

13.03.2024
SI No.5
Court No.8
(gc)

**MAT 1845 of 2023
CAN 1 of 2023**

**Shah Alam
Vs.
State of West Bengal & Ors.**

Mr. Saptangshu Basu, Sr. Adv.
Mr. Pingal Bhattacharyya,
Mr. Rajdeep Sinha
...for the Appellant.

Mr. T.M. Siddiqui,
Mr. Amrita Lal Chatterjee
...for the State.

Mr. Joydip Kar, Sr. Adv.,
Mr. Sagar Bandopadhyay,
Mr. Siddhartha Banerjee,
Mr. S. Ahmed,
Mr. Amit Nath
...for the Respondent No.6.

1. Earlier this matter was heard at length and prima facie we were satisfied that the appellant was able to make out a prima facie case on merits. In order to arrive at a fair conclusion we directed the respondent No.5 to file an affidavit disclosing their stand on the documents appearing at pages 67 and 118 of the Stay petition with different content which apparently shows that both the said memo are issued by the same authority on the same date having the same number and we also wanted to ascertain if any proceeding was initiated

under Section 17 of the WBLR Act for removal of Barga. We further directed to clearly state the status of the land on the date of the application with supporting evidence.

2. The original records of the appellant and the private respondent are produced before us along with a report in the form of an affidavit filed on behalf of the respondent No.5 and taken on record on the previous occasion. The affidavit was affirmed on 26th February, 2014. The private respondent has filed an affidavit taking exception to the affidavit filed by the appellant only to the extent that there was no suppression as on the basis of the information that was made available to the private respondent No.6 particulars have been furnished in the proposed application. We, however, shall give credence to the official document submitted by the parties in this proceeding as the documents speak for itself. The conclusions, however, may be different and could be inferential in the facts and circumstances of the case. In Paragraph 7

sub-paragraph (d) the respondent No.5 has stated as follows:-

“d) Reply from the ADM(LR) Murshidabad vide memo no 832/DLL44RO/MSD/24 dated 22-02/2024 was received by respondent no 4 and 5 on 22-02-2024. According to the views/options of ADM (LR) Murshidabad regarding the queries are as follows:-

Query no 2 – The document of the Certificate for change of character of land classification of LR Plot No.4762, 4763 and 4764 for “Aush” to “Viti” that is shown in page 118 in instant writ petition has been issued from the office of ADM(LR) Murshidabad. Whereas, the document of the Certificate for change of character of Land Classification to LR plot No.4758, 4762, 4763 and 4764 that is shown in page 67 in the writ petition has not been issued from the office of ADM(LR) Murshidabad.

Query no 3:- As per reply given by ADM(LR), proceeding for removal of Barga in LR Plot No.4758 of Mouza-Gopjan J.L. No.18 under P.S. – Berhampore Town in Khatian No.13557 has been initiated U/S 17 of the WBLR Act. 1955.

Query no 4 :- As per records given by ADM (LR), on the date of application i.e. 04-04-2023, the LR Plot No.4758 in Mouza – Gopjan, J.L. No.18 under P.S. – Berhampore Town in Khatian No.13557 was classified as “Aush” with recorded Bargadar and the LR Plot No.4762,

4763, 4764 in Mouza – Gopjan, J.L. No.18 under P.S. – Berhampore Town in Khatian No.13557 had not been converted from “Aush” to “Viti”. A copy of the report of ADMLR is annexed herewith and marked as Annexure-“B”.

I most respectfully submit that the time of submitting the duly filled prescribed application, sabinar Azad also submitted all the supporting documents regarding her possessional right over the proposed shop cum godown. She submitted a registered Deed of conveyance and ROR of the proposed land. It is also mentioned herein that the character of the land mentioned in the registered Deed of Conveyance as “VITI”. The ROR reflects the character of land as ‘AUSH’. The copy of the Deed of conveyance and ROR are annexed herewith and Collectively marked as Annexure-“C”.

e) It is pertinent to mention that conversion of plots as “Viti” were done 29th April 2023 prior to the field inspection that was held on 08-06-2022. The position of godown is not only over the plot no 4758 mentioned as ‘Barga’ but also over the plot nos. 4762, 4763, 4764.”

3. In Paragraph (f) of the said affidavit, the deponent has stated that the application of Sabinar Azad was considered on the basis of strength of document submitted by him, now, if any deviation, suppression or

falsification is found, the licence may be revoked with immediate effect.

4. In view of the fact that the report has been filed by the respondent no.5, we direct the District Controller (F&S), Murshidabad to consider the application of the writ petitioner and the private respondent no.6 for grant of licence.
5. Mr. Joydip Kar, learned Senior Counsel has produced before us the licence granted in favour of the private respondent no.6 in respect of three plots excluding plot no.4758.
6. However, Mr. Saptangshu Basu, learned Senior Counsel submits that information downloaded from the transparency portal, Public Distribution System, Food & Supplies Department on 25th February, 2024 at 9.32 p.m. shows that licence has been granted in favour of the private respondent in respect of plot no.4758.
7. The District Controller (F&S), Murshidabad shall decide the matter within a period of eight weeks from the date of communication of this order by either of the parties after giving a reasonable opportunity of hearing to the parties and

also to take the view of the Sub-Divisional Controller, Food & Supplies, Berhampore Sadar. The said authority shall also take into consideration the affidavit filed by the respondent no.5 in this proceeding.

8. In view of the aforesaid, the order passed by the learned Single Judge is set aside.
9. However, the licence already granted in favour of the respondent no.6 shall not be affected till a final decision is taken by the authority concerned.
10. We make it clear that we have not gone into the merits of the matter and the District Controller (F&S), Murshidabad shall decide the matter in accordance with law.
11. Accordingly, the appeal and the application are disposed of.
12. However, there shall be no order as to costs.
13. The original records produced are returned to Mr. Siddiqui.
14. Photocopies of the records are kept with the record.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)