

OD- 2

APO/47/2021
With
WPO/367/2019

IA No.GA/1/2021

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

KHAIRUNNESSA ALIAS KHAIRUNNISA
-VS-
THE STATE OF WEST BENGAL AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE KAUSIK CHANDA

Date :8th February, 2022.

Appearance:

*Mr. Ataur Rahman, Adv.
..for the appellant*

*Mr. Debjit Mukherjee, Adv.
Ms. Susmita Chatterjee, Adv.
..for the State*

*Mr. Alok Kr. Ghosh, Adv.
Mr. Gopal Chandra Das, Adv.
Mr. Shubhrangshu Panda, Adv.
..for KMC*

*Mr. Debasish Kundu, Adv.
Mr. Souma Subhra Ray, Adv.
..for respondent nos.9 to 12*

The Court : This is an appeal against an order dated February 4, 2021 whereby WPO/367/2019 along with the connected application was dismissed.

The writ petitioner approached the learned Single Judge with the grievance that although she had surrendered her trade licence long back, the Kolkata Municipal Corporation (in short, KMC) has issued a fresh trade licence/certificate of enlistment in favour of one of her erstwhile workers in

respect of the premises from where she used to earlier carry on restaurant business. Her case before the learned Judge was that the concerned erstwhile worker forcibly entered into possession of the premises in question after breaking the padlock put by the writ petitioner and is carrying on restaurant business therefrom with his associates on the strength of the certificate of enlistment that KMC issued in favour of the said erstwhile worker. Her contention is that she is the legal tenant in respect of the concerned premises and the persons who are carrying on restaurant business from the concerned premises have no right to occupy such premises.

The learned Judge observed that the dispute between the writ petitioner and the private respondents is civil in nature inasmuch as the disputes relate to possession/occupation of the concerned premises. The learned Judge granted liberty to the writ petitioner to approach the appropriate forum for necessary relief and dismissed the writ petition.

Before us, the writ petitioner/appellant argued that even the fire licence has been granted in favour of the private respondents and they are merrily carrying on with the restaurant business when they do not have even an iota of right to be in occupation of the concerned premises.

Learned advocate for the private respondents submits that the appellant has already instituted a suit against the private respondents for declaration and injunction being TS/18/2022 in the City Civil Court at Calcutta. The private respondents, who are defendants in the suit, are taking steps to contest the suit.

We had called for a report in the form of an affidavit from the KMC as to on what basis KMC issued the certificate of enlistment in favour of the

private respondents. Such report has been filed. From the report, we find that all necessary documents were submitted by the private respondents to the KMC in support of the application for certificate of enlistment. Even the arrear licence fees in respect of the licence that had been granted in favour of the appellant, were paid by them. It is trite law that while processing or granting an application for trade licence, the KMC is not required to enquire into whether or not the applicant has any right, title or interest in respect of the premises wherefrom the applicant proposes to carry on business. In support of this proposition, learned counsel for KMC refers to a Division Bench judgment of this Court in the case of *Abdul Rashid v. Calcutta Municipal Corporation and ors.* reported in AIR 1991 Calcutta 234.

We find no infirmity in the order impugned before us. We are not for a moment suggesting that the private respondents have legal right, title or interest in respect of the concerned premises. We have not gone into that issue at all as that is an issue which is to be agitated before the appropriate civil court.

As noted above, the appellant has already initiated a civil suit against the private respondents. Let such suit be carried to its logical conclusion. Nothing in this order shall have any bearing on the hearing of the said suit.

The appeal and the connected application are accordingly disposed of.

(ARIJIT BANERJEE, J.)

(KAUSIK CHANDA, J.)