

16.11.2022
Item No.03
Crt.No.24
b.r.

W.P.A 11929 of 2021

Sanjib Sen

-vs-

The Howrah Municipal Corporation & Ors.

Mr. Abhijit Ray

Mr. Subham Gupta

..... for the petitioner.

Mr. Rahul Karmakar

..... for the Resps. Nos. 3 and 4.

Mr. Sandipan Banerjee

Mr. Santanu Chatterjee

**..... for the Howrah
Municipal Corporation.**

Affidavit-in-Opposition filed by the respondent nos. 3 and 4, report in the form of affidavit filed by the Howrah Municipal Corporation and affidavit-in-reply filed by the petitioner in Court today are taken on record.

The order dated 13th May, 2021 passed by the License Department, Howrah Municipal Corporation rejecting the prayer of the petitioner for renewal of license by incorporating his name in the same is impugned in the present writ petition.

The impugned order mentions that M/s. Sachin Studio exists in the name of Pratap Chand Sen with Nimai Chand Sen and the Certificate of Enlistment has

been renewed for the years 2018-19, 2019-20 and 2020-21.

The petitioner has annexed documents to show that M/s. Sachin Studio was the proprietorship firm of Kanak Chand Sen. The said Kanak Chand Sen expired in the year 2015. License for the year 2014-15 valid up till 31st of March, 2015 stands in the name of M/s. Sachin Studio with the name of Kanak Chand Sen. There is no mention of the name of the private respondents in the said license till the time Kanak Chand Sen was alive. Immediately after the death of Kanak Chand Sen, the names of Pratap Chand Sen and Nemai Chand Sen have been mentioned in the Certificate of Enlistment.

According to the petitioner, after the death of Kanak Chand Sen, the names of the heirs of late Kanak Chand Sen ought to have been mentioned in the Certificate of Enlistment.

According to the private respondents, there was a partnership agreement in between Gopal Chand Sen, Rai Chand Sen and Kanak Chand Sen, Pratap Chand Sen and Nemai Chand Sen. The partnership deed is an unregistered document allegedly signed by the partners on 3rd January, 1972. Upon the demise of Gopal Chand Sen, Rai Chand Sen and Kanak Chand Sen, the

remaining partners reconstituted the partnership firm with the surviving partners.

The private respondents contend that documents were placed before the Howrah Municipal Corporation pursuant to which the Certificate of Enlistment has been issued by mentioning the name of Pratap Chand Sen and Nemaï Chand Sen.

Howrah Municipal Corporation submits that after the death of Kanak Chand Sen, no application was received from his heirs. Certificate of Enlistment was issued in favour of the private respondents relying on the basis of the documents submitted by them.

The private respondents have annexed photocopy of the reconstituted partnership deed allegedly signed by four partners, including Kanak Chand Sen, in the year 1997. A deed of reconstruction dated 24th September, 2015 has also been annexed.

The petitioner denies both the documents.

It appears from the submissions of the parties that the Howrah Municipal Corporation issued the Certificate of Enlistment till the year 2017-18 mentioning the name of Kanak Chand Sen though, admittedly, the said Kanak Chand Sen expired in the year 2015 and the deed of reconstruction was allegedly signed on 24th September, 2015. The Corporation

appears to have acted on the basis of the deed of reconstruction submitted before the authority.

The contents of the documents placed before this Court being seriously disputed by the petitioner, the Court is of the opinion that the parties should be relegated to the appropriate forum for adjudication of their private disputes.

Till such time, the Howrah Municipal Corporation is directed to issue fresh license mentioning only the name of the firm in whose name license was previously issued, without mentioning the name of the Proprietor /Partner /Director /Karta /Manager of the said firm, however, subject to compliance of all other statutory formalities.

It is made clear that the Court is not entering into or deciding the private rights of the parties to carry on business from the said place. The parties shall make appropriate application for running the business before the appropriate forum.

The writ petition is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all necessary formalities.

(Amrita Sinha,J.)