

S/L 9
27.08.2021
Court. No. 19
GB

WPA 6757 of 2021

Chandra Sani Hards
Vs.
The Sainthia Municipality & Ors.

(Through Video Conference)

Mr. Kishore Mukherjee.

...for the Petitioner.

*Mr. Ashis Kumar Chowdhury,
Ms. Sanjukta Das,
Ms. Deborupa Mukherjee.*

...for the Respondent Nos.1 & 3.

Mr. Tanmoy Mukherjee.

...for the Respondent No.9.

*Mr. Debjit Mukherjee,
Ms. Rupsha Chakraborty.*

...for the State.

The petitioner claims to be the proprietor of 'Chandra Sani Hards'. Records reveal that since 1987 the Sainthia Municipality has been issuing the Certificate of Enlistment in the name of the petitioner as the proprietor of the said hardware shop. Records also reveal that as per usual procedure, the petitioner filed an application for renewal of the trade license on September 21, 2020. The Executive Officer of the municipality intimated the petitioner that without a 'no objection' from the co-owner or without demarcation of the holding, the renewal of the Certificate of Enlistment could not be done. It is alleged that the respondent no.6, who is the daughter of the Chairman and the daughter-in-law of the erstwhile co-owner raised an objection with regard to the grant of renewal in favour of the petitioner with regard to the shop room and on the basis of

the said objection the renewal was rejected. It is further submitted that all along the business has been run by the petitioner. The respondent No. 6 stays in Calcutta.

Mr. Tanmoy Mukherjee, learned advocate appearing on behalf of the respondent no.6 submits that admittedly, by a deed of gift executed by one Late Bankim Chandra Chandra, the predecessor-in-interest of the respondent no.6 and the petitioner became the joint owners of the entire property which included the shop room and also the business. He refers to the deed of gift.

Mr. Chowdhury, learned advocate appearing on behalf of the municipality submits that admittedly both the persons are co-owners and the petitioner himself has acknowledged that the respondent no.6 has 50 per cent share in the property in question. The Certificate of Enlistment cannot be granted in the name of the petitioner in view of the objection raised by the respondent no.6.

Heard the parties. The deed of gift is of 2003. Prima facie, from the deed of gift it appears that the entire 'Ka' schedule property, which is the land with structure on which the shop room also exists, has been gifted to the petitioner as also the predecessor-in-interest of the respondent no.6. However, the deed in my prima facie opinion is silent as to who is the proprietor of the business, even if, the respondent no.6 is a 50 per cent owner of the structure which includes the shop room. Records reveal that since 1987, the petitioner

has been granted the Certificate of Enlistment as the proprietor, even during the lifetime of the donor.

A decision has been relied upon by Mr. Mukherjee, learned advocate appearing on behalf of the petitioner in the matter of ***The Chairman, Khardah Municipality & Anr. versus M/s. Annapurna Bakery & Anr.*** reported in ***1997 (1) CAL LT 32***, in which a Division Bench of this Court has held that it is not for the municipality to go into the question of title. The municipality has a limited scope. As long as the application is in order, no further municipality would be permissible. The relevant portion of the judgment is quoted below:-

“16. In Federation of Traders Organisation of West Bengal (supra) Altamas Kabir, J. followed Abdul Rashid's case despite an amendment made in section 199 of the Calcutta Municipal Corporation Act and held that a certificate of enlistment cannot be denied on the ground that the applicant had been unable to prove the tenancy in the premises where he allegedly carried on the business. It was further held that in view of amendment in sub-section (2) of section 200 a person is not obliged to file in the form provided by the Corporation inasmuch as such forms required various informations which in some cases may amount to nullify the pronouncement of the Division Bench in Abdul's case (supra) inasmuch as therein the division bench clearly held that certificate of enlistment cannot be linked up with the question of tenancy and/or incidence thereof. The said decisions apply in all fours to the instant case.

17. Grant of a certificate of enlistment does not decide any question of title. Such a question of title has to be raised before the appropriate forum and grant of such certificate would not have any value in a proceeding requiring adjudication on the question of title. Proviso appended to section 118 clearly states that such enlistment would not absolve such person from any liability to take out licence under the said Act or any other law for the time being in force.

18. Section 118 merely requires a person to obtain a certificate of enlistment before he can carry on business.

19. It is true under section 119, the Executive Officer or in his absence an officer authorised function as Executive Officer is entitled to make such enquiry but the terminologies used in the said provision clearly state that a certificate of enlistment has to be granted within 30 days from the receipt of the application and rejection thereof is permissible only if the same is not in order.

20. It is now well known that the provisions of a statute have to read as a whole. The power of rejection of application is, therefore, limited i.e. only in the event the application is not in order which in absence of any prescribed rule would mean an application which does not clearly give details of the nature of business, the locale thereof and other relevant facts. The enquiry contemplated under section 119 must, therefore, be held to have a limited scope and in our opinion, keeping in view the decision of the Division Bench in Abdul Rashid (supra), such an enquiry cannot extend to the question of the right of the person to hold the premises under a valid title of tenancy or similar such question. It is also not necessary for the concerned authority to consider as to whether carrying on such business would require other licences under the other statutes or not particularly in a case where a person praying for grant of certificate of enlistment denies or disputes the fact that he is required to obtain such a certificate. It goes without saying that if he violates any other statute he makes himself liable thereunder. However, the authorities under the Act are entitled to see as to whether the applicant by carrying on any business would be violating essential conditions of the said Act or not. It goes without saying that an applicant is also bound to have licences if so required even under the other provisions of the West Bengal Municipal Act.

21. The learned trial Judge, in our opinion, has rightly held that the question of title is irrelevant. Furthermore, the very fact that such a certificate of enlistment is required to be granted within 30 days of the receipt of the application under section 118 of the said Act clearly excludes a detailed enquiry in view of the fact that such a certificate of enlistment does not absolve the applicant from any liability to take out any licence thereunder or any other law for the time being in force.

22. In a case of this nature, the Municipality also can grant such certificate of enlistment without prejudice to its rights and contentions.”

The question whether the respondent No. 6 has become the 50 per cent share holder of the business also or

she is 50 per cent share holder of the property including the structure and the shop room is yet to be decided. The business and the premises are distinct and separate.

Thus, when the petitioner has been running the shop room from 1987 and the municipality has been granting the Certificate of Enlistment to the petitioner as proprietor of the business, even when Late Bankim Chandra Chandra was alive, the objection raised by the respondent no.6, without any determination of her right in the business should not be a bar to the renewal of the Certificate of Enlistment in favour of the petitioner. A renewal shall be given to the petitioner as a temporary measure, so that the petitioner may run the shop room. Such renewal shall be without prejudice to the rights and contentions of the parties. The petitioner shall maintain accounts and supply the same to the respondent no.6 annually. However, the right of the respondent no.6 to a share in the income from the business, shall also be decided by the appropriate forum in accordance with law. The interpretation of the deed of gift with regard to the title of the respondent No. 6 in the business will be decided by the appropriate court.

The renewal shall be made in favour of the petitioner within four weeks from date.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)