

11-11-2024
Item No.2
Subrata
Bhattacharyya
AR(C)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

WPA No.26858 of 2024
Chandana Maity
-vs-
The State of West Bengal & Ors.

Mr. Subir Sanyal
Ms. Sumouli Sarkar
Mr. Surojit Mukherjee ...for the petitioner

Mr. Amal Kumar Sen, AGP
Mr. Lal Mohan Basu ...for the State

Mr. Sukumar Ghosh
Ms. Moumita Ghosh ...for respondent no.16

1. The petitioner is aggrieved by the order dated October 3, 2024 passed by the District Magistrate & Collector, Purba Medinipur directing that the petitioner cannot be allowed to operate FL On Shop as the licensee failed to produce any valid documents in support of her ownership/tenancy of the site where the licence was originally granted.
2. The impugned order further records that the site is now owned by the Irrigation & Waterways Department, Government of West Bengal. As no objection certificate/lease agreement has not been issued/entered by the Irrigation & Waterways Department with the licensee to operate her On Shop, the licensee cannot be permitted to run the shop.
3. The petitioner contends that she is operating the On Shop by virtue of a valid license which was

initially issued in favour of her husband in the year 2004 and later transferred in her favour. She is running the business at the said place on and from the very first day.

4. The place where the business is being run is a tenanted one. The petitioner claims to be a tenant of the private respondent, Sri Shaki Bag. A dispute arose between the landlord and the tenant. The landlord filed a writ petition before this Court being WPA No.17882 of 2023 with the allegation that the petitioner, in the garb of enjoying tenancy, is running a liquor shop at a different portion which has not been let out to her.
5. Vide order dated October 17, 2023, the writ petition stood disposed of by directing the Superintendent of Excise, Purba Medinipur to give an opportunity of hearing to the petitioner and decide the representation given by the private respondent/landlord herein.
6. In compliance of the order passed by the Court, the Superintendent of Excise heard the matter and passed an order on December 8, 2023 by observing that the Superintendent of Excise has no discretion in deciding upon terms and conditions of settlement of the excise licence as per the Bengal Excise Act, 1909, as amended. The Superintendent of Excise observed that in terms of Section 31 of the said Act, the Collector is the competent authority to grant licence at the existing site for the next period of settlement.
7. On reference from the Superintendent of Excise, the Collector took up the issue and heard the parties. On September 12, 2024 the Collector opined to direct the Executive Engineer, Irrigation & Waterways Department, Tamruk to inform their

stand on running of the FL On Shop from the land/premises owned by the Irrigation & Waterways Department.

8. The licensee, that is the petitioner herein, was directed to submit valid document/proof pertaining to the said site for running the licensed shop. It was recorded that failure to produce any document in support of ownership of the site shall automatically lead to stoppage of shop operation.
9. A spot inquiry was conducted in the presence of the Block Land & Land Reforms Officer, Panskura to ascertain the plot number from where the petitioner was carrying on business. It was found during field inquiry that the shop is situated on plots no.363 and 364. The shop occupies the area of 394 sq.ft. in plot no.363 and area of 187 sq.ft. in plot no.364.
10. On September 12, 2024, the matter was posted for further hearing before the Collector on October 3, 2024. On the said date the petitioner made a request to adjourn hearing on medical grounds. The DM & Collector, ignoring the request made by the petitioner, went on to decide the matter ex parte.
11. Prayer has been made by the petitioner to set aside the impugned order.
12. Learned counsel representing the State submits that there is a provision for appeal and that the petitioner ought to have approached the appellate forum instead of rushing to the writ court at the very last moment.
13. It has been submitted that the private party ought not to run business from the plot of land which has been acquired for one of the departments of the State.

14. I have heard the respective submissions made on behalf of the parties and have perused the materials placed before this Court.
15. There is no recording in the order dated October 3, 2024 with regard to the immediate urgency in disposing of the matter ex parte. The FL On Shop is running from the said site since the year 2004 as per the licence issued by the authority. It does not appear that there was any pressing emergency to dispose of the matter ignoring the request for adjournment made by the petitioner.
16. Neither the records placed before this Court nor the impugned order dated October 3, 2024 disclose the date of acquisition of the subject land by the Irrigation & Waterways Department. There is nothing to suggest that the requiring body raised any objection against the petitioner for running her business from the acquired plot of land.
17. It has been asserted by the learned advocate representing the petitioner that there are several dwelling houses and shops situated over plot no.363 which has been acquired for the Irrigation & Waterways Department. As the shop in question is running for a considerable period of time, the DM & Collector ought not to have rushed to direct the licensee to stop operation of the business.
18. The authority ought to have further ascertained as to whether the department has any objection in running of the said shop from the plot which was acquired for the Irrigation & Waterways Department.
19. Debarring the petitioner from running the shop within 45 days from the date of the order without granting her reasonable opportunity to place

records in support of her status in respect of the subject land would result in closure of her business which would directly impact her livelihood.

20.The authority ought to have also deliberated over the issue as to whether there was any requirement of passing such order for immediate closure of the business if the requiring body did not intend to use the acquired land for their own purpose.

21.As it appears that the right to livelihood of the petitioner would be directly affected in view of the ex parte order that has been passed by the DM & Collector on October 3, 2024, accordingly, the Court intends to interfere in the matter.

22.The Court is of the opinion that a further opportunity ought to have been granted to the petitioner for production of documents as sought for by the Collector by order dated September 12, 2024.

23.The instant writ petition is, accordingly, disposed of by directing the DM & Collector to revisit the issue in terms of the observations made hereinabove by granting reasonable opportunity of hearing to the petitioner for placing documents in support of her claim.

24.A reasoned decision may be taken in the matter within a period of twelve weeks from the date of communication of this order and the reasoned order be communicated to the petitioner immediately thereafter.

25.The impugned order dated October 3, 2024 is, accordingly, set aside.

26.All parties are to act on the server copy of this order duly downloaded from the official website of

this Court.

27. Certified copy of this order, if applied for, shall be made available to the parties.

[Amrita Sinha, J]