

APO /104/2023
WPO/1313/2023
IA No.GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

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

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
The Hon'ble JUSTICE APURBA SINHA RAY

Date: October 04, 2023.

Appearance:
Mr. Shyamal Sarkar, Sr.Advocate,
Mr. Sankarsan Sarkar, Advocate,
Mr. S. Dasgupta, *Advocate*
Mr. Rakesh Jain Advocate
...for the Appellant-petitioner
Mr. Srijan Nayak, Advocate,
Ms. Rituparna Maitra, Advocate
For the KMC

THE COURT: The appellant is aggrieved by a
judgement and order dated June 26, 2023 whereby his writ

petition being WPO/1313/2023 was dismissed by a learned single Judge of this Court.

It appears that the appellant approached the learned single Judge contending that the private respondent is carrying on business on the ground floor of the premises of which the appellant is the owner without having obtained requisite licence therefor from Kolkata Municipal Corporation (in short 'KMC') in terms of Section 435 of Kolkata Municipal Corporation Act read with Schedule V thereof. The grievance of the writ petitioner was that KMC is taking no step in spite of the writ petitioner having lodged complaint with KMC.

Submissions were made before the learned single Judge, as would appear from the order impugned, as regards whether or not the private respondent wrongfully occupies the ground floor of the premises in question. This might have ultimately resulted in giving an impression to the learned single Judge that the dispute between the writ petitioner and the private respondent is civil in nature. The learned Judge therefore, dismissed the writ petition holding that disputed

facts cannot be adjudicated by the writ court. Hence this appeal at the instance of the writ petitioner.

We have heard learned Counsel for the parties. We are of the opinion that ends of justice will be served if we pass the following order:

KMC shall depute one or more competent officers to inspect the premises where the private respondent is carrying on business. No prior notice of such visit shall be served either on the appellant or on the private respondent. It should be a surprise visit.

Needless to say, if KMC finds that there is merit in the grievance of the appellant herein and the private respondent is carrying on business from the concerned premises without holding requisite licence in terms of Section 435 of the KMC Act read with Schedule V thereof, KMC shall take appropriate steps in the matter including the stoppage of business till such time that the private respondent obtains requisite licence.

We have not gone into the merits of the dispute between the parties. It is upto the KMC authorities to take appropriate steps in the matter so that the provisions of KMC Act are enforced. This means that KMC shall ensure that any business that the private respondent may be carrying on from the concerned premises is not in breach of any of the provisions of the KMC Act, 1980.

We clarify that KMC will not in any manner be concerned with the nature of possession of the concerned premises by the private respondent or with the legality or otherwise of such possession.

Copy of the inspection report shall be made available both to the appellant and the private respondent within a week from the date of the inspection. Let the entire exercise be completed by the end of November, 2023.

The order of the learned single Judge is set aside.

Both the appeal and the application are disposed of accordingly.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to have been admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

dg/