

OD-2

ORDER SHEET
WPO No.1313 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

HARSH VARDHAN MALL
-Versus-
KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:26th June, 2023.

Appearance:
Mr. M. K. Dutta, Adv.
Mr. Rakesh Jain, Adv.
Mr. B. Kour, Adv.
...for Petitioner.

Mr. Srijan Nayak, Adv.
Ms. Rituparna Maitra, Adv.
...for KMC.

Mr. Arindam Paul, Adv.
Ms. Parna Mukherjee, Adv.
..for Respondent no.5.

The Court:-The petitioner is aggrieved by the alleged inaction on the part of the License Department of the Kolkata Municipal Corporation for not considering his representation filed for cancellation of the license issued in favour of the private respondent on the ground that the same was obtained upon furnishing false and incorrect information and documents.

Learned advocate representing the Kolkata Municipal Corporation contends that he is the owner of the subject premises and he never let out the premises in favour of the private respondent. The petitioner claims to be unaware as to how the private respondent got the possession of the subject property. The petitioner also contends that no rent receipt was ever issued in favour of the private respondent. The private respondent

furnished false information and documents before the Kolkata Municipal Corporation for obtaining the trade license.

Prayer has been made for directing the License Department of the Kolkata Municipal Corporation to consider the representation of the petitioner and to decide as to whether the documents submitted by the private respondent for the purpose of obtaining the trade license are genuine or not.

Learned advocate representing the private respondent opposes the prayer of the petitioner. It has been submitted that the private respondent is the sub tenant of the subject premises. Agreement of sub tenancy is still valid and the private respondent is running the business for a considerable period of time on the basis of the license issued by the Kolkata Municipal Corporation.

Learned advocate representing the Kolkata Municipal Corporation is yet to receive instruction in the matter.

Upon hearing the submissions made on behalf of the parties, it appears that the petitioner feigns ignorance of the status of the private respondent in the subject property. According to the petitioner, the private respondent is not a tenant under him. The petitioner, however, does not submit whether the private respondent is a sub tenant under any of the tenants of the petitioner. License in question which has been annexed to the writ petition was issued in the year 2014.

The private respondent submits that the business is being run for a considerable period of time. Assuming the license was issued in the year 2014, by now, at least ten years have lapsed during which the private respondent is running the business from the said location.

The petitioner claims that he got to know about the existence of the trade license very recently. It is for the owner to take appropriate steps against any unauthorized occupants in the subject premises.

The Kolkata Municipal Corporation will not be the competent authority to decide whether agreement of sub tenancy was validly executed or not or whether there is at all a valid sub tenancy pursuant to which the private respondent is occupying the subject premises.

The issue appears to be a purely civil dispute in between the tenant and the occupier of the subject premises. There are disputed question of fact which can neither be adjudicated by the Writ Court nor the Kolkata Municipal Corporation.

As long as the private respondent holds a valid license from the Kolkata Municipal Corporation, he is entitled to run his business in accordance with the same.

In view of the above, no relief can be granted to the petitioner in the instant writ petition. The writ petition fails and is hereby dismissed.

Dismissal of the writ petition will, however, not stand in the way of the petitioner for approaching the appropriate forum for other reliefs in accordance with law, if so advised.

Affidavit of service filed in Court today is taken on record.

Leave is granted to the learned advocate appearing on behalf of the private respondent to file Vakalatnama in the department in course of the day.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J)