

(2014) 06 TP CK 0022

In the Tripura High Court

Case No : Writ Petition (Civil) No. 111 of 2014

Narayan Chandra Saha VsThe State of Tripura

Date of Decision : 30-06-2014

Acts Referred:

Citation : AIR 2014 Tripura 54

Hon'ble Judges : Deepak Gupta, C.J;S. Talapatra, J

Bench : Division Bench

Advocate : A.K. Bhowmik, Sr. Advocate and R. Datta, Advocate for the Appellant; S. Chakraborty, Addl. Govt. Advt., Sekhar Dutta, S. Deb Gupta and D. Sengupta, Advocate for the Respondent

Judgement

Deepak Gupta, C.J.—The petitioner by means of this petition has prayed that the bid of the private respondent No. 3 for running the Khowai Town Foreign Liquor shop be held to be informal and be cancelled and the State be directed to grant the shop in favour of the petitioner. The undisputed facts are that the petitioner is at present moment the licensee of the Khowai Town Foreign Liquor shop. Fresh notices inviting tenders were issued by the State on 24th January, 2014 for settlement of the Foreign Liquor shops including the Khowai Town Foreign Liquor shop. The petitioner and respondent No. 3 have submitted their separate bids in response to the said Notice Inviting Tender (NIT). The respondent No. 3 offered a bid of Rs. 21,50,000/- whereas the bid submitted by the petitioner was for a sum of Rs. 20,02,404/-. Therefore, the respondent No. 3 was the highest bidder.

2. The case of the petitioner is that since the respondent No. 3 failed to produce "No Objection Certificate" from the owner of the building in which he proposed to set up the liquor shop in possession in terms of Clause 3 of the NIT, the tender of respondent No. 3 should have been rejected and, thereafter, the tender of the petitioner being the second highest bidder should have been accepted.

3. The main dispute is with regard to the suitability of the premises which were proposed by respondent No. 3 for housing the liquor shop in question. The said respondent proposed to house the liquor shop in a building situated on Khatian No. 2324 of Mouja Khowai. According to the petitioner, the property is jointly

owned by the respondent No. 3, his brothers, father and other co-sharers. The case of the petitioner is that the building was not partitioned amongst the shareholders and the "No Objection Certificate" of one of the co-sharers namely, Haralal Debnath was only submitted with the bid. It is alleged that one of the co-owners Sri Biplab Debnath submitted written objection dated 01.03.2013 to the authorities of the State in which he alleged that he was the co-owner and did not want a liquor business to be run in the premises. On this ground, it is submitted that the bid of the respondent No. 3 should be declared to be informal and be set aside. It is also alleged that the respondent No. 2 the Collector of Excise, has given time to respondent No. 3 to make arrangement for an alternative shop premises and according to the petitioner, this cannot be permitted.

4. In this behalf, reference may be made to the order of the Collector, Khowai, dated 7th March, 2013, wherein the objection of Biplab Debnath, brother of the respondent No. 3, has been considered. In this objection Biplab Debnath claimed that the shop is in his possession and Bhupal Debnath, the respondent No. 3, admitted that Biplab Debnath had forcibly taken possession of the said shop premises and, therefore, he would follow the due course of law for getting Biplab evicted from the shop premises. The Collector also gave time to Bhupal Debnath to find out alternative premises.

5. We may also point out that Haralal Debnath, father of respondent No. 3 filed a suit being Tide Suit 24 of 2014 in the Court of the Civil Judge, Senior Division claiming that he is the owner of the suit property and also claimed that the objector Biplab Debnath be restrained in any manner from interfering in the said property. In this case on 15.05.2014 an order was passed wherein the learned Civil Judge, Sr. Division, West Tripura, Agartala came to the conclusion, that the objector has no right over the property and further held that the objector be restrained from interfering with the peaceful possession of the petitioner. The relevant portion of the order reads as follows:

"On perusal of the application for injunction and the documents filed therewith including the copy of order dated 07.03.2014 passed by the DM and Collector, Khowai Tripura, I am of the opinion that the petitioner has made out a prima facie case to go to trial.

Admittedly, the petitioner is the father of the OP. Therefore, the OP has no right over the property of the petitioner during the lifetime of the petitioner unless title is handed over to him otherwise. Without touching the merit of the case if we dwell upon the documents filed in the record, prima facie it would be evident that the land under schedule -1 of the petition stands in the name of the petitioner. The OP, however, prima facie appears to have a share over the property left by their mother described in the schedule-2 of the application.

Situated thus, we are of the considered opinion that the balance of convenience and inconvenience in respect of schedule-1 land is in favour of the petitioner. On the materials available in the record I am also of the opinion that the petitioner

will suffer irreparable loss if the order of injunction is withheld.

In this view of the matter application for injunction stands allowed.

The OP is hereby restrained from interfering with the peaceful possession of the petitioner and also hereby directed not to restrain the petitioner and his man to perform construction work over the land described in schedule-1 of the petition till disposal of the connected Tide Suit No. 24/2014."

6. Sri A.K. Bhowmik, learned senior counsel appearing for the petitioner, submits that in the plaint filed by Haralal Debnath it was stated that he was in possession of the premises whereas Bhupal Debnath admitted before the respondent No. 2 that possession was taken over by his brother/objector Biplab Debnath.

7. We are not going into the question as to who is the owner of the property. That is the subject-matter of a civil dispute. Having said so, one cannot lose sight of the fact that in these very premises the respondent No. 3, Bhupal Debnath, was running a liquor business from the year 2006 to 2010 without any objection from the objector. The case of the private respondent is that his father Haralal Debnath is the sole owner of the property and he has no objection to the liquor shop being run in these premises.

8. The main objection of Sri Bhowmik is based on the provisions of the Tripura Excise Act 1987, the Rules framed thereunder and the terms of the NIT. Sri Bhowmik has relied upon the Rules 25 and 26 of the Tripura Excise Rules, 1990. As far as Rule 25 is concerned, that is not at all applicable because that applies to liquor vends where consumption of liquor is permitted. In Tripura no such liquor license has been issued till date. The principles granting other licenses are mentioned in Section 26. We are unable to find any objection which falls within the ambit of Rule 26. The Notice Inviting Tenders contained condition No. 3 which reads as follows:

"3.(iii) the detail so the location & description of the building (Owned or hired) including all required document(s) of the building, including land particulars & in the case of hired building a no objection certificate from the owner of the building along with supporting document(s)."

As per this condition, the owner of the building must give a no objection certificate. In this case, according to the respondent No. 3, the owner is his father who has given a "No Objection Certificate". The father has also not denied this fact.

9. The case of the petitioner is that the father is not the sole owner and, therefore, the certificate should have been given by all. The State has permitted the assessee to choose some other premises. We see no reason why such order could not have been passed. Each case has to be decided in the light of its peculiar facts. In the present case, the respondent No. 3 was running a liquor shop in these very premises for 4 years earlier without any objection from his brother. He submitted a fresh tender which was the highest and in the said

tender he proposed the same place along with the "No Objection Certificate" of his father. According to the private respondent, thereafter his brother forcibly took possession of the premises. Then his father filed the civil suit in which some orders have been passed.

10. We are not going to the correctness of the order so passed but we are clearly of the view that in cases like the present one the highest bidder must be given a chance to show some alternative premises. The condition in which building, the shop is to be run is an important condition but at the same time, if, as alleged by the private respondent, somebody takes forcible possession of the premises or raises frivolous objections, the highest bidder should not be denied the right to suggest alternative premises. The alternative premises must meet the requirement of Rule 26 but merely because the premises suggested have become unsuitable due to action which had taken place after the bid was tendered would not be a ground to hold that the bid is informal. In the facts and circumstances of the present case we hold that the bid of the present petitioner is not informal.

11. This Court in *Tapash Kr. Roy and another v. State of Tripura* [W.P.(C) No. 99 of 2014 and another connected matter] has already upheld the policy of the State that if the highest tenderer is not to be awarded the tender then the tender shall be cancelled but will not be awarded to the second highest tenderer. Therefore, the tender can in any event not be awarded to the petitioner. Whether a shop is suitable or not is a matter for the excise authorities to decide and this Court would normally not interfere in such issues unless it is shown that the decision of the excise authorities is perverse or totally against law. In this view of the matter, we are not inclined to interfere in the matter. The writ petition is accordingly dismissed. No costs.