

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

MAT No. 1300 of 2025
+
CAN 1 of 2025

Archana Jana
-VS-
The State of West Bengal and others

For the appellant : Mr. Ram Anand Agarwala,
Ms. Nibedita Pal,
Mr. Ananda Gopal Mukherjee,
Ms. Sonam Ray

For the State : Mr. Supratim Dhar, Ld. Sr. Adv.,
Mr. Santimay Bhattacharyya.

For the respondent no. 5 : Mr. Somnath Gangopadhyay.

Heard on : August 14, 2025, August 19, 2025 & August 21, 2025.
Judgment on : August 21, 2025.

Sabyasachi Bhattacharyya, J.:

1. The appeal and the connected application are taken up for hearing together, in view of identity of the issues raised in both.
2. The present appeal has been preferred against an order of the learned Single Judge whereby the appellant's writ petition has been dismissed.
3. In the writ petition, the appellant had challenged the rejection of the FPS dealership of the appellant on the ground that the appellant had committed fraud.
4. Although initially, before the writ court, primarily a ground was taken that no show cause notice was served prior to passing the rejection order learned counsel appearing for the appellant submits before us that although a notice was given, the ground of fraud was not established.
5. Learned counsel for the appellant argues that in the present case, the FPS licence was obtained upon an enquiry report having been taken by the respondent authorities in accordance with law and only after verification of the veracity of the application of the appellant, licence was granted.

6. Learned counsel submits that two grounds have been cited in the order cancelling the licence of the present appellant.
7. The first ground was that a wrong plot number was mentioned in the lease deed which was produced by the appellant, which erroneous plot number was reiterated in the licence application by the appellant to be the land where the godown-in-question stood.
8. Learned counsel for the appellant submits that the recording in the lease deed of the number of the plot as 387 was entirely a *bona fide* error whereas the correct number should have been plot no. 375. It is submitted that since the boundaries of the plot, as stated in the lease deed, tally with that of plot no. 375 and were correctly disclosed in the lease deed, there could not be any dispute about the identity of the plot.
9. That apart, even the enquiry report of the respondent authorities indicates that the authorities proceeded on the premise that the appellant's godown, which was inspected, was standing on plot no. 387. Thus, the stand of the appellant, that it was a *bona fide* mistake and not a deliberate suppression, is vindicated since the authorities themselves also committed the same error in their enquiry report.

10. Learned counsel places reliance on a judgment in the matter of *P. Udayani Devi Vs. V. V. Rajeshwara Prasad Rao and another* reported at (1995)3 Supreme Court Cases 252 where the Supreme Court observed that the position in law is well-settled that certificates of sale are documents of title which ought not to be lightly regarded or loosely construed.
11. The Supreme Court went on to observe, by relying on previous judgments, that in the sale certificate, the boundaries as well as the plot number were mentioned but there was a mistake in mentioning the plot number, in which context it was held that the matter may have been different if no boundaries had been given in the final decree for sale as well as in the sale certificate and only the plot number was mentioned. But where both the boundaries and the plot numbers were given and there was a mistake in the plot number, it must be treated as a mere misdescription which does not affect the identity of the property sold.
12. Insofar as the other ground cited for cancellation of the appellant's licence is concerned, learned counsel for the appellant argues that although the character of plot no. 375 was recorded as "Jal", that is, water-body, in reality, the lease

deed describes the godown situated on the said property, which was also established from the enquiry report of the respondent authorities themselves. Thus, the mere erroneous recording in the records of rights cannot alter the fate of the licence issued to the appellant, since the required criterion was that a godown of appropriate proportions, as indicated in the vacancy notification, was to be possessed by the applicant.

13. Learned counsel appearing for the respondent no. 5, who is the landlord of the appellant, submits that the erroneous description in the lease deed was a mere mistake on the part of both parties, that is, the appellant and the respondent no. 5 and supports the stand of the appellant to the effect that the same was merely a *bona fide* mistake whereas the boundaries given in the lease deed identify plot no. 375 and not plot no. 387 and the number of the plot given in the lease deed was a misnomer.

14. Learned counsel for the respondent no. 5 further submits that the landlord is agreeable to rectify the lease deed by executing an appropriate registered document, by incorporating plot no. 375 instead of plot no. 387 as the actual subject-matter of the lease deed, in favour of the appellant.

15. The learned Senior Advocate appearing for the State opposes the contentions of the appellant and submits that the appellant did not raise the issues which are urged before us before the learned Single Judge and the primary ground taken in the writ petition was non service of prior show cause notice.
16. It is further submitted, by placing reliance on a co-ordinate Bench judgment of this Court reported at 2019(1) CHN (CAL) 533 (*Liang Miao Sheng vs. State of West Bengal*), that there was a conflict of views between the Hon'ble Judges in the said judgment, upon which the matter was referred to a learned third Judge of this Court, whose judgment is also cited before this Court. The learned Single (Third) Judge, while resolving the conflict, held that even if there was no specific provision for review of a decision on the ground of fraud, such power was inherent in a tribunal / authority.
17. It is submitted that as such, even if the grounds as stated in Rule 45(3) of the Control Order of 2024 were *per se* not satisfied, the respondent authorities had the inherent power to cancel a licence in the capacity of the Licence Issuing Authority if there was a fraud or suppression deliberately practiced by the applicant.

18. Moreover, it is submitted that the relevant plot, that is, plot no. 375, where the godown of the appellant is actually situated, is still classified as 'Ja' and as such, the licence could not have been issued in the first place. As soon as the fraud was detected, it is submitted, the licence was duly cancelled.
19. Upon a perusal of the impugned order of the learned Single Judge, we find that the learned Single Judge was not restricted in his inquiry to the grounds raised by the appellant/writ petitioner but also entered into the question as to whether fraud was practiced by the appellant, thus, opening up the entire gamut of the issues raised by the parties before this Court. Hence, the argument of the respondents that new grounds are being urged in appeal cannot be countenanced.
20. The first ground which is required to be considered is whether the respondents had power under Clause 45(3) of the TPBS Control Order 2024 to cancel the licence on the grounds as cited in the "Reasoned Order" dated August 1, 2025, since it is the said provision which was stated specifically and invoked in the said order cancelling the licence.

21. Clause 45(3) contemplates a situation where the Licencing Authority, on a complaint received against a dealer or *suo moto*, is *prima facie* satisfied that such dealer is acting in such a manner which is prejudicial to the interest of the beneficiaries tagged with his fair price shop or may hamper smooth implementation of public distribution or may lead to law and order situation, in which case, the Licencing Authority may immediately render the licence under suspension and after giving him an opportunity of being heard, if found guilty of any of the contraventions mentioned in these orders, may, for reasons to be recorded in writing, impose punishment of either fine or reduction of the volume of business according to the gravity of the offence, or termination of his licence.
22. In the present case, there is no allegation in the nature of those envisaged under Clause 45(3).
23. However, this Court is aware of the position of law, in terms of the judgment rendered by the learned Single Judge (Third Judge) in *Liang Miao Sheng* (supra), that an authority has inherent power, if it is the authority issuing the licence, also to terminate the licence in the event a palpable fraud is practiced while obtaining the licence.

24. If such a power is not read into the authority of the licence issuing entity, it would wreak havoc, since a person practising fraud while obtaining the licence values cannot then be hauled up for such gross contravention of principles of natural justice and the basic tenets of Indian law.
25. However, we are unable to convince ourselves from the materials on record that in the present case, a deliberate fraud was practised by the appellant.
26. To constitute “fraud”, there has to be an element of deliberate and willful act or suppression on the part of the concerned person. Unless the action is deliberate, either in commission or omission, it cannot be said that a fraud has been perpetrated by the concerned person.
27. Viewed from such perspective, there are several mitigating circumstances in the present case in favour of the appellant.
28. First, the boundaries of the property, which was the subject-matter of the lease deed produced by the appellant, clearly demarcate plot no. 375 as it has come out from the submissions of the parties, although it was wrongly numbered as plot no. 387 in the lease deed. Pursuant to the ratio laid down in *P. Udayanai Devi’s* case, in such a situation, it will be

deemed that the description of the plot number was a mere misdescription and does not vitiate the transaction as such. Borrowing the said principle in the circumstances of the instant case, we find that the erroneous description of the plot number in the lease deed was a *bona fide* error and not a deliberate suppression, since even otherwise, the boundaries of the demised property, as given in the lease deed, tally with plot no. 375, and the landlord appears before this Court and categorically supports the contention of the appellant that it was a mistake in enumerating plot no. 387 instead of 375. Thus, we are of the opinion that no case of fraud has been made out.

29. That apart, particulars of fraud have to be specifically pleaded and proved, which is entirely absent in the present case.
30. Even otherwise, on the second ground of rejection, we do not find from the vacancy notification any clause in the context of which the misdescription of the character of the land would be germane.

31. While perusing the said vacancy notification, we find that Clause 10 describes the supporting documents which an applicant has to file along with the licence application.
32. Clause (C) is the relevant provision which is applicable in the present case, since it deals with leased/rented property. The requirement under the said head is for the applicant to submit a registered / notarized lease deed or tenancy agreement for at least four years with copies of rent receipts for all the months from the date of agreement.
33. We do not find from sub-head (c) of Clause (C), pertaining to leased properties, that the records of rights have to be produced at all.
34. Even in respect of other categories of properties than leased ones, the production of records of rights is optional.
35. Under Clause (A), which deals with ownership properties, the requirement under sub-clause (a) is the production of the photocopy of records of rights/registered deed of conveyance, etc. However, such requirement is diluted and made optional by the immediately succeeding sub-clause (b), which provides that a document showing the character of land as '*dokan* /

commercial / *bastu*', would be sufficient if records of rights are not produced.

36. It is conspicuous that the language used in respect of the records of rights in the said sub-clause is not "is not available" but "is not produced", thereby leaving the option entirely on the applicant either to produce the records of rights or any document showing the character of land as *dokan* / commercial / *bastu*, irrespective of the availability or non-availability of records of rights..
37. Even in case of a property owned by a family member of the applicant, covered by Clause (B) of the vacancy notification, the requirement is similar to that of an owned property.
38. Hence, from a composite reading of all the provisions of Clause 10 of the vacancy notification, we find that the production of the records of rights is entirely optional and if any document is produced showing the nature and character of the land, it would suffice for getting a licence. Rather, in the case of a leased out property, there is no requirement even to produce the extracts of the records of rights as an option. The only document required is a registered / notarized lease deed

which may describe the character of the property, which was duly produced in the present case.

39. Hence, it is evident from the vacancy notification itself that the character of the land need not be established by production of the records of rights. If such requirement is not an essential pre-requisite for a licence application as per the vacancy notification itself, which circumscribes the grant of the licence, non-production of records of rights or consequential non-disclosure of the character of land as depicted in the records of rights would be entirely irrelevant while cancelling the licence as well. If a particular requirement is not there for issuance of a licence in the first place, non-fulfillment of such requirement cannot be a ground for cancelling the licence as well.

40. Hence, the description of plot no. 375 as 'Ja/' in the records of rights is not germane and not a valid basis for cancellation of a licence at all. In any event, the appellant submits through counsel that an application has already been made for effecting the necessary rectification in the records of right and that a conversion application has since been made as well.

41. Be that as it may, since those are not essential criteria under the vacancy notification, we are of the opinion that the cancellation of the licence of the appellant was entirely misdirected and based on grounds not validated by the extant Rules and Regulations, including the vacancy notification, of the respondent-authorities themselves.
42. Hence, with utmost respect, the learned Single Judge proceeded on erroneous yardsticks in affirming the cancellation of the licence of the appellant and dismissing the writ petition.
43. Accordingly, MAT No. 1300 of 2025 is allowed on contest, thereby setting aside the impugned judgment and order dated August 5, 2025 passed in WPA No. 17891 of 2025 as well as setting aside the "Reasoned Order" whereby the FPS licence of the appellant was cancelled, bearing Memo No. 348/SCH/MR Admin./25 dated August 1, 2025. Consequentially, the FPS licence of the appellant is hereby restored.
44. The consequential order dated August 1, 2025, bearing Memo No. 260/INSP/F&S/N-I/25 of even date, is also set aside.

45. Any action taken pursuant to the impugned orders, which have been set aside above, also stand automatically revoked and cancelled.
46. In view of the appeal itself having been disposed of, CAN 1 of 2025 is disposed of as well.
47. There will be no order as to costs.
48. Urgent photostat certified copy of the order, if applied for, be supplied to the parties at an early date.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)