

04. 12.05.2023
Court No.6
Tanmoy Ghosh

MAT 424 of 2023

Md. Arshad Hussain
-Versus-
Jaiswal Seva Sangh (Kalitala) Trust & Ors.

With
IA No: CAN/1/2023
With
IA No: CAN/2/2023

Mr. Abdul Hadi, Adv.,
Mr. Md. Ashfaque Ahmed, Adv.
...for the applicant/appellant.

Mr. Prabhat Kr. Srivastawa, Adv.
...for the respondent nos. 1 & 2.

Mr. Santanu Mitra, Ld. Sr. Adv.,
Ms. Anandamayee Ghosh, Adv.
...for the State.

Mr. Alok Kr. Ghosh, Adv.,
Mr. Dwijadas Chakraborty, Adv.
...for the respondent nos. 4-9 (KMC).

Affidavit of service filed in Court today, be kept with
the records.

In Re: IA No: CAN/2/2023

In the matter of : Md. Irshad Hussain ... applicant

A Judgment and order dated January 17, 2023,
whereby WPA 7041 of 2020 (*Jaiswal Seva Sangh (Kalitala)*
Trust & Anr. – Vs. – The State of West Bengal & Ors.) was
disposed of by a learned Single Judge, is being sought to
be challenged in an appeal intended to be filed by the
applicant in IA No: CAN/2/2023, which is an application
for leave to prefer appeal since the applicant was not a

party to the writ petition on which the order sought to be assailed was passed. The applicant says that he has been forcibly removed from his place of business. This was done pursuant to the order of the learned Single Judge. Hence he is an aggrieved party.

We are of the view that the applicant may have something to say. Leave is granted to prefer appeal against the order dated January 17, 2023.

The application being IA No: CAN/2/2023 is allowed and disposed of.

In Re: MAT 424 of 2023
With
IA No: CAN/1/2023

By consent of the parties, the appeal and the connected application are taken up together for hearing.

The appellant says that he was carrying on business of selling food items and the Kolkata Municipal Corporation has also granted certificate of enlistment in his favour. He has annexed a Certificate of Enlistment for the year 2013 which mentions the business address as 3, Balak Dutta Lane. The business apparently was being carried on from a portion of the footpath and/or public street.

Complaint was lodged by the writ petitioners with the Corporation. Pleading inaction on the part of the Corporation, the writ petitioners approached the learned Single Judge. Before the learned Single Judge, a report was

filed on behalf of the Corporation mentioning that the encroachment has been removed with the help of Police Authority. Learned Advocate for the writ petitioners admitted that the encroachment had indeed been removed. In view of the aforesaid, the learned Judge disposed of the writ petition.

The appellant says that he has been illegally removed from his place of business.

The Corporation says that apart from the fact that the Certificate of Enlistment which the appellant is relying on is not a current one and is of the year 2013, issuance of Certificate of Enlistment by the Corporation does not amount to any admission or recognition on the part of the Corporation that the applicant is a lawful occupant of the business premises. A Certificate of Enlistment is to be renewed from year to year.

Having heard learned Counsel for the parties, we are of the considered opinion that the dispute involved between the parties is of civil nature. The Corporation has carried out its statutory duty under Section 372 of the Kolkata Municipal Corporation Act, 1980. If the appellant has any grievance, he will be at liberty to approach the civil forum for appropriate relief, in accordance with law. If the civil forum is so approached, it is requested to decide the appellant's case uninfluenced by any observation in this order, in accordance with law.

We find no apparent infirmity in the order under appeal.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 424 of 2023 and the connected application being IA No: CAN/1/2023 are accordingly dismissed.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)