

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1101 OF 2016

Smt. K. Sanjeevi ... Petitioner.
V/s.
The Municipal Corporation of
Greater Mumbai ... Respondent.

Mr. Rakesh Sawant i/b Ms Anita R. Manjalkar for the Petitioner.
Ms Vandana Mahadik for the Respondent – BMC.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 20TH DECEMBER 2017.

P.C.:

1] Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondent.

2] Considering the narrow controversy involved in this petition, the same is immediately taken up for final disposal. In fact on the earlier date, we had put the learned counsel appearing for the parties to the notice that we intend to dispose of this petition finally, at the admission stage. Rule. The respondent waives service.

3] The facts which we are setting out in this judgment and order show that the petitioner should never have been driven to approach this Court in a simple matter. The petitioner Smt. K. Sanjeevi claims to be the widow of one Mr. K. J. Sampath, who was holding a licence granted by the respondent Municipal Corporation, a copy of which is annexed as

Exhibit-A to the petition. A photocopy of the original licence is also annexed. The said K.J. Sampath died on 14th September 2009. On 29th December 2009, the present petitioner made an application to the Assistant Municipal Commissioner for transfer of the said license in respect of Squatter Stall in her name. By a letter dated 18th January 2010, Senior Inspector (Licences) F/N Ward informed the petitioner that certain documents were needed so as to transfer the licence. The documents demanded from the petitioner were set out in clause 3 of the said letter. All that the petitioner was required to submit was Indemnity Bond/Affidavit/Undertaking/Assignment Deed, if any. In fact, the said letter is in a preconceived format raising four objections and only one objection which we have set out above regarding non furnishing Indemnity Bond/Affidavit/ Undertaking/Assignment Deed was tick marked. Thus, no other objection was raised by the Senior Inspector (Licences).

4] Surprisingly, by another letter dated 9th September 2015, the Senior Inspector (Licences) raised hyper technical objections. The objection was that the name of the deceased licence holder in the Death Certificate is shown as K.J. Sampath. However, in the Ration Card, the name of the licence holder is shown as G. Sampat. The letter also mentioned that in the Death Certificate, the name of the licence holder is shown as G. Sampat. This statement appears to be factually incorrect from the perusal of the copy of the Death Certificate at Exhibit-B, which records the name of the deceased as K.J. Sampath. By the said letter it was informed to the petitioner that considering these discrepancies, the license cannot be transferred.

5] The petitioner responded by addressing a letter which was dispatched on 18th September 2015, in which she stated that she has submitted Death certificate, Indemnity Bond, Affidavit, Undertaking, a copy of the Ration Card and a copy of electricity bill. By communication dated 21st November 2015, the Senior Inspector (Licences) informed the petitioner that the licence has been cancelled on 24th November 2013. Aggrieved by the said communication that the present petition has been filed.

6] After having heard learned counsel appearing for the parties, we find that the stand taken by the Municipal Corporation is hyper technical which ought not to have taken.

7] A photocopy of the licence granted in the name of K.J. Sampat is annexed to the petition. There is no dispute that on 14th September 2009, when the licence holder died, the said licence was valid and subsisting. Immediately on 29th December 2010, the petitioner applied for transfer of the licence. On the rear side of the application dated 29th December 2009, there are remarks made by the License Department of the Municipal Corporation which record that the licence fees was paid up to November 2009. Thus, when the application was made by the petitioner for transfer of the licence, the licence was valid. On 18th January 2010, the Senior Inspector (Licence) called upon the petitioner to produce the documents which we have set out above. In the letter dated 9th September 2015 (Exhibit-E to the petition), the Senior Inspector (Licences) took a stand that due to discrepancies in the name of deceased, her application cannot

be considered. Surprisingly, in the letter dated 21st November 2015, for the first time, a stand has been taken that the licence was cancelled on 24th November 2013. This obviously appears to be an afterthought as the said stand has not been taken by the same Officer in the letter dated 9th September 2015. The Senior Inspector (Licences) has ignored the letter dated 18th September 2015 addressed by the petitioner to the Municipal Corporation, in which, it is stated that the documents such as Indemnity Bond, Affidavit, Undertaking dated 9th February 2016 have been submitted by the petitioner.

8] Therefore, when the application for transfer of licence was submitted by the petitioner, the licence was very much valid and subsisting. The petitioner complied with the requirements set out in the letter dated 18th January 2010 issued by the Senior Inspector (Licences). After having complied with the said requirements, the petitioner was entitled to transfer of licence. However, by raising hyper technical objection regarding discrepancies in the name in the documents that the transfer was denied. The first communication issued to the petitioner regarding denial of transfer was five years after the petitioner submitted documents in terms of the letter dated 18th January 2010. On the date on which she applied for transfer, even according to the respondent, she was entitled to transfer.

9] Learned counsel for the respondent tried to submit that the petitioner has committed breaches of the terms and conditions of the licence. The said argument is uncalled for. Even as of today, the licence is

not transferred in the name of the petitioner. It is not the case of the respondent that any one else claimed transfer of licence on the ground that he or she is the legal representative of the deceased licence holder.

10] As observed earlier, this is a case where the Municipal Corporation should not have driven the petitioner to Writ Court. The petition must succeed and we pass following order:

a] We direct the petitioner to submit a fresh Indemnity Bond as well as the affidavit and Undertaking in terms of the letter dated 18th January 2010 (Exhibit-D to the petition) executed either before a Notary public or before an Executive Magistrate within a period of one month from the date on which this order is uploaded, in the office of the Senior Inspector (Licenses) F/N Ward of the respondent;

b] If the aforesaid documents are furnished by the petitioner, within a period of two months from the date on which this order is uploaded, the respondent shall call upon the petitioner to pay a specific amount by way of licence fees from December 2009 onwards;

c] On deposit of the licence fees by the petitioner, the licence, a copy of which is annexed as Exhibit-A to the petition, shall be forthwith transferred in the name of the petitioner. We make it clear

that we have not decided the issue of heirship of the deceased licence holder;

d] Needless to add that the petitioner will be bound by all the terms and conditions of the license and in the event of any breach, the respondent will be entitled to take action in accordance with law;

e] Rule is made absolute in the above terms. There shall be no order as to costs.

(M. S. SONAK, J.)

(A.S.OKA, J.)