

7.08.2024
Ct. No. 2
Sl. No. 3
tbsr

(Assigned)
WPA 16121 of 2024

Mahamaya Pal
Vs.
The State of West Bengal & Ors.

Mr. Kamlesh Jha
Ms. Srabani Biswas
....for the petitioner

Mr. Asish Kumar Guha
Mr. Anirban Datta
....for the State

Affidavit of service, filed in Court today, is taken on record.

Mr. Kamlesh Jha, learned counsel appears for the petitioner.

Mr. Anirban Datta, learned State counsel led by Mr. Asish Kumar Guha, learned State counsel appears for the respondents.

The petitioner claims to be in a permissive occupation of a shop room within the premises of Bankshall Court, Kolkata. In respect of this particular shop room there is no dispute with regard to the occupation of the petitioner and carrying out a small shop by her therefrom. An adjacent shop room was lying vacant for about five years under lock and key without any operation. The petitioner applied before the State authority so that the said vacant shop room

can be granted to the petitioner and petitioner can use the same for her livelihood. The petitioner submitted several representations, *inter alia*, dated **January 5, 2022, Annexure P-6 at page 47** to the writ petition before the respondent no. 3. The bottom portion of the said representation shows an endorsement dated **February 3, 2022** alleged to have been made by the respondent no. 3 with a comment that, the said vacant shop room may be allotted to the petitioner.

Drawing attention to **Annexure P-11 at page 59** to the writ petition which is the communication of the impugned decision dated **March 27, 2024** communicated by the respondent no. 2 to the petitioner rejecting the prayer made by the petitioner on the plea that, there shall be a safety and security issue in the Hon'ble High Court and its precincts.

Learned State counsel appearing for the State respondents submits a written instruction dated June 27, 2024 issued by the Executive Engineer/II, City Division, P.W.D., the same is taken on record.

After considering the submissions made on behalf of the parties and upon perusal of the materials on record, the said impugned decision and/or communication of the impugned decision dated March 27, 2024 and on perusal of the grounds for rejection, it appears to this Court that, the reason shown therein is

not tenable in law and without any application of mind by the authority.

The shop room is situated at the Bankshall Court which is little less than one kilometer away from the High Court premises.

In view of the above, the impugned decision and the connected communication dated March 27, 2024, Annexure P-11 at Page 59 to the writ petition stands **set aside** and **quashed**.

The respondent no. 2 is directed upon issuing a prior hearing notice of at least **seven days** to the petitioner to revisit the issue on the basis of the representation of the petitioner dated January 5, 2022, Annexure P-6 at page 47 to the writ petition. After affording an opportunity of hearing to the petitioner either by herself or through her duly authorized representative, the respondent no. 2 shall pass a reasoned order on the issue.

The entire exercise shall be carried out and completed upon the respondent no. 2 positively within a period of **four weeks** from the date of communication of this order. The reasoned order then shall be communicated to the petitioner positively within a further period of **one week** from the date of the said reasoned order to be passed.

It is made clear that, this Court has not gone into the merits of the claim of the petitioner and the petitioner shall be at liberty to urge whatever points she wishes to urge by relying upon whatever records and documents she wishes to rely upon before the respondent no. 2.

It is made clear that, if the reasoned order goes in favour of the petitioner, then the respondent no. 2 and/or any other appropriate authority shall give an immediate effect thereto but positively within a period of **two weeks** from the date of communication of the said reasoned order to the petitioner.

Learned counsel appearing for the petitioner, on instruction from his client, submits that, in the event, the said closed shop room is allotted to the petitioner, the petitioner shall immediately commence the operation therefrom within a period of **two weeks** from the date of such allotment. The petitioner then shall vacate the present shop room which is under the occupation of the petitioner positively within a period of **four weeks** from the date of such allotment.

It is needless to mention that, this order shall not create any right or equity in favour of the petitioner in any manner and the claim of the petitioner shall be considered strictly in accordance with law. In the event, the allotment of the closed shop room is made to

the petitioner and the petitioner still does not vacate the present shop room wherefrom she is carrying out her livelihood, the jurisdictional authority shall take all necessary steps including coercive steps against the petitioner in accordance with law.

Since affidavits are not called for, the allegations made in this writ petition are deemed not to have been admitted by the respondents.

With the above observations and directions, this writ petition, **WPA 16121 of 2024** stands **disposed of**, without any order as to costs.

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

(Aniruddha Roy, J.)