

Sl. 03
04.09.2024
Suman
Ct.No.15

WPA 8550 of 2024

Smt. Sumita Sikder
Vs.
The Barrackpore Municipality and Ors.

Mr. Prantick Ghosh
Mr. Siddhartha Sarkar
Mr. Prosad Bhattacharya
..for the petitioner

Mr. Syamal Kumar Das
Mr. Prasanta Banerjee
..for the Municipality

Ms. Juin Dutta Chakraborty
Mr. Bidan Modak
..for respondent nos. 4 and 5.

Ms. Noelle Banerjee
Ms. Subhra Nag
..for the State

Let the names of Ms. Noelle Banerjee and Ms. Subhra Nag be recorded in the order dated September 2, 2024, as the learned advocates appearing for the State.

The petitioner is the sister of respondent nos. 4, 5, 7, 8 and 9.

Respondent nos. 4 and 5 are represented by Ms. Juin Dutta Chakraborty, learned advocate, while respondent nos. 7, 8 and 9 remain unrepresented.

By filing this writ petition, the petitioner has prayed for a direction upon Barrackpore Municipality

not to issue trade licence/certificate of enlistment in favour of any tenant, licensee or lessee in respect of premises no.62 (35) S. N. Banerjee Road, Barrackpore, 24 Parganas (North).

It appears that one late Monotosh Chandra Ghosh, who was the owner of the said premises, executed a will in favour of respondent nos. 4 and 5 as his two sons.

The said will was challenged by the petitioner's sisters in a probate proceeding. The said proceeding has not yet been finally decided.

A partition suit, at the instance of the writ petitioner, is also pending before a competent Civil Court where an order of injunction has been passed directing the parties to maintain the status quo.

The dispute between the parties as surfaced in this writ petition relates to letting out the first floor of the said premises to a third party.

The petitioner claims that without her consent, the Municipality should not issue any trade licence to a third party.

The Municipality, however, has issued a permanent certificate of enlistment under the West Bengal Municipal Act, 1993 in favour of one Sandip Das, Director of "Digital Age Retail Private Limited" who entered into an agreement in respect of the first floor premises with respondent no.4.

This is not the first time that this type of dispute has cropped up. Previously, when respondent nos. 4 and 5 sought to induct another business entity to run a business from the first floor, the same was challenged before this Court by the writ petitioner by filing WPA 5995 of 2016 (Smt. Sumita Sikdar Vs. The Barrackpore Municipality and Ors.)

The said writ petition was disposed of by a Co-ordinate Bench of this Court on May 4, 2016, with the following directions:-

“The reasoning of the Chairman cannot be faulted. However, in my opinion, considering the above highly disputed question of facts, the trade licence granted to the respondent No.8 can only be treated as a temporary licence subject to any order by the learned civil court that may be approached by the writ petitioner in an appropriate proceeding.

It appears from a communication dated 22nd August, 2009 that the petitioner was receiving one sixth of rent paid by the West Bengal State Co-operative Bank to the Co-sharers in respect of the self-same premises.

In those circumstances, I direct the respondent Nos. 3 and 4 to pay 1/6th of the rent received by them from the added respondent No.8 to the petitioner month by month together with the petitioner's share from the rent received by the said respondents from the respondent No.8 earlier. The arrear should be paid by 31st May, 2016. The share of monthly rent should be paid within one week of receipt of rent from the respondent No.8.

This payment will be made subject to the execution of a bond by the petitioner in favour of the respondent Nos.3 & 4 on ten rupees stamp paper that in the event the will is probated in favour of the respondent No.8, she will refund the amount received.”

It has been submitted today before this Court by respondent nos.4 and 5 that they are willing to continue with the same arrangement with regard to the newly inducted lessee in the relevant premises as directed by the Co-ordinate Bench on May 4, 2016.

Accordingly, this writ petition is disposed of with the same directions and conditions as specified by the Co-ordinate Bench of this Court on May 4, 2016. Learned advocate appearing for respondent nos. 4 and 5 has made over a copy of the agreement entered with “Digital Age Retail Private Limited” to the learned advocate appearing for the petitioner.

Learned advocate appearing for the petitioner has furnished the bank account details of the petitioner to the learned advocate appearing for respondent nos. 4 and 5. Respondent nos. 4 and 5 shall transmit the share of rent amount as directed by this Court in favour of the petitioner within first week of each month.

The arrear for the period of March 28, 2024 to August 30, 2024, shall also be cleared by the respondent nos. 4 and 5 in twelve equal instalments, the first of such instalments should be paid by the first week of October, 2024, and the remaining eleven instalments in the first week of the successive months.

Accordingly, **WPA 8550 of 2024** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)