

06.07.2022
rc/ct.no.24
Item No.ML-112

WPA No. 6220 of 2021
Dr. Indrakamal Majumder
Versus
The State of West Bengal & Ors.

Mr. Subhojit Ghosh
Mrs. Senjuti Sengupta
Mr. Rananesh Guha Thakurta ...for the Petitioner

Mr. Gurudas Mitra
Mr. Jayanta Kr. Dhar ...for the KMC

Affidavit of service filed in Court today is taken on record.

The petitioner claims to be the owner of the property situated at 418/B, Jodhpur Park, Police Station - Lake Police Station, Kolkata 700 068.

The respondent no. 5, Ujjwal Kumar Roy is a tenant under the petitioner in the said premises. A trade license was issued by the Kolkata Municipal Corporation (in short, "KMC") in favour of the respondent no. 5 on 26.10.2017.

The petitioner submits that the said trade license was issued upon obtaining consent of the petitioner. The petitioner submits that thereafter the KMC has issued trade license in favour of one Sai Vidyamandir and the nature of trade is tuition in group (non-technical) coaching centre.

The petitioner is aggrieved by the issuance of the trade license in favour of Sai Vidyamandir in the year 2020-21. Copy of the trade license issued in favour of the

Sai Vidyamandir is annexed to the writ petition. It appears therefrom that the name of the proprietor of the aforesaid business is Ujjwal Kumar Roy, the respondent no. 5 herein.

According to the petitioner, no consent was taken from the petitioner prior to the issuance of trade license in favour of Sai Vidyamandir. The petitioner through the learned advocate filed a representation before the KMC on 15.02.2021 and alleges that the same has not been taken up for consideration till date.

On perusal of the said representation it appears that the petitioner has admitted the tenancy of Ujjwal Kumar Roy in the said premises. It has been submitted that a Title Suit being TS No. 102 of 2018 has been filed by the petitioner against the respondent no. 5 for eviction and the same is pending consideration before the learned Civil Judge, Sr. Division, 9th Court at Alipore. Prayer has been made for cancelling the trade license issued in favour of the respondent no. 5.

Learned advocate appearing on behalf of the KMC submits that the petitioner has already admitted the tenancy of the private respondent and the KMC issued the initial trade license after obtaining consent of the landlord. Thereafter the license was renewed in favour of the respondent no. 5.

As regards the license issued in the year 2020-21 it has been submitted that the proprietor of the business

is the respondent no. 5 and no further no objection was required for the purpose of issuance of the said trade license.

I have heard the submissions made by the learned advocates appearing on behalf of the parties. Admittedly, the tenancy of the respondent no. 5 is not under challenge. A civil suit is already pending consideration before the learned Court below. The KMC is only required to issue the trade license on receipt of the application filed by the applicant and upon making necessary enquiries.

This Court in Venod Kumar Vs. Kolkata Municipal Corporation reported in 1987(2) CHN 219 held that while issuing the certificate of enlistment, the question of title cannot be investigated by the Corporation nor can the same be subject matter of enquiry. If a person is found to be in occupation of the property and running business, his prayer for renewal of license cannot be refused.

In the matter of Layeeque Ahmed Akhtar Vs. State of West Bengal & Ors. reported in 2006(1) CHN 634 the Court was of the opinion that the concerned authority could not refuse to grant certificate of enlistment to a party who intends to be engaged in a trade within the municipal area for non-production of the landlord's consent letter.

In view of the settled position of law it was not open for the Corporation to refuse the trade license when

it was sought for by the person intending to start business within a municipal area. Moreover, the landlord had initially consented to running the business. At this stage, the landlord cannot oppose the grant or renewal of the trade license in favour of the respondent no. 5.

In view of the above, no relief can be granted to the petitioner in the instant case.

The writ petition fails and is hereby dismissed.

There shall be, however, no order as to costs.

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

(Amrita Sinha,J)