

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

(Through Video Conference)

WPA 2935 of 2021

Sandip Kumar Shaw
Vs.
State of West Bengal & Ors.

Mr. Aniruddha Chatterjee
Mr. Debabrata Roy
... For the petitioner

Mr. Raghunath Chakraborty
... For the respondents no.4 & 5

The petitioner claims to be a partner and major shareholder of a business operated under the name and style “Ten To Ten Shopping Mall” (also referred to as “Ten 2 Ten” at some places), inter alia, selling readymade garments, toys, cosmetics, gift items etc. from a portion of premises having holding no.1/18, Tematha Jyotirmore, Chandannagar, Hooghly – 712136 (hereinafter referred to as the said Shopping Mall). The premises from wherein the said Shopping Mall was operated had been taken on rent from the respondent no.4 under a tenancy agreement dated 22nd August, 2019.

The petitioner says that by an order dated 15th October, 2020, the Commissioner, Chandannagar Municipal Corporation, has directed to shut down the business operated under the nomenclature “Ten 2 Ten”

from the said Shopping Mall. The reason assigned in the said order for shutting down the business is that the building in question wherein the said Shopping Mall was operated from is without a completion certificate. This is in violation of the provisions of Section 282 of the West Bengal Municipal Corporation Act, 2006 (hereinafter referred to as the “said Act of 2006”). The petitioner says that the goods pertaining to the petitioner’s business are lying inside the said Shopping Mall as it had to be closed down abruptly owing to such order dated 15th October, 2020. The petitioner is seeking removal of such goods, which, according to the petitioner, are perishable in nature and will deteriorate if left inside the Shopping Mall for a considerable period of time. The petitioner will not be able to sell the goods or recover any money from these readymade garments, soft toys and gift items with the passage of time. The petitioner further says that amidst the crossfire between the landlord (respondent no.4) and the municipal authorities, the petitioner has been trapped and unless the goods are allowed to be removed, the petitioner is likely to suffer further loss.

It appears from the tenancy agreement that the liability to pay the existing property tax is on the landlord. The petitioner is only liable for additional taxes if and when imposed and other charges, if any, levied by the concerned municipality. There is, as such, no liability of the petitioner towards payment of taxes in respect of the

tenanted portion for the realisation of which the petitioner's goods can be seized or detained. The petitioner is also not liable for any alleged violation of the provisions of Section 282 of the said Act of 2006. The petitioner's liability, if any, may arise for operating business from the said Shopping Mall without a certificate of enlistment. Penalty and punishment for operating the Shopping Mall without a certificate of enlistment are also provided in the said Act of 2006. Chandannagar Municipal Corporation at the highest can proceed against the petitioner for operating a business without the certificate of enlistment. Even in such a case unless the petitioner is held guilty, no steps to detain the petitioner's goods can be taken by the municipal authorities for realising penalty, if any, from the petitioner. The municipal authorities, therefor, cannot prevent the petitioner from removing the movables lying inside the said Shopping Mall. The respondent no.4 (landlord) also has no objection in the goods being removed.

It also appears that as of now Chandannagar Municipal Corporation has not initiated any proceedings against the petitioner for operating a business without a certificate of enlistment as yet.

In such circumstances, I am inclined to allow the petitioner to remove the goods lying inside the said Shopping Mall situate at 1/18, Tematha Jyotirmore, Chandannagar, Hooghly – 712136, having the name and

style “Ten To Ten Shopping Mall”. The goods will be, however, removed after making an inventory thereof in the presence of an official to be deputed by Chandannagar Municipal Corporation.

The petitioner shall serve a copy of this order upon the Commissioner, Chandannagar Municipal Corporation, who shall, within seven days from the date of receipt of the order, depute and deploy an official of the said Municipal Corporation in consultation with the petitioner to fix the date and time to commence the removal so that the goods can be removed at the earliest. Two original copies of the inventory list shall be prepared and counter-signed by the petitioner’s representative and the official so to be deputed. One copy of the original inventory list shall be retained by the petitioner and the other copy to be retained by Chandannagar Municipal Corporation.

The petitioner shall make an endeavour to remove the goods at the earliest so that the official of Chandannagar Municipal Corporation who shall be deputed for the purpose of inventory may not be detained and engaged unnecessarily.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)