

(2021) 09 CAL CK 0020

In the Calcutta High Court

Case No : Writ Petition No. 239 Of 2021, IA NO: GA/1 Of 2021

Pushpa Bouri @ Puspa Bauri

APPELLANT

Vs

M/S. Eastern Coal Fields Ltd. And Ors.

RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 09 CAL CK 0020

Hon'ble Judges : Arindam Mukherjee, J

Bench : Single Bench

Advocate : Partha Ghosh, Amal Kumar Datta, Bijoy Kumar

Judgement

RE: GA 1 of 2021:

GA 1 of 2021 filed in this writ petition is an application by the respondent no.1, inter alia, for modification and/or clarification of the order dated 6th August, 2021. The respondent no.1 says that the office of the respondent no.1 situate at 13 R.N. Mukherjee Road Kolkata 700001 is functional with a skeleton staff only to protect the property contrary to what was submitted by the Advocate for the respondent no.1 on 6th August, 2021 and recorded in the said order. The respondent no.1 further says that the office at 13 R.N. Mukherjee Road Kolkata 700001 has been closed but the property has not yet been sold. In order to protect this prime property one or two officials are required who are posted thereat. The said office in strict sense does not function after the Functional Director Coal India Limited (in short 'CIL') had decided to shift all the desk office of all the subsidiaries of CIL from Kolkata to their respective head quarters. It is also stated that the learned Advocate representing the respondent no.1 under confusion had submitted that the office had been closed and as such seeks modification to that part of the order dated 6th August, 2021 wherein the submission of the Advocate representing the respondent no.1 has been recorded. It is a matter of concern to find that the respondent no.1 on affidavit in paragraph 8 of the application is stating that the office at 13 R.N. Mukherjee

Road Kolkata 700001 has been closed down yet the said respondent is seeking modification of the portion of the order dated 6th August, 2021 wherein the Advocate representing the respondent no.1 had submitted that the office at 13 R.N. Mukherjee Road Kolkata 700001 had been closed down. The stand of the respondent in view of the aforesaid is not clear to this Court. In view of such apparent contradiction in the stand of the respondent no.1 the order dated 6th August, 2021 to that extent does not need any modification or clarification. The respondent no.1 has also sought for a fresh prayer in the garb of modification in the said application by inviting this Court to hold that no part of cause of action as pleaded by the petitioner in the writ petition arose within the Original Side Jurisdiction of this Court. This point has been taken at the first hearing of the writ petition on 6th August, 2021 which resulted in asking the respondent no.1 to produce documents to show that the office at 13 R.N. Mukherjee Road Kolkata 700001 of ECL is closed. No documents to that effect has, however, been produced. On the contrary the statement is that the said office still exists with few officials and is not functional. This issue as such should be decided in the writ petition itself. No separate application is required for adjudication of this issue when the same has been taken prior to the filing of this application and recorded in the order dated 6th August, 2021.

The application being GA 1 of 2021 is therefore devoid all merits and the same is dismissed with cost assessed at 100 GMs. payable to the Calcutta High Court Legal Services Committee by 17th September, 2021.

RE: WPO 239 of 2021:

The respondents have raised a preliminary point of objection in entertaining the writ petition in the Original Side of this Court by citing Rule 4 of the Rules of the High Court at Calcutta relating to applications under Article 226 of the Constitution of India. The respondents say that to file and maintain a writ petition in the Original Side of this Court, all the respondents shall either have to reside or carry on business or have their offices situate within the Ordinary Original Civil Jurisdiction of this Court, unlike a Civil Suit which can be filed after obtaining leave under Clause 12 of Letters Patent, 1865 if any part cause of action has arisen within the Ordinary Original Civil Jurisdiction of this Court.

Assuming without admitting that the respondent no.1 has an office at 13 R.N. Mukherjee Road Kolkata 700001, and a part cause of action has arisen within the Ordinary Original Civil Jurisdiction of this Court then also all the respondents do not have their offices within the Ordinary Original Civil Jurisdiction of this Court which is necessary to file and maintain a writ petition in the Original Side of this Court. In that view of the matter the writ petition according to the respondents has to be filed in the Appellate Side.

The writ petitioner has disputed this contention of the respondent no.1 by saying that the office of the respondent no.1 at 13 R.N. Mukherjee Road Kolkata 700001 is still operational for which the writ petition can be filed, received and heard in

the Original Side of this Court. Moreover, part cause of action according to the petitioner has arisen within the Ordinary Original Civil Jurisdiction of this Court. The petitioner also refers to several judgments to show that writ petition has been entertained against the respondent no.1 in the Original Side. There are however several judgments holding that the writ petition wherein all the respondents do not have their respective offices of their business within the Ordinary Original Civil Jurisdiction of this Court has to be filed in the Appellate Side. Without going into the technicalities as to whether part cause of action has arisen within the Ordinary Original Civil Jurisdiction of this Court or that by virtue of the office of the respondent no.1 being situate at 13 R.N. Mukherjee Road Kolkata 700001 which will linger the hearing of the writ petition and may cause detriment to the interest of the petitioner due to delay, I think justice will be subserved if I direct this writ petition to be converted into a writ petition filed in the Appellate Side of this Court by assigning a writ petition number in the Appellate Side.

The writ petition is therefore sent back to the Registry/department to make necessary endorsement/recording to treat this writ petition to have been filed in the Appellate Side on the date when it has been filed in the Original Side and assign a number to the writ petition for being treated as a Writ Petition filed in the Appellate Side on that date. The entire exercise has to be completed by the Registry/department within 17th September, 2021.

Let this matter appear in the Appellate Side list of the Bench taking up Group VI matters as a motion on 20th September, 2021.