to Rule 21 of the West Bengal Minor Minerals Concession Rules, 2016 (hereinafter

referred to as the 'said Rules of 2016' in short). It is submitted by Mr. Chakraborti that the respondent no. 4/authority while passing the order under challenge dated 18.01.2023 has completely misconstrued the provisions of Rule 21 of the said Rules of 2016 inasmuch as the said respondent no. 4/authority has failed to consider that no notice as contemplated under Rule 21 (1) of the said Rules of 2016 was issued to the writ petitioner by the respondents/authorities and further the said application for extension was made during the subsistence of period of lease.

8. It is further argued by Mr. Chakraborti that the respondent no. 3/authority while passing the order dated 01.07.2024 in an appeal as preferred by the writ petitioner most mechanically endorsed the view of the respondent no. 5/authority without applying his independent mind and without visualizing the true implication of Rule 21 of the said Rules of 2016. Mr. Chakraborti thus submits that it is a fit case for allowing the instant writ petition by granting the reliefs as prayed for.
9. *Per contra*, Mr. De, learned AGP appearing on behalf of the respondents/State and its instrumentalities submits before this Court that from the report as submitted before this Court today it would reveal that the handing over of physical possession of the leased out plot by executing the document dated 12.12.2019 as has been annexed at page no. 94 of the instant writ petition was a mere formality inasmuch as the writ

petitioner even prior to execution of the said registered deed of lease dated 16.10.2017 as registered on 09.03.2018 were in possession of the leased out plot by virtue of an earlier deed of lease as would be evident from paragraph no. 2 of the instant writ petition.

10. On being asked by this Court Mr. De, however, contended that in the aforementioned impugned two orders admittedly there was no reflection that the writ petitioner was in possession of the leased out plot of land by virtue of an earlier deed of lease.
11. It is thus submitted by Mr. De that there was no wrong on the part of the respondents/authorities to turn down the request as made by the writ petitioner. In this regard Mr. De places his reliance upon a judgment and order dated 30.01.2023 as passed by a Division Bench of this Court in MAT 2047 of 2022 (The State of West Bengal & Ors. Vs. Swapan Sarkar).
12. Mr. Saha, learned Advocate appearing on behalf of the respondent no. 2/authority adopted the argument of Mr. De. It is further submitted by Mr. Saha that the writ petitioner has not deposited the royalty amount for five years as per the new Rules of 2016 and thus question of suffering pecuniary loss by the writ petitioner does not arise on account of alleged delay in handing over the possession.
13. On careful consideration of the entire materials as placed before this Court and after hearing the learned Advocates for the contending parties, this Court at the very outset proposes to look to the Rule 21 of the said

Rules of 2016 which is quoted hereinbelow in verbatim:

“21. Lapsing of lease.- (1) *Subject to the other conditions mentioned in these 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.*

(2) *Where a lessee is unable to commence the mining operation within the specified period stated in sub-rule (1) above or discontinues mining operations for a period exceeding the said period for reasons beyond his control, he may, within 30 days of service of such notice, submit an application to the State Government or the Lease Granting Authority explaining the reasons for non-commencement or discontinuance of mining.*

(3)

(4)”

14. On perusal of the provisions of the Rule 21 of the said Rules of 2016 it appears to this Court that it is the legislative mandate that in the event the 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 self-same period after the commencement of such operation, the lease granting authority shall have to serve a notice upon the lessee for declaring the mining lease as lapsed.

15. Rule 21 (2) of the said Rules of 2016 further mandates that in the event such notice is served the lessee may submit an application within 30 days from the date of service of such notice before the lease granting authority explaining the reasons for non-commencement or discontinuance of mind.
16. As rightly pointed out by Mr. Chakraborti that the respondent no. 5 as well as the respondent no. 3/authority though in their respective orders under challenge have quoted the aforementioned two provisions but the said two respondents/authorities practically overlooked that no notice was served under Rule 21 (1) of the said Rules of 2016.
17. At this juncture, the moot question arises for consideration before this Court is as to whether for non-consideration of said Rule 21 of the said Rules of 2016 the writ petitioner is entitled to get any favourable order from this Court or not.
18. At this juncture, this Court proposes to look to the paragraph no. 2 of the instant writ petition wherefrom it reveals that it is the specific pleadings of the writ petitioner that prior to the execution of the deed of lease dated 16.10.2017, a mining lease was granted to the writ petitioner in respect of the self-same leased out plot and the said lease was subsequently renewed and a grant order for renewal of mining lease was issued in favour of the writ petitioner on 09.03.2017. It thus appears to this Court that pursuant to the said grant order dated 09.03.2017 the lease deed dated

16.10.2017 was executed which was registered on 09.03.2018.

19. At this juncture, this Court also proposes to look to the judgment and order dated 30.01.2023 as passed in the case of *Swapan Sarkar (supra)* by a co-ordinate Bench of this Court. The relevant portion of the said order and judgment of *Swapan Sarkar (supra)* is quoted hereinbelow in verbatim and the same is as under:

“Mr. Banerjee, learned Standing Counsel representing the State, is aggrieved by the fact that the learned Judge directed that the lease would be considered to be valid till April 25, 2022. He submitted that the writ petitioner has been in possession of the land in question since 2008. The renewal of the lease in 2016 was only a matter of paper work. The writ petitioner was always and continuously in possession of the land. Hence, the direction of the learned Judge extending the validity of the lease was uncalled for and will set bad precedent.

Mr. Banerjee further submitted that the delay in completion of paper work as regards renewal of the lease was due to the delay on the part of the writ petitioner to furnish environmental clearance certificate. This is disputed by learned Advocate appearing for the writ petitioner.

We think Mr. Banerjee is right. There is nothing on record to show and learned Advocate for the writ petitioner has also not been able to demonstrate that at any point of time physical possession of the land in question was returned back to the State. If that be so, i.e., if the writ petitioner was always in possession of the land in question, then, just because there might have been delay in completion of paper work, there

was not warrant for extending the lease period. As a matter of principle, we thus clarify that if the lessee in any manner was in continuous possession of the land in question, mere delay in completion of paper work pertaining to renewal of the lease would not be ground for extending the validity of the lease period.”

20. It thus appears to this Court that in the case of *Swapan Sarkar (supra)* the Hon'ble Division Bench of this Court noticed that the subsequent lease deed was a mere continuation of the earlier deed of lease and the writ petitioner was always and continuously in possession of the land.

21. At this juncture, if I look to the report as submitted on behalf of the respondents/State today it appears to this Court that it is the specific stand of the respondents/State that execution of the possession certificate dated 12.12.2019 as has been annexed at page no. 94 is merely a formality inasmuch as from the pleadings of the instant writ petition it would reveal that prior to the execution of the deed of lease dated 16.10.2017 as has been registered on 09.03.2018 another lease was executed in favour of the writ petitioner in respect of the self-same plot of land and on its expiry the said lease deed was renewed and grant order was issued in favour of the writ petitioner and in pursuance of issuance of such grant order the subsequent lease deed dated 16.10.2017 is executed.

22. This Court thus finds sufficient merit in the submission of Mr. De in coming to a conclusion that though the second deed of lease was executed on 16.10.2017 as has

been registered on 09.03.2018 the execution of the document of possession dated 12.12.2019 was merely a formality since that no material point of time the said leased out area was returned back to the respondents/State.

23. In view of the discussion made hereinabove, this Court is constrained to hold that the instant writ petition is devoid of any merit and is thus hereby dismissed.

24. However, there shall be no order as to costs.

25. Urgent Xerox certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Partha Sarathi Sen, J.)