

02.09.2024
Court No.09
Item no.03
CP

WPA No. 17500 of 2024

Swapam Kumar Saha
Vs.
The State of West Bengal & ors.

Mr. Pratip Mukherjee
Mr. Dhananjay Banerjee
Mr. Tanmoy Khan
Ms. Oindrila Ghosh

... for the Petitioner.

Mr. Anirban Ray, Ld. GP
Mr. Tanoy Chakraborty
Mr. Saptak Sanyal

.....for the State.

Mr. Kushal Chatterjee
Mr. Sudarsan Halder

.....for the respondent no.3.

1. The writ petition is disposed of with a direction upon the competent authority under the West Bengal Excise (Transfer of Licence) Rules 2023 to treat the writ petition as a representation of the petitioner and dispose of the same in accordance with law.
2. It appears that the petitioner's application for transfer of licence to operate a foreign liquor off shop has been kept pending on account of an objection received from the respondent no. 3. The petitioner submits that the authorities should be directed to issue the licence in his favour in terms of Rule 5(C)(i).

3. Mr. Chatterjee, learned advocate appearing for the respondent no. 3, submits that the said respondent does not recognize the petitioner as a licensee in respect of the premises in question. As the petitioner does not have a 'site', no licence can be issued in the name of the petitioner. The petitioner's father was the licence holder but the shop was run by a private limited company. Upon the death of the petitioner's father three persons were allegedly occupying the premises and the licence was granted to the petitioner's mother by the authorities, to operate the shop. The petitioner may not be the only heir.
4. It is also submitted that rent is being deposited in the rent control in respect of the premises in question but no rent has been paid by the petitioner either to the respondent no. 3 who claims to have purchased the property from the erstwhile owner, or deposited with the rent controller.
5. To this, it is submitted by the learned advocate for the petitioner that after purchase by the respondent no. 3, the letter of attornment had not been issued. As such, the petitioner was not in a position to offer rent. On the other hand it is also submitted that the shop has

been running for decades under proper licences granted by the concerned authority and the fact that the site was eligible for grant of licence is not in dispute. If the present owner disputes the status of the present occupant, the issue will be decided in a civil court. Unless, the petitioner is evicted by due process of law, the possession cannot be disputed.

6. This court agrees that a landlord/tenant dispute cannot be the subject matter of non-grant or non-transfer of foreign liquor licence in favour of the heir of the deceased licence holder. Such transfer of licence will be governed Rules of 2023.
7. The other issues raised by Mr. Chatterjee with regard to the status and the interest of the petitioner in respect of the premises vis-à-vis the other persons whose names were recorded in the receipts granted by the rent control, are matters of fact which have to be looked into by the authority concerned. The authority has to decide whether the transfer of licence should be granted in the name of the petitioner as the sole heir of Nilima Saha or there were other heirs. The landlord cannot deny the transfer of licence on the ground that he does not recognize the petitioner's possession. All that

has to be ascertained is whether the licence in the name of Nilima can be transferred to the name of the petitioner. He may file an eviction suit, but till a decree of eviction is passed, the landlord cannot raise any dispute. All issues shall be decided on the basis of the records and documents to be produced by the parties.

8. All the parties, including the respondent no. 3, shall be heard.
9. The authority shall dispose of the matter within a period of three months from date.
10. As there are unused stocks in the shop in question, grant of temporary licence for the time being shall also be decided within three weeks, so that the stock in existence does not cross the expiry date. Such endeavour shall also be made by the competent authority upon hearing all parties.
11. Accordingly, the writ petition is disposed of.
12. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)