
(2019) 09 CAL CK 0153

In the Calcutta High Court

Case No : Tender Of Mand Appl (MAT) No. 1140 Of 2019, Civil Application (CAN)
No. 8220 Of 2019

Krishna Roychowdhury

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 02-09-2019

Acts Referred:

West Bengal Minor Minerals Concession Rules, 2016 — Rule 21

Citation : (2019) 09 CAL CK 0153

Hon'ble Judges : Biswanath Somadder, J; Arindam Mukherjee, J

Bench : Division Bench

Advocate : Krishnendu Bera, Sirsanya Bandopadhyay, Subhendu Sengupta

Final Decision : Dismissed

Judgement

Biswanath Somadder, J

By consent of the parties, the appeal is treated as on day's list and taken up for consideration along with the connected application.

The instant appeal arises out of a judgment and order dated 20th February, 2019, passed by a learned Single Judge in W. P. 7439 (W) of 2018 (Krishna Roychowdhury vs. The State of West Bengal & Ors.). By the impugned judgment and order, the learned Single Judge was pleased to dismiss the writ petition with an observation that such dismissal shall not prevent the writ petitioner from participating in any future proceedings for grant of lease in accordance with law.

The appeal has been preferred by the writ petitioner.

The issue before the learned Single Judge was in respect of grant of mining lease in favour of the writ petitioner for the purpose of extraction of sand in the district of Burdwan (presently, Purba Burdwan). This lease deed was entered into by and between the writ petitioner and the State of West Bengal on 21st February, 2014 and was valid till 24th February, 2019.

According to the appellant-writ petitioner, after execution of the deed of lease in the year 2014, it became impossible for her to carry out any mining activity. As such, a notice under Rule 21 of the West Bengal Minor Minerals Concession Rules, 2016, was served by the appellant-writ petitioner upon the concerned respondent authority on 24th January, 2018, requesting renewal/extension of the period of lease in accordance with the said Rule.

Learned Single Judge took into consideration the respective stand taken by the parties, including the specific stand taken by the State-respondents that in the facts of the instant case, the issue does not fall squarely within the provisions of Rule 21 of the West Bengal Minor Minerals Concession Rules, 2016. A further stand taken on behalf of the State-respondents before the learned Single Judge was that the lease was now subject to the extant policy of the State Government and the writ petitioner was also entitled to participate in future for obtaining mining lease under the present policy. The learned Single Judge was unable to agree with the appellant-writ petitioner that a deeply entrenched accrued right had grown qua the petitioner in respect of claiming renewal of lease after the original lease expired. The learned Single Judge also came to a finding that instead of raising issues under Rule 21, the appellant-writ petitioner had waited for long to bring the issue to the notice of the Court close on the heels of expiry of the original lease. In such circumstances, the learned Single Judge proceeded to dismiss the writ petition with the observation that such dismissal shall not prevent the writ petitioner from participating in any future proceeding for grant of lease in accordance with law.

Rule 21 of the West Bengal Minor Minerals Concession Rules, 2016, reads as follows:

"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) Every such application under sub-rule (2) shall be accompanied by a fee of one thousand rupees deposited in the manner as may be notified.

(4) The State Government or the Lease Granting Authority may, on receipt of an application made under sub-rule (2) and on being satisfied about reasons for the non-commencement of mining operations or discontinuance, allow the commencement or continuance of such lease."

Explanation. - Where the non-commencement of mining operations within a period of one year from the date of execution of mining lease or discontinuation of such operations for a period of one year is on account of -

- (a) delay in acquisition of surface rights; or
- (b) delay in getting the possession of the leased area; or
- (c) delay in supply or installation of machinery; or
- (d) orders passed by any statutory or competent authority; or
- (e) operation becoming highly uneconomical;
- (f) strike or lock-out;

as the case may be, and the lessee is able to furnish documentary evidence supported by an affidavit in Form C duly sworn in the State Government may consider any or all of these as sufficient reasons for the non-commencement/discontinuation of mining operations within the said period of one year."

From the explanation as reproduced hereinbefore, it is clearly evident that in the event of non-commencement of mining operations within a period of one year from the date of execution of mining lease or if discontinuation of such operations for a period of one year is on account of one or more of the six reasons as specified thereunder and the lessee is able to furnish documentary evidence supported by an affidavit in Form C, duly sworn in, the State Government may consider any or all of the reasons as provided under the explanation as sufficient reason(s) for non-commencement/discontinuation of mining operations within the said period of one year.

In the facts of the instant case, if the appellant-writ petitioner wanted to make out her case under Rule 21 of the West Bengal Minor Minerals Concession Rules, 2016, she ought not to have waited till 24th January, 2018, for the purpose of invoking the said Rule.

As such, we do not find any plausible or justifiable reason to disagree with the impugned judgment and order passed by the learned Single Judge. That apart and in any event, in an Intra-Court Mandamus Appeal, interference is usually warranted only when palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. In the facts of the instant case, we do not notice any palpable infirmity or perversity on a plain reading of the impugned judgment and order. Moreover, the impugned judgment and order is supported with cogent and justifiable reasons.

In such circumstances as stated above, the appeal and the connected application

are liable to be dismissed and stand accordingly dismissed.

I agree.