

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA No. 11667 of 2020

Ajit Singh

Vs.

The State of West Bengal & Ors.

For the writ petitioner	:-	Mr. Kushal Chatterjee, Adv. Mr. Debabrata Roy, Adv.
For Kamarhati Municipality	:-	Ms. Chandrima Bhattacharya, Adv.
Heard on	:-	18-02-2021
Judgment on	:-	05-03-2021

Amrita Sinha, J.:-

The matter relates to grant of stall by the Kamarhati Municipality in the Sky Walk at Rani Rashmoni Road.

The petitioner happened to be a stall owner on the Rani Rashmoni Road, Dakshineswar. For the purpose of construction of the Sky Walk the shop owners were temporarily shifted with assurance that they will be properly rehabilitated in the stalls which shall be constructed on the Sky Walk. Notices were issued to all licensees/shop owners of the Rani Rashmoni Road, Dakshineswar Dokander Samity for shifting their existing stall to the newly built temporary shop rooms for the purpose of implementation of the project for construction of the Sky Walk.

The petitioner initially objected to the shifting of the stalls. A writ petition was filed through the Secretary of the Rani Rashmoni Road, Dakshineswar Dokander Samity being WP 22980 (W) of 2015. By an order dated 15th December, 2017 the Court directed three stall owners, namely Ajit Singh, Abhijit Dey and Tapanjyoti Dey to make application before the Chairman, Kamarhati Municipality within a stipulated period with all supporting documents regarding their license to run the stall. The Chairman of the Kamarhati Municipality was directed to consider the applications and take a decision, in accordance with the law, after giving an opportunity of hearing, to all the three stall owners and after verifying all the documents and thereafter communicate the reasoned order to the said stall owners. The aforesaid direction was passed by the Court in view of the submission that out of the 137 stall owners only three stall owners have not been given the temporary allocation, though others have already been given such allocation.

Pursuant to the leave granted by the Court the petitioner made application before the Kamarhati Municipality. The application of the petitioner was taken up for consideration and a decision was taken by the Municipality on 29th January, 2018 and the same was communicated to the petitioner by memo dated 15th September, 2018. The Kamarhati Municipality rejected the application of the petitioner for grant of stall.

The petitioner being aggrieved by the decision taken by the Kamarhati Municipality challenged the same by filing writ petition being WP No. 5504 (W) of 2019. The Court after hearing the parties and considering the materials placed, by order dated 22nd November, 2019,

remanded the matter back to the Chairman, Kamarhati Municipality to take a decision, strictly on merits, following the terms of the solemn order of the Court dated 15th December, 2017, after affording another opportunity of hearing to the petitioners and the Court was pleased to set aside the impugned decision taken by the Kamarhati Municipality on 29th January, 2018.

The Municipality afforded an opportunity of hearing to the petitioner and passed order on 17th October, 2020, communicated by memo dated 17th December, 2020, again rejecting the prayer of the petitioner.

Being aggrieved the petitioner has filed the instant writ application praying for necessary direction upon the Kamarhati Municipality to hand over a stall in the newly constructed Sky Walk.

The petitioner submits that the reasons for rejecting his application for grant of stall as indicated in the order dated 17th October, 2020 is similar to the reasons adopted in the earlier decision of the Municipality. As the Court on an earlier occasion had been pleased to set aside the decision taken by the Kamarhati Municipality rejecting the application of the petitioner, accordingly the impugned reasoned order dated 17th October, 2020 is also liable to be set aside.

It has been submitted that on both the occasions when the case of the petitioner was taken up for consideration by the Municipality, the authority admitted that the petitioner was indeed a licensee of a stall at the Rani Rashmoni Road. The Court, in order dated 15th December, 2017 directed the Municipality to verify the documents in support of his

status as licensee. As the Municipality has admitted that the petitioner was a licensee in the Rani Rashmoni Road accordingly, the petitioner is liable to be granted a stall in the Sky Walk.

With regard to the reason mentioned in the impugned order that the petitioner acted in violation of the terms and conditions of the lease agreement by parting /assigning the stall to a third party, it has been submitted that there is a specific clause in the lease agreement for termination in the event there is a breach in the terms and conditions of the agreement. The petitioner has denied that he assigned the stall in favour of any third party.

It has been submitted that the petitioner has cleared all dues in respect of the erstwhile stall at Rani Rashmoni Road, Dakshineswar till September, 2015.

It has been submitted that as the petitioner was one of the stall owners who actively opposed the shifting, false criminal case was lodged against him. The petitioner had to remain under cover to avoid arrest. He was unable to collect the keys of the new stall in proper time as he was apprehending arrest the moment he visits the Municipality.

The learned advocate representing the Kamarhati Municipality submits, upon instructions, that the order passed by the Chairman is a reasoned one. In the said reasoned order it has been clearly mentioned that the petitioner intentionally and deliberately did not accept the keys of the temporary stall which was offered to him in spite of repeated requests.

It has been alleged that the petitioner entrusted a third party to run his shop independently.

The petitioner is implicated in a criminal proceeding for causing resistance to the advancement of the Sky Walk, which is pending till date. Allotment of stall to an under trial accused person is not justified.

The Chairman was of the opinion that as the chapter of disbursement of stalls had been closed long ago and as the petitioner did not collect keys during the disbursement session, accordingly the prayer was refused on the ground of mala fide.

I have heard the submissions advanced by the parties in details and considered the documents placed before the Court. The impugned order is a detailed and reasoned one. The Court has to decide as to whether the reasons assigned by the Municipality in rejecting the prayer of the petitioner are valid in the eye of law.

In view of the ratio laid down by the Hon'ble Supreme Court in the matter of ***Mohinder Singh Gill & anr. -vs- The Chief Election Commissioner, New Delhi & ors.*** reported in ***1978 AIR 851*** there is hardly any scope to supplement the reasons assigned in the impugned order by filing affidavit by the respondents. Accordingly, the matter is taken up for final hearing and disposed of as herein below.

From the documents annexed to the writ petition it is crystal clear that the petitioner was indeed a stall owner/licensee in respect of a stall in the Rani Rashmoni Road. All the communications made by the Kamarhati Municipality addressed to the petitioner mentions the stall number 33 of the petitioner. The Municipality accepted the rent in

respect of the said stall till September, 2015. The stall number of the petitioner is also reflected in the money receipt issued by the Kamarhati Municipality showing acceptance of rent.

One of the grounds for rejecting the application of the petitioner is that the petitioner had assigned the stall in favour of a third party. The license agreement annexed to the writ petition clearly mentions that the license is valid for a period of four years and the same may be renewed on the same terms and conditions and the licensee is required to pay rent to the licensor and duly observe and perform the conditions contained in the agreement for license.

Clause 10 of the agreement for license bars the licensee from assigning/transferring or disposing of any of the rights under the license without written permission of the licensor.

Clause 12 of the agreement for license mentions that license is terminable at any time upon a months' notice to be served by the licensor to the licensee in connection with breach of the terms and conditions mentioned therein.

Clause 14 of the agreement for license lays down that the license is not transferable nor shall confer on the licensee any right of possession affecting absolute right of ownership as vested in the Municipality in respect of the license.

As per clause 15, the licensor and/or his agents had the liberty to inspect the stall at any time, if required.

It has been admitted by the parties that no steps for termination of the agreement for license was taken by the Kamarhati Municipality. Had the Municipality been aggrieved by the act of the petitioner in assigning/transferring and/or permitting a third party to run the stall, then steps ought to have been taken by the Municipality for termination of the license.

The Municipality in the reasoned order, on both the occasions, have recorded that the person who was allegedly running the stall of the petitioner never came forward with the claim for grant of stall in his favour. In fact, there is no rival claimant in respect of the stall of the petitioner. The Municipality never denied the factum of the grant of license to the petitioner neither did the Municipality initiate any proceeding for terminating the license agreement of the petitioner on the ground of breach of its terms and conditions. The Municipality had the liberty to inspect the stall and take necessary steps against the offending stall owner. The Municipality did not do so. Accordingly, the allegation of assigning/ transferring/parting the stall in favour of a third party remains unsubstantiated.

The other ground for rejecting the prayer of the petitioner is that he is an under trial accused person and allotment of stall to such a person was not justified. The elementary principal of criminal law is, that, no person will be held guilty till an order to that effect is passed by the appropriate Court. It is settled law, that till such time guilt of a person is proved, he is deemed to be innocent. The Municipality has recorded that the criminal case filed against the petitioner was pending before the Court of law. Until and unless the Court passes an order

convicting the petitioner and holding him guilty, the pendency of the criminal case ought not to stand in the way of the petitioner from being allotted a stall for running his business, otherwise the same will amount to infringement of the fundamental right of a citizen to carry on business as enshrined in Article 19(1)(g) of the Constitution of India. Non-granting of the stall to the petitioner in view of a criminal case pending against him will amount to imposing punishment to the petitioner even though he is yet to be held guilty by the Court. There is also no provision in the agreement for license for cancellation/revocation of the license if the licensee is implicated in a criminal case. As such, the said reason adopted by the Chairman, for not granting the stall to the petitioner cannot be held to be a valid one.

It is not improbable that the petitioner was implicated in a criminal case only because he objected to the shifting of the stalls from Rani Rashmoni Road, Dakshineswar to the temporary accommodation which was provided to the stall owners. The petitioner in fact, on the apprehension of being arrested by the police, remained absconding for a considerable period of time because of the pendency of the criminal case and only after he was granted bail by the Court did he approach the authority for handing over the stall to him in the newly constructed Sky Walk.

The Municipality ought to have considered the documents in support of the status of the petitioner as licensee and the rent receipts in support of payment of rent in respect of the stall occupied by him. The Municipality ought not to have relied upon any other information which is not required for the purpose of taking a decision with regard to

handing over of stall to a stall owner. It appears that the consideration of the application of the petitioner has been made on extraneous grounds.

Accordingly, the impugned order passed by the Chairman, Kamarhati Municipality on 17th October, 2020 is liable to be set aside and is accordingly set aside. The Kamarhati Municipality is directed to take steps for handing over the keys of the stall in favour of the petitioner, strictly in accordance with the scheme framed by the Government, within a period of eight weeks from the date of communication of a copy of this order, subject to compliance of all necessary formalities by the petitioner.

It is needless to mention that if the petitioner acts in breach of any of the terms and conditions mentioned in the agreement for license, it will be open for the Municipality to take steps, against the licensee, in accordance with law.

The writ petition is disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)