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17-10-2023
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

**MAT 2036 of 2023
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IA NO:CAN/1/2023**

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

Mr. Srijib Chakraborty,
Mr. Pintu Karar,
Mr. Akashdeep Mukherjee
... For the Appellant.

Mr. Amal Kumar Sen, learned AGP,
Mr. Lal Mohan Basu
... For the State.

Mr. Sayan Sinha,
Mr. Soham Kumar
... For Baruipur Municipality.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated September 18, 2023, whereby the appellant's writ petition being WPA 22199 of 2023 was disposed of by a learned Single Judge of this Court, is under challenge in this appeal at the instance of the writ petitioner.

The appellant/writ petitioner approached the learned Single Judge being aggrieved by cancellation of a trade license that had been issued in his favour by Baruipur Municipality, on the ground that the business was being run from an unauthorized structure.

It was submitted on behalf of the writ petitioner that in view of the order dated September 13, 2021, issued by the Urban Development and Municipal Affairs Department, and also in view of the relevant provisions of the West Bengal Municipal Act, 1993, the Municipality could not have cancelled the trade license on the ground mentioned in the cancellation notice.

Learned advocate for the Municipality pointed out that there was no sanctioned building plan for the structure in question. Learned counsel relied on a decision of this Court in the case of **Raju Chanda and Anr. Vs. State of West Bengal and Ors.**, reported at **(2010) 3 CHN 39 (Cal)**, in support of the submission that permitting business to be run from a premise which is unauthorized, would give premium to such illegal construction and may also be dangerous since there is likelihood of accident.

It was submitted on behalf of the writ petitioner that the structure in question has been in existence for a long period of time.

The learned Judge observed that there was no material to show that the structure in question was supported by a sanctioned plan. The learned Judge then disposed of the writ petition with the following observations and directions:-

“ 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 unauthorized 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 person(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. ”

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

We have heard learned advocates for the parties at length. Without going into the merits of the case, we are of the view that if the Municipality decided to cancel the trade license/Certificate of Enlistment that had been issued in favour of the appellant, on whatever ground, an opportunity of hearing or an opportunity of showing cause should have been granted to the appellant. After all, it is a question of the appellant's livelihood and touches upon his fundamental rights under Articles 19 and 21 of the Constitution of India.

We do not deem it necessary to go into the question of whether or not the Municipality is within its rights to cancel the trade license on the ground that the trade is being carried on from an unauthorized building. We set aside the order of cancellation of the trade license only on the ground of breach of the principles of natural justice. We repeat that since the order of cancellation of the trade license would have severe civil consequences for the appellant, he deserves an opportunity of showing cause or being heard before he suffers such cancellation.

We are not for a moment putting our seal of approval on the impugned construction. If the impugned construction is unauthorized, as has been found by the Municipality, it may be removed by the Municipality in accordance with law. We are only on the question of cancellation of the trade license of the appellant. We also do not say that the fact that the business is being carried on from an unauthorized structure cannot be a ground for cancellation. Nor do we say that the same can be a ground for cancellation. We leave it entirely to the Municipality

to take an informed decision in accordance with law after observing the principles of natural justice.

The order under appeal stands modified to the aforesaid extent.

The Municipality shall grant a hearing to the appellant or his authorized representative on November 01, 2023 (Wednesday), at 12-00 noon, on the issue of cancellation of the appellant's trade license. No further notice of such hearing need be issued. This order shall serve as a notice. The appellant will be at liberty to make such submission and rely on such documents at the hearing, as he may be entitled to in law. We doubly clarify that we have not touched upon the merits of the case.

The appeal and the connected application are, accordingly, disposed of.

Affidavits not having been called for, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)