

19.09.2022
Sl. No. 10
S. De

W.P.A. 34082 of 2014
With
I.A. No.CAN/1/2016
(Old No.CAN 9599 of 2016)
(CAN 9599 of 2016 is not in file)
I.A. No.CAN/2/2017
(Old No.CAN 6434 of 2017)
Swaraj Kumar De.
-Versus-
Baranagore Municipality & Ors.

Mr. Rabilal Moitra, Sr. Adv.
Mr. Ujjwal Trivedi,
Mr. Rajitlal Moitra,
Mr. Sujal Dey,
...for the petitioner.
Mr. Arijit Dey,
...for the Baranagar Municipality.
Mr. Sayantan Bose,
Mr. Shounak Mukhopadhyay,
Ms. Ankita Choudhury,
...for the respondent no.4.

This writ petition has been filed praying for setting aside the order of the Chairman, Baranagore Municipality dated 27.11.2014 and to allow the petitioner to carry on his business at the property.

The writ petitioner and the private respondent are brothers and are fighting against each other with regard to mode of user of the premises which was originally owned by their father. The writ petitioner claims to have been

running a business since the time when the property was owned by the father. After the death of the father, the petitioner and the private respondent claim to have inherited the property in question and the petitioner claims to have been running the business in a portion thereof prior to coming into force of the West Bengal Municipal Act, 1993 (for short the 1993 Act) upon obtaining necessary Trade Licence/Certificate of Enlistment issued by the Baranagore Municipality. The petitioner applied for renewal of the Certificate of Enlistment on 11.06.2013 for the period 2013-2014 but such application for renewal of the Certificate of Enlistment was however rejected by the Municipality by a Memo dated July 10, 2013.

The petitioner challenged the said Memo dated July 10, 2013 issued by the Executive Officer, Baranagore Municipality by filing W.P. No.32505(W) of 2013 which was disposed of by an order dated January 15, 2014 by directing the municipal authority to consider the issue regarding alleged unauthorized use of the property and thereafter to review the decision contained in the Memo dated July 10, 2013.

Pursuant to the said order passed in W.P. No. 32505 (W) of 2013, the Chairman, Baranagore Municipality passed the order dated November 27, 2014 directing stoppage of unauthorized use of the premises for non-residential purpose. By the said order, the Chairman further held that the petitioner could not make out any ground for review of the order contained in the Memo dated July 10, 2013.

Mr. Moitra, learned senior advocate appearing for the petitioner contends that the petitioner was running the business since the year 1986 upon obtaining necessary Certificate of Licence/Trade Licence from the municipal authority. He further submits that since the Certificate of Enlistment was issued after making necessary enquiries and also taking into consideration the nature of the business which the petitioner is carrying on at the premises in question, the municipal authority cannot subsequently reject the prayer for renewal of such Certificate of Enlistment in respect of the self-same business. He further submits that the nature of the business is not a hazardous one and the petitioner is carrying on business in a portion of the property in

question and the petitioner has also obtained necessary clearance from the authorities of the Pollution Control Board. By referring to the provisions of Section 118 of the 1993 Act, Mr. Moitra contends that the Chairman while passing the order impugned has exceeded his jurisdiction by taking into consideration irrelevant materials and issues which are not germane for the purpose of considering the application for renewal of the Certificate of Enlistment. In support of his contention that the scope of enquiry contemplated under Section 118 of the 1993 Act is very limited, Mr. Moitra refers to a decision of a Co-ordinate Bench of this Court in the case of *Layeeque Ahmed Akhtar Vs. State of West Bengal & Ors.* reported in *2006 (1) CHN 634*.

Mr. Dey, learned advocate appearing for the Baranagore Municipality drew the attention of this Court to the order dated November 27, 2014 passed by the Chairman and submits that the building plan had been sanctioned for residential use and therefore the said building cannot be allowed to be used for non-residential use. He further submits that Certificate of Enlistment cannot be issued in favour of the petitioner for running a

business in a portion of a residential house. He contends that the consequence of the order passed on the issue of unauthorized use of the building is to deny renewal of Certificate of Enlistment and that is exactly what has been done by the Chairman in the impugned order.

Mr. Mukhopadhyay, learned advocate representing the private respondent submits that the property is yet to be partitioned and the property has not yet been mutated in the name of the petitioner. He further submits that the petitioner is storing hazardous substance in the property and as such any untoward incident may happen at any point of time on account of storage of such hazardous substance. He further places the provisions laid down in Section 200 of the 1993 Act and more specifically Sub-section 1(b), Sub-section 3, Sub-section 5 to contend that since the nature of use specified in the sanctioned plan is only for residential use, the petitioner cannot be permitted to use the property, or any portion thereof, for non-residential purpose. By drawing the attention of the Court to the provisions laid down under Sub-Section 6 of Section 200, Mr. Mukhopadhyay submits that the portion of the order deciding the issue relating to unauthorized use of

the property is an appealable order under Sub-section 6 of Section 200 and this Court while exercising its jurisdiction under Article 226 of the Constitution should not entertain any challenge in so far as the issue regarding unauthorized use of the property is concerned. He further submits that the contention of Mr. Moitra that the petitioner had been running the said business since the order 1986 is of no relevance as it is well-settled that the principle of estoppel cannot override the law. In support of such contention Mr. Moitra relied upon a decision of the Hon'ble Supreme Court of India in the case of *Krishna Rai (Dead) through LRs & Ors. Vs. Banaras Hindu University Through Registrar & Ors.* reported in *2022 LiveLaw (SC) 553*.

Heard the learned advocates for the parties and perused the materials placed. The principal objection of the private respondent is that the petitioner is using the residential property for commercial/industrial purpose though the building plan was sanctioned for residential purpose. Record reveals that the licence under Section 201 of the 1993 Act was issued in favour of the petitioner on April 11, 2009 for using the part of premises no. 207/2, Pramanieu Ghat Road, Kol-38 for the purpose of industrial

testing and analytical laboratory, chemical analysis of industrial goods upon receipt of a consideration of Rs.400/-. Thus, it cannot be said that permission for using the portion of the property for running the business by the petitioner was not accorded by the municipal authority.

The Co-ordinate Bench while passing the order dated January 15, 2014 in W.P. No.32505(W) of 2013 directed the municipal authority to decide the issue regarding alleged unauthorized use of the property by passing a reasoned order after giving an opportunity of hearing to the petitioner and the private respondent and after verifying the records. Whether the property in question has been partitioned between the co-sharers or whether the property has been mutated in the name of the present owners cannot be the matter to be taken into consideration for deciding as to whether the petitioner may be allowed to use the portion of the property for running the business. Even though the building plan may have been sanctioned only for residential purpose, Section 200 of the 1993 Act empowers the Chairman to grant permission for change of authorized use of the building. Section 201 of the Act puts a restriction for user of the

premises for non-residential purposes without or otherwise than in conformity with the licence granted by the Chairman. Since it is evident from the record that the petitioner was permitted by the municipality to use the portion of the property for running the business, this Court is of the considered view that the Chairman while deciding with the issue regarding change of user had taken into consideration irrelevant materials but did not take into consideration the relevant document which goes to show that permission was granted to the petitioner to use a portion of the property for business purpose. The Chairman while deciding the said issue failed to appreciate that Section 200 read with 201 empowers the Chairman to permit a person to use a residential property for non-residential purpose subject to obtaining a written permission/licence from the Chairman.

Though, Mr. Mukhopadhyay was right in contending that an order deciding an issue regarding alleged unauthorized use of the property is an appealable order under Sub-section 6 of Section 200 of the 1993 Act but taking into consideration the fact that the order was passed by the Chairman as far back as on November 27,

2014 and the writ petition has been filed immediately thereafter that is on December 2014 and the same was languishing before this Court since 2014, this Court is not inclined to relegate the petitioner to avail the statutory appellate remedy at this stage as the parties advanced arguments also on merits and this Court is of the view that the decision making process suffers from infirmity. This Court, therefore, holds that the first portion of the order deciding the issue of unauthorized use of the property and consequently directing the petitioner to stop the user of the premises for purposes other than residential is liable to be set aside.

Now, this Court shall consider as to whether the decision of the Chairman for not reviewing the decision contained in the Memo dated July 10, 2013 can be sustained in the eye of law. Upon going through reasons assigned in the last portion of the order, this court finds that the Chairman while deciding the issue as to the renewal of Certificate of Enlistment has over-stepped its jurisdiction as prescribed under Section 118 of the 1993 Act.

Section 118 of the 1993 obliges the Executive Officer to issue Certificate of Enlistment if an application is filed by a person engaged or intending to be engaged in any profession, trade or calling upon an application being made therefor. Section 119 of the 1993 Act obliges the Executive Officer to make necessary enquiries and within thirty days of the receipt of application, grant Certificate of Enlistment if the application is in order or shall reject it, if it is not in order. It is not the case of the municipal authority that the application made under Section 118 of the said Act was not in order.

Upon going through the provision of Sections 118 and 119 and the rules framed thereunder, this Court is of the considered view that the scope of enquiry for grant of Certificate of Enlistment is very narrow. The scope is even narrower at the time of renewal if there is no change of circumstances from that prevailed at the time of issuance of the last licence/Certificate.

A Co-ordinate Bench of this Court in the *Layeeque Ahmed Akhtar (Supra)* held that the municipal authority should limit its enquiry with regard to the requirements under Sections 118, 119 and the Rules framed thereunder.

Since it is evident from the record that the petitioner was carrying on the business and Certificates of Enlistment for different periods prior to the date of the impugned application has been annexed to this writ petition, this Court holds that the Chairman, Baranagore Municipality was not justified by rejecting the prayer for renewal of the Certificate of Enlistment for reasons which do not fall within the scope of Sections 118, 119 and the rules framed thereunder. However, as the application for renewal was filed sometimes in the year 2013 praying for renewal of Certificate of Enlistment for the period 2013-2014, no useful purpose will be served by directing the municipal authority to issue/renew the Certificate of enlistment for the period which already stood expired in the meantime. However, liberty is granted to the petitioner to submit an application for renewal of Certificate of Enlistment together with fees prescribed for carrying on the nature of business carried on by the petitioner in a portion of the property in question. Upon such application being made, the Executive Officer, Baranagore Municipality shall take a decision on such application strictly restricting the scope of

enquiry as contemplated under Section 118 read with Section 119 and the rules framed thereunder.

It is also made clear that grant or renewal of the licence shall not absolve the petitioner from taking out any licence under the 1993 Act.

There is however, no quarrel to the proposition to law laid down in Krishna Rai (Supra) that the principle of estoppel cannot override the law but the same cannot be of any assistance to the petitioner in the case on hand.

For the reasons as aforesaid, the impugned order dated November 27, 2014 is set aside and quashed.

With the aforesaid observations and directions W.P.A. 34082 of 2014 is disposed of along the applications being I.A. No.CAN/1/2016 (Old No.CAN 9599 of 2016) I.A. No.CAN/2/2017 (Old No.CAN 6434 of 2017).

There shall be however no order as to costs.

Urgent photostat copy of this order, if applied for, be given to the parties after observing necessary formalities.

(Hiranmay Bhattacharyya, J.)