

OD-3

WPO/1701/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SABIHA DANISH
VS
THE STATE OF WEST BENGAL AND ORS

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 5th December, 2023.

Appearance:
Mr. Debanik Banerjee, Adv.
Mr. Steven S. Biswas, Adv.
. . .for the petitioner.

Mr. Joyak Kumar Gupta, Adv.
Mr. Sutanu Chakraborty, Adv.
Mr. Asique Rosul, Adv.
. . .for the private respondent.

Mr. Yash Vardhan Deora, Adv.
. . .for the State.

Ms. Susmita Chatterjee, Adv.
. . .for the K.M.C.

The Court: The grievance of the petitioner is that the private respondent is operating a fast food restaurant namely 'New Fast Food Garam Garam' from the shop room no.1B, Brabourne Court, Block B, Ground Floor, 1, Chandney Chowk Street, Police Station Bowbazar, Kolkata 700072, by encroaching the public footpath.

It is the further submission that the petitioner being the landlord of the subject premises never issued any no objection certificate or consent in favour of the private respondent to run the said restaurant. Objection was

filed before the Municipal Commissioner which is pending consideration till date.

Learned advocate representing the private respondent submits, upon instruction that, the restaurant is running after obtaining proper licence from the Corporation. The landlord also issued no objection certificate in favour of the private respondent for running the said shop. The sole intention of the petitioner/ landlord is to evict the private respondent/ tenant without the due process of law.

Learned advocate representing the Corporation is not ready with proper instruction.

A report has been filed by the Officer-in-Charge Bowbazar Police Station dated 16th October, 2023. The submission of the petitioner that consent was required to be obtained from the landlord for obtaining licence to run the business, does not appear to be proper. As long as a person produces the proof of occupancy of a premises, the licence granting authority may issue licence in favour of the occupier, till such time the occupier is in possession of the subject premises in accordance with law.

The petitioner has failed to produce any order from the competent authority relying upon which the possession of the private respondent may be disputed. It is an undisputed fact that the private respondent is in possession of the subject premises and the petitioner admits the private respondent as her tenant.

As it appears that the objection of running the restaurant by encroaching the public footpath is pending consideration before the respondent authority, accordingly, the instant writ petition is disposed of by directing the Municipal Commissioner or his delegate to consider the said representation in accordance with law after giving reasonable opportunity of hearing to all the necessary parties. The parties will be entitled to rely upon all documents in support of their stand at the time of hearing. A reasoned order shall be passed and communicated to the parties. Steps shall be taken in the matter at the earliest but positively within a period of twelve weeks from the date of communication of this order.

Learned advocate for the petitioner is directed to forward a copy of the objection dated 31st July, 2023 to the aforesaid respondent at the time of communicating the order of the Court.

WPO 1701 of 2023 is disposed of.

Affidavit of service filed in Court is taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)