

(2000) 09 CAL CK 0062

Calcutta High Court

Case No: Writ Petition No's. 11894 and 1160 (W) of 2000

Debasis Pal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Sept. 12, 2000**Citation:** (2001) 1 ILR (Cal) 229**Hon'ble Judges:** Dilip Kumar Seth, J**Bench:** Single Bench**Advocate:** Mrinal Kanti Das and Kamal Krishna Chakraborty, for the Appellant; Indrajit Sen and Pinaki Banerjee and Gautam Lahiri, for the Respondent

Judgement

Dilip Kumar Seth, J.

The W.P. No. 1160(w) of 2000 was disposed of by an order dated August 30, 2000, while disposing of the W.P. No. 11894(w) of 2000. The writ petition No. 11604(w)/2000 was directed to be governed by the order passed in W.P. No. 11894(w) of 2000. After hearing Mr. Mrinal Kanti Das, learned Counsel for the Petitioner in W.P. No. 1160(w) of 2000 and Mr. Goutam Lahiri, learned Counsel for the Respondent No. 12 Mr. A.K. Mukherjee learned Counsel for Respondent No. 8 and Mr. Pinaki Banerjee, learned Counsel for the State, it appears that there is an apparent mistake on the face of the order dated August 30, 2000, passed in W.P. No. 11894(w) of 2000 which governs the order No. 1160(w) of 2000. At the same time it appears that this ground cannot be heard separately since the issue involved is one and the same and order passed in one would be governing the other. It appears, that the order was passed absolutely on the wrong premise to which my attention was not attracted at the time of passing the order dated August 30, 2000.

2. Therefore, there are substances to the contentions of Mr. Das and accordingly the application for recalling the order dated August 30, 2000, is hereby allowed and the said order passed dated August 30, 2000, in W.P. No. 11894(w) of 2000 governing with the W.P. No. 1160(w) of 2000, is hereby recalled.

3. After the above order is passed by consent of the parties both the writ petitions are treated as on day's list and are taken up for hearing. The learned Counsel for the respective parties had addressed the Court on merit of their respective cases.

4. The order dated August 5, 1999, which was under challenged in both the writ petitions appears to have been passed wholly in a wrong premise. It mentioned about 10 applications for mining lease in respect of Plot No. 1443 in Mouza Kanaria and Plot No. 1484 in Mouza Deulpara. The first four applications filed between 1981 and 1985 were rejected by an order dated June 25, 1992. Thus the remaining six applications remain pending. An order was passed in W.P. No. 24912 (w) of 1997 by this Court on January 5, 1998. The said order runs as follows:

The writ application is disposed of directing the Respondent Nos. 2 and 4 to deal with and dispose of the Petitioner's representation dated 19.6.97 being Annexure "C" to the writ petition in accordance with law within a period of 2 months from the date of communication of this order. It is also made clear that if any other application is pending that will also be disposed of within 2 months from the date of communication of this order.

Until disposal of this matter let there be an interim order of status quo as on today.

Until disposal of the representation of the Petitioner the same should not be settled in favour of any other party.

The application for addition of party filed by Putul Chakraborty is disposed of along with this writ application.

5. It appears that by the said order the application for the Petitioner Debasish Pal, who was the Petitioner in the said writ petition, was directed to be disposed of along with all pending applications within a period of 2 months and that till such disposal the order of status quo as on the said date was directed to be maintained. It was further clarified that till the disposal of the representation of the Petitioner the land should not be settled in favour of any other party.

6. In the impugned order dated August 5, 1999, only four applications out of the remaining six applications were considered. The first one was that of one Saroj Tarafdar, alleged to have been applied on February 4, 1987, was rejected on the ground that he was no more interested in the mining lease of the respective two plots. The remaining four applications of Satinath Mukherjee, Balai Bhattacharyya, Jayanta Pal and Debasish Pal were considered. At the initial stage while 10 names were mentioned, the name of pratul Chatterjee, Respondent No. 12 was mentioned in Serial No. X by hand mentioning the date of his application as February 5, 1987, which according to Mr. Das appears to be suspicious. It is not necessary to go into the said question at the moment.

7. The said order proceeds on the basis of that on June 25, 1998, lease was granted in respect of 17 acres of land comprising of 5 acres in Plot No. 1443, Mouza Kanaria

and 12 acres in plot No. 1484, Mouza Deulpara.

8. This situation has since been explained in the affidavit by the officer concerned stating that the lease was granted without the knowledge of the order dated January 5, 1998, passed in the earlier writ petition filed by the Petitioner and therefore, the same was cancelled by an order dated September 27, 1999. At least, on August 5, 1999, the order dated January 5, 1998 was known to the officer. By reason of the said order no part of the plot No. 1443 or 1484 of the respective mouzas could be settled with any of the parties after the order dated January 5, 1998. Therefore, by reason of granting of lease that too on June 26, 1998, it was not open to the officer to state that no land was available to the extent of 17 acres and only 8.4 acres was available. By virtue of the order dated January 5, 1998 the said lease could not have been granted. Even if granted the same was void and as such it cannot be stated that the land was not available. If there was any application of Pratul Chatterjee filed on February 5, 1987, in that even, he definitely claim of priority even above Satinath Mukherjee who had alleged to have been filed an application on February 6, 1987. Therefore, at the same time the application of Respondent No. 12, Pratul Chatterjee was pending on January 5, 1988, and as such his application was also to be considered along with the said four applications and could not have been considered separately. Therefore, at the time of passing the order dated August 5, 1999, it was incumbent on the officer to cancel the lease granted to Shri Pratul Chatterjee and then proceed to decide the five applications then pending since one of them Soraj Tafadar had declined, a proper order should have been passed if there was no lease given in favour of Pratul Chatterjee in that event, the said 17 acres of land would have also been available and could have been considered giving priority to the candidates, so eligible.

9. It may also be noted that the lease granted on June 25, 1998 was cancelled by an order dated September 27, 1999, and on the same date, the self same lease was granted to Pratul Chatterjee. Mr. Das had pointed out that there are reasons to be suspicious about the application of Shri Pratul Chatterjee which was not mentioned after the name of Saroj Tafadar, but at the bottom of the list as serial No. X instead of serial No. VI and that too by hand and then nothing was mentioned about the pendency of the application while considering the four applications in the impugned order. Then again while passing the order dated August 5, 1999, the said lease was taken to be valid and 17 acres of land was excluded and only in order to avoid the impact of the order dated January 5, 1998, the same was purported to be cancelled on September 27, 1999, and then granting the lease on the same very date. Thus it cannot be said that the lease granted to Pratul Chatterjee is cancelled since there is no break even for a single day which amounts to continuation of the same lease granted on June 25, 1998. Thus it appears that the situation was improper and the concerned officer did not, act bona fide.

10. In that view of the matter, the order dated August 5, 1999, cannot be sustained, and therefore is hereby quashed. The concerned authority shall reconsider the question of grant of lease to the respective parties in terms of the order dated January 5, 1998, passed in the W.P. No. 24912(w) of 1997 afresh, within a period of 8 weeks from the date of communication of this order after giving the respective parties an opportunity of hearing. It may be noted that I have not entered into the merits of this case. All questions raised in this petition shall remain open. The Respondents shall take into consideration all the applications for mining lease pending as on January 5, 1998, till date. It will also be open to the authority concerned to examine the suspicion with regard to the application made by the Respondent No. 12, as raised by Mr. Das and the observation made herein before. The application of Saroj Tarafdar, if he had declined may not be taken into consideration. Let it be noted that the authority shall be free to decide the question strictly in accordance with law and according to their own wisdom and discretion without being influenced by any observation made in this order with regard to the respective merits of the cases.

11. Thus these two writ petitions being W.P. No. 11894 (w) of 2000 and W.P. No. 1160 (w) of 2000 are disposed of as above.

12. There will be no order as to costs.

13. Further the grant of mining lease to the Respondent No. 12 on September 27, 1999, however, be governed by the decision that might be taken afresh and shall be subject to such decision.

14. Mr. Goutam Lahil learned Counsel appearing for the Respondent No. 12 had relied upon a decision in the case of [State of Uttar Pradesh Vs. Brahm Datt Sharma and Another](#), in order to contend that once the writ petition is disposed of, the Court becomes functus officio and cannot reopen the proceeding. But the ratio decided therein, could not be attracted in the present case. Inasmuch as the proposition so laid down is to the extent that once the proceeding is disposed of it cannot be re-opened on the basis of a fresh cause of action. In the present case the case is not being re-opened on the basis of any fresh cause of action but on the basis of apparent error on the face of the order itself. There cannot be any prohibition with regard to review of an order, if it is passed on incorrect facts apparent on the face of the record even when the Court exercises its jurisdiction under Article 226

15. Xerox plain copy of this order, duly counter-signed by the Assistant Registrar (Court), be given to the Petitioner.