

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)**

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 498 of 2009

With

IA No. CAN 2 of 2014

(Old No. CAN 3191 of 2014)

Sri Bhuban Chaital

Versus

Durgapur Steel Plant Authority & Ors.

With

WPA 16663 of 2018

Sri Bhuban Chaital

Versus

Union of India & Ors.

Mr. Binoy Kumar Panda

Mr. Raju Mondal

.....For the Petitioner in both the matters.

Mr. Tapas Kumar Banerjee

Mr. Sauvik Nandy

.....For the Respondents in both the matters.

Heard on : 24.02.2022

Judgment on : 17.05.2022

Krishna Rao, J.: The petitioner and one Shri Jiban Kumar Ghosal, the respondent no. 4 herein have jointly applied for allotment of Stall No. DR. 21

at Akbar Road and accordingly, the respondent authorities have allotted the said stall in the joint name of the petitioner and the respondent no. 4 vide letter dt. 28.12.2002. After the order of allotment the respondent no. 4 had entered into an agreement with one Shri Uma Kanti Chaital with respect of his 50% of share in the said stall.

The petitioner had also entered into a Partnership Deed with respect of his share along with his wife wherein it is mentioned that the wife shall get the benefit of 99% of the profit and the petitioner will get only 1% profit from the said stall. The petitioner has also entered into a deed of declaration with his wife wherein the petitioner declared that the petitioner is not able to devote himself in the said business due to his personal engagement and he relinquished all title and interest of the said business and the said stall in favour of his wife. The petitioner has also executed a Power of Attorney with respect of his share of business in the said stall in favour of his wife.

As per the agreement entered between the respondent no. 4 and Shri Uma Kanti Chaital, Shri Uma Kanti Chaital has taken possession of the share of the respondent no. 4 in the said stall. When the petitioner came to know about the same, the petitioner had made complaint to the authorities against the respondent no. 4. As the authorities have not taken any action on the complaint made by the petitioner, the petitioner has filed a writ application before this Court being W.P. No. 27200 (w) of 2007 and the said writ petition was disposed of directing the respondent authorities to dispose

of the complaint of the petitioner by giving an opportunity of hearing to the petitioner and the private respondent.

After the order passed by the Coordinate Bench of this Court, the respondent authorities have passed the following order :-

“(I) Sri Bhuban Chaital and Sri Jiban Ghosal shall run their business jointly peacefully and harmoniously and in accordance with the terms and conditions under which the shop has been allotted to them jointly. They shall also jointly ensure that there is no unauthorized occupation of the stall.

(II) Sri Bhuban Chaital and Sri Jiban Ghoshal shall forthwith take steps to clear all outstanding dues.

(III) In the event either of the parties raise fresh dispute(s) or cause any disturbance, DSP shall be at liberty to take back possession of the said stall by cancelling the allotment

(IV) Both the parties shall jointly file an undertaking that they have resumed business operation harmoniously.”

After the order passed by the respondents, the petitioner had made an application to the respondent authorities to hand over possession of the share of the petitioner in the said stall and when the respondents have not considered the application, the petitioner has filed the instant writ petition praying for possession of the said stall.

During the pendency of the instant writ application, the petitioner has also made complaints against the respondent no. 4 alleging that the petitioner has been illegally ousted from the said shop and the respondent no. 4 through his men and agents illegally running the business and is neither paying the rent of the said stall nor is paying the electrical charges

to the concern authority and requested for disconnection of the electric connection of the said stall.

As the respondent authorities have not disconnected the electricity connection, the petitioner has filed another writ application being WP No. 16663 of 2018 praying for an order for disconnection of the electric connection of the said stall.

The Counsel for the respondent authorities submitted that the writ application filed by the petitioner is not maintainable under law and the petitioner trying to invoke writ jurisdiction for resolving an issue pertaining to interse-parties and the same is private dispute, cannot be decided in the writ jurisdiction.

To resolve the dispute between the parties, the Senior Manager TS-TA (Accts & Rev) of Town Services Department of Danapur Steel Plant had issued a letter on 30.12.2008 permitting the partition of the stall on the following terms and conditions:

- i. Partition wall shall be constructed on the cost of both the allottees so that the stall gets converted into two equal size stalls (71.5 sq. ft. each).*
- ii. Electrical wiring for two separate stalls to be done by both the allottees at their own costs and two separate electrical meters to be installed for the two newly-built stalls.*
- iii. Civil construction like shutter fixing etc., to be done at allottees' own costs without damaging or alerting any original construction.*
- iv. Shape of size of stall to be kept in tidy condition and no addition or alteration would be permitted.*
- v. Drawing of the stalls of size (71.5 sq. ft) with all electrical wiring and meter to be submitted to get necessary approval from the concerned authority.*

- vi. *All outstanding dues till date to be paid to get allotment of new stall."*

On 29th January, 2022 the respondent no. 2 had inspected the Stall No. DR-21, Akbar Road and on inspection it was found that :-

- "i. It was being run by one Sri Uma Kanta Chaital, a non-contracting party, who happens to be the brother of the Petitioner himself.;*
- ii. One partition wall had been made with thoroughfare;*
- iii. Supply of electricity to the stall was continuing;*
- (j) On examining the billing records, it was found that :*
 - i. Bills have been raised in the names of the joint allottees Sri Bhuvan Chaital and Sri Jiban Ghosal upto 31.01.2022.*
 - ii. Dues as per bills raised for the period upto 31.01.2022 was found to be Rs. 1,13,355.40 P and last payment received was Rs. 30,000/- on 29.10.2018; No further payment was found to have been made till date thereafter, although several reminders have been sent for payment."*

The respondent authorities to resolve the dispute between the parties have issued direction vide their letter dt. 30.12.2008 by allowing the parties to partition the stall in two equal share and to make electrical wiring for providing electrical connection. The respondents have also clarified in the said letter what measures is to be taken for partitioned and electrical wiring.

The authorities have also inspected the premises and found that none of the parties are in possession of the premises and one third party namely Uma Kanta Chaital who is the brother of the petitioner is in possession of the said stall and the said stall is having one partition wall made with thoroughfare . It is also mentioned that after the month of October, 2018 no electrical charges have been paid inspite of several reminders.

It is found that this is the dispute between private parties and third party is in occupation of the premises and thus W.P. No. 498 of 2009 is not maintainable under law and accordingly, the same is dismissed. Consequently I.A. CAN. 02 of 2014 (Old CAN No. 3191 of 2014) is also dismissed.

As regard W.P. No. 16663 of 2018, it reveals from the inspection report of the authority that electricity charges is paid only up to the month of October, 2018 and thereafter no further payment is made inspite of several reminders.

In view of the above, the respondent authorities are directed to take appropriate steps if the electricity charges is not paid up to date within two weeks from the date of receipt of this order.

W.P.A. 498 of 2009 with IA No. CAN 2 of 2014 (Old No. CAN 3191 of 2014) with WPA No. 16663 of 2018 are thus disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)