

19.01.2023
Item No. 04.
Court No.6.
S. De

**M.A.T. 1506 of 2022
with
I.A. No. CAN/2/2022**

**Miss Papri Das.
Vs
Kolkata Municipal Corporation & Ors.**

Mr. Kaustav Chandra Das,
Mr. Arnab Dutt,
...for the appellant.

Mr. Biswajit Mukherjee,
Mr. Manish Chandra Ray,
Mr. B. Chowdhury,
...for the private respondents.

Mr. Ranajit Chatterjee,
Mr. Arijit Dey,
...for the K.M.C.

Mr. Manoj Malhotra,
Mr. Suma Dey,
...for the State.

A judgment and order dated June 29, 2022, whereby the appellant's writ petition being WPA 11663 of 2020 was disposed of, is under challenge in this appeal.

The appellant and the private respondents reside in the same building. The grievance of the appellant is that the private respondents carry on business from the residential premises, which involves hazardous activities and creates nuisance for the appellant. The activities that are carried on emit foul smell and are generally detrimental to health.

It appears that a complaint was made by the appellant to the Corporation authorities who had

issued Certificate of Enlistment in favour of the private respondents to enable them to carry on the business in question. Hearings were held before the Licence Officer (H.Q.), Kolkata Municipal Corporation pursuant to an earlier order of this Court passed in W.P. 8052(W) of 2019, which had been filed by the appellant herein. Joint inspection of the site where the private respondents carry on business was held. The inspection report is to the effect that sticker cutting business is being carried on at the concerned premises. It was submitted on behalf of the appellant before the Licence Officer that thick plastic coating papers of huge quantity were dumped at the said premises which could be fire hazardous. The appellant also submitted that chemical material that was being used for the business is highly hazardous and inflammable in nature and also emits obnoxious smell and fumes causing environmental health hazard.

Allegations of the appellant were naturally denied and disputed by the private respondents. The private respondents categorically denied that they were running silk-screen printing business from the concerned premises as had been alleged by the appellant.

After hearing both the parties, the Licence Officer passed an order dated September 20, 2019, the operative portion whereof reads as follows :-

“After hearing the contentions of both parties, verifying the records, along with keeping the views of W.B.P.C.B. and taking into consideration of the report of joint inspection, the objection of Papri Das of running a hazardous business of silk screen printing by respondent is not established. It is observed that CE obtained by Dolon Das is also not for silk screen printing as alleged. It is for sticker, cutting, gumming, printing and order supplier. Hence, prayer of Papri Das for cancellation of the CE in question does not sustain. So, the prayer of Papri Das for cancellation of CE is rejected.

It is further confirmed from the joint inspection report and statement of Dolon Das that business of gumming is not running there. Hence, concerned Dy. Licence Officer (HQ) is directed to do correction in the C.E. by omitting the word ‘Gumming, printing’.”

Being aggrieved by and dissatisfied with the said order, the appellant herein challenged the same before the learned Single Judge in the present round of litigation.

Before the learned Single Judge, the private respondents were not represented for whatever reason. The learned Judge, however, went through the records of the case and heard learned counsel for the writ petitioner and Kolkata Municipal Corporation. The

learned Judge noted that there had been a joint inspection of the concerned business. The learned Judge also noted that the Licence Officer had directed amendment of the Certificate of Enlistment by omitting the words “gumming and printing”. The Certificate of Enlistment that had been annexed to the writ petition mentioned the nature of work conducted at the concerned premises as silk screen printing. However, this was rectified subsequently. The learned Judge directed the Licence Officer of Kolkata Municipal Corporation to ensure that no silk screen printing work is carried on at the said premises. The Officer-in-Charge of the Amherst Street Police Station was directed to oversee that the silk screen printing unit is not operated at the said premises. With those directions, the learned Judge disposed of the writ petition.

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant says that there is no separate path for ingress to/egress from the concerned premises. Without having separate entry /exit, the private respondents cannot carry on commercial activity at a residential premises. Learned advocate drew our attention to Sections 424 and 435A of the Kolkata Municipal Corporation Act, 1980. For

the sake of completeness, the said Sections are set out hereunder :-

“424. Permission in case of other non-residential uses of premises. –

(1) The Municipal Commissioner may, from time to time and with the prior approval of the Mayor-in-Council, notify such other non-residential uses of premises (including the one for an educational building or an institutional building or an assembly building or a business building or a mercantile building or an industrial building or a storage building or a hazardous building) as are not provided for in this Chapter and in the case of which prior permission of the Municipal Commissioner shall be necessary, subject to the provisions of section 425, for establishing, or materially altering, or enlarging, or extending the use of, any such premises.

(2) The Municipal Commissioner may refuse to give such permission in any case on the ground that such use-

- (a) would be objectionable by reason of the density of population in the neighbourhood, or*
- (b) would add to the traffic constraints in the vicinity including parking spaces, for vehicles, or*
- (c) would not conform to other predominant uses in the neighbourhood, or*
- (d) would constitute a fire hazard, or*

- (e) would be a nuisance to the inhabitants of the neighbourhood, or*
- (f) in the case of a hospital or clinic would be harmful to the patients due to noise or an environment which poses a health hazard, or*
- (g) in the case of an educational building would deprive the students of playground facilities, or*
on any other similar ground.

(3) Subject to any land use control under this Act or any other law for the time being in force, the Municipal Commissioner's decision in refusing permission under this section shall be final.

435A. Allowing Trade or Business alongside major roads.

(1) In residential buildings alongside major roads, commercial or trade activities (which is non hazardous in nature), as specified in Schedule VA of this Act except Wine and Liquor Shops, may be allowed by issuance of Certificate of Elistment against receipt of license fees as detailed in the budget schedule of the License Department, so passed by the Corporation, in its Budget meeting, subject to condition that the residential buildings may be allowed to use a mazimum of 45% of the total floor area for such non-hazardous office or commercial purposes. Non hazardous activity involving use of explosive, gas,

etc. will be permitted in the residential neighbourhoods.

(2) The Corporation shall be the authority to issue permission to the owner and/or Certificate of Enlistment to the traders or businessmen intending to carry on non hazardous trade or business or already carrying on such non hazardous trade or business in the premises in question subject to payment of requisite fees as may be fixed in the schedule of License Department, so passed by the Corporation, in its Budget meeting. However, the traders or businessmen will be liable to produce necessary proof of occupancy, as per extant norms, rules and procedure followed by the License Department to carry on such trade or business and will also produce such permission or No Objection Certificate or License from the respective authorities as may be required for this purpose.

(3) For the purpose of carrying out any of the listed permissible category of business activities of non-residential in nature in residential building as specified in Schedule VA, the existing parking space in such residential building shall not be allowed to be converted for undertaking such business activities.”

Learned advocate submitted that two out of the three businesses that are being carried on by the private respondents are creating tremendous nuisance

for the appellant/writ petitioner. Schedule 5A of the Kolkata Municipal Corporation Act, 1980, does not contemplate the kind of business that the private respondents are carrying on in a residential building. The Corporation should forthwith cancel the Certificate of Enlistment in respect of the said two businesses.

Learned advocate for the private respondents has drawn our attention to the Certificate of Enlistment dated January 22, 2020. The same indicates the nature of trade as **“WORKSHOP OF NON FOOD ITEMS – STICKER CUTTING & SUPPLIER”**

Learned advocate for the appellant made a further grievance that the private respondents have installed Close Circuit Television at the said premises which is intruding into the privacy of the appellant. Learned advocate for the private respondents says that it is correct that Close Circuit Television has been installed for security purpose but the same is no way invading upon the privacy of the appellant.

We make it clear that the Close Circuit Television System that has been installed must be operated by the private respondents ensuring that in no manner the privacy of the appellant is infringed.

As regards cancellation of the Certificate of Enlistment issued in favour of the private respondents, we see no reason to pass such a direction on Kolkata

Municipal Corporation. The nature of business that the private respondents are carrying on at the said premises, seems to be covered by the second entry in Schedule 5A to the Kolkata Municipal Corporation Act, 1980. We, however, further clarify that no machine will be used for business purpose at the said premises by the private respondents which could create any nuisance for the appellant. Manually operated machines of course may be permissible. We are sure that the private respondents will respect not only the privacy of the appellant but will also make all efforts to see that no undue discomfort or inconvenience is caused to the appellant by reason of the private respondents carrying on their business at the said premises. As law abiding citizens, this is the minimum the Court will expect from the private respondents.

We find no reason to interfere with the order under appeal. The appeal being MAT 1506 of 2022 is, accordingly, disposed of along with the application being I.A. No.CAN/2/2022.

Needless to say, if the appellant is so advised, she will be at liberty to approach the appropriate civil forum for any further relief that she may claim.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)