

27
11.03.2020
PP.

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

WPA 607 of 2020

Hara Kumar Barman
-versus-
The State of West Bengal & Ors.

Dr. Navin Barik,
Mr. Sandip Majumder

....for the petitioner.

Mr. Hirak Barman,
Ms. Bedashruti Bose

....for the State.

The petitioner was given a patta in respect of a plot comprised in JL No.66, Khatian No.1, Dag No.719, area measuring about 0.05 acre in Mouza – Rangia, P.O. & P.S. – Matigara (hereinafter referred to as the said land). The petitioner is operating a grill factory from the said land wherein the petitioner is the main labourer and the same is his only source of livelihood. The said grill factory is operated under the name M/s. Grill Factory and Shop. The petitioner complains that the Sub-Divisional Officer, Siliguri had orally directed the petitioner to close down the grill factory. Subsequently, an order was passed on 19th February, 2020 by the said Sub-Divisional Officer passing certain directions as a result whereof the petitioner is unable to operate the grill factory. The petitioner says that the Sub-Divisional Officer, Siliguri does not possess the jurisdiction to enquire into the aspect of operating a grill factory from the said land. The order passed by the Sub-Divisional Officer, Siliguri is without jurisdiction and should be set aside. In any event, the order dated 19th February, 2020 does not speak of any reason as to

why the grill factory of the petitioner had to be closed down.

The advocate appearing on behalf of the State submits that the patta which was given to the petitioner was strictly for agricultural purpose and no grill factory could either have been set up at the said land or operated therefrom. It is further submitted that after receiving a mass complaint from the residents of the locality about the nuisance committed by the grill factory, the Sub-Divisional Officer, Siliguri conducted an enquiry and passed an order dated 14th March, 2019. The petitioner did not challenge such order, but is challenging the order passed by the Sub-Divisional Officer, Siliguri, which culminates from the decision of the Sub-Divisional Officer, Siliguri dated 14th March, 2019.

The petitioner, in reply, disputes that the land covered by the patta is only for agricultural use and that he cannot operate a grill factory therefrom. The petitioner says that the petitioner has obtained statutory licences and even high voltage electric connection to operate the grill factory. The said authorities were satisfied and only thereafter granted the permission/licence. By a stroke of pen, the Sub-Divisional Officer, Siliguri could not have passed the order dated 19th February, 2020 to stop the petitioner's grill factory. That apart, the order is in violation of principles of natural justice as the petitioner was never intimated about any proceedings said to have conducted by the Sub-Divisional Officer, Siliguri nor was any hearing granted to the petitioner prior to passing of the order dated 14th March, 2019.

According to the petitioner only at the stage of passing the order dated 19th February, 2020, a purported hearing was granted.

The advocate for the State is unable to demonstrate that the petitioner was called for a hearing or had been given personal hearing before passing of the order dated 14th March, 2019, which is the basis of the proceedings initiated by the Sub-Divisional Officer, Siliguri, wherein the order dated 19th February, 2020 had been passed.

After considering the rival contentions and the materials on record, I find that two sorts of issues arise; one, regarding the nature of the patta and the use of the land and the other as to the operation of the grill factory from the land and the alleged nuisance said to have committed by it.

Petitioner by referring to certain licences, tries to demonstrate that the petitioner is holding all statutory licences and permission necessary for operating the said grill factory and should therefore be allowed to operate the grill factory till such time the land use issue is decided, if this Court intends to send such issue for adjudication.

The advocate for the State, on the other hand, submits that these licences and/or permission were obtained subsequent to 14th March, 2019 and these certificates and/or permission should not be looked into or the grill factory be allowed to operate on the basis thereof.

Be that as it may, so far as the nature and use of patta are concerned, Sub-Divisional Officer, Siliguri has referred the matter to the Block Land & Land Reforms Officer, Matigara for initiating proceedings.

I am told that no such proceedings has been initiated.

The Block Land & Land Reforms Officer, Matigara is directed to initiate proceedings immediately and after giving personal hearing to the petitioner should pass a reasoned order as to the nature of the patta and the use

of the land contained thereunder. The said Block Land & Land Reforms Officer should also give a specific finding as to whether the petitioner has violated any condition of the patta granted in his favour while setting up and operating the grill factory.

So far as the statutory licences and other permissions are concerned, the District Magistrate, Darjeeling should consider the statutory licences and permissions obtained by the petitioner and if the petitioner has all the requisite permissions and they are genuine and valid, the District Magistrate should allow the petitioner to operate the said grill factory till an adverse decision is taken by the Block Land & Land Reforms Officer, Matigara in the proceedings before him regarding the use of the land.

The petitioner shall approach the District Magistrate, Darjeeling with a server copy of this order within a period of seven days.

The District Magistrate, Darjeeling, upon hearing the petitioner and considering the documents that may be placed before him should come to a decision by way of a reasoned order and communicate the petitioner regarding the operation of the grill factory.

In the event, the petitioner is unable to get the original documents now said to be lying with the Sub-Divisional, Officer, Siliguri, the concerned District Magistrate shall call for the same and scrutinise them.

So far as the patta portion is concerned, a final decision will be given by the Block Land & Land Reforms Officer, Matigara after hearing the petitioner through a reasoned order. The entire process before the Block Land & Land Reforms Officer, Matigara should be completed within a period of six months from the date of communication of this order.

The order of the Sub-Divisional Officer, Siliguri, dated 19th February, 2020 shall remain stayed till disposal of the proceeding before Block Land and Land Reforms Officer, Matigara in the event the District Magistrate, Darjeeling holds that the petitioner is entitled to operate the grill factory on the strength of the licences the petitioner has.

It is made clear that I have not gone into the merits of the orders passed by the Sub-Divisional Officer, Siliguri and all points are kept open. The District Magistrate concerned and the Block Land & Land Reforms Officer, Matigara shall apply their independent mind without being influenced by any observation made by the Sub-Divisional Officer, Siliguri in the order dated 19th February, 2020 or in the order date 14th March, 2019.

The writ petition is disposed of with the aforesaid directions.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Arindam Mukherjee, J.)