IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

BEFORE:
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

WPA 28376 OF 2025

Pal Enterprise
Versus
The State of West Bengal and others

For the Petitioners	: Mr. Ashoke Banerjee, Sr. Advocate Mr. Mir Anowar ..... Advocates
For the State	: Mr. Arka Kumar Nag Mr. Manish Biswas .... Advocates
For the respondent nos. 8	: Mr. Sanjay Saha Mr. Raju Mondal ..... Advocates
Reserved on	: 02.02.2026
Judgment on	: 30.04.2026

<u>Hiranmay Bhattacharyya, J.:-</u>

1. Petitioner has challenged the order of the Commissioner, Burdwan Division dated 31.07.2025 passed in Appeal Case no. 53 of 2023 and the order of the Additional District Magistrate and District Land and Land Reforms Officer, Purba Bardhaman dated 10.05.2023.

2. Petitioner participated in an e-auction conducted on November 18, 2017 for grant of a sand mining lease in respect of a sand block situated at Mouza

Shikarpur under Police Station Galsi in the district of Purba Bardhaman. Petitioner was declared as the highest bidder. A Letter of Intent (for short "LOI") was issued in favour of the petitioner directing the petitioner to comply with all statutory formalities including Environmental clearances and approval of mining plan for the purpose of execution and registration of the long term mining lease. A long term mining lease dated February 27, 2018 was executed in favour of a petitioner for a period of five years and the lease deed was registered on March 6, 2018. Petitioner took possession of the sand block on March 7, 2018 and claims to have commenced mining operations after making payment of the requisite charges.

3. Petitioner states that an unprecedented road accident occurred on 1st January 2020 at Simultala under Galsi Police Station which resulted in law and order problem and extraction of sand from the sand block in question had been unilaterally suspended by an order 02.01.2020. Thereafter, by order dated March 23, 2020 issued by the Block Land and Land Reforms Officer Galsi II, sand mining activities was suspended and such suspension was withdrawn with effect from 13.05.2020. In the meantime due to Covid 19 Pandemic, Lock down was imposed and the sand mining activities of the petitioner was totally stopped.

4. Petitioner states that for the reasons as aforesaid, the sand mining activities were totally stopped for nearly five months from 01.01.2020 to 13.05.2020. Petitioner further stated that the respondent authorities again directed stoppage of movement of sand loaded trucks through the road on account of construction of the road and for such reason the sand mining activities of the petitioner were stopped for a period of about 12 months on and from February, 2021 to 31st January 2022. The petitioner states that the said restriction was further extended for a period of two more months till 7th April 2022. Petitioner thereafter, submitted a representation dated 10.06.2022 before the respondent authorities praying for extension of the lease period. As the petitioner could not carry on the sand mining activities for reasons beyond the control of the petitioner lessee, a writ petition being WPA 14512

of 2022 was filed by the petitioner which was disposed of by a co-ordinate bench by an order dated 14.04.2023 by directing the 3rd respondent therein to consider and dispose of the representation of the petitioner by passing a reasoned order after affording an opportunity of hearing to all the affected parties including the petitioner. Pursuant to the aforesaid order passed by the co-ordinate bench, the Additional District Magistrate and District Land and Land Reforms Officer, Purba Bardhaman passed an order dated 10.05.2023 rejecting the prayer of the petitioner for extension of the lease period.

5. Challenging the order dated 10.05.2023, petitioner preferred an appeal under Rule 51 of the West Bengal Minor Minerals Concession Rules 2016, before the Commissioner, Burdwan Division being the appellate authority, which was registered as Appeal Case no. 53 of 2023. The appellate authority dismissed the said appeal on merit. Being aggrieved by the order of the appellate authority refusing to interfere with the order of the original authority, petitioner has approached this Court.

6. Mr. Banerjee, learned Senior Advocate appearing for the petitioner contended that the petitioner had to stop the mining activities on account of restrictions imposed in movement of vehicles carrying sand for substantial period of the tenure of the lease. In support of such contention he drew the attention of the Court to several letters issued by various authorities. Mr. Banerjee further contended that the petitioner also could not carry on the mining activities on account of the Lock down imposed on account of Covid 19 Pandemic. He thus contended that the petitioner could not carry out the mining activities for the entire period of five years for no fault on the part of the petitioner lessee. By referring to Clause 5 under part IX of the lease deed, Mr. Banerjee contended that the lease deed provides for extension of the period of lease if the fulfilment by the lessee of any of the terms and conditions of the lese is delayed for reasons beyond the control of the lessee.

7. Mr. Banerjee placed reliance upon a decision of the co-ordinate bench in the case of ***Radharaman Constructions and Marketing Private Limited and***

Another vs. State of West Bengal and ors. reported at ***2023 SCC Online Cal 4791*** and an order dated 15.07.2025 passed by a co-ordinate bench in WPA 13654 of 2024 in the case of ***Pradip Arora vs. The State of West Bengal and ors.*** in support of the prayer for extension of the lease deed.

8. Mr. Saha learned advocate appearing for the WBMDTCL seriously disputed the submissions of Mr. Banerjee. He contended that the "Force Majeure" clause appearing in clause 5 under part IX of the lease deed cannot apply to a case where the Government has not raised any claim against the lessee on account of failure by the lessee of any terms and conditions of the lease deed. He contended that in the meantime the West Bengal Sand Mining Policy 2021 had come into effect and Clause 6(iii) of the said policy clearly provides that upon expiry of the existing sand mining leases, such leases shall not be renewed and shall automatically revert to the State Government. He submitted that the petitioner is not entitled to extension of lease by taking the aid of the "Force Majeure" clause. In support of such contention, Mr. Saha placed reliance upon the decision of the Hon'ble Division Bench in the case of ***Dilip Mondal vs. The State of West Bengal and ors.*** passed in **MAT 1304 of 2025** with **CAN 2 of 2025.**

9. Heard the learned advocates for the parties and perused the materials placed.

10. The long term mining lease deed dated February 27, 2018 was executed and registered on 06.03.2018 in favour of the petitioner for a period of five years. Petitioner took possession of the sand block in question on March 7, 2018. The lease deed was valid till March 5, 2023.

11. The grievance of the petitioner is that due to an accident that occurred on 01.01.2020 at Simultala under Galsi Police Station, work of extraction of sand had been suspended. Due to outbreak of Covid 19 pandemic which resulted in imposition of nationwide lock down, the petitioner claims that he could not continue with the mining works. Petitioner further alleges that due to construction of road from Shikarpur to Galsi, sand loaded trucks

were not allowed to ply along the said road for which the petitioner could not carry on the mining activities. Petitioner claims that he suffered huge losses as he could not carry out the mining activities during the entire period of the lease.

12. The petitioner has prayed for extension of the period of lease by submitting a representation dated 10.06.2022. In support of the prayer for extension of the lease period petitioner placed strong reliance upon the "Force Majeure" clause contained in the said lease. For the purpose of effective adjudication of the dispute involved in this matter clause 5 under Part IX of the lease deed is extracted hereinafter-

> *"5. Failure on the part of the Lessee/Lessees to fulfill any of the terms and conditions of this lease shall not give the State Government any claim against the Lessee/Lessees or be deemed a breach of this lease, in so far as such failure is considered by the said Government to arise from force majeure, and if through force majeure the fulfillment by the Lessee/Lessees of any of the terms and conditions of this lease be delayed, the period of such delay shall be added to the period fixed by this lease. In this clause the expression "force Majeure" means act of God, war, insurrection, riot, civil commotion, strike, earthquake, tide, storm, tidal wave; flood, lightning, explosion, fire and other happenings, which the Lessee/Lessees could not reasonably prevent or control."*

13. In ***Pradip Arora*** (supra) the mining operations of the writ petitioner therein were directed to be suspended by the respondent authorities for alleged violation on the part of the writ petitioner regarding excavation of sand beyond the leasehold area for which the petitioner could not carry on his business from April 2019 to September 2021. The co-ordinate bench after arriving at a finding that the respondent authorities could not justify their action for suspending the petitioner from carrying out the mining operation for 29 months, directed the respondent authorities to extend the period of lease for a period of 29 months. The decision being distinguishable on facts cannot come to the aid of the petitioner.

14. The appellate authority recorded that the petitioner did not apply for renewal or extension during the currency of the lease nor was the formal invocation of the “Force Majeure” clause made before the lease expired. The appellate authority further recorded that the belated representation of the petitioner made after the expiry of the lease cannot revive a leasehold interest which has been lawfully terminated. The appellate authority further recorded that Clause 6(iii) of the West Bengal Sand Mining Policy, 2021 clearly provides that upon expiry of the existing sand lease the lease shall not be renewed and shall automatically revert to the State Government.

15. From the materials disclosed in the writ petition it is evident that the petitioner submitted a representation dated June 10, 2022 which was received by the office of the respondent authorities on 13th June, 2022 praying for extending the lease period which was lost due to Covid 19 lock down and other disturbances that occurred during the stipulated time period of the long time mining lease.

16. Thus, the finding of the appellate authority that the representation submitted by the petitioner was after the expiry of the lease period suffers from perversity.

17. The petitioner has prayed for excluding the period of the lock down due to Covid 19 Pandemic as well as other disturbances from the lease period. In other words the petitioner has prayed for extension of the period of lease for the aforesaid reasons.

18. The distinction between “extension” and “renewal” of a lease deed has been succinctly stated by the Hon’ble Supreme Court in the case of ***State of Gujarat and others. vs. Nirmalaben S. Mehta and Anr.*** reported at ***(2016) 9 SCC 240***. The Hon’ble Supreme Court held that in case of “renewal”, new lease is required while in the case of “extension”, the same lease continues in force during additional period by performance of stipulated act. The word “extension” when used in its proper and usual sense in connection with a lease means prolongation of the lease.

19. It, therefore, follows that extension of lease is not a fresh grant but it is only a prolongation of the original lease.

20. In the case on hand, petitioner has prayed for extension of the lease and not renewal of the same.

21. Clause 6(iii) of the West Bengal Sand Mining Policy 2021 deals with the transfer of existing mining lease. It states that in existing leases, the lease shall not be renewed and shall automatically be resumed and vested with the State Government upon expiry of such lease. The State Government shall then lease the sand mines to WBSTDCL or any agency recommended by it. Thus, Clause 6 (iii) of the 2021 policy restricts transfer of existing mining lease by way of renewal. That apart the right to seek extension of the lease period under Clause 5 of Part IX of the lease deed could not be nullified by the coming into force of the 2021 Policy.

22. As observed hereinbefore there is a fundamental difference between extension of lease and renewal of lease and the petitioner has prayed for extension of the period of lease by invoking Clause 5 under Part IX of the lease deed and not renewal thereof. Therefore, Clause 6(iii) of the Sand Mining Policy cannot apply to the case on hand.

23. The question that now falls for consideration is whether the petitioner is entitled to extension of the lease period on account of the lock down imposed due to outbreak of Covid 19 Pandemic as well as other restrictions imposed by the authorities in movement of trucks carrying sand.

24. At this stage it would be relevant to take note of the Office Memorandum (O.M.) dated May 13, 2020 on the invocation of Force Majeure Clause (FMC) issued by the Government of Ministry of Finance Department of Expenditure Procurement Policy Division. The said O.M. is extracted hereinafter.

No. F. 18/4/2020-PPD
Government of India
Ministry of Finance

Department of Expenditure
Procurement Policy Division

North Block, New Delhi
New Delhi dated the 13th May, 2020

OFFICE MEMORANDUM

Subject: Force majeure Clause (FMC)

Attention is invited to Department of Expenditure's O.M. No 18/4/2020-PPD dated 19th February, 2020 on the invocation of Force Majeure Clause (FMC). Vide the O.M., it was clarified that disruption of supply chains due to spread of Coronavirus will be covered under FMC which could be invoked, wherever considered appropriate, following the due procedure as stated in para 9.7.7. of the Manual on Procurement of Goods.

2. Subsequent to issuance of the above referred O.M., further disruptions have affected transportation, manufacturing and distribution of goods and services in the country. Limitations placed on the movement of men and material as per the guidelines issued by the Ministry of Home Affairs (MHA) under the Disaster Management Act, 2005 (DM Act 2005) and the respective State and UT governments from time to time have severely impaired the fulfilment of contractual obligations for supply of goods, works and consultancy services (including other services), and affected the volume of vehicular traffic.

3. Attention in this regard is invited to para 9.7.7 of the "Manual for Procurement of Goods 2017", Para 6.4.2 of the "Manual for Procurement of Works 2019" and para 8.14.1 of the "Manual for Procurement of Consultancy and other Services 2017" issued by the Department of Expenditure. The above referred three Manuals recognize extraordinary events or circumstances beyond human control leading to delays in or non-fulfilment of contractual obligations. In a situation of such events happening, and after following due procedure, parties to the contract are allowed flexibility to invoke FMC following prescribed due procedure.

4. It is recognised that in view of the restrictions placed on the movement of goods, services and manpower on account of the lockdown situation prevailing overseas and in the country in terms of the guidelines issued by the MHA under the DM Act 2005 and the respective State and UT Governments, it may not be possible for the parties to the contract to fulfil contractual obligations. In respect of Public-private Partnership (PPP) concession contracts, a period of the contract may have become unremunerative. Therefore, after fulfilling due procedure and wherever applicable, parties to the contract may invoke FMC for all construction/works contracts, goods and services contracts and PPP contracts with Government Agencies and in such event, date for completion of contractual obligations which had to be completed on or after 20th February 2020 shall stand extended for a period not less than *three months and not more than six months without imposition of any cost or penalty on the contractor/concessionaire. Concession period in PPP contracts ending on or after 20th February 2020 shall be extended by not less than three and not more than six months. The period of extension (between three and six months) may be decided based on the specific circumstances of the case and the period for which performance was affected by the force majeure events.*

5. It is clarified that invocation of FMC would be held valid only in a situation where the parties to the contract were not in default of the contractual obligations as on 19th February, 2020. It is further clarified that invocation of FMC does not absolve all non-performances of a party to the contract, but only in respect of such non-performance as is attributable to a lockdown situation or restrictions imposed under any Act or executive order of the Government/s on account of COVID-19 global pandemic. It may be noted that, subject to above stated, all contractual obligations shall revive on completion of the period.

(Kotluru Narayana Reddy)
Deputy Secretary to the Govt. of India
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To,
Secretaries of all Central Government Ministries/Departments"

25. The said Office Memorandum states that the Office Memorandum dated February 19, 2020 on the invocation of Force Majeure Clause (FMC) clarified that disruption of supply chains due to spread of Corona Virus will be covered under FMC which could be invoked wherever considered appropriate. By referring to several Manuals it was stated that such Manuals recognized extraordinary events or situations beyond human control leading to delays in or non-fulfillment of contractual obligations and in a situation of such events happening and after following due procedure, parties to the contract are allowed flexibility to invoke FMC following prescribed due procedure.

26. The said O.M. provides for invocation of "Force Majeure Clause" for all construction/works contracts, goods and services contract and other contracts. It speaks of extension of the period of lease for which performance was affected by force majeure events.

27. Upon going through the Office Memorandum dated May 13, 2020 it *prima facie* appears to this Court that the lock down imposed on account of Covid 19 pandemic may fall within the expression "other happenings" used in Clause 5 of part IX of the lease deed.

28. The petitioner has claimed extension of the period of lease on account of stoppage of mining activities due to imposition of lock down on account of onset of Covid 19 Pandemic as well as on other grounds.

29. This Court has to now consider whether the other grounds raised by the petitioner apart from imposition of lock down on account of on set of Covid 19 Pandemic would also fall within the expression " other happenings" used in Clause 5 under part IX of the lease deed.

30. The co-ordinate bench in ***Radharaman Construction and Marketing Private Limited*** (supra) after noting that the petitioner therein was unable to carry on mining operation in view of a notification issued by the District Administration restricting movement of all types of heavy loaded goods vehicles for a certain period held that the petitioner was entitled to extension of the period lost due to imposition of the restriction in terms of clause 5 under part IX of the deed itself.

31. At this stage it would be relevant to take note of the judgment dated November 27, 2025 passed by the Hon'ble Division Bench in ***MAT 1304 of 2025*** with ***CAN 2 of 2025*** in the case of ***Dilip Mondal vs. The State of West Bengal and ors.*** The Hon'ble Division Bench held that 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, which the Lessee/Lessees could not reasonably prevent or control. The Hon'ble Division Bench further proceeded to observe that stoppage of mining operation even if it was due to unlawful action on the part of the respondent authorities 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. It, therefore, follows that stoppage of mining operation on account of an action of the respondent authorities even if the same was unlawful would not fall within the expression “other happenings” used in Clause 5 of part IX of the lease deed. The appellate authority did not have the occasion to consider the decision of the Hon’ble Division Bench in the case of ***Dilip Mondal*** (supra). However, the order of the appellate authority suffers from perversity as observed hereinbefore. ***Dilip Mondal*** (supra) is a binding precedent and, therefore, this Court has applied the proposition of law laid down in ***Dilip Mondal*** (supra).

32. Appellate authority as well as original authority also did not take into consideration the effect of Office Memorandum issued from time to time by the Government of India after the onset of Covid 19 Pandemic on the invocation of Force Majeure Clause to the case on hand.

33. For all the reasons as aforesaid this Court is inclined to remit the matter to the authority to take a fresh decision.

34. Since a substantial time has elapsed from the date of expiry of the lease, this Court feels that the matter be remitted to the appellate authority.

35. Accordingly, the writ petition stands allowed and the order of the appellate authority dated 31.07.2025 is set aside. The Appeal no. 14 of 2025 stands restored to the file of the appellate authority and the appellate authority is directed to hear out and decide the said appeal afresh and dispose of the same by passing a reasoned order in the light of the observations made hereinbefore and after affording an opportunity of hearing to the petitioner or his authorised representative and/or any other affected party and communicate the reasoned order to the petitioner as expeditiously as possible but positively within a period of ten weeks from the receipt of a server copy of this order.

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

37. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

38. Before parting, it is, however, made clear that the appellate authority shall be free to decide on the applicability of the said O.M. dated 13.05.2020 to the lease in question in accordance with law and upon hearing the petitioner on such point.

(HIRANMAY BHATTACHARYYA, J.)