
(1990) 08 CAL CK 0030
In the Calcutta High Court
Case No : F.M.A.T. No. 983 of 1989

Abdul Rashid

APPELLANT

Vs

Calcutta Minicipal Corporation and others

RESPONDENT

Date of Decision : 28-08-1990

Acts Referred:

Calcutta Municipal Act, 1980 — Section 199, 200, 435

Citation : AIR 1991 Cal 234 : (1990) 1 CALLT 127 : 95 CWN 748

Hon'ble Judges : Ajoy Nath Ray, J; A.M. Bhattacharjee, J

Bench : Division Bench

Advocate : Mr. Pradip Ghose and Mr. S. Munshi, for the Appellant; Mr. Mukul Prokash Banerjee and Mr. Jugal Porel, for the Respondent

Judgement

A.M. Bhattacharjee, J.—We regret our inability to agree with the learned trial Judge and our consequential inability to sustain the order under appeal.

2. "Business" is a word of protean significance and the expression "business man" as used in Serial No. 8, No. 44 or No. 84 of Schedule IV of the Calcutta Municipal Act, 1980 would include a person engaged in any profession, trade or other commercial activities.

3. The petitioner professes to carry on the business of a motor-mechanic. The learned Judge has not held that the petitioner does not carry on any such business; he has only disbelieved the case of the petitioner that he carries business at the disputed premises and that he is a tenant in respect of his place of business. To quote the learned Judge (from paragraph 19 of the judgment), "the petitioner has hopelessly failed to establish his tenancy right in the portion of the premises in question" or to prove that "the petitioner was carrying on his motor car repairing business at this very premises or he merely used to receive the communications at this address and carry out the orders at some other place."

4. As would appear from the relevant entries in Schedule IV, even if a person is

carrying on the business without any place of business he would still be liable to be taxed under Serial No. 84 of Schedule IV, but if he is carrying on that business at a place, whether as an owner or tenant or otherwise, he would have been liable to pay higher taxes under Serial No. 8 or No. 44. A businessman, whether Aniketa, i.e., without a place, or Sanikata, i.e., with a place, of business, is liable to be taxed u/s 199 and entitled to a certificate of enlistment u/s 200 of the Calcutta Municipal Act, 1980. Such certificate and payment of tax only entitle the certificate holder-cum-tax-paer with a licence to carry on trade or business which may or may not have any relation to or connection with any place or site.

5. The learned trial Judge has considered with anxious advertence the question as to whether the appellant writ petitioner has been able to establish his right to the place where he professes to carry on the business and has held that the appellant has failed to do so. But assuming, though not deciding, it to be so arguendo, that, by itself, cannot deprive the petitioner of his right to a certificate of enlistment u/s 200 nor absolve him of his liability to pay tax u/s 199, if the petitioner is otherwise carrying on business whether at any place with or without any right therein or at no particular place.

6. Reliance was placed before the learned trial Judge on a decision of our learned brother Susanta Chatterjee, J. in *Venode Kumar Jalan v. Calcutta Municipal Corporation*, 1987 (1) Calcutta Law Time 333, but we have not been able to appreciate the process of reasoning by which the learned trial Judge has endeavoured to distinguish the same. Chatterjee, J. has clearly ruled in that decision that the failure of a person to make out his right or title to the place where he professes or intends to carry on business can be no ground to deny him certificate of enlistment u/s 200. We find good reasons to agree with respect with the ratio of the decision spelt out by Chatterjee, J. in some details with appreciable clarity. As we have already indicated, we are of the view, place or no place, if one is a businessman carrying on business within the limits of Calcutta Municipal Corporation, he acquires a right to a certificate of enlistment u/s 200 and incurs a liability to pay tax and the Corporation has no right to refuse the certificate or the tax. The learned trial Judge has nowhere held that the petitioner does not carry on the business of motor repair and all that he has held is that the petitioner has failed to prove that he does so at the premises in question.

7. Assuming, but not deciding, that the petitioner does not do so, he is then not required to take out any licence u/s 435 of the Act, At the same time, if he does so, a certificate of enlistment u/s 200 and payment of tax therefore u/s 199, would not, by themselves, entitle the petitioner to any licence u/s 435, if he is not entitled thereto under the relevant provisions of law.

8. As already stated, the learned trial Judge has proceeded to go deep into the question as to whether the petitioner has been able to prove his alleged tenancy in respect of the premises in question. As already indicated, vis a vis the question of certificate of enlistment u/s 200 and payment of tax therefore u/s

199, the question was not required to be gone into at all.

9. It is not disputed that the petitioner has already filed a civil suit in a competent Court for declaration of his tenancy in respect of the premises and other reliefs and the Court has also passed interim order directing maintenance of status quo. We are afraid that it was not for the learned trial Judge to decide and determine the existence or otherwise of the alleged tenancy in a writ proceeding with such a civil suit pending between the parties in a Court which is the appropriate forum for proper and effective determination of such question, and, more so, when the petitioner's right to the certificate of enlistment under S. 200 was not dependent on his having any legal right to his alleged place of business.

10. It is true that under S. 435 of the Municipal Act, no person shall use or permit to be used any premises for any non-residential purposes mentioned in Schedule V without licence under that section and carrying on the trade or business of motor-repairing is such a non-residential purpose under Entry No. 22(i) of Schedule V. Under our law, even a trespasser, having no title to possess, may still have a right to possess a premises against all but the true owner, and even against the real owner until the former is evicted in due course of law and even though no citation may be, necessary, reference may be made to, among others, the decision of the Supreme Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh* AIR 1968 SC 620. But can the grant or renewal of a licence under S. 435 of the Act be refused solely on the ground that the person applying therefor, though having the right to possess until evicted, has no title to possess the premises? We have our doubts, but we do not proceed to decide the question as not being necessary for our present purpose.

11. We, with respect, are ready to share the anxiety expressed by the learned Judge for the nuisance, annoyance and other health hazards resulting from "the mushroom growth of motor-car repairing shops and let, as desired by the learned Judge, the Municipal Corporation and other authorities entrusted with the maintenance of public health, safety and order come down upon them with the long and heavy hands of law. But all that we say, in respectful disagreement with the learned trial Judge and in respectful agreement with Chatterjee, J. in *Venode Kumar Jalan* (1987) 1 Cal LT 333 (supra) is that the Corporation cannot refuse certificate of enlistment under S. 200 and payment of tax under S. 199 to one carrying on the business of motor-car repairing solely on the ground that he has no place of business or no title to his professed place of business.

12. Our attention has also been drawn to a Division Bench decision of this Court in *Corporation of Calcutta v. Sumenia Bewa*, 35 Calcutta Weekly Notes 831, decided under the corresponding provisions of the Calcutta Municipal Act, 1923, which appears to us to be an authority for the view that taxes are payable by any person who exercises or carries on any profession, trade or calling as mentioned in Schedule IV, even without any place of business or any legal title to such place. That is also the view we take in this case; that is also what Chatterjee, J.

has held in *Venode Kumar Jalan* (1987) 1 Cal LT 333) (supra). But no such tax or licence or certificate can legalise any business, if it is otherwise illegitimate because of non-compliance with any other provision of the Municipal Act or any other law and can never be a substitute for any other legal requisite. The later Division Bench decision of this Court in *Jadunath Basak Vs. Mritunjoy Sett and Others*, , so much relied on by the learned trial Judge, has also taken similar view.

13. We would, therefore, allow the appeal and direct the Municipal Corporation to grant to the petitioner the certificate of enlistment under S. 200 and to accept the tax payable under S. 199 of the Municipal Act. And we would like to make it clear that the observations of the learned trial Judge as to the alleged tenancy of the petitioner in respect of the disputed premises must be taken to be non est. The appeal is accordingly allowed to the extent as aforesaid. No order as to costs.

Ajoy Nath Ray, J.

14. I agree.

15. Appeal allowed.