

OD-2

ORDER SHEET

WPO/633/2019

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MISS RENU SHAW AND ANR.
Versus
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 21st February, 2022.

[Via Video Conference]

Appearance:
Mr. Asit Baran Routh, Adv.
Mr., Gautam Das, Adv.
For the petitioners.

Mr. Sabyasachee Bhattacharjee, Adv.
Md. Shamim Halder, Adv.
For the respondent no. 8.

Mr. Arijit Dey, Adv.
For the K.M.C.

The Court :- The writ petition has been filed challenging inaction of the Kolkata Municipal Corporation in disposing of the complaint of the petitioners written through their learned Advocate which is AnnexureP-1 at page 17 of the writ petition.

It is the contention of the petitioners that the licensing authority of the license department, Borough-1 of the Corporation, failed and neglected to consider the fact that the respondent nos. 7 to 12 have been running a business from the premises situated at 23, Banamali Sarkar Street, Kolkata-700 005 without a valid licence. The said respondents are tenants of the petitioners.

Mr. Dey, learned Advocate appearing on behalf of the Corporation, submits that initially the father of the respondent nos. 7 to 12 was

granted a certificate of enlistment by the Corporation. Mr. Dey is not in a position to submit whether the same has been renewed or granted in favour of the heirs of the deceased, as per the provisions of law.

Mr. Sabyasachee Bhattacharjee, learned Advocate appearing on behalf of the respondent no.8, one of the tenants, submits that the sweetmeat shop has been running since time immemorial and the Writ Court should not go into the question of the rights of the tenants, at this stage. The jurisdiction of the Writ Court is limited and the question of title and/or encroachment should not be gone into, in this writ proceedings. He further submits that the writ petition has been filed only as a coercive method to evict the respondent nos. 7 to 12 from the said premises. He further submits that the petitioners as landlords filed a suit for eviction. The suit was decreed ex parte. The execution case is pending. The respondent nos. 7 to 12 have filed an application under the provisions of Order IX Rule 13 of the Code of Civil Procedure for setting aside the ex parte decree. He also submits that the Writ Court should not go into those questions at this stage.

The Court is in agreement with Mr. Das and Mr. Bhattacharjee. The Writ Court should not get into the question of title, eviction, rights of the tenants etc. However, the Writ Court has the jurisdiction to call upon the statutory authority to ensure that the statutory provisions of the Kolkata Municipal Corporation Act, 1980 are not violated by any person. Section 199 of the Kolkata Municipal Corporation Act, 1980 stipulates that no trade or business can be carried on without proper certificate of enlistment as per the schedule of the said Act. Fire licence would also be necessary to run a sweet-meat work shop.

This writ petition is disposed of with a direction upon the Licensing Authority, Licence Department, Borough-1 to dispose of the complaint of the petitioners which is Annexure P-1 at page 17 of the writ petition, in accordance with law, upon hearing the petitioners as also the respondent nos. 7 to 12 within six weeks.

The questions to be determined by way of a civil suit shall not be gone into by the authority. The only question to be determined is whether the sweetmeat shop is being run upon obtaining a proper certificate of enlistment from the Kolkata Municipal Corporation or not. If it is found that the respondent nos. 7 to 12 have failed to comply with the law, in that case, appropriate orders shall be issued. It is also provided that the heirs of the erstwhile licensee can also pray for a certificate of enlistment in accordance with law. If there are compliances to be made by the respondent nos. 7 to 12 in respect of the said shop room, until they are evicted, the Corporation shall indicate the same by passing a reasoned order, in accordance with law. The application under Order IX Rule 13 of the Code of Civil Procedure filed by the respondents and the execution case shall continue independently.

(SHAMPA SARKAR, J)

snn.