

13.06.2022
Item No. 24
Court No.32
Avijit Mitra

**MAT 1654 of 2017
with
IA No. CAN 1 of 2018 (Old CAN 1396 of 2018)**

**Mr. Malay Bhattacharya
Versus
State of West Bengal & ors.**

Mr. Sandip Kumar Bhattacharyya,
Mr. Suman Basu
....for the appellant
Mr. Supriyo Roy Chowdhury,
Mr. Sankar Ghosh
....for the respondent no.4

Affidavit-of-service filed by the appellant be kept on record.

The present appeal has been preferred challenging an order dated 21st July, 2017 passed in a review application being RVW 344 of 2016.

Records reveal that the writ petitioner/appellant preferred a writ petition being WP No.28249 (W) of 2015 alleging inaction on the part of the respondents to consider a representation submitted by him on 27th July, 2015. The writ petition was disposed of by an order dated 14th December, 2015 directing the Secretary, Department of Excise, Government of West Bengal to consider the same, in accordance with law. In compliance with such direction, the Principal Secretary, Excise Department, Government of West Bengal passed an order on 16th

March, 2016. Pursuant to the said order, an inspection was conducted and the license of the private respondent no.4 was suspended *vide* memo dated 6th July, 2016 and the said respondent was directed to conduct necessary alteration work of the licensed premises and to report to the Collector. Thereafter the private respondent herein, namely, Pulin Kumar Sarkar preferred a writ petition being WP 16015 (W) of 2016. The said writ petition was disposed of by an order dated 17th August, 2016 directing the respondent no.3 therein to inspect the shop and to recall the order of suspension if satisfied that the petitioner therein had conducted the necessary alterations. Aggrieved by the said order, the appellant herein preferred a review application. The said review application being R.V.W. 344(W) of 2016 was disposed of by an order dated 21st July, 2017. Challenging the said order, the present appeal has been preferred.

Mr. Bhattacharyya, learned advocate appearing for the appellant submits that the appellant is the owner of the plot of land at Mouza Basudebpur, J.L. No.23, Dag No.244, Khatian No.295, North 24 Parganas, West Bengal from where the F.L. On shop was functioning. Though the license commenced from 25th January, 2006, the building from which the said shop was being operated was granted sanction plan on 25th March, 2013. The learned Single Judge failed to appreciate that though the respondent no.4 was required to complete the construction in

accordance with the blue print of the map annexed to the sanction plan dated 25th March, 2013, the purported alterations effected by the said respondent were not in consonance with the said map.

He argues that the learned Single Judge ought to have directed the State authorities to consider the claim of the respondent no.4 once construction was completed in consonance with the sanction plan and not upon completion of certain undefined and vague alterations. In view of such patent error in the directions issued, the prayers in the review application ought to have been allowed.

Per contra, Mr. Roy Chowdhury, learned advocate appearing for the respondent no.4 submits that there was no error in the order dated 17th August, 2016 warranting interference of the Court in review. According to him, Mr. Bhattacharyya has sought to reargue the matter though the parameters prescribed for review do not postulate such rehearing.

It is well-settled that power of review may be exercised when some mistake or error apparent on the face of the record is found. Such error must strike on mere looking on the record and would not require any long drawn process of reasoning. It appears that the writ petition preferred by the respondent no.4 was disposed of directing the respondent no.3 therein to inspect the shop of the writ petitioner and with a further direction that if

upon inspection, the said respondent was satisfied that necessary alterations have been made in the shop, the suspension order should be recalled.

Answering our query, Mr. Roy Chowdhury submits that the authorities had conducted such inspection and the suspension order has been withdrawn.

The learned Judge while passing the order impugned dated 21st July, 2017 rightly negated the contention of Mr. Bhattacharyya that the alterations were made on the basis of the observations made in the order dated 17th August, 2016. We do not find any infirmity in the said order warranting any interference in the present appeal.

Accordingly, the appeal and the connected application are dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)