

Item No.60

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

07.12.2023
Ct-24

RVW 122 of 2023
with
IA No. 1 of 2023
Arambagh Apexx Diagnostic & Health Care Pvt. Ltd.
v.
State of West Bengal & Ors.

Mr. Kallol Basu
Mr. Samrat Choudhury
Mr. Samik Sarkar
... for the petitioner.

Mr. Suddhadev Adak
Mr. Richaa Pramanik
... for the Municipality.

The petitioner prays for review of the order passed by this Bench on April 12, 2023 dismissing the writ petition upon hearing the parties.

Challenging the said order the petitioner approached the Hon'ble Division Bench and the Hon'ble Division Bench vide order dated May 18, 2023 passed in MAT No. 779 of 2023 with IA No.CAN 1 of 2023 disposed of the appeal by observing that if the appellant is entitled, in law, to approach the learned Single Judge for review of the judgment and order impugned, it will be open for him to do so in accordance with law.

The instant review has been filed relying on the said observation of the Hon'ble Division Bench.

The petitioner submits that there has been misconception of law as well as fact which was not

properly placed before this Bench which led to passing the order for dismissal of the writ petition.

Upon hearing the submissions made on behalf of both the parties it appears that the petitioner primarily seeks renewal of the trade license. The submission on the earlier occasion was that the petitioner sought for implementation of certain conditions in the lease deed. The trade licence of the petitioner expired in the year 2021. The Municipality has not renewed the trade licence allegedly on account of non-payment of certain dues.

It appears that a lease deed was executed by and between the petitioner and the Municipality in the year 2015. In terms of the said lease the Municipality was supposed to provide space to the petitioner for construction of lift/ ramp / slope and for installation of generator and submersible pump. As the requisite space was not provided, the petitioner did not pay the amount as claimed by the Municipality.

It has been brought to the notice of the Court that a sum of Rs. 8,00,000/- was submitted before the Municipality by way of cheque for providing space for installation of pump, which has duly been encashed but space has not yet been provided.

Learned advocate representing the Municipality submits that space for installation of submersible pump will be provided to the petitioner soon. The Municipality seeks additional payment on account of providing space for setting up the lift, ramp, slopes etc.

No provision of law has been shown before this Court which permits the Municipality to withhold

renewal of license on account for non-payment of dues arising out of a lease deed. In the absence of a specific legal provision, it is impermissible for the Municipality to withhold renewal of trade license.

It is settled law that if a person is found to be in occupation of the property and running business therefrom, then renewal of license cannot be refused.

The petitioner claims to be running business of healthcare and diagnostics from the said place. Even after expiry of the trade licence the petitioner is compelled to run the business as the same is providing essential and emergency services to the general public. The Municipality has not taken any step to shut down the business of the petitioner for running the same without a valid trade license. The Municipality only intends to collect money from the petitioner and the petitioner is willing and agreeable to pay provided space is made available.

On account of non-payment of dues for identifying and providing land to the petitioner for constructing of lift, ramp, slope etc. the Municipality cannot withhold renewal of the trade licence. The Municipality is, accordingly, directed to renew the trade licence of the petitioner upon payment of the renewal charges. The Municipality cannot insist for further payment on any other account for renewal of the trade license of the petitioner.

The trade license shall be renewed by the Municipality within a period of four weeks from the date of filing the application for renewal, subject to payment of renewal fees.

It will be open for the Municipality to raise demand for providing the land to the petitioner but the said demand will not at all be connected with the renewal of trade license.

In view of the above, the order passed by this Bench dated April 12, 2023 is recalled.

The memorandum of review was found to be defective by the Stamp Reporter on the ground that the same was filed out of time.

The review applicant has relied upon the decision delivered by the Hon'ble Division Bench of this Court in ***Maruti Real Estate Private Limited & Anr. vs. Life Insurance Corporation of India & Ors.*** reported in ***2008 (4) ICC 413*** wherein it was inter alia held that Section 5 of the Limitation Act will not apply in connection with application filed in respect of a writ petition as there is no statutory time limit for filing application in the writ jurisdiction.

In view of the aforesaid, the defect pointed out by the Stamp Reporter cannot be taken to be a valid one.

The application for review 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.)