

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APOT 460 of 2023 WITH
WPO 353 OF 2019
IA GA 3 of 2025
GA 1 OF 2023
ASHOK AGARAWAL
Versus
KOLKATA MUNICIPAL CORPORATION AND ORS.**

**APOT 36 of 2024
IA GA 2 of 2025
GA 1 OF 2024
PRADIP AGARWAL AND ORS.
Versus
KOLKATA MUNICIPAL CORPORATION AND ORS.**

Present :
The Hon'ble Justice Debangsu Basak
-And-
The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant (in APOT/460/2023)	:	Mr. Jishnu Chowdhury, Sr. Adv. Mr. Uttiyo Mallick, Adv. Ms. Vedika Sureka, Adv.
For the Appellant (in APOT/36/2024)	:	Mr. Suman Kr. Dutt, Sr. Adv. Ms. Monica Jaiswal, Adv. Mr. Niladri Khanra, Adv. Mr. D. Mukhopadhyay, Adv.

For the KMC : Mr. Alak Kumar Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.

For the Respondent No.4 : Mr. Rajarshi Dutta, Adv.
Mr. Aritra Basu, Adv.
Ms. Nairanjana Ghosh, Adv.
Mr. Kritin Saraf, Adv.

HEARD ON : 06.03.2025
DELIVERED ON : 06.03.2025

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as they emanate from the same impugned judgment and order dated December 14, 2023 passed in WPO 245 of 2019 and WPO 353 of 2019.
2. Both the appeals were dismissed since no learned advocate for the appellants appeared before the Court to assist the Court on the merits of two appeals on a particular date.
3. Two restorations applications filed in two individual appeals are taken up analogously for consideration as they relate to same issues.
4. For the ends of justice, the causes shown in both the applications for restoration are accepted as sufficient. Orders dismissing both the appeals are recalled. Both the appeals are restored to their original file and number.

5. By consent of the parties, both the appeals are taken up for final hearing.
6. Learned senior advocate appearing for the appellant in APOT 460 of 2023 submits that, there was an initial license executed between the Kolkata Municipal Corporation (KMC) and a private entity on February 15, 1985. He refers to clauses 6(iii), (iv), (v) and (vi) thereof. He submits that, KMC authorized such private entity to enter into license agreement with different persons. The model form of agreement was prescribed. He draws the attention of the Court to such model forms of agreement. He submits that, his client is occupying a stall at the subject premises pursuant to an agreement entered into in terms of such license dated February 15, 1985.
7. Learned senior advocate appearing for the appellant in APOT 460 of 2023 submits that three tenders were attempted by KMC upon the period of the first license coming to an end. He submits that, the amount prescribed in the three attempts were successively reduced. In response to the query of the Court he submits that, the first two attempts by the Kolkata Municipal Corporation were not challenged by his client. Justification for non-challenge is no knowledge of such attempt.

- 8.** Learned senior advocate appearing for the appellant in APOT 460 of 2023 submits that under the fresh tender, there is a clause which records there are 354 existing stalls in the market. Successful bidder cannot remove such existing stall holders.
- 9.** Learned senior advocate appearing for the appellant in APOT 36 of 2024 submits that, the property is a municipal market. He refers to Section 426 and 430 of the Kolkata Municipal Corporation Act, 1980 and submits that, the rates and taxes leviable are to be determined by the KMC through the Mayor-in-Council. He submits that, fresh tender process allows the successful tenderer to charge and obtain such rates and taxes from the occupants as the successful tenderer desired without reference to the Mayor in Council. Such course of action, according to him is not permissible, in view of the provisions of Section 426 and 430 of the Act of 1980.
- 10.** Learned senior advocate appearing for the appellant in APOT 36 of 2024 draws the attention of the Court to Article 243W and 243X of the Constitution of India. He submits that powers granted by the Constitution on the Municipal Corporation to levy tax is sought to be breached by the impugned tender process. Therefore, according to

him, KMC cannot undertake the tender process as it is in breach of the Act of 1980 and the Constitution of India.

- 11.** Learned advocate appearing for the KMC relies upon 1987 (Supp) Supreme Court Cases 571 (Calcutta Youth Front and Others vs. State of West Bengal & Ors.) and submits that, the issues as to whether KMC was entitled to enter into a license agreement with a private party in respect of the same market concerned fell for consideration thereof. The decision of KMC to enter into a license agreement was upheld. He submits that, license can be granted by the Corporation in respect of the same market complex. First license agreement expired by efflux of time. It is for the next period that the KMC undertook the tender process.
- 12.** Learned advocate appearing for the KMC submits that on the third attempt of the tender process, KMC could obtain a successful tenderer who is willing to undertake the license. Two earlier attempts did not result in any person coming forward to take the license. He submits that KMC is suffering lots of revenue since it is being detained by the pendency of the present litigation from entering into the formal contract with the successful bidder.

- 13.** Learned advocate appearing for the successful bidder submits that there are at least three civil suits pending in respect of the property concerned. He submits that the occupants of the property are not paying any occupation charges despite orders passed by the High Court on appeal and on revision in such civil suits. He submits that, Corporation is not executing the formal contract in view of the pendency of the present litigation.
- 14.** Two writ petitions were filed before the High Court. Both the writ petitions are at the behest of the two appellants before us. Two writ petitions assailed the tender process undertaken by the KMC in respect of Satyanarayan Market for its operation, maintenance and overall management.
- 15.** Satyanarayan Market is a property owned by KMC. KMC initially entered into a deed of license in respect of such market for its maintenance and upkeep through a tender process. The first tender process, was assailed right upto the Supreme Court which resulted in Calcutta Youth Front & Ors. (supra).
- 16.** Appellants before us are occupants of the Satyanarayan Market as stall holders. They are one of the beneficiaries of the first tender process.

- 17.** The first tender process was also for maintenance and upkeep of the Satyanarayan Market, amongst others.
- 18.** Therefore, the contention of the appellants that the KMC authorities cannot undertake a tender process for the purpose of grant of license to maintain and upkeep a market place such as Satyanarayan Market is not available to them since they are the beneficiaries of the first tender for the same purpose.
- 19.** None of the appellants participated in the tender process. Third tender process after expiry of the first license period by efflux of time resulted in indentifying a successful tenderer. The appellants did not challenge the tender process at the inception. Rather the challenge was thrown on the issuance of the letter of allotment in favour of the successful tenderer.
- 20.** Tender is a judicially recognized transparent process for grant of State largesse such as the license involved. Appellants are not complaining that the award of the tender was done in violation of the terms of the tender.
- 21.** Moreover, individual act of infraction of any provision of law is absent. At least none of the appellants drew our attention to either the Corporation or the private respondent acting contrary to

Sections 426 or 430 of the Act of 1980 or Articles 243W or 243X of the Constitution of India.

- 22.** No right of any of the appellants is established to be affected by the tender process. Contentions of rates are in the realm of speculation at present.
- 23.** In such context, we are not minded to enter into the contention of the appellant in APOT/36/2024 that, the tender process impugned in the two writ petitions attracts provisions of Sections 426 or 430, Articles 243W or 243X of the Constitution of India.
- 24.** The learned single Judge noted that there are disputed question of facts involved. Learned single Judge noted such disputed question of fact should not be entered into by a writ petition although, existence of disputed question of facts did not denude the writ Court with the jurisdiction to decide the issues. There are three suits pending also in respect of the first license and rights flowing thereunder. In fact, there are subsisting orders of civil Court as also the revisional Court and the appeal Court requiring occupants to pay the occupation charges. There are allegations and counter allegations with regard thereto. In view of the pending civil suits and

the orders passed therein, we need not enter such arena. Parties are at liberty to avail of their remedies before the appropriate forum.

- 25.** Policy decision taken by the KMC to undertake the tender process for the purpose of grant of license to upkeep and maintain the market place cannot be interdicted in the facts and circumstances of the present case.
- 26.** In such circumstances, the learned single Judge rightly dismissed two writ petitions. We do not find any ground to interfere.
- 27.** APOT/460/2023 and APOT/36/2024 along with the connected applications are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

- 28.** I agree.

(MD. SHABBAR RASHIDI, J.)