

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 26114 of 2024

**Ashok Kumar Saha
Vs.**

The State of West Bengal & Ors.

For the petitioner: Md. Sarwar Jahan, Adv.,
Mr. Asif Mehdi, Adv.,
Mr. Karunamoyee Samanta, Adv.

For the State: Mr. Ansar Ali Mondal, AGP
Mr. Subrata Dasgupta, Adv.,
Ms. Mahuya Dutta Biswas, Adv.

For the respondent no. 2: Mr. Sanjay Saha, Adv.,
Mr. Raju Mondal, Adv.

Hearing concluded on: 19.05.2025.

Judgment on: 19.05.2025.

PARTHA SARATHI SEN, J

1. The exception as filed by the writ petitioner to the report of the respondent nos. 4, 5 and 6 is taken on record.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondent no. 3 for quashing of the order dated 12.09.2024 as passed by the respondent no. 3/authority whereby and whereunder the writ petitioner's appeal under Rule 51 of the West Bengal Minor Minerals Concession Rules, 2016 (hereinafter referred to as the 'said Rules of 2016' in short) was dismissed

affirming the order dated 18.05.2023 as passed by the respondent no. 5/authority whereby and whereunder the respondent no. 5/authority declined to concede with the request of the writ petitioner for extension of lease.

3. In course of his submission Mr. Jahan, learned Advocate appearing on behalf of the writ petitioner draws attention of this Court to page nos. 18 to 67 of the instant writ petition being a copy of registered deed of mining lease dated 11.02.2017 as has been executed by and between the respondents/State and the writ petitioner for the purpose of excavation of sand from the area particulars of which has been mentioned in Part – I of the schedule of the said registered deed of lease. It is submitted that it is undisputed that the period of the said lease was for a term of five years.
4. At this juncture, Mr. Jahan draws attention of this Court to page no. 73 and 74 of the instant writ petition being a copy of the letter dated 10.09.2021 as written by the writ petitioner addressed to the respondents/authorities practically requesting them to grant extension of the period of lease on account of his inability to continue with the work of excavation of sand from the leased out river bed area on account of surge of COVID-19. Since the writ petitioner's said representation was not considered by the respondents/authorities, the writ petitioner approached a co-ordinate Bench of this Court by filing WPA 1407 of 2023 which came to be disposed of by a judgment and order dated 19.04.2023 by the said

co-ordinate Bench directing the respondent no. 5/authority herein to consider the said representation in accordance with law after giving an opportunity of hearing to the writ petitioner.

5. In such perspective the respondent no. 5/authority passed the reasoned order dated 18.05.2023 which is the subject matter of appeal before the respondent no. 3/authority.
6. In course of hearing Mr. Jahan draws attention of this Court to the order dated 18.05.2023 as passed by the respondent no. 5/authority *vis-à-vis* the order under challenge dated 12.09.2024 as passed by the respondent no. 3/authority in an appeal conjointly. It is submitted by Mr. Jahan that from the aforementioned two orders, it would reveal that the prayer for extension of lease as made by the writ petitioner was not considered favourably by the said two authorities practically without assigning no reason whatsoever. It is further submitted that though the said two authorities in their respective orders found that the writ petitioner was prevented by the respondents/authorities from work of excavation in terms of the lease deed as has been executed in favour of the writ petitioner but the said two authorities have failed to visualize that Rule 21 of the said Rules of 2016 has got no manner of application in respect of the prayer made by the present writ petitioner.
7. It is further submitted that Mr. Jahan that the aforementioned two respondents/authorities had wrongly held that during COVID period the

quantum of excavation as made by the writ petitioner from the leased out river bed area was high and further the respondent/State has not charged anything on account of shortfall excavation as per terms of the said deed of lease. It is thus submitted on behalf of the writ petitioner that the order which is under challenge may be set aside and appropriate writ may be issued against the respondents/authorities, more specifically against the respondent no. 5 to allow the writ petitioner to carry out the work of excavation for a period for which he was prevented on account of surge of COVID-19 as well as on account of restriction made by the respondents/authorities.

8. *Per contra*, learned Advocate appearing on behalf of the respondents/State draws attention of this Court to the report supported by affidavit as affirmed on 22.04.2025. It is submitted that from the said report it would reveal that on account of failure on the part of the writ petitioner, the respondents/State being lessor had not raised any claim as against the present petitioner for failure on the part of the lessee in terms and conditions of the said lease agreement in view of the fact that prior to surge of COVID-19, the writ petitioner failed to excavate minimum 60,000 cft. sand from the leased out area and at the same time it has been noticed by the respondents/authorities that the lessee/writ petitioner during the period of COVID-19 pandemic excavated 66,000 cft.

9. it is further submitted on behalf of the respondents/State that in view of the enactment of the West Bengal Sand (Mining, Transportation, Storage and Sale) Rules, 2021 (hereinafter referred to as the 'said Rules of 2021') by repealing the said Rules of 2016 there is hardly any scope for extension/renewal of the mining lease as prayed for by the writ petitioner.
10. Learned Advocate appearing on behalf of the respondent no. 2 adopted the argument of the learned Advocate for the respondents/State and its functionaries.
11. This Court has given due consideration over the submissions of the learned Advocates for the contending parties.
12. It is undisputed that the aforementioned lease deed was executed for a period of five years. This Court has also noticed as per terms and conditions of the said lease, the lessee/writ petitioner would have to extract and despatch minimum 60,000 cft. per acre of sand from the leased out river bed that is to say 3,79,200 cft. per year.
13. At this juncture, if I look to the chart as available at page no. 6 of the report supported by affidavit as affirmed on 22.04.2025, it reveals that in 2019-20 the excavated amount of sand was 8250 cft., in 2020-21 such excavated amount of sand was 66,000 cft. whereas in 2021-22 the total excavation was nil. As rightly argued on behalf of the respondents/State that for shortfall of such excavation the respondents have not imposed any

penalty pursuant to the Clause (b) Part VII of the lease deed upon the writ petitioner.

14. No plausible explanation has come from the side of the writ petitioner as to what prevented the writ petitioner to excavate the required quantity of sand from the leased out river bed except during the period of surge of COVID-19 when excavation were stopped. As rightly held by the respondent no. 5/authority as well as the respondent no. 3/authority in their respective orders that before them the writ petitioner has failed to extend any plausible explanation as to what prevented him to excavate the required quantity of sand from the leased out river bed. This Court has noticed that the respondents/authorities while passing their respective orders found no logical explanation on the part of the writ petitioner for less amount of excavation.

15. It is pertinent to mention herein that the writs issued by the High Court under Article 226 of the Constitution of India is highly prerogative in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case has discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power and this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedy unless such action of the State or its instrumentality is arbitrary and

unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons for which the court thinks it necessary to exercise the said jurisdiction. Such view has been taken by the Supreme Court in the reported decision of ***ABL International Limited vs. Export Credit Guarantee Corporation of India Ltd.*** reported in ***(2004) 3 SCC 553.***

16. In the event the present case is viewed from equitable angle, it appears to this Court that the writ petitioner cannot claim any equitable remedy also inasmuch as no explanation is furnished by the writ petitioner for lesser amount of excavation during the period of lease excluding the period when surge of COVID-19 was at the peak.
17. In view of the same and in absence of any perversity in the order under challenge or in absence of any material to show that the decision making process of said two respondents/authorities have been vitiated on account of taking into consideration of some extraneous materials, this Court considers that it would not be proper to interfere with such factual findings of the said respondents/authorities.
18. This Court has also perused the Clause 21 of the said 'Rules of 2016' as well as the subsequent 'Rules of 2021'. Admittedly, in view of the provisions of the said 'Rules of 2021' the lease can be granted only by way of auction and, therefore, there is hardly any scope on the part of the

respondents/authorities to grant extension of lease overlooking the relevant provisions of the said 'Rules of 2021'.

19. This Court thus finds no much merit in the instant writ petition.

20. Accordingly, the instant writ petition being WPA 26114 of 2024 is dismissed.

21. There shall be, however, no order as to costs.

22. 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.)