

29. 31.01.2023
bd. Ct.15

W.P.A. 34388 of 2014

Asok Debnath

-vs-

The Principal Director, Defence Estate, Eastern
Command (MOD) & Ors.

Mr. Dhananjay Banerjee

Ms. Oindrila Ghosh

... for the petitioner.

Mr. Indrajit Dasgupta

Ms. Puspita Bhowmick

Ms. Rima Biswas

... for the respondents.

The writ petition is preferred, inter alia, challenging the order dated 17th July, 2014 issued by the Chief Executive Officer, Cantonment Board, Barrackpore, whereby the application of the petitioner for issuance of trade licence was spurned on the score that No objection certificate from the house owner/tax payer was not submitted along with application form for issuance of trade licence. It has also been contended on behalf of the petitioner that petitioner's mother was having trade licence and who has died which led the petitioner to make an application for issuance of trade licence afresh. It has also been submitted on behalf of the petitioner that on the ground of failure by the applicant to submit No objection certificate from house owner issuance of trade licence cannot be denied by the authority concerned denying right of the petitioner to run lawful business in the premises so long the applicant is having valid tenancy agreement. In support of such contention reliance has been placed on the judgement of the

Apex Court reported in **(2016) 14 SCC 263 (Sudhakaran –vs- Corporation of Trivandrum and Anr.)**. Paragraph 9 of the said judgment runs infra:

“After due consideration of the issues involved, we find merit in the submission made on behalf of the appellant. The statutory provision already quoted above shows that the requirement of the consent of the landlord is applicable only when a person intends to obtain a licence for the first time. Renewal or subsequent application for obtaining licence on expiry of the period of the existing licence, during the currency of the tenancy, is not applicable for obtaining licence. Even in the case of application for obtaining licence for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant.”

Though Mr. Dasgupta, learned advocate, representing the Cantonment Board, Barrackpore, has made an attempt to defend the decision of the Chief Executive Officer in denying claim of the petitioner to issue trade licence but in consideration of the law laid down by the Apex Court in the case of **Sudhakaran** (supra) this Court finds substance

in the contention made on behalf of the petitioner.

On perusal of the impugned order dated 17th July, 2014 issued by the Chief Executive Officer it appears that on the sole ground of non-supply of No-objection certificate from the house owner claim of the petitioner for issuing trade licence that too after the death of petitioner's mother who was having valid trade licence, can not be denied.

In view of the aforesaid scenario and in consideration of the law laid down by the Hon'ble Supreme Court in the case of **Sudhakaran** (supra) the impugned order dated 17th July, 2014 issued by the Chief Executive Officer stands set aside.

This Court directs the Chief Executive Officer being the respondent no.3 to issue trade licence infavour of the petitioner, if it is found that petitioner is enjoying the premises in question based on valid tenancy agreement. Before issuance of trade licence in favour of the petitioner the respondent no. 3 shall be at liberty to ask for tenancy agreement from the petitioner. However, the process of issuing trade licence in favour of the petitioner shall be concluded within a period of eight weeks from the date of communication of this order.

With the aforesaid direction, the writ petition stands disposed of. However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if

applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)