

16.05.2024
Sl. No.33
tkm

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

MAT 31 of 2024
CAN 1 of 2024
CAN 2 of 2024

In re : Sukhdeb Paul

...appellant

Ms. Ratan Banik
Dr. Pabitra Pal Chowdhury
Mr. S Banik
Mr. S Sarkar
... .. for the appellant
Mr. Raju Saha
Mr. Subham Chanda
... .. for the SJDA
Mr. Subham Sarkar
... .. for the respondent no. 1

1. Having considered the averments made in the application for condonation of delay, delay in preferring the appeal, is condoned.
2. CAN 1 of 2024 is allowed.
3. Learned counsel for the appellant submits dispute is private in nature and the writ petition at the behest of the respondent no.1-writ petitioner was not maintainable. He contends father of the appellant and the writ petitioner was a licensee in respect of a stall at Bidhannagar Market under Siliguri Jalpaiguri Development Authority (in short SJDA). Upon his death, appellant had obtained no-objection certificate from the respondent no.1-writ petitioner for issuance of license in his favour. Before he could submit the application, writ petitioner committed a volte face and filed a partition suit which came to be dismissed. Once he applied

for grant of license, writ petitioner came to this court seeking various reliefs. Ignoring the nature of dispute between the heirs of a deceased licensee, the writ petition was entertained and the appellant was restrained to carry on business from the licensed premises. He further submits since death of his father he was running the business and a trade license had been issued by the municipality concerned

4. Learned counsel for the respondent no. 1-writ petitioner contends his client had not granted any no objection certificate as claimed by the appellant. Appellant had no license from SJDA to carry on business from the stall. Under such circumstances the learned single judge restrained him from carrying on business from the said stall.

5. We have considered the rival submissions of the parties. Appellant and the writ petitioner are brothers. Their father was a licensee of a stall at Bidhannagar market under SJDA. Admittedly, he has expired and with his death the license stood extinguished. Appellant contends writ petitioner had issued a no objection certificate and on the strength of such document he had applied for a new license in December 2023.

6. On the other hand the writ petitioner disputes such fact and claims he had not issued any no objection certificate.

7. Be that as it may, no license has yet been issued in favour of the appellant by SJDA. Under such circumstances direction by the learned single judge that the appellant

cannot carry on business without requisite license from SJDA cannot be faulted.

8. We are unable to persuade ourselves to hold that the writ petition is not maintainable as the issue raised by the respondent no. 1- writ petitioner was with regard to illegal running of business sans license from a stall owned by a public authority.

9. However, appellant has a legitimate expectation that a license may be issued in his favour provided the no objection certificate submitted by him is a valid one.

10. Accordingly, we direct SJDA to consider the application of the appellant for license after verifying the genuineness of the no objection certificate and giving an opportunity of hearing to the appellant and the respondent no. 1-writ petitioner. Decision in the matter shall be taken at the earliest not later than three months from the date communication of this order.

11. With the aforesaid directions MAT 31 of 2024 is disposed of.

12. In view of the disposal of the appeal, connected application being CAN 2 of 2024 stands disposed of.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)