IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Justice Amrita Sinha

WPO 1303 of 2015

Pawan Kumar Jhunjhunwala
Vs.
The Kolkata Municipal Corporation & Ors.

For the writ petitioner	:-	Mr. Meghnad Dutta, Adv. Mr. Samit Rudra, Adv.
For the KMC	:-	Mr. Ashok Kr. Banerjee, Sr. Adv. Mr. Barin Banerjee, Adv. Mr. Dilip Kr. Chatterjee, Adv. Mr. Jayanta Kumar Dhar, Adv.
Hearing concluded on	:-	17.02.2023
Judgment on	:-	24.02.2023

Amrita Sinha, J.:-

The issue to be decided in the present writ petition is whether any fee under Section 435/435A of the Kolkata Municipal Corporation Act, 1980 ('the Act' for short) is payable for running advocates' chamber in a non residential building.

The petitioner claims to be an advocate engaged in legal profession. He is carrying on profession under the name and style of Jhunjhunwala & Company from an office space measuring about 425 sq.ft. in the fifth floor of the building known as Hastings Chambers at 7C, Kiran Sankar Roy Road, Kolkata 700001.

A certificate of enlistment for carrying on the legal profession under the name and style of Jhunjhunwala & Company was obtained from the Kolkata Municipal Corporation in the year 1984-85 and the same was renewed upto 1989-90. At the time of renewal the petitioner paid the necessary charges imposed by the Corporation including fee u/s 435 of the Act.

Apart from payment of tax on profession to the Corporation, the petitioner regularly pays professional tax under the West Bengal State Tax on Profession, Trades, Callings and Employment Act, 1997.

The petitioner stopped paying profession tax to the Corporation from the year 1990-91. In December, 2008 the petitioner filed fresh application for obtaining certificate of enlistment. An inspector of the Corporation inspected the office of the petitioner and intimated him that for renewing the certificate of enlistment the petitioner is required to pay Rs. 26,600/- only.

On good faith the petitioner paid the aforesaid sum and the Corporation accepted the money and issued the certificate of enlistment. The receipt of the aforesaid sum issued by the Corporation mentions that a sum of Rs. 25,200/- only has been appropriated by the Corporation on account of arrears from 1990-91 to 2007-08 and a sum of Rs. 1,300/- only is the fee for use of premises for non-residential use with AC under Section 435 and Rs. 50/- is the fee for issuance of certificate of enlistment under Section 199 of the Act. Rs. 50/- has been charged as processing fee.

The petitioner continued payment of fees under Section 435 of KMC Act for the subsequent years.

The petitioner thereafter realized that no fee is required to be paid under Section 435 of the Act for using an advocate's chamber in a non residential building. The petitioner, accordingly, sought for issuance of the certificate of enlistment for the years 2012-13 and 2013-14 without insisting upon payment of fee under Section 435 of the Act. The Corporation refused to issue/ renew the certificate of enlistment in favour of the petitioner.

The petitioner contends that the profession of the petitioner does not fall within the category of trade and operations mentioned in Schedule V of the Act and, as such, the petitioner is not required to obtain any license under Section 435 of the Act for carrying on legal profession from his air conditioned chamber cum office in a non residential building.

Learned advocate for the petitioner has relied upon Sections 435 and 435A, Schedules V and VA of the Act in support of his case.

It has been submitted that the issue in question has already been decided by a coordinate Bench of this Court in ***WP No. 1302 of 2015*** (***P.K Advisory Services Private Limited vs. The Kolkata Municipal Corporation & Ors.***).

The petitioner prays for a direction upon the Corporation to renew the certificate of enlistment in his favour without insisting upon payment of any fee under Section 435 of the Act. Further prayer of the petitioner is to direct the Corporation to refund the amount accepted by the Corporation under Section 435 of the Act along with interest.

The prayers of the petitioner have been opposed by the learned senior advocate representing the Corporation. It has been mentioned in the affidavit in opposition filed by the license officer of the Corporation that lawyer's chamber comes under the permissible category of the business activity that is non-residential in nature. It has been averred that the municipal authority can charge license fees from lawyers under Section 435 (4) and 435A (1) under Schedule VA of the Act. It has been contended that the municipal authority rightly charged the sum for renewal of the certificate of enlistment.

A further affidavit has been filed by the license officer of the Corporation mentioning that as per the books of records maintained by the Corporation there are one hundred eleven apportioned shares at the subject premises. The entire property is recorded as fully non-residential in the books of records of the Assessment Collection (North) Department.

The building in question is a G+5 storied building. Upto G+4 storey is used for commercial purpose and the top floor is used for residential purpose. A joint inspection was conducted by the Deputy License Officer and the Assistant Officer on 1st February, 2023 at the subject premises and it was found that all the floors (G+5) of the building are used for commercial purpose. A structure with asbestos shed approximately 400 sq. ft. was located on the fifth floor that is the roof of the building and it was found that some people reside there.

It has been contended that as a portion of the building is used for residential purpose, the building cannot be treated as a non residential one, and fee for using the building for non residential purpose will be payable.

The respondent authority prays for dismissal of the writ petition.

I have heard and considered the rival submissions made on behalf of both the parties.

The Corporation contends that license fee can be charged under Section 435 (1), 435A (4) and under Schedule VA.

Section 435 of the Act deals with premises not to be used for non-residential purpose without municipal license. Section 435 (1) of the Act mentions that except as provided in the Act, no person shall use or permit to be used any premises for any of the non-residential purposes mentioned in Schedule V without or otherwise than in conformity with the terms of a municipal license granted by the Municipal Commissioner.

The purposes for which premises may not be used without permission do not include an advocate's chamber/ office. The same implies that no license is required to be obtained under Section 435 for running an advocate's chamber/ office either in a residential or non residential building.

Section 435(4) mention that the Corporation shall by regulation determine the fees to be paid in respect of a municipal license to be granted under sub-Section (1) and may specify different fees for different categories of non-residential uses in different parts of Kolkata.

The submission of the respondent that the Corporation can determine fees under Section 435 (4) in respect of lawyer's chamber is absolutely misplaced and contrary to the provision of law. If no license is required to be obtained for using a premises for non-residential purpose in accordance with Section 435 (1), there is no question of determination of fees under Section 435 (4).

Section 435A has been inserted in the Act by way of an amendment with effect from 15th January, 2015. Section 435A (1) mentions that in residential buildings alongside major roads, commercial or trade activities, non hazardous in nature as specified in Schedule VA may be allowed by issuance of certificate of enlistment against receipt of license fees.

The premises from where the petitioner is carrying on profession is categorized and recorded as a fully non-residential building in the municipal records and, accordingly, the provision of Section 435A cannot be made applicable in this case. Schedule VA of the Act deals with business activities, non-residential in nature, in residential buildings. The premises of the petitioner, not being a residential building, Schedule VA will also not be applicable in this case.

Finger was pointed at the 400 sq. ft. room in the roof of the building used for residential purpose to contend that the building is not exclusively meant for non residential purpose but is of mixed occupancy. Learned advocate for the petitioner has cleared the doubt by mentioning that the said structure, although an illegal and unauthorized one, is the durwan's / caretaker's room. A G+V storied building with one hundred eleven apportions will certainly require a durwan/care taker to look after and manage the building. Provision has to be kept aside for such purpose. The durwan/

caretaker's room will not change the character of the building from non residential to residential.

The key word in the statute to determine as to whether the aforesaid provision will apply or not is 'residential premises'. The law applicable for residential premises cannot be invoked in respect of non residential premises, unless the same is specifically mentioned in the Act. The Corporation has categorized the buildings within its jurisdiction in two distinct sets; residential and non residential. The tax component of the two sets is different. The fee payable in respect of any profession, trade or calling carried on from a residential property and a non residential building is separate.

A non residential building is necessarily meant for commercial use; but residential premises can be used for non residential purpose, only if the law permits, otherwise not. This is not a case of a residential building used for non residential purpose. The building from where the petitioner is carrying on his profession is recorded as fully non residential and the profession for which the petitioner is using the office in the said premises does not require a separate licence, accordingly, there is no scope for levying further tax/fee upon the petitioner.

Section 199 of the Act deals with certificate of enlistment of profession, trade and calling. Schedule IV of the Act deals with the class of persons required for obtaining certificate of enlistment for carrying on any profession, trade and calling. The aforesaid provision mentions that every person engaged or intending to be engaged in any profession, trade and calling categorized in Schedule IV shall obtain a certificate of enlistment and renew the same with such application fee as specified in the guideline at such rate as may be determined by the Corporation.

The profession of the petitioner, being incorporated in Schedule IV of the Act, will require a license under Section 199 of the Act, but the petitioner cannot be subjected to payment of any fee under Section 435/435A of the Act or the Schedules corresponding thereto.

In view of the discussions made herein above, it is evident that Section 435 or 435A cannot be made applicable in respect of a lawyer's chamber running from a non-residential premises.

The Corporation is, accordingly, directed to issue necessary certificate of enlistment in favour of the petitioner on the basis of the application made by the petitioner subject to payment of the application fee.

The prayer of the petitioner for refund of the money paid by him under Section 435 of the Act, however, cannot be accepted, as the petitioner voluntarily deposited the money without raising any objection at the initial stage. Moreover, the present writ petition seeking refund of the amount erroneously collected by the Corporation was filed after the prescribed period of limitation. The claim of the petitioner for refund is thus barred under the law of limitation.

Writ petition stands disposed of.

No costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)