

19.05.2025.
18
Ct.No.7.
as

WPA 9722 of 2020

Dinesh Kumar Agarwala
Vs.
The State of West Bengal & Ors.

Mr. Sukanta Chakrabarty,
Mr. Soumya Kanti Sinha,
Ms. Suparna Das,
Mr. Anindya Halder.
...for the Petitioner.

1. Despite service, the State is unrepresented.
2. The present writ petition has been preferred primarily praying for the following reliefs:-

“a) A writ and/or writs in the nature of mandamus directing the respondents to forthwith provide access to the petitioner to the said sand mine block MGB-44 situated at Plot No.2488(P) admeasuring 5 hect. Equivalent to 12.35 acres of land in J.L.No.104, Mouza-Askola, P.S.-Gopiballavpur-II, District- Jhargram on the Subarnarekha river bed enabling him to carry out the sand mining activity;”

3. Mr. Chakrabarty, learned advocate appearing on behalf of the petitioner, submits that pursuant to a tender process, a parcel of land identified as Block MGB-44 was allotted to the petitioner for the purpose of sand extraction. A deed of lease was duly executed between the petitioner and the competent authority. Referring to the map annexed to the lease deed, Mr. Chakrabarty points out that an existing or

proposed road was shown on one side of the Subarnarekha River, intended to provide access to the said land.

4. He submits that, in the absence of proper access, the petitioner constructed a temporary bridge over the river to reach the allotted site. However, following an order passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, the said bridge was dismantled. As a result, the petitioner has been unable to access the leased land, thereby preventing him from carrying out any sand extraction activities. This situation, he contends, has persisted since 2017.

5. Drawing attention to Clause (a) of Section 108 of the Transfer of Property Act, 1882, he submits that the lessor is under an obligation to disclose to the lessee any material defect in the property, with reference to its intended use, of which the lessor is aware and which the lessee, exercising ordinary diligence, could not have discovered. He further relies on Clause (b) of Section 108 of the Act to argue that the lessor is duty-bound, upon the lessee's request, to put him in possession of the property.

6. He submits that the fact that, due to environmental restrictions, even a temporary bridge cannot be constructed across the Subarnarekha River to gain access to the other side, had not been disclosed to the petitioner. The non-disclosure of this fact, which, according to him, constitutes a material defect, has caused considerable hardship and loss to the petitioner.

7. He submits that a copy of the affidavit-in-opposition, duly affirmed on behalf of the State respondents, was

served upon the petitioner, who has since filed an affidavit-in-reply. He requests that the copy of the affidavit-in-opposition provided by him be treated as the original.

8. However, the representative of the State did not submit the affidavit-in-opposition in court, and as noted previously, despite receiving notice, no one appears to represent the State. The copy of the affidavit-in-opposition, as served upon the petitioner and produced by Mr. Chakrabarty, is taken on record. In the absence of the original copy, the said copy shall be treated as the affidavit-in-opposition filed on behalf of the State respondents and shall be deemed to be the original for all purposes of this proceeding.

9. Referring to paragraph 13 of the affidavit-in-opposition, Mr. Chakrabarty submits that the respondents themselves have acknowledged the existence of an alternative access route, which is presently being used by other allottees to reach and operate sand mining activities in adjacent blocks. In light of this, he prays that an appropriate direction be issued upon the respondents to allow the petitioner to use the said alternative route for accessing Block MGB-44 and to carry out sand extraction operations thereon.

10. Referring to an order passed by the Principal Secretary, Department of Industry, Commerce and Enterprise, in compliance with the order dated 12.08.2024 passed in WPA 13773 of 2024, Mr. Chakraborty contends that he extension of the lease period even after its expiry, have been granted to other similarly situated allottees.

11. Heard the learned Advocates appearing for the petitioner and perused the materials on record.

12. It is an admitted position that the petitioner emerged as the successful bidder in the tender process floated by the respondents for the allotment of a sand mining block identified as MGB-44, situated at Plot No. 2488(P), measuring 5 hectares (equivalent to 12.35 acres) in J.L. No. 104, Mouza Askola, P.S. Gopiballavpur-II, District Jhargram, located along the Subarnarekha river bed. Pursuant thereto, a lease was duly executed between the petitioner and the respondents. As noted earlier, the map annexed to the lease deed clearly indicates that the mining plot identified as MGB-44 is situated on one side of the Subarnarekha River.

13. The petitioner submits that the paragraph 13 of the affidavit-in-opposition filed by the State respondents states that the bridge constructed over the Subarnarekha river was dismantled in compliance with the order dated 11th July, 2017, passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Calcutta. It is further submitted that the respondents have acknowledged the existence of roads from 'Ratua to Feko' and 'Ratua to Nayagram,' which are located adjacent to the mining block. Notably, the lessee of sand block MGB-45, which is situated on the same Plot No. 2488(P), is currently using the said road to access and extract sand from Plot No. MGB-45. The relevant portion of the paragraph 13 of the affidavit-in-opposition is quoted as below:

“it is humbly submitted that even after removal of the bridge over river Subarnarekha in compliance of the order passed by the Hon’ble Tribunal the petitioner has road connectivity available for such mining activities connecting “Rantua” to “Feko” and “Rantua” to “Nayagram Road” which has been used by other lessee of sand block MG-B45 situated on the same Plot No. 2488 as that of the instant appellant’s sand block- MG-B44, in the same Mouza- Askola, JL No. 104, Block-Gopipallavpur-II.”

14. Therefore, since the State respondents have acknowledged that another lessee of the adjacent mining block is being permitted to use the aforementioned road, I find no justification as to why the petitioner’s request to access the same road for the purpose of extracting sand from the mining block allotted to him should not be accepted.

15. It is admitted in the affidavit-in-opposition that the petitioner was able to extract 4,05,700 cubic feet of sand from the said block during the period from April 2017 to July 2017.

16. The lease granted pursuant to the tender was for a period of five years, effective from the date of registration of the deed of lease. However, the petitioner was able to extract sand only for a period of four months.

17. In view of the above, the writ petition is disposed of with a direction upon the respondents to permit the petitioner to extract sand for the remaining period of four years and eight months, in accordance with the terms and conditions of the lease deed, from the date of receipt of a copy of this order, provided there is no other legal

impediment. The Secretary, Government of West Bengal, Commerce and Industries Department, is further directed to allow the petitioner to use the roads from 'Ratua to Feko' and 'Ratua to Nayagram' for the purpose of extracting sand from the mining block identified as MGB-44.

18. There will be no order as to costs.

(Partha Sarathi Chatterjee, J.)