

(2000) 09 CAL CK 0044
In the Calcutta High Court
Case No : W. P. No. 2224 (W) of 1999

Maniklal Tewari

APPELLANT

Vs

Calcutta Municipal Corporation

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 416

Citation : (2001) 1 ILR (Cal) 563

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Barin Banerjee and Archana Manna, for the Appellant; Alok Ghosh and Satyabrata Mazumdar for C.M.C. and Ashit Bhattacharjee, for Private Respondent, for the Respondent

Judgement

Dilip Kumar Seth, J.—The Petitioner had been running a motor garage at premises No. 46, Alipore Road, Calcutta-27 after having obtained license from the Corporation of Calcutta right from 1962. The license having been cancelled, the Petitioner had moved a writ petition on an earlier occasion which was ultimately disposed of by directing the Corporation to consider the application for license in accordance with law. Pursuant to the interim order granted in the said writ petition, the writ Petitioner continued with his business though the license was not renewed. Subsequently, in terms of the said order, the Corporation had considered the Petitioner's case and had ultimately refused to grant license on the ground that the Petitioner was unable to produce Clearance Certificate from the Pollution Board towards sound pollution and that he had never obtained any sanction u/s 416 of the Calcutta Municipal Corporation Act, 1980.

2. Mr. Barin Banerjee, learned Counsel, appearing for the Petitioner contends that since the license was being granted right from 1962, therefore, the Corporation cannot refuse to renew the license on the ground or to grant fresh license is issued. He contends that the Corporation can not insist for no objection certificate or certificate from the Pollution Board. Since the premises was being

used as garage right from 1962 when 1951 Act was in force, it is not open to the Corporation after having allowed the garage to continue to insist that sanction u/s 416 is to be obtained long after this period of 37 years. He also contends that in the affidavit-in-opposition ground relating to running of factory has since been taken. By means of affidavit in the absence of any ingredient in the order, the order cannot be improved and the said ground cannot be allowed to be considered for renewing the purpose of dealing with the order impugned.

3. Mr. Alok Ghosh, learned Counsel, appearing for the Corporation on the other hand, contends that so far as the change of residential use to that of factory is concerned, the same requires sanction u/s 419 of the Calcutta Municipal Corporation Act, 1980. Even if the Petitioner can be permitted to run the garage the same does not permit the Petitioner to convert the house into a factory. If the Petitioner had done so, without any permission u/s 419, he cannot claim any equity since he has come with unlearned hands. Therefore, he cannot maintain this writ petition. Then again without the certificate from the Pollution Board as insisted upon no license can be granted if the Petitioner runs the factory.

4. Mr. Ashit Bhattacharjee, learned Counsel, appearing for the private Respondent, who was not made party either in the earlier writ petition or in this writ petition but was subsequently added as a party to this writ petition only, contends that the agreement between the Petitioner and the added private Respondent No. 7 was for running garage but the Petitioner had been running a factory which is apparent from the admission of the Petitioner himself in the proceeding under the Factories Act before the appropriate forum which is annex. "D" to his petition for. Therefore, the license has been rightly refused.

5. I have heard both the learned Counsel appearing for the respective parties at length.

6. In fact, the order dated January 20, 1999, contained in Annex. "K" to the writ petition does not disclose that the license was being refused to be renewed on the ground that the Petitioner had been running the factory and that there was any violation of Section 419. Therefore, the Corporation cannot take this point after having mentioned Section 416 when garage was being run since 1962. However, the Corporation may insist on the certificate from the Pollution Board if it is alleged that there is sound pollution. In view of Environment Law the said certificate would be necessary since admittedly the garage is situated in a residential locality. Such pollution may not effect the landlord or the tenant, but it may also effect the neighbors. Therefore, it is still within the competence of the Corporation to ask for certificate of clearance from the Pollution Board.

7. Be that as it may, the Corporation having not taken the ground of running factory in violation of Section 419, the order so far as it relates to the Section 416 is concerned, cannot be sustained.

8. The Respondent No. 7 might have some right in respect of his own property as against the Petitioner but the same flows from the agreement between the

Petitioner and the Respondent No. 7. Such a right is purely a civil right which he may establish before the Civil Court, if he is so advised. However, there is nothing to prevent him from bringing the matter to the notice of the Corporation if there is any contravention of the provisions of the Calcutta Municipal Corporation Act. The Corporation may take into consideration such objection, but, however, it has to make its own enquiry and find out that there are substance in the allegations made and only then the Corporation can take independent decision of its own in order to renew the license.

9. Since there are some infirmity in the order contained in Annex. "K", therefore the said order will not prevent the Petitioner from making fresh application complying with the requisite formalities enclosing and furnishing the clearance certificate from the Pollution Board, if he runs the garage in the said premises. It will be open to the Corporation to enquire and take the appropriate decision in the matter, if necessary, through inspection by one of its officer as the Corporation may deem fit and proper and if there is a factory it may not grant license unless the Petitioner is able to show that he had obtained appropriate permission u/s 419 of the C.M.C. Act as well as the requisite license as are necessary for the establishment of the factory under the relevant enactments operating in the field. If any application is made the Corporation may decide the same after giving opportunity to the Respondent No. 7 within a period of 3 months from the date of making such application.

10. Thus the writ petition is disposed of without any order as to costs.

11. Let xerox certified copy of this order be supplied to the applicant on an urgent basis subject to compliance with all the required formalities.