

77 13.01.2023
NB Ct. 39

WPA 16603 of 2022

Balaram Ghosh
Vs.
The State of West Bengal & Ors.

Mr. Jayanta Samanta,
Mr. Karunamoyee Samanta.
...for the petitioner.

Mr. Lalit Mohan Mahata,
Mr. Prasanta Behari Mahata.
...for the State.

Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray.
..for the private respondent.

This is an application under Article 226 of India praying for a direction upon the respondent authorities to cancel the MR Dealership standing in the name of the respondent no.7 having Dealership no.64 in the village Bawra, Post Office-Pendira, Police Station-Katwa, District-Burdwan (now Paschim Burdwan) as the same was obtained by exercise of fraud.

Learned counsel appearing on behalf of the petitioner submits as follows. On the basis of a fabricated consent letter, the respondent no.7 got the dealership transferred in his name without even giving notice to the petitioner. One could not have transferred the dealership in this fashion. It was because of serious illness of the petitioner that he had engaged the respondent no.7 only to look after the business. Earlier, an application was filed before this Court being *W.P. No.11486(W) of 1999* challenging the transfer of dealership on the same

grounds. However, the learned Single Bench was pleased not to interfere with the same. Unfortunately, this was not communicated to the petitioner by the learned advocate of the petitioner in time. Therefore, the petitioner was not able to take appropriate steps. He came to know the outcome of the writ petition only in June, 2022. Thereafter, he gave a representation before the respondent authorities making similar allegations and praying for a similar redressal again.

Learned counsel appearing on behalf of the private respondent submits as follows. This writ petition is barred by res judicata. By passing a reasoned order, a Single Bench of this Court had refused to interfere with the proceeding, or for that matter, entertain the claim of the present petitioner. If at all aggrieved, the petitioner ought to have challenged the said order before the Division Bench. It also cannot be accepted that the petitioner was unaware of the result of the earlier writ petition till June, 2022. Accordingly, the present petition should be dismissed with exemplary cost.

Learned senior counsel appearing on behalf of the State adopts the submissions of the learned counsel for the private respondent and submits that this petition cannot be entertained as a co-ordinate Bench of this Court had earlier dismissed a similar application on merits.

I have heard the submissions of the learned counsels appearing for the parties and have perused the writ petition.

The merits of the contentions of the petitioner in this writ petition had earlier being considered by a co-ordinate Bench of this Court in *W.P. No.11486(W) of 1999*. By passing a

reasoned order, this Court refused to interfere with the proceeding and dismissed the writ petition.

If aggrieved, the petitioner ought to have preferred an appeal. Instead of doing so, the petitioner has decided to file a similar writ petition by giving a representation before the concerned authorities on the selfsame grounds.

This writ petition, thus, cannot be entertained as the issue involved had been decided earlier on merits.

The contention of the petitioner that he was unaware of the result of the writ petition till June, 2022 is also quite incredulous. Besides, it only points to the casual manner in which the petitioner was dealing with the matter.

I do not find any merit in this application.

Accordingly, the writ petition is dismissed.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)