

Item No.3
30.11.2023
Court. No. 2
GB

*CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE JURISDICTION*

WPA 704 of 2023
With
CAN 2 of 2023

Papiya Saha
VS
Siliguri Municipal Corporation & Ors.

*Mr. Partha Pratim Roy,
Mr. Avrojoyoti Das,
Mr. Kushal Chatterjee,
Ms. Pratusha Dutta Chowdhury,
Mr. Rajdeep Das,
Ms. Sneha Sarkar*

...for the Petitioner.

*Mr. Subir Kumar Saha,
Ms. Bedashruti Bose*

...for the State.

*Mr. Raja Saha,
Mr. Subham Chanda*

...for the SJDA.

Mr. Deborshi Dhar

...for the Siliguri Municipal Corporation.

*Mr. Bikramaditya Ghosh,
Mr. Manik Das,
Ms. Supriya Singh*

...for the Respondent Nos.10 & 11.

In the 3rd line of 2nd paragraph of the order dated November 29, 2023 the expression 'petitioner' be deleted and the expression 'respondent nos.10 and 11' be inserted.

Let the correction be incorporated by the registry and the same be treated as a part of the earlier order. Rest of the order dated November 29, 2023 remains unaltered.

The writ petition was filed by one of the co-owners of a property situated at 147, A/B/C/, Raja Ram Mohan Roy Road, Hakimpura, Siliguri. From the said premises

the respondent nos.10 and 11 were running a guesthouse, named and styled as 'Hemlata Bhawan'. The petitioner is the sister of the respondent nos.10 and the sister-in-law of the respondent no.11.

The original partnership was constituted between Surya Kumar Saha, Uttam Kumar Saha, Namita Saha and Subodh Kumar Saha under a partnership deed dated January 12, 2000. Sanjeeb Saha was admitted in the partnership upon death of Surya Kumar Saha and the partnership was reconstituted on January 1, 2009. The trade license was granted in favour of Hemlata Bhawan sometime in 2004-05. Thereafter, all licenses were renewed from time to time in the name of Hemlata Bhawan, the partnership firm. The firm was further reconstituted under a retirement-cum-reconstituted deed of partnership dated April 1, 2016 when Uttam Kumar Saha retired from the firm and Monica Saha, wife of Sanjeeb Saha entered into the partnership firm. The partnership was reconstituted by another deed dated April 1, 2017, upon the death of Subodh Kumar Saha and Namita Saha on February 16, 2017 and March 10, 2017. Thus, at present, Sanjeeb Saha and Monica Saha are the only existing partners who are in possession of the part of the property from which the guesthouse is running. Admittedly, Papiya Saha has also an equal share in the said portion of the property, along with Sanjeeb Saha.

The writ petition was filed by Papiya Saha challenging the continuation of the partnership business

without appropriate statutory compliances and a trade license. The learned coordinate Bench, upon coming to a finding of statutory violation, had directed that the guesthouse should be stopped and passed necessary orders on the police authorities. The respondent nos.10 and 11 preferred an appeal. The Hon'ble Division Bench disposed of the appeal upon holding that the Siliguri Municipal Corporation should dispose of the pending applications for grant of license/renewal of license in accordance with law, upon hearing all the parties. The Hon'ble Division Bench also observed that the pendency of an application before the District Magistrate in terms of the SARAIS Act, 1867, would not be an impediment towards running the guesthouse, in the event the certificate of enlistment was granted by the corporation. Thereafter, the parties were heard and an order was passed by the Commissioner, Siliguri Municipal Corporation. It was ordered that Sanjeeb Saha and Monica Saha should be allowed to carry on their trade/profession/calling in terms of the permanent enlistment certificate no.0917P86823151811. However, the same was subject to further verification, in case the situation demanded. Sanjeeb Saha and Monica Saha were also directed to clear the property tax pending, if any. It was further directed that permanent certificate of enlistment would not absolve Sanjeeb Saha and Monica Saha from their liability to obtain other statutory clearances, as required by law.

The respondent nos.10 and 11 have filed the application being CAN 2 of 2023, praying for modification of the order of the learned coordinate Bench by which the business was stopped. It is submitted that pursuant to the direction of the Hon'ble Division Bench, necessary certificate of enlistment had been granted.

Mr. Roy, learned advocate appearing on behalf of the writ petitioner submits that the trade license was not granted in accordance with law. The copies of the statutory clearances were not made available to the petitioner, despite the petitioner having asked for the same.

Having heard the rival contentions of the parties, this Court finds that the municipal commissioner was satisfied that the clearance required to run the business, was available and the certificate of enlistment was granted subject to further directions of payment of property tax and compliance of other statutory formalities, if required by law. It was also clarified that the certificate of enlistment would not absolve the respondent nos.10 and 11 from complying with other requirement.

Mr. Saha, learned advocate for the State respondents submits that the police authorities do not have any objection for the guesthouse to run at present. There is no law and order problem. The police authorities had acted only on the direction of the Court.

This Court is of the view that the Hon'ble Division Bench had narrowed down the scope of the writ petition to the extent that the guesthouse could run, provided a proper certificate of enlistment was granted by the corporation. The Hon'ble Division Bench also held that the pendency of the application before the District Magistrate under the SARAIS Act, would not be an embargo for running the guesthouse.

In the light of the observations of the Hon'ble Division Bench, the writ petition is now taken up. The 'no objection' of the police is available from the submission of the learned Additional Government Pleader. The trade license has been granted by the municipal corporation. The trade license in the name of Hemlata Bhawan had been renewed from time to time, until the same had expired. The fire license has also been granted. The pendency of the application under the SARAIS Act is yet to be disposed of by the District Magistrate.

Under such circumstances, the writ petition is disposed of, as the challenge in the same does not survive in view of the subsequent development. However, the contention of the petitioner that the partnership was not properly constituted or that she was being deprived of her right to enter into the partnership business upon demise of her parents, are matters to be decided by the appropriate forum and not in this proceeding. The other contention of the petitioner that the trade license was not properly granted, is always open to challenge and the

petitioner is always at liberty to take steps in accordance with law. A partition suit is also pending and there is not order of injunction in favour of the petitioner.

The Court finds that the Commissioner of the corporation has elaborately dealt with the issues and has come to a specific finding that the respondent nos.10 and 11 satisfied the requirement of law, for grant of a certificate of enlistment.

This Court has also considered the fact that Sanjeeb Saha is the co-owner who is using the premises along with his wife and is running the guesthouse from there. Thus, the question of production of rent receipt from the owners, for running the business, will not arise at this stage.

Accordingly, the writ petition is disposed of.

With the disposal of the writ petition, the application being CAN 2 of 2023 is also disposed of with a direction upon the police authority to hand over the keys and all documents in respect of the business, to the respondent nos.10 and 11 forthwith.

The rights of the parties, the validity of the partnership, etc., can be decided by the appropriate forum and not in a writ petition.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)