

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/211/2023
WITH
WPO/1783/2023
IA NO: GA/1/2023

SWAPAN KUMAR KHASKEL
VS.
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

AND

The Hon'ble JUSTICE APURBA SINHA RAY

Date : 15th January, 2024.

Appearance:

Mr. M. A. Samad, Adv.

Ms. Priyanka Sharma, Adv.

.....for Appellant/petitioner.

Mr. Gopal Chandra Das, Adv.

Ms. Manisha Nath, Adv.

...for KMC.

Md. S. Hossan, Adv.

Ms. Sanjida Sultana, Adv.

Mr. Prithviraj Biswas, Adv.

. . .for the private respondent no.5

Mr. Debangshu Dinda, Adv.

...for State

The Court:- Affidavit of service filed in court today, be kept with the records.

Leave is granted to learned advocate on record for the appellant to correct the cause title of the Stay Petition by adding the Officer in Charge, Tangra Police Station as respondent No.4 and by marking Binod Kumar Gupta as respondent No.5.

By consent of the parties, the appeal is taken up for hearing along with the connected application.

A judgement and order dated December 5, 2023, whereby the appellant's writ petition being WPO/1783/2023 was dismissed by a learned Judge of this Court, is the subject matter of challenge in this appeal.

It appears that the private respondent herein was inducted as a tenant by the predecessor-in-interest of the appellant in respect of a portion of the concerned premises. The private respondent runs a business under the name and style M/s. Anju Jewellers from the said premises. Certificate of enlistment has been issued by Kolkata Municipal Corporation (in short, "KMC") in favour of the private respondent.

The appellant herein approached the learned Single Judge alleging that the certificate of enlistment was obtained by the private respondent fraudulently. The learned Judge noted that the representation of the writ petitioner made to the Municipal Commissioner seeking cancellation of the trade licence issued in favour of the private respondent is pending consideration. The learned Judge also noted that the private respondent is running the business for a considerable period and the current trade licence is valid upto 2023-24. Electricity bill in the name of the private respondent was produced before the learned Judge as proof of the private respondent's occupancy of the concerned premises. It was noted that no-objection certificate from the

Fire Authorities or the West Bengal Pollution Board is not necessary for running the kind of business that the private respondent does. The learned Judge dismissed the writ petition. Hence, this appeal.

Learned advocate for the appellant tried to impress upon us that the private respondent cannot run any kind of business from the premises in question which is residential in nature. No commercial activity can be carried on in any portion of such premises. He further repeated his argument that by suppressing material facts and by taking resort to fraudulent means, the private respondent induced KMC to issue trade licence in his favour.

We have not called upon the respondents to make submission. We are of the view that since a representation is pending before the Municipal Commissioner at the instance of the appellant/writ petitioner, the same should be considered and disposed of in accordance with law, observing the principles of natural justice.

Accordingly, we direct the Municipal Commissioner or any competent officer authorised by him to take a reasoned decision on the appellant's representation dated November 7, 2023 (page 54 of the Stay Petition), in accordance with law and the applicable Rules and Regulations, if any, within a period of eight weeks from the date of communication of this order to the Municipal Commissioner, after giving opportunity of hearing to the appellant and the private respondent herein. The decision taken shall be communicated to the parties within a week from the date of the decision. The Municipal Commissioner or his

authorised representative shall take an independent decision uninfluenced by any observation in this order or in the order of the learned Single Judge which is the subject matter of this appeal.

The appeal and the connected application are, accordingly, disposed of.

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

(ARIJIT BANERJEE, J)

(APURBA SINHA RAY, J.)