

(2011) 08 CAL CK 0095

In the Calcutta High Court

Case No : MAT No. 231 of 2011 and CAN No. 1668 of 2011

Mr. Arindam Jha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 02-08-2011

Acts Referred:

Citation : (2011) 5 CHN 306

Hon'ble Judges : Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Jaydeep Kar and Siddhartha Banerjee, for the Appellant; Ashok Banerjee, Shyamal Sanyal and Sutanu Kumar Patra, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This Mandamus-Appeal is at the instance of a writ-Petitioner and is directed against order dated 5th October, 2010 passed by a learned Single Judge of this Court by which His Lordship dismissed the writ-application filed by the Appellant in which the Appellant challenged the legality and propriety of the order dated 25th July, 2006 passed by the Sub-Divisional Magistrate and Sub-Divisional Officer, Malda by which the Bar of the writ-Petitioner under the name and style "Barron Bar-cum-Restaurant" was temporarily closed after an explosion on 9th June, 2006 followed by final order passed by the District Magistrate, Malda dated 16th August, 2007 refusing to reopen the Bar at its existing site but giving liberty to the writ-Petitioner to shift the same to some other safer zone.

2. Being dissatisfied, the writ-Petitioner has come up with the present Mandamus-Appeal.

3. The facts giving rise to filing of this Mandamus-Appeal may be summed up thus:

a) On 7th September, 2005, the Appellant was granted licence for retail sale of foreign liquor from his Bar premises at Pranta Pally, Rathbari, under English

Bazar, P.S., Malda till 31st March, 2006.

b) On 9th June, 2006 at about 2 A.M., there was an explosion causing immense damage to the premises where the Bar is situated. At that point of time, the Bar remained closed.

c) On 10th June, 2006, the Respondent No. 6 inspected the premises and on receipt of necessary release order from local police authority on 16th June, 2006, the Appellant renovated the damaged Bar premises. Thereafter, on 27th June, 2006, the Appellant made a written request to Respondent No. 8 to hand over all documents received from him on 10th June, 2006 so that he could reopen his business followed by subsequent reminders on 29th June, 2006, 30th June, 2006 and 17th July, 2006 but to no effect.

d) On 19th July, 2006, the Appellant wrote a letter to the Respondent No. 3 with a request to direct the Excise Department to certify newly purchased documents like Bar Register, Go down Register etc., so that he could reopen his business for which, according to the Appellant, he was incurring daily financial liability of Rs. 1,500/- against bank loan taken for running his business.

e) The Respondent No. 7 visited his Bar and submitted his inspection report on the basis of which the Respondent No. 4 issued an order dated 25th July, 2006 directing the Appellant to close his business temporarily.

f) Being dissatisfied, the Appellant filed the writ-application.

g) The writ-application was contested by Respondent Nos. 1 to 8 and thereby alleging that the Appellant cannot be allowed to continue at the site situated on the first floor of the residential complex named "Rituraj Apartments". According to the Respondents, after explosion, the local residents of the apartment raised objection and prayed for closure of the said Bar-cum-Restaurant within residential area. It was also submitted that in the entire district of Malda, there were 11 Bar-cum-Restaurants of which only the Appellant's liquor shop was situated in a residential complex. Consequently, instead of cancellation of his licence, the Appellant was given option to select a free alternative site for grant of licence to carry out the business.

h) The learned Single Judge by the order impugned came to the conclusion that there was no illegality or impropriety in the administrative action of the District Authority in asking the Appellant to change the place of business justifying interference in a writ application.

i) Being dissatisfied, the writ-Petitioner has come up with the present Mandamus-Appeal.

4. Mr. Kar, the learned Advocate appearing on behalf of the Appellant by relying upon various provisions of the Bengal Excise Act and Rules framed there under, tried to impress upon us that there was no justification of the Excise Authority to ask the Appellant to shift the business, as his client has neither violated the

terms of the licence nor is there any inaction or negligence on the part of his client in the explosion. By relying upon the police report, Mr. Kar tried to impress upon us that the explosion was an act of accident and that can happen at any place and therefore, the order of the District Authority in asking his client to shift the place of business was illegal. Mr. Kar further contended that under the Act and Rules framed there under, there is no provision of asking an existing licensee to shift the place of business unless the licensee himself applies for shifting. Mr. Kar, therefore, prays for setting aside the order passed by the learned Single Judge and directing the District Authority to permit his client to resume the business.

5. Mr. Banerjee, the learned Government Pleader appearing on behalf of the Respondent, has, on the other hand, supported the order impugned and has contended that having regard to the fact that the Bar is situated in a business-cum-residential area and the fact that the earlier explosion in the Bar created a panic in the locality and particularly, among the residents of the said building, the Revenue Authority decided to shift the business to any other place. Mr. Banerjee submits that as the Appellant had no fault in the explosion, his client has not terminated the licence or withdrawn the same but simply given liberty to the Appellant to shift his business. Mr. Banerjee further contends that in the matter of running of business of selling liquor, a citizen has no fundamental right nor is there any absolute right to run such business in a particular place.

6. At any rate, Mr. Banerjee contends that in the facts of the present case, the learned Single Judge was quite justified in not interfering with the decision taken by his client. Mr. Banerjee therefore, prays for dismissal of the Mandamus-Appeal.

7. After hearing the learned Counsel for the parties and after going through the materials on record, we appreciate the contention of Mr. Kar that his client did not commit any illegality while running the business. However, the fact remains that the said business is in a residential-cum-business place and in the same building, there are residential accommodation of various persons. It appears that in view of the accident, there was apprehension of danger and a feeling of insecurity in the mind of the persons residing in the said building for the simple reason that huge amount of liquor which is combustible goods are stored in the Bar and in such circumstances, if the administration has taken a decision asking the Appellant to shift his business after taking into consideration the past incident of explosion as well as apprehension of the residents of the said building, such decision cannot be said to be unreasonable. After all, the right of the Appellant to carry on his business of running the Bar has not been totally curtailed but only he has been asked to shift his business to any other suitable place.

8. In our view, the Licensing Authority has every right to ask a licensee to shift business, in a case, where there is just ground for shifting. In this case, it further appears that some of the residents of the locality also complained that Bar in question should not be permitted to be run in a residential building where by

common staircase, the customers are required to go to the Bar and coming out of it and in the process they face the female residents as also the children. Such factor cannot also be said to be an irrelevant one.

9. On consideration of the entire materials on record, we, thus, find that the learned Single Judge rightly refused to interfere with the discretion exercised by the Revenue Authority in asking the Appellant to remove the Bar to any other place. The decision taken cannot be branded as unreasonable.

10. We, thus, find no reason to interfere with the order passed by the Authority as the Appellant cannot be said to have any absolute legal right to run the business of Bar in a particular place when sufficient materials are available to conclude that there are just causes for discontinue of such business in that place.

11. The appeal is, thus, dismissed.

12. In the facts and circumstance, there will be, however, no order as to costs.