

06
18.09.2023
A.G.M.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 22199 of 2023

**Safi Uddin Naskar
-versus
The State of West Bengal & Ors.**

**Mr. Pintu Karar
...For the petitioner.**

**Mr. Amal Kumar Sen, A.G.P.
Mr. Lal Mohan Basu
...For the State.**

**Mr. Sayan Sinha
... For the Baruipur Municipality.**

The petitioner is aggrieved by the act of Baruipur Municipality in canceling the trade license issued in his favour on the ground that the business was being run from an unauthorised construction.

The petitioner submits that the Municipality could not have cancelled the trade license in view of the order dated 13th September, 2021 passed by the Urban Development & Municipal Affairs Department.

It has been submitted that the trade license was obtained by making application online as per the prevailing system.

Learned advocate representing the Municipality submits that the building in question from where the business is being run is an unauthorised one. No sanction was granted by the Municipality to raise construction in the subject premises.

Learned advocate for the respondent Municipality submits that in terms of the aforesaid order dated 13th

September, 2021, the Municipality was within its jurisdiction to cancel the certificate of enlistment after getting knowledge of the fact that the business was being run from an unauthorized subject premises. The Municipality has taken steps for removal of the unauthorised construction in accordance with Section 220 of the West Bengal Municipal Act, 1993.

Respondent Municipality relies upon a decision passed by the Court in the matter of ***Raju Chanda & Anr-Versus- State of West Bengal & Ors*** reported in (2010) 3 CHN 39 (Cal). At paragraph 16, the Court observed that permitting business to be run from a premise which is an unauthorised one would give premium to such illegal construction. Permitting business to be run from a building having unauthorised additional construction may be dangerous since there is likelihood of an accident on a business premises which is frequented by the citizens.

In response to the aforesaid submission, the petitioner submits that the structure in question is in existence for a long period of time and the Municipality was not proper in canceling the trade license.

I have heard the submissions made on behalf of both the sides. There is nothing on record to suggest that the construction in question has been made in accordance with the plan sanctioned by the Municipality. A construction may unauthorisedly does not become legal due to passage of time.

Permitting business or any type of activity from an unauthorised construction may, to a huge extent, encourage dishonest and unscrupulous builders to raise construction and thereafter use the same for commercial activity with a view to legalize the same. Such type of action ought not to be permitted at all.

The Municipality issued the trade license relying upon the documents submitted by the applicant online.

The Municipality hardly had any scope to verify the documents with regard to sanction of the subject premises. Immediately after it came to the knowledge of the Municipality that business is being run from an unauthorised construction, steps have been taken to cancel the trade license. There is nothing erroneous on the part of the Municipality in adopting such a step.

However, keeping in mind the principle of natural justice which is required to be complied at the time of taking any punitive action, it would have been proper had the Municipality granted one opportunity of hearing to the persons affected by such order.

Accordingly, the Court directs the Municipality to grant one opportunity of hearing to the petitioner or any other persons(s) responsible for making construction including the owner of the subject premises, to produce the sanctioned plan pursuant to which such construction was made.

In the event, it is found that no plan has been sanctioned for raising such construction, then the Municipality may proceed in accordance with law. If sanction is found to have been granted to raise construction, then the Municipality may consider revoking the order of cancellation of license and permit the petitioner to run the business subject to compliance of all necessary formalities.

The Municipality is directed to take steps in terms of the aforesaid direction positively within a period of four weeks from the date of communication of this order.

Since, *prima facie*, it has been found that no plan has been sanctioned for raising construction, accordingly, the petitioner is restrained from carrying on business from the subject premises till the Municipality taken a decision in the matter.

It is made clear that the Court is not interfering with the order of cancellation of trade license.

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.

(Amrita Sinha, J.)