

GAHC010236762024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3440/2024

SMT. ANJANA BORA
OWNER OF M/S KRIB AND M/S SATYAM ASSOCIATES AND HOTEL APOLLO
GRAND, R/O BORA BHAWAN, TRP ROAD, BHARALUMUKH, GUWAHATI-
781009

VERSUS

SANKARDEV COMMERCIAL PVT LTD AND ORS
- A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE INDIAN
COMPANIES ACT AND HAVING THEIR PRINCIPAL PLACE OF BUSINESS AT
HOUSE NO. 1, BYELANE NO. 4, ANIL NAGAR, RAJGHAR LINK ROAD,
GUWAHATI-781007, DIST- KAMRUP (M), ASSAM AND REPRESENTED
THROUGH THEIR DIRECTOR SRI DEVABRATA TALUKDAR, AGED ABOUT
52 YEARS, S/O LATE RAJEN CHANDRA TALUKDAR

2:THE STATE OF ASSAM

REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
A-BLOCK
GROUND FLOOR
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006

3:GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI-781006
ASSAM

4:THE COMMISSIONER

GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI-781006
ASSAM

5:THE JOINT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI-781006
ASSAM

6:THE ASSISTANT COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI-781006
ASSAM

7:THE SENIOR MEDICAL AND HEALTH OFFICER
GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI-781006
ASSAM

8:THE MAYOR-IN-COUNCIL IN APPEAL
GUWAHATI MUNICIPAL CORPORATION
GANESH MANDIR
GUWAHATI-781006
ASSAM

Advocate for the Petitioner : R SARMAH, MS M KAKOTY,MR P CHOUDHURY

Advocate for the Respondent : SC, GMC, SC, GDD,MR. D SARAF

Linked Case : WP(C)/1453/2024

SANKARDEV COMMERCIAL PVT LTD
A PRIVATE LIMITED COMPANY INCORPORATED UNDER THE INDIAN
COMPANIES ACT AND HAVING THEIR PRINCIPAL PLACE OF BUSINESS AT
HOUSE NO. 1
BYELANE NO. 4
ANIL NAGAR
RAJGHAR LINK ROAD
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DIST- KAMRUP (M)
ASSAM AND REPRESENTED THROUGH THEIR DIRECTOR SRI DEVABRATA
TALUKDAR
AGED ABOUT 52 YEARS

S/O LATE RAJEN CHANDRA TALUKDAR

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
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8:SMT. ANJANA BORA
OWNER OF M/S KRIB AND M/S SATYAM ASSOCIATES AND HOTEL APOLLO
GRAND
R/O BORA BHAWAN
TRP ROAD
BHARALUMUKH
GUWAHATI-781009

Advocate for : MR. D SARAF
Advocate for : SC
GMC appearing for THE STATE OF ASSAM AND 7 ORS

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE
O R D E R

Date : 09.12.2024.

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. R. Sarma, learned counsel for the applicant. Also heard Mr. D. Saraf, learned counsel for the opposite party/writ petitioner.

2. This is an application seeking recalling/modification/ alteration/vacation of the order dated 15.03.2024, passed in WP(C) No.1453/2024.

3. The opposite party/writ petitioner claims to be the owner of a plot of land measuring about 2 Kathas and 10 Lechha covered by Dag No. 959(O)/2417(M)/2589(N) of K.P. Patta No. 32(O)/1210(M)/2133(N) of revenue village – 2 No. Japorigog, Mouza- Beltola situated at Guwahati Shillong Road, near Christian Basti in the district of Kamrup (M), Assam along with B+C+4 R.C.C. building standing thereupon assessed by the Guwahati Municipal Corporation (in short 'the GMC'), as Holding No. 10539100 of Ward No.19 (New), Guwahati under East Zone in the name of the petitioner. It is contended that the property is presently under attachment vide an order dated 30.03.2020,

passed by the Enforcement Directorate.

4. It is the contention of the opposite party/writ petitioner that although there was an unregistered agreement of the petitioner with the applicant to take over possession of a part of the building, the said agreement has elapsed and accordingly the petitioner had filed numerous applications for cancellation of the trade license dated 26.04.2023 and also the occupancy certificate of the applicant, which have not been acted upon. It is further contended that the opposite party/writ petitioner is also aggrieved with the issuance of No Objection Certificate (in short 'the NOC') by the Joint Commissioner, GMC in favour of the applicant to run the trade of IMFL "ON" Bar cum Restaurant, in the name and style M/s. Krib with the applicant as its proprietor. It is contended that the applicant does not have any legal stand to seek for such NOC and therefore grant of the same without considering the objections of the petitioner is not sustainable in law.

5. This Court on 15.03.2024, issued notice returnable by four weeks and passed an interim order the relevant paragraph which is reproduced here-in-below:-

"9. Considering the facts and circumstances, this Court is of the view that the equities would be balanced and the interest of justice would be served directing that though the process for consideration of issuance of a trade license on the basis of the impugned NOC is not put to any hold, no final order of trade license to the respondent no. 8 be issued without taking leave of this Court.

10. Since this order has been passed ex parte, liberty is granted to the respondents to come up for modification / alteration, if so advised".

6. Hence, this Interlocutory Application is filed by the applicant for modification/alteration/vacation of the above interim order dated 15.03.2024.

7. Mr. K.N. Choudhury, learned Senior Counsel for the applicant, submits that the Opposite Party had undertaken loans from Central Bank of India and TATA Capital Financial Services Ltd. for running of business at the Sontonza Complex. The Opposite Party had mortgaged the aforesaid land and building along with another plot of land in favour of the Central Bank of India against a loan amount of Rs.10.35 crores including T.L./C.C. & B.G. However, subsequently, due to financial problem caused by loss in business, the Opposite Party was unable to liquidate its outstanding loan liabilities towards the Central Bank of India and TATA Capital Financial Services Ltd. and accordingly the loan at Central Bank had been classified as NPA and the property of the Opposite Party had been attached by the said bank.

8. The Opposite Party had approached the Applicant and made an offer to sell the aforesaid plot of land measuring 2 Katha 10 Lechas along with the RCC building to the Applicant in order to clear its outstanding loan amount at Central Bank of India and TATA Capital Financial Services Ltd. The Applicant accepted the said offer and accordingly, an agreement for sale dated 29th August, 2017 was drawn up and executed between the Opposite Party and the Applicant herein for sale of the said plot of land measuring about 2 Kathas and 10 Lechas described herein above, presently known as "The Cube" comprising of the ground floor 3461 sq. ft., the upper three floors (4299 sq.ft.) each floor and 3499 sq.ft. alongwith basement parking space 86%) and ground floor parking space (96%) therein along with basement rights and all other privileges available therein, including open space available on the ground floor and 66% of total roof area over the fifth floor of the said complex (2838 sq.ft.) for the terms and conditions mentioned therein. The said agreement for sale was duly notarised on 29.08.2017.

9. Mr. K.N. Choudhury, learned Senior Counsel contended that as per Clause 1 and 2 of the aforesaid agreement for sale dated 29.08.2017 it was agreed that the Applicant shall pay an amount of Rs.1 Crore to the Opposite Party No. 1 to enable it to pay the amount to the Central Bank of India against the loan amount standing against the Opposite Party for the purpose of seeking One Time Settlement (OTS) of the outstanding the loan amount and on receipt of the proposal for OTS from the bank, shall be paid by the Applicant to the bank as per the schedule of the OTS. In case on payment of Rs.1 crore if the bank does not provide the OTS within a period of one month then the Opposite Party shall refund the amount from no-lien account which will be received from the Central Bank of India. As per Clause 3 of the agreement for sale, it was further agreed that against the total outstanding loan amount of Rs.5.15 crore to TATA Capital Financial Service Ltd. the Opposite Party No. 1 shall pay an amount of Rs.65 lakh and the balance amount of Rs.4.5 crore will be paid by the Applicant. Further, it is to be stated that it was specifically agreed under Clause 4 of the aforesaid agreement for sale that after liquidation of the Opposite Party's bank loan and after payment of Rs.4.5 crore to the Opposite Party by the Applicant towards clearing the outstanding dues against the loan at TATA Capital Financial Services Ltd., a registered sale deed would be immediately executed between the parties for sale of the said property and steps will be taken for registration of the said property in favour of the Applicant. It is to be stated that the Applicant, in terms of the said agreement for sale dated 29.08.2017 cleared all outstanding dues of the Opposite Party in Central Bank and to TATA Capital Financial Services Ltd. The Applicant made various payments to the Opposite Party, i.e. M/s Shankardev Commercials Pvt Ltd by cheques and cash so as to enable the Opposite Party to repay the loans to Central Bank of India and Tata Capital

Financial Services and discharge its obligation and liabilities in respect of the said loans availed by the Opposite Party. The Applicant obtained loan from ICICI bank by mortgaging its own residential house and made a payment of Rs.2,99,39,288/- (Rupees Two Crores Ninety-Nine Lakhs Thirty-Nine Thousand Two Hundred and Eighty-Eight) only by way of various cheques to M/s Shankardev Commercials Pvt Ltd. Furthermore, Applicant also paid an amount of Rs.3,79,60,000/- (Rupees Three Crores Seventy-Nine Lakhs and Sixty Thousand) only by way of various cheques to the Opposite Party. Furthermore, Applicant also paid an amount of Rs.2,99,00,000/- (Rupees Two Crores and Ninety- Nine Lakhs) only by cash in several instalments to the Opposite Party and for each such installment the Opposite Party issued money receipts to the Applicant. Additionally, the Applicant also paid an amount of Rs.26,75,000/- (Rupees Twenty-Six Lakhs Seventy-Five Thousand) only vide demand drafts to Central Bank of India, and also paid an amount of Rs.1,19,60,000/- (Rupees One Crore Nineteen Lakhs and Sixty Thousand) only vide various cheques and demand drafts to TATA Capital Financial Services Ltd. However, in-spite of the aforesaid payments and in-spite of several verbal requests made by the Applicant, the Opposite Party failed to execute the registered sale deed in favour of the Applicant thereby violating the terms of the agreement for sale dated 29.08.2017. Furthermore, the loan availed by the Opposite Party from Central Bank of India and TATA Capital Financial Services Ltd. has been closed after repayment by the Opposite Party from the money received by the Opposite Party from the Applicant in terms of the agreement for sale dated 29.08.2017.

10. It is further contended by Mr. K.N. Choudhury, learned Senior Counsel that as per Clause 5 of the agreement for sale dated 29.08.2017, it was agreed between the parties that the Applicant shall have possession of the land and building as mentioned in the schedule therein on and from the date of payment

of Rs.1 crore. The Applicant had cleared all outstanding payments of the Opposite Party against the loans and accordingly has been in possession of the property. In fact, after taking possession of the said property the GMC had come to attach the property for non-payment of tax for a number of years by the Opposite Party. Upon approaching the Opposite Party for payment of the tax due, the Opposite Party surrendered and did not pay the tax which amounted to a substantial sum of Rs.4,38,853/- (Rupees Four Lakhs Thirty Eight Thousand Eight Hundred and Fifty-Three) only. Thereafter, left with no other option, the Applicant paid the amount of Rs.4,38,853/- to the GMC which ought to have been paid by the Opposite Party as it pertained to the years prior to the agreement for sale dated 29.08.2017 and the same was not a part of the said agreement. Subsequent to the execution of the agreement for sale dated 29.08.2017 and after taking possession on September, 2017 the Applicant has been regularly paying the tax in respect to the said property to the GMC. The Applicant has paid an amount of Rs.1,32,240/- (Rupees One Lakh Thirty-Two Thousand Two Hundred and Forty) only to GMC for the year 2021-22 and also an amount of Rs.2,42,440/- (Rupees Two Lakhs Forty-Two Thousand Four Hundred and Forty) only to GMC for the year 2022-23. Further, the Applicant also paid the land mouza/khazna tax for an amount of Rs.1,45,269/- (Rupees One Lakh Forty-Five Thousand Two Hundred and Sixty-Nine) and Rs.96,846/- (Rupees Ninety-Six Thousand Eight Hundred Forty-Six) only on 05.08.2019 and 04.05.2023 respectively.

11. That apart, the Applicant had to make a payment of Rs.8,69,194/- (Rupees Eight Lakhs Sixty-Nine Thousand One Hundred and Ninety-Four) only towards outstanding electricity dues as the same had not been paid by the Opposite Party for several years. Moreover, the Applicant had to incur substantial amount

of Rs.12,00,000/- for installation of transformer, as the Opposite Party had not installed the transformer though he was required to and without which getting electricity from APDCL was not possible. In terms of the agreement for sale dated 29.08.2017, the Applicant had made huge investment. It is to be stated thereafter the electricity dues of the building of the said property has been regularly paid by the Applicant till date and the electricity connection is presently in the name of M/s Satyam Associates which is a proprietorship concern of the Applicant.

12. It is further submitted by the learned Senior Counsel, that under the agreement for sale dated 29.08.2017, it had been mutually agreed between the parties that the applicant will be entitled to run any business in the scheduled land and building mentioned therein (i.e. the said property) and as such, the Applicant has all the rights to run the business whatsoever in the said property which is under the possession of the Applicant on this date. In that view of the matter, the Applicant decided to start a hotel business in the name of Hotel Apollo Grand (A unit of Satyam Associates) and accordingly obtained registration certificate under FSS Act, 2006 from the Commissionerate of Food Safety (Health & Family Welfare Department) Food Safety and Standards Authority of India, (for short "FSSAI"), Govt. of Assam along with other necessary documents like NOC from Fire & Emergency Services, Guwahati, Assam declaring the building to be fit in respect of fire safety etc. The Applicant was also granted an occupancy certificate dated 03.01.2022 by the Guwahati Municipal Corporation whereby it certified that the construction of the hotel building has been approved and Mrs. Anjana Bora (i.e. Applicant) is permitted to occupy the building. Further, the Applicant obtained a trade license from Guwahati Municipal Corporation, East Zone for its hotel business which has

been renewed thereafter. Thereafter, the Applicant in order to expand its hotel business wanted to operate a bar in the restaurant. Accordingly, the Applicant applied to the relevant authorities for grant of trade license/NOC for "IMFL 'ON' Bar cum Restaurant". The GMC on being satisfied issued the NOC dated 20.02.2024 whereby it allowed the Applicant to operate the trade of "IMFL 'ON' Bar cum Restaurant" in the name & style of "M/s Krib" at the ground floor of Hotel Apollo Grand pursuant to the verification report dated 14.03.2022 issued by the Office of the Commissioner of Police.

13. It is further contended that the Applicant has legally obtained all documents and has started its hotel business in the name of Hotel Apollo Grand (A unit of Satyam Associates). Moreover, pursuant to the agreement for sale dated 29.08.2017 the said property has been under the possession of the Applicant since September, 2017 and it has been duly agreed between both parties that the Applicant may run any business in the said property when the said property is under the possession of the Applicant. Therefore, there cannot be any objection by the Opposite Party now in respect of running the hotel business including the bar in the said property by the Applicant. In fact on the contrary, by raising objections the Opposite Party is violating the terms and conditions contained in the agreement for sale dated 29.08.2017 which were mutually decided and agreed by both the parties at the time of execution of the agreement.

14. It is further submitted that as per agreement for sale dated 29.08.2017, Applicant has invested huge amount of money in respect of the said property and has cleared all dues and outstanding liabilities of the Opposite Party at Central Bank of India and TATA Capital Financial Services Ltd. However, till date

the Opposite Party has not taken steps to complete the sale by way of registration in favour of the Applicant and has failed to discharge its duty in terms of agreement for sale dated 29.08.2017. Although, no formal registration has been done in favour of the Applicant in respect to the said property due to the inaction of the Opposite Party, however, the Applicant has been in possession of the said property since September, 2017 and has in fact been paying all bills including electricity bills, property tax, khazna etc. and is legally running Hotel Apollo grand in terms of the agreement for sale dated 29.08.2024 and after obtaining all licenses as required under law for running a hotel business. The Opposite Party has received the entire money in respect of the said property and all dues have been cleared on behalf of the Opposite Party in respect of its outstanding debt towards banks/financial institution. Hence, the Opposite Party ought to have immediately entered into a sale deed and proceeded for registration of the property in favour of the Applicant. Infact the Applicant is in possession of the property as agreed in the agreement for sale dated 29.08.2017 and ought to be the rightful owner of the said property on today's date. He submits that in any view of the matter, in view of the aforesaid facts and circumstances, interest has been accrued in favour of Applicant in respect of the property and as such the Opposite Party cannot create hurdles and impediments for Applicant to possess and enjoy the property and also to operate business in the property.

15. It is further contended by Mr. K.N. Choudhury, learned Senior Counsel that the Opposite Party has filed the instant writ petition suppressing the material fact as regard the huge amount of money given by the Applicant to the Opposite Party to re-pay the bank/financial institution loans in terms of the Agreement to Sale dated 29.08.1027 and pursuant to which the Applicant has been conducting business in the property after taking all statutory approvals. As such,

the Applicant has an interest in the property. However, Opposite Party choose to suppress the material fact as regard the Opposite Party receiving money in terms of the Agreement to Sale Dated 29.08.2017 which is material to the adjudication of the issues raised in the present petition and therefore is guilty of suppression of material facts and approaching this Hon'ble Court with unclean hands so as to obtain an order in its favour. This Hon'ble Court under misrepresentation of facts passed an interim order on 15.03.2024 to not to pass any final order of the trade license to the Applicant without taking leave of this Hon'ble Court.

16. Mr. K.N. Choudhury, learned Senior Counsel submits that it is trite law that the party who invokes the extraordinary jurisdiction of this Hon'ble Court under Article 226 of the Constitution is supposed to be truthful and disclose all material facts without any reservation even if such facts are against him. In other words, the Opposite Party cannot play hide and seek or pick and choose the facts he likes to disclose and to suppress or not to disclose other facts which are not in his favour. As the Opposite Party has suppressed material fact so as to obtain a favourable order from this Hon'ble Court, it is not entitled to any equitable relief from this Hon'ble Court and accordingly the interim order dated 15.03.2024 needs to be vacated.

17. Mr. K.N. Choudhury, learned Senior Counsel, submits that at the time of passing the order dated 15.03.2024, all the facts and circumstances as narrated hereinabove were not before the Court and the same could not be considered. Therefore, this Court may be pleased to recall/modify/alter the order dated 15.03.2024, as the observation made in the order dated 15.03.2024 has seriously prejudiced the applicant.

18. Mr. K.N. Choudhury, learned Senior Counsel, has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***K.D. Sharma vs. Steel Authority of India Limited and others***, reported in ***(2008) 12 SCC 481***, wherein the Hon'ble Supreme Court has held that the jurisdiction of the jurisdiction of the Supreme Court under [Article 32](#) and of the High Court under [Article 226](#) of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

19. *E converso*, Mr. D. Saraf, learned counsel for the opposite party/writ petitioner, while opposing the application, submits that the Applicant is the proprietor of M/s. Satyam Associates and M/S Krib and the Applicant is carrying on/intends to carry on business under the same name from the property of the Opposite Party, the same is in utter violation of clause 7 of the agreement dated 29/08/2017 in as much as the Applicant was permitted to run business from the property of the Opposite Party only on the condition that the Opposite Party shall have a share in the proposed business and the share percentage will be decided amicably by both parties. The Applicant has failed to comply with the said condition and still intends to carry on business from the property of the Opposite Party as a proprietor which is in violation of agreement dated 29/08/2017 under which the Applicant is claiming rights.

20. It is further contended by Mr. Saraf, learned counsel that the Applicant has paid a sum of Rs. 10.35 Crores to liquidate the loan account of the Opposite Party with the Central Bank of India. The Opposite Party denies that their property was attached by the Central Bank of India and likes to state that the symbolic possession of the said property was taken by the said Bank.

21. He submits that the agreement dated 29/08/2017 is an unregistered agreement thereby limiting the rights and protection that can be claimed by the Applicant under the said agreement. It is further stated that based on understanding that the Applicant shall make the said property suitable for carrying business there from, the Applicant was permitted to undertake the said works after payment of initial Rs.1 Crore. Further, the Applicant had promised to the Opposite Party that immediately when the property is ready for carrying business, they shall decide the share of the Opposite Party amicably and start business on the said property jointly which shall be followed by registration of sale deed by the Opposite Party in favor of the Applicant. But the Applicant failed to honor the said condition and in the most illegal manner obtained occupancy certificate, NOC and GMC trade licence illegally and started carrying on business from the said property illegally.

22. Mr. Saraf, learned counsel, while denying that the Applicant paid a sum of Rs.2,99,00,000/- (Rupees Two Crores and Ninety Nine Lakhs) to the Opposite Party by cash, submits that all the money receipts produced by the Applicant were issued in acknowledgement of payment of part consideration by the Applicant from bank accounts. However, most deceptively, the Applicant mentioned about payment in cash in two money receipts though the payment

under the same was also made through bank accounts. A sum of Rs.8,20,71,625/- (Rupees Eight Crores Twenty Lakhs Seventy One Thousand Six Hundred and Twenty Five) only was paid by the Opposite Party to the Central Bank of India and a sum of Rs.5,22,10,000/- stands paid to the Tata Capital Financial Services Limited. But the Applicant has only paid a sum of Rs.8,17,34,288/- (Rupees Eight Crores Seventeen Lakhs Thirty Four Thousand Two Hundred and Eighty Eight) only to the Opposite Party /their financial bank against the agreement dated 29/08/2017. It is pertinent to mention here that Notice dated 29/04/2017 sent by Central Bank of India specifically mentions that the reserve price of the said property was Rs.18 Crores at that point of time based on valuation report obtained by them and based on forced value. As such, the claim of the Applicant of having paid the entire sale price of the said property by making a meager payment of Rs.8.17 Crores to the Opposite Party without honoring their obligation of share of the Opposite Party in the business of Hotel Apollo Grand, Satyam Associates, Krib etc. is not supported by the facts of the instant case.

23. He submits that the Applicant is debarred from seeking any protection of possession on the Opposite Party's property based on an unregistered agreement dated 29/08/2017 in view of section 53A of the Transfer of Property Act. It is further submitted that the Applicant has herself in a manner admitted that as the Opposite Party was not in a position to clear the dues of GMC, the Applicant cleared the dues of GMC to motivate them to issue trade licence and occupancy certificate illegally in the name of the Applicant. It is further submitted that whenever the Opposite Party approached the Mouzadar to deposit land revenue, he was always informed that the same stood paid by someone else. It

is further submitted that there were no electricity dues in the name of the Opposite Party and the Applicant would know better whose dues he has paid and why. It is pertinent to mention here that the Applicant had sought a no objection certificate from the Opposite Party for installation of transformer which was not provided by the Opposite Party but the Applicant in her most unusual manner, presumably manufactured forged documents and installed transformer illegally. It is lastly submitted that when the Applicant has chosen to carry on the business from the said property by depriving the Opposite Party, she shall be unable to carry her business if she does not pay electricity bills regularly and as such, the same is being paid by her for carrying on her business therefrom.

24. Mr. D. Saraf, learned counsel, submits that the entitlement to run business from the said property was coupled with an obligation to share proceeds of business with the Opposite Party which the Applicant has failed to do. All the registration certificate, licence, clearance, NOC etc obtained by the Applicant were obtained illegally based on her political connections. It is pertinent to mention here that two of the prayers in WP is regarding cancellation of trade licence and cancellation of occupancy certificate obtained by the Applicant illegally. The NOC dated 20/02/2024 being relied upon by the Applicant is also the subject matter of challenge of the instant writ petition. The verification report submitted by Office of Commissioner of Police is based on traffic point of view only and not based on title of the said property. It is submitted that the Applicant has selectively chosen to plead about her entitlement in the agreement dated 29/08/2017 but not to speak on her obligation of sharing proceeds of the business with the Opposite Party which she has chosen not to do thereby violating the terms of agreement dated 29/08/2017 and as such, she is not entitled to any relief claimed in the instant application.

25. Mr. Saraf, learned counsel submits that soon after the said property was free from charges of Central Bank of India and Tata Capital Financial Services Limited and the Applicant got access to the said property, the Applicant out of greed forgot her obligation to share the proceeds of business with the Opposite Party and chose to pay the outstanding dues of property tax, land revenue etc as the same were substantially low as compared to the share of business to which the Opposite Party was entitled. No interest in the said property has accrued in favor of the Applicant as the Applicant at best could have sought repayment of money advanced by her to the Opposite Party which she has failed to do within the period of limitation.

26. He further submits that specific case of the opposite party/Petitioner is that the agreement dated 29/08/2017 has elapsed due to efflux of time as the Applicant on one hand failed to honor her obligation as per agreement dated 29/08/2017 of sharing proceeds of business on the said property with the Opposite Party and on the other hand, the Applicant failed to seek specific performance of the agreement dated 29/08/2017 within prescribed time inspite of refusal by the Opposite Party to execute sale deed unless the terms of agreement dated 29/08/2017 are performed in its true letter and spirit. He has submitted that when the non-performance of the obligation to share the business proceeds of business under agreement dated 29/08/2017 was agitated in the writ petition and the Applicant has only paid part consideration compared to that which was agreed in agreement dated 29/08/2017, it is completely arbitrary to allege that the Opposite Party has suppressed the fact of payment of huge amount of money by the Applicant. He finally submits that the full facts

and circumstances of both sides being on record, the Hon'ble Court may adjudicate the writ petition as the interim order dated 15/03/2024 is a valid order which has been passed in the matter without any necessity of interference. Therefore, present application may be dismissed.

27. Mr. D. Saraf, learned counsel, by placing reliance on the judgment and order dated 05.04.2022, passed in WP(C) No.7940/2019 (***M/s. Shambhu Electricals and another vs. the Gauhati Municipal Corporation and others***) submits that as per the notification dated 30.05.2017, issued by the Gauhati Development Department, the documents required for trade license are: (i) I/D Proof, (ii) Lease Deed/Rent Agreement/Legal Occupancy (any one) and (iii) PAN/VAT/TIN/GSTN. The learned counsel Mr. Saraf submits that he is relying the same only for the purpose that for issuance of trade license as per the said notification, the applicant has not submitted all the required documents, as per notification dated 30.05.2017. He submits that since the objections/various representations filed by the petitioner has not been considered by the respondent authorities, this Court may direct the respondent authorities to consider the objections/representations of the petitioner, as the respondent authorities are duty bound to consider the same in accordance with the applicable Acts and Rules.

28. Mr. Saraf, learned counsel for the opposite party/writ petitioner, while referring to the Annexure-P at page 77 of the writ petition submits that the Member, Mayor-In-Council (Appeal), Guwahati Municipal Corporation, vide order dated 18.11.2023, on the appeal of the applicant has directed the matter to be placed before the Commissioner, Guwahati Municipal Corporation to examine the matter and pass a speaking order, either allowing or rejecting the prayer of the

applicant. Thereafter, the opposite party/writ petitioner has filed a representation praying for reject the application of No Objection Certificate (in short 'the NOC') for Bar cum Restaurant (IMFL "ON" and "OFF" license) for directing initiation of proceedings for cancellation of Trade License and Occupancy Certificate to the applicant. However, vide NOC dated 20.02.2024, the Joint Commissioner, Guwahati Municipal Corporation has issued the said NOC, allowing to run the trade of IMFL "ON" Bar cum Restaurant, in the name and style M/s. Krib, Proprietor – Smti. Anjana Bora, applicant herein without passing any speaking order, as ordered by the Member, Mayor-In-Council (Appeal), Guwahati Municipal Corporation. He submits that there is no suppression of material facts, as the unregistered sale agreement has been clearly annexed and it was referred and relied, while the writ petition was moved before this Court. He submits that after considering the facts and circumstances, this Court has passed the interim order dated 15.03.2024 and considering the equities, balance and the interest of justice, therefore, the interim order is not liable to be modified/vacated.

29. I have considered the rival submissions advanced by the learned counsel for the parties and perused the materials on record.

30. It is noticed that the applicant, who has been arrayed as respondent No.8 in the writ petition, and the opposite party/writ petitioner have entered into a Deed of Agreement on 29.08.2017, whereby the opposite party/writ petitioner has offered to sale the plot of land measuring 2 Katha 10 Lecha along with the building (particulars of which has been mentioned hereinabove) to the applicant for enabling them to repay the outstanding loan amount to the Central Bank of India and the TATA Capital Financial Services Ltd. Pursuant thereof, the

applicant appears to have paid the amount as agreed by the opposite party/writ petitioner and taken the possession of the land and the building. It is noticed that the opposite party/writ petitioner had agreed that the applicant will be entitled to run any business in the scheduled land and the building and the writ petitioner will be given a share of the said proposed business by the applicant and the share of percentage of the writ petitioner will be decided amicably by both the parties. It is also noticed that the possession has been handed over to the petitioner in terms of the said deed of agreement and accordingly, the occupancy certificate dated 30.01.2021 was issued in favour of the applicant. Thereafter, the trade license was issued on 26.04.2023. The respondent authorities have also issued the NOC by allowing the applicant to run the trade of IMFL "ON" Bar cum Restaurant, in the name and style M/s. Krib, Proprietor – Smti. Anjana Bora, applicant herein.

31. As noted herein earlier, this Court while passing the interim order dated 15.03.2024, has not stayed the process of consideration for issuance of a trade license on the basis of the NOC, but not to issue final order of trade license to the applicant without leave of this Court and since the order has been passed ex-parte, opportunity has been granted to the respondents, including the applicant to come up for modification/alteration, if so advised.

32. On consideration of the materials on record, I am of the *prima facie* view that the petitioner has not clearly disclosed the material facts except annexing the deed of agreement on 29.08.2017 as no details of transactions pursuant to the agreement as narrated by the applicant are disclosed, although the petitioner is stated to be aggrieved of non consideration of his objections by the GMC. As categorically contended and fructified by submissions of learned

counsel for the writ petitioner, it appears that the opposite party/writ petitioner is basically aggrieved by the non-adherence of the Clause 7 of the deed of agreement, whereby it is stipulated that the applicant will be entitled to run any business in the scheduled land and building and the petitioner will be given a share by the applicant in proposed business and the share percentage of the petitioner will be settled amicably by both the parties.

33. Admittedly, the applicant has taken the possession of the said scheduled land and building in terms of the said Deed of Agreement dated 29.08.2017. Pursuant thereto, the occupancy certificate was issued on 03.01.2022 and the trade license was issued on 26.04.2023. Although, no sale deed has been registered as per the said deed of agreement dated 29.08.2017, it is stated that the applicant is running the hotel except the Bar cum Restaurant, for which the impugned NOC has been issued for issuance of trade license of the IMFL "ON" Bar cum Restaurant. Essentially the petitioner appears to be aggrieved by non-sharing of business and its share percentage by the applicant.

34. Having considered the submissions of learned counsel for the parties and also on careful perusal of the materials on record, I am of the view that the grievance raised in this writ petition appears to be purely non-adherence to the clauses in the deed of agreement, which appears to be civil dispute and the same can be agitated before the appropriate competent Civil Court. Although the challenge made in this writ petition is to the issuance of the NOC, the occupancy certificate and trade license as well as non-consideration of the various representations by the respondent authorities, whereby he has objected to the issuance of the NOC, the trade license and the occupancy certificate, same appears to be breach of agreement and prima facie, in my view, a purely

disputed question of facts. However, as to whether the writ petition is liable to be dismissed on the ground of suppression of material facts or otherwise would be adjudicated finally in the writ proceedings including its maintainability.

35. Having considered above, I am of the prima facie view that since the applicant is having an occupancy certificate with trade license and running a hotel pursuant to the deed of agreement, serious prejudice may be caused to the applicant, if the interim order is allowed to be continued, although it is only to the effect that no final order of trade license to the applicant be issued, without taking leave of this Court.

36. For the forgoing reasons, I am of the considered view that interest of justice would be served, if the interim order dated 15.03.2024 is modified to extent that the respondent authorities may proceed with the process of issuance of trade license, on the basis of the NOC, as the applicant is stated to be running the hotel, on the strength of occupancy certificate and trade license, on the scheduled land and building, as mentioned hereinabove.

37. Accordingly, the interim order dated 15.03.2024 is modified to the extent as above. However, any final order of trade license to the applicant shall be subject to the final outcome of the writ petition.

38. Interlocutory Application stands allowed as indicated above and disposed of.

JUDGE

Comparing Assistant