

10.11.2022
Ct. 5
D/L 11
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WPA 17988 of 2022

Suyash Agarwal & Ors.

-Vs-

The State of West Bengal & Ors.

Mr. Tanoy Chakraborty,
Mr. Sitikantha Mitra,
Mr. Keshav Daruka

.... for the petitioners

Mr. Raja Saha,
Mr. D. Ghosh,
Mr. Amit Kr. Ghosh

... for the State

Mr. Siddhartha Banerjee,
Ms. Jyoti Routh

... for the respondent no. 8

Mr. Megnath Dutta,
Mr. Arijeet Dass Mullick

... for the respondent no. 9

Ms. Ankita Dey

... for the NKDA

The petitioners are a group of four residents of a Housing Complex situated in Rajarhat, Kolkata. The petitioners seek an injunction restraining the respondents from giving any further effect to a licence granted by the State respondent authorities to the private respondent nos. 8 and 9 for running a Bar-cum-Restaurant from the licensed premises, which is situated in the said Housing Complex. The petitioners

also pray for an injunction restraining the respondents from renewing the licence granted to the private respondents.

The State and the private respondents are represented. Adjournment is prayed for on behalf of learned counsel appearing for the NKDA.

The petitioners represent a miniscule percentage of the total units in the Complex. The petitioners represent about 7 whereas the total number of units in the said Complex are approximately 500. Even if the petitioner no. 1 occupying four units in the said Complex is taken as correct, the petitioners cannot claim to represent the larger concerns of the residents of the Housing Complex. This factor is important since the petitioners complain that running of the Bar-cum-Restaurant by the private respondents within the precincts of the Housing Complex is resulting in disruption of the safety and peaceful environment for the residents of the Complex.

The other grievance is that the Collector under the Bengal Excise Act, 1909, did not conform with the requirement of Rule 9(1)C of The West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Liquor and Certain Other Intoxicants)Rules, 2003, before grant of licence to the private respondents.

Upon perusal of the said Rule, it is clear that Rule 9 sets out a procedure for selection of a new site for

grant of licences and casts an obligation on the Collector to go through certain steps which are outlined from 9(1) A-G for disposal of the proposal for grant of such licence.

Learned counsel appearing for the petitioners relies on Rule 9(1)C(a) which provides that the Collector shall consider public grievance, if any, which may be submitted to him in this regard. Counsel relies on an e-mail of 27th November, 2019 written to various authorities by 11 residents of the Complex on the objection to the Bar-cum-Restaurant operated by the private respondents. The other complaint, which is on record, is of 22nd March, 2021 again written to several authorities.

The relevant Rule relied upon requires the Collector to consider the public grievance submitted to him before grant of licence. In the present case, a temporary licence was granted by the authorities to the private respondents on 6th March, 2020. There is no evidence of any complaint or representation containing a public grievance being made to the Collector before grant of temporary licence to the private respondents. The e-mail of 27th November, 2019 simply sought for an appointment with the Chairperson of HIDCO in relation to erection of an illegal construction in the basement of car parking area of the particular Complex. This is the only document bringing the issue of public grievance on

record before grant of temporary licence to the private respondents on 6th March, 2020. The other complaint is of 27th March, 2021, which is subsequent to grant of temporary licence to the private respondents; hence Rule 9(1)C would not apply in the present case.

The other Rule relied upon is Rule 9(1)F under which grant of a regular licence may be considered after the holder of such temporary licence has run the same for a period not exceeding six months or under the other conditions under Rule 9(1)F. There is no material on record to show that the petitioners made any such representation which ought to have been considered by the Collector at the relevant point of time namely, before grant of regular licence to the private respondents.

In the present case, the regular licence was granted sometime in 2022 and is valid till 2023. The document under challenge, which is of 22nd June, 2022 of the Superintendent of Excise, North 24 Parganas does not reflect any threatened action which would undermine the rights guaranteed to the petitioners under the Constitution of India in any manner. The said communication merely states that the concerned authority is not in a position to take any steps since an earlier writ petition is pending before the Court. This Court has been informed that an earlier writ petition filed by a different group of residents of the said

Complex for demolition of a structure/construction within the building Complex is pending as on date.

Being unable to find any cause of action which could have constrained the petitioners to approach the Writ Court and most of all a statutory basis to restrain the respondents from taking any further steps in furtherance of licence granted to the private respondents, this Court is disinclined to entertain the writ petition or grant the relief prayed for.

WPA 17988 of 2022 is accordingly dismissed without any order as to costs.

(Moushumi Bhattacharya, J.)