

(2013) 04 CAL CK 0085
In the Calcutta High Court
Case No : W.P. No. 21896 (W) of 2012

Anjali Mondal

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 CAL CK 0085

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this WP under art. 226 of the Constitution of India dated September 25, 2012 is seeking the following principal relief:-

a) A writ in the nature of Mandamus commanding the Respondent and/or their subordinate to give lease hold right of mining lease over the abovementioned land from 17.5.2011 to 16.5.2016 as it was mentioned in the lease deed prior to over writing.

The petitioner's husband, Haradhan Mondal, applied for a mining lease under the West Bengal Minor Minerals Rules, 1973. The application was allowed and the lease deed was executed on February 22, 2000 for five years. By a deed dated December 18, 2006 the lease was renewed for five years from the date of registration of the deed. It was registered on January 19, 2007.

2. On March 26, 2008 Haradhan informally applied for consent of the State Government to transfer the lease to the petitioner. The transfer was permissible according to the provisions of r. 18 of the West Bengal Minor Minerals Rules, 2002 whereby the West Bengal Minor Minerals Rules, 1973 were repealed. During pendency of the application Haradhan died on May 4, 2008.

3. It is submitted that Haradhan was survived by the petitioner and two minor children. In view of the provisions of the deed dated December 18, 2006 the

leasehold was to devolve on Haradhan's heirs. The application for consent to transfer, however, lost significance due to Haradhan's death. Pursuant to the terms of the lease the petitioner and her children were entitled to enjoy the leasehold till January 19, 2012 when the term of the lease was to expire.

4. But then the authority concerned executed a fresh lease deed dated May 17, 2011 giving the petitioner the leasehold till December 17, 2012. It is evident that the term of the lease dated December 18, 2006 was extended by around eleven months. The question of extension, if necessary, could be considered by the State Government only according to the provisions of r. 16 of the West Bengal Minor Minerals Rules, 2002.

5. The petitioner accepted the lease and commenced mining operations. Hence there was no question of submitting any application for extension of the term of the lease mentioned in the deed dated May 17, 2011. She brought this WP dated September 25, 2012 contending that though she was entitled to enjoy the leasehold for five years from May 17, 2011, the State Government gave it only till December 17, 2012.

6. The question is whether the petitioner is entitled to a mandamus commanding the respondents to consider the question of extending the term of the lease till May 16, 2016.

7. It is not a case of renewal of the lease; for the petitioner did not seek any renewal of the lease dated December 18, 2006 or the lease dated May 17, 2011; none of them provided for renewal. But the petitioner wants extension of the term of the lease dated December 18, 2006 and consequent extension of the term of the lease dated May 17, 2011. As already mentioned, the question of extension could be considered by the respondents, if at all, under r. 16 of the rules.

8. Sub-rule (2) of r. 16 of the rules provides that where a lessee is unable to commence the mining operations within a period of one year from the date of execution of the mining lease or discontinues mining operations for a period exceeding one year for reasons beyond his control, he may submit an application to the State Government explaining the reasons for the inability or discontinuance within a month from the date the one year period expires.

9. The petitioner's case is that mining operations commenced by Haradhan were discontinued after his death on May 4, 2008. In view of the provisions of the lease dated December 18, 2006 the petitioner and her two minor children were entitled to carry on the mining operations till January 19, 2012; and for this no fresh lease or permission was necessary.

10. The petitioner claiming that the mining operations were discontinued from May 4, 2008 was entitled to apply under r. 16(2) for extension of the term of the lease dated December 18, 2006. The last date for filing such application was June 4, 2009. She did not apply. She claims that she pursued her case for

transfer of the lease to her.

11. The petitioner's claim for transfer of the lease to her, though was not entertainable, was considered by the authority, who ultimately decided to execute a fresh lease de hors the rules permitting her to enjoy the leasehold for around eleven months more than the original term of the lease dated December 18, 2006 whose term was to expire on January 19, 2012. The extension was granted de hors the rules.

12. Nothing entitled the petitioner to seek a fresh extension, because it is not her case that mining operations commenced by her were discontinued once again for a period exceeding one year. No provision of the rules entitled the petitioner to seek extension of the term of the lease after June 4, 2009, and no provision of rules empowered the respondents to give the petitioner the leasehold beyond January 19, 2012. For these reasons, the petitioner is not entitled to any relief. The WP is, accordingly, dismissed. No costs. Certified xerox.