

Item No.7

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

08.06.2023
Ct-24

WPA 5377 of 2022
Nejamuddin Molla & Anr.

v.

The State of West Bengal & Ors.

Md. Mansoor Alam
... for the petitioners.

Mr. Sandidpan Banerjee
Mr. Ankit Sureka
Mr. Sobham Majumder
... for HMC.

The petitioners claim to be the lessees in respect of a stall being No. 1-G-199, Block-A at Howrah Haat Complex. The stall in question was leased out in favour of the predecessors-in-interest of the petitioners. The lease in question allegedly expired in the year 2017. The petitioners claim to hold on to the said stall even after expiry of the lease period. The petitioners further claim that applications were made from time to time seeking renewal of the agreement for lease but the Howrah Municipal Corporation did not take any steps either to consider or to renew the same.

The petitioners have filed a supplementary affidavit stating that the men and agents of the Howrah Municipal Corporation have taken possession of the stall in question forcefully by locking the main entrance gate of the Howrah Haat Complex.

It has further been submitted by the petitioners that the Howrah Municipal Corporation accepted the

rent in respect of the stall in question even after expiry of the lease period.

The petitioners pray for restoration of possession of the said stall in their favour.

Learned advocate representing the Howrah Municipal Corporation submits, upon instruction that, the petitioners have failed to produce any document to show that a formal agreement of lease was executed by and between the Corporation and the predecessor-in-interest of the petitioners.

It has been submitted that the petitioners have only relied upon coupons issued by the Howrah Municipal Corporation but the lease agreement has neither been filed nor produced before the Howrah Municipal Corporation.

It has also been submitted that the writ Court is not the appropriate forum to enter into the private disputes in between the Corporation and the petitioners which allegedly arises out of an agreement of lease.

Upon hearing the submissions made on behalf of both the parties it appears that the petitioners are yet to file any representation before the Howrah Municipal Corporation seeking restoration of possession or objecting to their illegal dispossession from the stall in question.

The petitioners have relied upon certain receipts issued by the Corporation, but admittedly, the lease agreement has not been brought on record.

Learned advocate for the petitioners alleges that the lease agreement is lying inside the stall premises

which has been locked by the Corporation, and accordingly, the petitioners are not in possession of the said agreement.

It further appears from the documents annexed to the writ petition and the submissions made on behalf of both the parties that the Howrah Municipal Corporation accepted the allotment charges from the predecessors-in-interest of the petitioners. There are documents to support that rent in respect of the stall was accepted by the Corporation.

In such a situation, the Corporation ought to have offered an opportunity of hearing to the occupiers prior to putting the stall in question under lock and key. The Corporation has not been able to produce any document to show that opportunity of hearing was granted to either the petitioners or their predecessors-in-interest prior to putting padlock on the subject stall.

The Corporation, being a statutory authority, ought to follow the principles of natural justice, equity and fair play.

In view of the above, the instant writ petition is disposed of by granting liberty to the petitioners to make formal application before the Commissioner of the Howrah Municipal Corporation annexing all documents in support of their claim in respect of the subject stall.

In the event such representation is filed, the same shall be considered by the Commissioner or his delegate in accordance with law, after giving reasonable opportunity of hearing and by passing a reasoned order.

Steps shall be taken in the matter at the earliest but positively within a period of twelve weeks from the date of filing the representation by the petitioners.

As it appears that the Commissioner, Howrah Municipal Corporation has not been impleaded as party respondent in the present writ petition, accordingly, leave is granted to the advocate-on-record of the petitioners to implead the Commissioner, Howrah Municipal Corporation as party respondent.

The formality of serving a copy of the writ petition upon the added respondent stands dispensed with as learned advocate has already entered appearance on behalf of the Howrah Municipal Corporation.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)