

09.01.2023
Court No.12
S/L. No.1
Sourav/
Suvayan

MAT 851 of 2022
With
IA No: CAN 1 of 2022
With
IA No: CAN 2 of 2022

Kamelesh Saha
Vs.
State of West Bengal & Ors.

Mr. Vivekananda Bose
Mr. Arijit Bakshi

...for the appellant.

Mr. Debabrata Saha Roy

... for the private respondent.

Heard Mr. Vivekananda Bose, learned Counsel appearing for the appellant and Mr. Debabrata Saha Roy, learned Counsel appearing for the private respondent.

This is a lis between two brothers i.e., the appellant and the private respondent.

The fact of the case is that the father of the appellant and the private respondent was an ex-fair price shop dealer. On his death, the appellant's mother came to be bestowed with the licence on compassionate ground being the widow. It is asserted by the appellant that the appellant all through was helping and assisting his father and, thereafter, his mother in day to day running of the business in the fair price shop. In the month of April, 1999, the appellant left the house for some reasons. Coming

back to the house, he found that the fair price shop dealer licence has been transferred in favour of private respondent i.e., his brother.

The petitioner moved this Court in a writ petition challenging such action of the authority concerned, on the ground that without No Objection Certificate having been issued by the appellant, the licence should not have been granted in favour of his brother i.e., private respondent. The writ petition was disposed of directing the petitioner to move the Civil Court.

The petitioner (the present appellant) moved the Civil Court but in vein. The suit filed by him was dismissed. The appellant preferred an appeal. The appeal was also dismissed as withdrawn.

Thereafter, as alleged by the appellant, he came to know that the licence has been obtained by the private respondent i.e., his brother by practicing fraud or misrepresenting before his mother. Such fact has also been admitted by his mother who is stated to be alive then. The appellant's mother in her lifetime had also filed several petitions before the authorities of the department bringing such fact to the notice of the authorities. The authorities concerned is stated to have come to finding that the licence was obtained by the private respondent by misrepresenting facts before her mother. When the authority concerned did not take any step, the petitioner filed the present writ

petition. The writ petition was disposed of against the petitioner obliging him to file this appeal. The dispute is of the year 1999. More than 23 years have elapsed in the meantime and the brothers are still litigating.

So far as fraud and misrepresentation are concerned, those being question of facts cannot be gone into in a writ petition under Article 226 of the Constitution of India. We, therefore, find no infirmity in the order impugned.

However, the petitioner, if so advised, may file a representation before the appropriate authority concerned, if it is felt necessary, they may process the matter at their end in accordance with law and the rule governing the field within a period of three months from the date of receipt of the copy of this order.

It is made clear that we are not directing the authority concerned to revive a Stale matter. We have just made an observation to redress the grievance of the appellant, if possible, within the boundary of law.

Accordingly, the appeal being **MAT 851 of 2022** along with the interim applications being **CAN 1 of 2022** and **CAN 2 of 2022** are disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)