

pS/L 17
06.08.2021
Court. No. 19
GB

W.P.A. 12049 of 2021

Madhu Ghosh
VS
The Chandernagore Municipal Corporation & Ors.

(Through Video Conference)

Mr. Raghunath Chakraborty.
...for the Petitioner.

Mr. Kishore Datta,
Ms. Sumita Shaw.
...for Chandernagore Municipality.

The petitioner is the owner of certain portions of a G+4 building situated at Holding No.1/18, Tematha Jyotirmore, Chandernagore, Hooghly.

It is the contention of the petitioner that the petitioner developed the said building and has been allotted some portion thereof in terms of the development agreement as the promoter's/developer's share. The contention of the petitioner is that one such portion allotted to the petitioner was tenanted. The tenant had continued an unauthorized business without a certificate of enlistment and the authorities of the Chandernagore Municipal Corporation proceeded against such illegal business of the tenant of the petitioner by not only closing the business but also by putting a padlock in the shop room. The tenant of the petitioner moved this Court and an order was passed by a coordinate Bench with a direction upon the Chandernagore

Municipal Corporation to allow the said tenant to remove his goods from the premises. The order of this Court was complied with. It is submitted by the petitioner that the tenant had surrendered the shop to the petitioner and has removed all his goods. Such removal was done in the presence of the officials of the Chandernagore Municipal Corporation as per the order of this court. He further submits that thereafter the Chandernagore Municipal Corporation once again put a lock on the shop room in question although, the petitioner is the owner of the said shop room and the tenant had surrendered the shop room. The petitioner prays that the said room be handed over to the petitioner as the owner thereof, by removing the padlock put by the Chandernagore Municipal Corporation.

Mr. Datta, learned Advocate General appears on behalf of the Chandernagore Municipal Corporation. He submits that the business was being carried on by the petitioner and the tenant Sandip Kumar Shaw was only a name lender. He submits that the law empowers the corporation to proceed against any business, which is being carried on without any certificate of enlistment. Mr. Datta further submits that there has been a protracted litigation between the petitioner and the corporation. Several deviations were detected by the corporation in the building. A demolition order was issued. Ultimately, an order was passed directing the petitioner to demolish the unauthorized construction. The petitioner preferred an appeal before the

appellate tribunal. The tribunal is yet to be constituted. A coordinate Bench of this Court passed an order staying the demolition order till the stay application filed by the petitioner in the appeal against such demolition was heard by the appropriate authority. According to Mr. Datta not only has the petitioner allowed an illegal business to be continued from the said premises, the petitioner has also used the premises without the completion certificate. In order to frustrate the demolition order the petitioner filed an application for revalidation of the deviations. Mr. Datta further submits that the West Bengal Municipal Corporation Act, 2006 does not permit revalidation of even minor deviations.

Be that as it may, the writ petition has been filed mainly for a direction upon the corporation to remove the padlock from the room of which the petitioner is the owner. The other prayer for revalidation of the sanction plan and the deviations cannot be looked into at this stage in view of the pending litigation and the order of demolition which is still in force although a temporary protection has been given to the petitioner. However, although the law permits the corporation to proceed against a person who continues a business illegally without a certificate of enlistment, the law does not allow the corporation to take possession of the premises from which such business was being carried on. Thus, the pad lock put on the shop room which was initially occupied by Sandip Kumar Shaw and thereafter vacated on

the basis of the order of this Court shall be removed by the corporation and the petitioner shall be put in vacant possession of the same. However, the petitioner cannot use the premises in question except in accordance with law.

The petitioner undertakes to accept the order of the corporation and carry out the demolition as directed by the corporation to avoid further complications and wishes to settle the issue honourably. Such opportunity should be given to the petitioner by the corporation. As the petitioner has accepted to demolish the portion as directed by the corporation, nothing remains to be decided in the writ petition.

The writ petition is disposed of.

The petitioner shall approach the appropriate authority of the Chandernagore Municipal Corporation for a joint inspection of the premises. Upon such inspection, the sketch map and the demolition plan shall be handed over to the petitioner. The demolition shall be carried out. The petitioner shall demolish the unauthorized portion as indicated by the corporation in accordance with law upon supervision of the engineers of the corporation. Once such demolition is carried out, the petitioner shall become eligible for issuance of the completion certificate in accordance with law and upon compliance of other formalities. The petitioner's engineer shall also be entitled to participate in the inspection. The padlock shall be removed by the

corporation within two weeks from date of communication of this order.

There will be no order as to costs.

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

(Shampa Sarkar, J.)