

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side**

Present :- Hon'ble Justice Amrita Sinha

WPO No. 48 of 2021

Soumendra Kristo Dutt & Anr.

Vs.

The Kolkata Municipal Corporation & Ors.

For the writ petitioners	:-	Mr. Abhrajit Mitra, Sr. Adv. Mr. Dipendra Nath Chunder, Adv. Mr. S. Mitra, Adv.
For KMC	:-	Mr. Barin Banerjee, Adv. Mrs. Sima Chakraborty, Adv.
For the respondent No. 4	:-	Mr. Jagabandhu Roy, Adv. Mrs. Manasi Roy, Adv. Ms. Madhurima Sarkar, Adv.
For the State	:-	Mrs. Sipra Majumdar, Adv. Mr. Sougata Mitra, Adv.
Heard on	:-	15-02-2021
Judgment on	:-	24-02-2021

Amrita Sinha, J.:-

By consent of the parties the matter is taken up for consideration at the “court application” stage and is being disposed of in the manner appearing herein below.

The petitioner prays for revocation/cancellation/withdrawal of the Certificate of Enlistment issued in favour of the private respondent. According to the petitioners the said Certificate of Enlistment was initially issued and subsequently renewed contrary to the guidelines

mentioned in Section 199 of the Kolkata Municipal Corporation Act, 1980.

The petitioner claims to be the owner and landlord of the premises where the private respondent is carrying on his business. He submits that it was obligatory for the private respondent to obtain his consent prior to applying for issuance of the Certificate of Enlistment in his favour. According to the petitioner, without the consent letter of the landlord the Certificate of Enlistment could not have been issued in favour of the private respondent, who is a rank trespasser in the said premises.

The petitioner contends that the application for issuance of Certificate of Enlistment could be considered only if the same was made in accordance with the prescribed format as indicated in the guidelines.

The petitioner relies up an unreported order dated 4th October, 2012 passed by an Hon'ble Division Bench of this Court in AST 216 of 2020 with ASTA 131 of 2012 with MAT 1238 of 2012 with CAN 7441 of 2012 with WP 20159 (W) of 2010 with CPAN 1099 of 2012 wherein the Court held that for the purpose of having a Certificate of Enlistment it requires disclosure of different particulars as mentioned in the form. In absence of such application, following rule, the Municipality had no scope to consider the same.

The petitioner further relies upon the judgment delivered by this Court in the matter of ***All Bengal Rickshaw Union & Ors. -vs- State of West Bengal & Ors.*** reported in ***(2018) 1 CHN 44*** wherein the Court held that the Municipal Commissioner can refuse issuance of a

Certificate of Enlistment if the application for the same is not in order. The application for renewal has to be considered in terms of Section 199 of the KMC Act, 1980 and in accordance with the terms of statute and consideration thereof cannot be on any extraneous grounds.

The petitioner also relies upon the judgment delivered by this Court in the matter of **Harvinder Singh -vs- Kolkata Municipal Corporation & Ors.** reported in **(2017) 4 CHN 504** in support of his aforesaid stand.

Reliance has been placed upon the judgment delivered by the Hon'ble Supreme Court in the matter of **P. Kasilingam & Ors. -vs- P.S.G. College of Technology & Ors.** reported in **1995 Supp (2) SCC 348** para 20 wherein the Court held that the Act and the Rules form part of a composite scheme. Many provisions of the Act can be put into operation only after relevant provision or form is prescribed in the rules. In the absence of the rules the Act cannot be enforced.

The learned advocate representing the private respondent submits, upon instructions, that he is carrying on business in the said premises for more than thirty years on the basis of the Certificate of Enlistment issued by the Kolkata Municipal Corporation. It has been submitted that he is a bona fide tenant in the said premises and is depositing rent regularly, month by month, before the Rent Controller.

The learned advocate appearing on behalf of the Kolkata Municipal Corporation submits that the Certificate of Enlistment has been issued in favour of the private respondent strictly following the provisions of law. The dispute, if any, in between the parties is

absolutely private and civil in nature. The alleged dispute in between the parties ought not to stand in the way of the Corporation from either issuing or renewing a Certificate of Enlistment.

The learned Advocate for the Corporation rely on the decision delivered by this Court in the matter of ***Venode Kumar Jalan -vs- Calcutta Municipal Corporation & Ors.*** reported in ***1987(II) CHN 219*** wherein the Court held that any occupier of a property, unless evicted in due course of law, is entitled to remain in the property by obtaining necessary rights or easement and if he intends to run a business by obtaining a trade license, provided he complies with other formalities as prescribed under the statute. So long as a person is in possession of the property one cannot raise any objection with regard to renewal of his license, as a license would not confer any title of the property.

I have heard the submissions made on behalf of both the parties.

The primary contention of the petitioner is that the Kolkata Municipal Corporation ought not to have issued and thereafter renewed the Certificate of Enlistment in favour of the private respondent as the private respondent is a rank trespasser and the petitioner being the owner of the said premises did not issue any consent letter permitting him to run the business from the said premises.

The petitioner relies upon Section 199(1) of the Kolkata Municipal Corporation Act, 1980 which mentions that every person engaged or intending to be engaged in any profession, trade or calling as mentioned in Schedule-IV shall obtain a Certificate of Enlistment upon

presentation of an application together with such application fee, as specified in the guidelines. According to the petitioner the guidelines are available in the official website of the Kolkata Municipal Corporation wherein the procedure for obtaining the trade license has been mentioned in a simplified manner.

The procedure for obtaining the trade license as available in the official website of the Kolkata Municipal Corporation mention that in proof of the place of business an applicant, if a tenant, is required to produce the rent bill. The official website also mentions that if a relative/person is granted rent free accommodation by the premises owner, then the consent letter is to be produced. If the person is granted rent free accommodation by any bona fide tenant, consent letter along with current Certificate of Enlistment of the tenant to be produced. If a sub-tenant, then consent of the premises owner will also be produced along with documents namely rent bill, current Certificate of Enlistment of the original tenant.

The petitioner has relied upon a couple of decisions of this Court in support of his submission that the Corporation is bound to abide by the guidelines as mentioned in Section 199(1) of the said Act. The petitioner has also relied upon the judgment of the Hon'ble Supreme Court in the matter of P. Kasilingam (supra) in support of his submission that the Act and the Rules form part of a composite scheme.

According to the petitioner the guidelines as mentioned in the Act are extremely vital for the purpose of making the application for obtaining the Certificate of Enlistment and also for renewal of the same.

The petitioner however has not been able to produce any guidelines framed by the Kolkata Municipal Corporation in terms of the aforesaid Section. Reliance has only been placed on the information that is available in the portal of the Kolkata Municipal Corporation which mentions about the consent letter from the owner to be produced at the time of making application only in certain cases.

The private respondent claims to be a bona fide tenant of the said premises and claims to deposit rent before the Rent Controller. According to the procedure prescribed in the website of the Corporation, a tenant is required to produce only the rent bill at the time of making application for obtaining the Certificate of Enlistment. There is no requirement of producing the consent letter of the landlord. The challan showing deposit of rent in favour of the landlord before the Rent Controller can be treated as a rent bill for this purpose.

The learned advocate for the private respondent has submitted that he is carrying on business in the said premises for more than three decades. The private respondent possesses a valid Certificate of Enlistment issued in his favour by the Kolkata Municipal Corporation.

The Court in the matter of Venode Kumar Jalan (*supra*) held that any occupier of a property, unless evicted in due course of law, is entitled to remain in the property by obtaining necessary rights of easement as that of water and light and if he intends to run a business by obtaining a trade license, provided he complies with other formalities as prescribed under the statute. Any license would not confer a better right in the property than the real owner can ask for, and the question

of title to the property cannot be investigated by the Corporation and the same cannot be the subject matter of enquiry.

The Court in Harvinder Singh (supra) held that if a person wants to be engaged in any trade as mentioned in the Act he has to obtain a Certificate of Enlistment and to have the same renewed from time to time. The Certificate is obtainable upon submission of an application in a proper form. The section conceptualises enlistment of a trader and not the particular place from which such trade may be carried out.

In All Bengal Rickshaw Union & Ors. (supra) the Court was of the opinion that the scope of scrutiny of an application for issuance of a Certificate of Enlistment or its renewal is very limited. It can be refused if the application is not in order. If it is in order, grant is the rule. It further held that consideration thereof cannot be on any extraneous grounds

In the instant case, the private respondent claims to be running his business for a considerable period of time from the said premises on the basis of the Certificate of Enlistment issued by the Kolkata Municipal Corporation. The petitioner has failed to show any provision of law which permits the Kolkata Municipal Corporation to cancel/revoke the Certificate of Enlistment. The guidelines as referred to in Section 199, relied upon by the petitioner, have also not been placed in Court.

It appears that Section 199 of the KMC Act, 1980 stood amended with effect from 17th August, 2017 and by virtue of the said amendment the provision which required the Municipal Commissioner to make

enquiry within 30 days of the receipt of the application, has been done away with. The same implies that a Certificate of Enlistment may be obtained from the Kolkata Municipal Corporation upon presentation of an application together with application fee.

Section 199(2) mentions that the manner of issuance of Provisional and Permanent Certificate of Enlistment shall be such as may be determined by the State Government in the guidelines mentioned in the sub-Section. No such guidelines have been produced or referred to by the parties at the time of hearing of the writ petition. In the absence of a prescribed guideline which mandates production of consent letter from the owner prior to issuance of the Certificate of Enlistment, the Kolkata Municipal Corporation will be bound to issue the Certificate of Enlistment and not reject the same on the ground of non-production of the same. The Corporation relied upon the challan showing deposit of rent by the private respondent before the Rent Controller and issued the Certificate of Enlistment in his favour. In fact, there was no scope on the part of the Corporation to make any enquiry prior to the issuance of the Certificate as the Act does not provide for the same. The action of the Corporation cannot be faulted. Accordingly, the prayer of the petitioner for cancellation/revocation of the Certificate of Enlistment issued in favour of the private respondent does not have any merit. No relief can be granted to the petitioner in the instant case.

WPO 48 of 2021 is dismissed.

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.)