

06.06.2023
Court No. 19
Item No.32
CP

C.O. 1278 of 2023

Ruma Das & ors.

Vs.

Hooghly – Chinsurah Municipality & ors.

Ms. Madhumita Patra

....for the petitioners.

Mr. Tapas Kr. Ghosh

Mr. Tanmay Chowdhury

...for the opposite party nos. 1 to 4.

Mr. Sukumar Bhattacharyya

Ms. Oindrila Chatterjee

....for the opposite party no. 5.

Mr. Gautam Das

....for the opposite party no. 7.

The petitioners are aggrieved by an order passed by the learned Civil Judge (Junior Division), Additional Court at Hooghly in Title Suit No. 15 of 2015. By the order dated February 10, 2023, the learned court rejected the application of the petitioners for a direction upon the Hooghly – Chinsurah Municipality to renew the trade licence in favour of the petitioners' shop.

Mr. Bhattacharyya and Mr. Das, learned advocates appear on behalf of the shebait/landlords. Mr. Chowdhury, learned

advocate appears on behalf of the Hooghly – Chinsurah Municipality.

As the petitioners are in possession of the property in question and have been running the shop therefrom, it is urged that the learned court below ought to have directed the municipality to renew the licence. It is further submitted that the finding of the learned court below that allowing an application for renewal of the trade licence would be an assumption of tenancy, was incorrect.

Mr. Bhattacharyya submits that when the licence had not been renewed for the past ten years, suddenly the prayer for renewal of licence cannot be allowed. He further submits that the petitioners have no right to remain in the property. They were not tenants and had not been paying any rent either to the rent controller or to the shebait of the property.

This court is of the view that the municipality need not assess the title of a person who applies for renewal of licence, if the said person is in occupation of any premises. The municipality may grant licence, provided other requirements of law are complied with.

However, as the trial court has opined that whether any shop room existed or not is doubtful, the revisional court cannot sit in appeal over such fact and pass orders for renewal of licence.

Moreover, it is an admitted position that the trade licence had not been renewed since 2013. It is the specific contention of the shebait that no rent had ever been offered by the petitioners and they are trespassers.

Under such circumstances, unless the possession of the petitioners and the operation of the business from the said shop room are factually found to be correct by the municipality, no orders can be passed.

It is also the opinion of this court that the question of renewal after ten years would not arise. The petitioners may apply for fresh trade licence, in accordance with law, which shall be disposed of by the municipality upon holding an inspection and upon coming to a finding that the petitioners are in possession of the said alleged shop room and otherwise eligible for the same.

The consent of the owners shall not be taken in view of the pending litigation, if the municipality decides to grant trade licence.

However, this order shall be subject to the final decision in the suit and also subject to the demolition proceedings which have been directed by competent courts on several occasions. Trade licence in respect of any unauthorized construction or shop room, cannot be granted.

This order shall not create any equity in favour of the petitioners. The petitioners cannot claim any vested right to run the shop from the premises either on the basis of this order or on the basis of any fresh trade licence, that may be given by the municipality. The grant of licence if allowed by the municipality, shall be subject to the final decision in the suit and not a presumption of tenancy. The prayer for grant of trade licence, if made, shall also be subject to any decision in the demolition proceeding. If the municipality is of the opinion that the premises had been constructed unauthorizedly, no trade licence can be given.

Accordingly, the revisional application is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)