

03.07.2025

3
Ct.No.7
sdas

WPA 24753 of 2016

Sukhendu Nath Bhattacharya
Vs.
The State of West Bengal & Ors.

Mr. Debabrata Acharyya
Mr. Sital Samanta
....for the petitioner

Md. T. M. Siddiqui
Mr. Tanoy Chakraborty
Mr. Suddhadev Adak
..... for the State

The present writ petition has been filed by the petitioner assailing the legality and propriety of the order dated 21st July, 2016, bearing Memorandum No. 68/1(3)/AA, issued by the District Magistrate, South 24-Parganas, whereby the authority refused to withdraw the earlier order revoking the registration of the hotel known as “Hotel River View (Residential)” under the provisions of the Sarais Act, 1867. The petitioner accordingly prays for the issuance of a writ of *certiorari* for quashing and setting aside the said order dated 21st July, 2016. Additionally, the petitioner seeks issuance of a writ of *mandamus* directing the concerned respondents to remove the padlock affixed on the main gate of the building and to permit the petitioner to use the premises for residential purposes.

Briefly stated, the facts giving rise to the present writ petition are as follows: the petitioner was operating a hotel at Falta under the name and style of “Hotel River View (Residential)” on the basis of a licence granted in his favour on 29th August, 2000, in accordance with the provisions of section 4 of the Sarais Act, 1867.

Subsequently, pursuant to a complaint lodged by local residents, an inspection was conducted by the competent authority, which allegedly revealed that the premises were being used for immoral activities. As a consequence, a criminal case, being Falta Police Station Case No. 24 of 2009 dated 14th February, 2009, was registered against the petitioner under sections 3, 4, 5, and 7 of the Immoral Traffic (Prevention) Act, 1956, naming him as the owner of the said hotel.

As a consequence thereof, and in accordance with the provisions of the Sarais Act, 1867, the registration of Sarai Licence No. 04/2k, which authorised the petitioner to operate the hotel under the name and style of “Hotel River View (Residential)”, was revoked by an order dated 12th August, 2015.

The petitioner challenged the order revoking the registration by filing Writ Petition No. 16644(W) of 2015, which was disposed of by a Co-ordinate Bench of this Court by an order dated 27th July, 2015. In disposing of the writ petition, the Hon’ble Bench directed the District Magistrate to issue a notice to the petitioner within a

specified period, calling upon him to show cause as to why the registration should not be revoked. The District Magistrate was further directed to pass an appropriate order in accordance with law, after affording the petitioner an opportunity of hearing. The Bench also observed that unless and until the petitioner obtained a favourable order from the District Magistrate, he would not be permitted to operate the hotel.

Record reveals that a case under Section 133 of the Code of Criminal Procedure, 1973, was also initiated against the petitioner on the allegation that he was creating a nuisance in the locality.

In compliance with the order dated 27th July, 2015, passed in W.P. No. 16644(W) of 2015, the matter was duly reconsidered by the District Magistrate, South 24-Parganas. However, upon such reconsideration, the District Magistrate ultimately declined to withdraw the earlier order revoking the registration of the petitioner's hotel under the Sarais Act, 1867. It is pertinent to note that following the registration of Falta P.S. Case No. 24 of 2009 dated 14th February, 2009, the concerned authorities proceeded to secure the premises by placing a lock and key on the main gate of the building.

Mr. Acharyya, learned Advocate representing the petitioner, invites my attention to the provisions of Section 9 of the Sarais Act, 1867, and submits that the facts and circumstances of this case do not satisfy the requirements

prescribed under Section 9 of the Sarais Act to enclose the building. He further submits that a direction be given to the concerned District Magistrate to forthwith remove the padlock and permit the petitioner to use the building for residential purposes.

Mr. Chakraborty, learned Advocate representing the respondents, vehemently opposes the prayer advanced by Mr. Acharyya on behalf of the petitioner. He submits that the record would reveal that the petitioner used the building for immoral purposes. Consequently, two cases were registered against the petitioner, and the trial of Falta Police Station Case No. 24 of 2009 dated 14th February, 2009, is still pending. He further submits that the building stands on public land, and accordingly, proceedings under the relevant provisions of the West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962 (hereinafter referred to as “the 1962 Act”) have been initiated against the petitioner. A final order has also been passed directing the petitioner to remove all structures of the building from that piece of land. He therefore submits that, in such circumstances, it would not be appropriate to direct the District Magistrate to open the padlock and permit the petitioner to take possession of the land and use it as a residence.

In reply, Mr. Acharyya, submits that the entire portion of the two lands has not been vested in the State. He asserts that only a portion comprising an area of 2.5

decimals out of 11 decimals has been vested to the State. Therefore, the State cannot acquire the entire property and cannot deny the petitioner the right to use the said building as a residence.

Answering my queries, Mr. Acharyya, submits that the land has not yet been demarcated. However, as per an oral arrangement, the petitioner has been enjoying possession of a portion of this land.

Mr. Chakraborty submits that the petitioner constructed the building on land which was prima facie vested in the State. However, this statement has been disputed by Mr. Acharyya.

Heard the learned Advocates representing both parties and perused the materials on record.

Admittedly, the registration of the hotel granted to the petitioner under the provisions of Section 4 of the Sarais Act, 1867, was revoked based on a complaint from the local residents alleging that the petitioner was using the building for immoral purposes. This complaint led to the registration of a criminal case, Falta Police Station Case No. 24 of 2009 dated 14th February, 2009, under Sections 3, 4, 5, and 7 of the Immoral Traffic (Prevention) Act, 1956. The trial of that case is still ongoing. Meanwhile, a case under Section 133 of the Code of Criminal Procedure was also initiated against the petitioner. Taking note of these facts, after affording an opportunity of hearing and applying the provisions of the Sarais Act,

1867, the District Magistrate refused to revoke the licence. I do not find any infirmity or perversity in the order that would warrant interference by this Court.

With regard to the petitioner's second submission, that a direction be given to the District Magistrate to open the padlock on the main gate and permit the petitioner to use the building for residential purposes, I am of the considered opinion that such relief cannot be granted at this stage. This is primarily because, as admitted, a portion of the land in question stands vested in the State and the process of demarcation has not yet been completed. As a result, it remains undetermined which specific portion of the land is vested in the State and which portion, if any, may lawfully be utilised by the petitioner.

Therefore, in the present case, disputed questions of fact are involved, the resolution of which would require assessment of evidence by the appropriate fact-finding authority. Furthermore, it is important to note that an order has already been passed by the Collector under the relevant provisions of the 1962 Act, directing the petitioner to remove all existing structures from the land in question.

I have been informed that the petitioner preferred an appeal challenging the order passed by the Collector under the 1962 Act, before the Divisional Commissioner. However, the appeal was decided against the petitioner. The petitioner has since filed a writ petition challenging

both orders passed in the proceeding under the 1962 Act, which is still pending adjudication.

In such a situation, it would neither be feasible nor appropriate to direct the District Magistrate to open the padlock and permit the petitioner to use the building for residential purposes.

With this observation and order the writ petition is, thus, disposed of.

There shall be no order as to costs.

(Partha Sarathi Chatterjee, J.)