(1994) 08 CAL CK 0012

In the Calcutta High Court

Case No : Matter of 1994

USG Financial Services (Pvt.) Ltd. and Another — APPELLANT

Vs

The Calcutta Municipal Corpn. and Another — RESPONDENT

Date of Decision : 03-08-1994

Acts Referred:

Calcutta Municipal Corporation Act, 1980 — Section 193, 199, 200, 200(3), 200(4)
Constitution of India, 1950 — Article 226

Citation : (1994) 2 CALLT 160

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Judgement

Satyabrata Sinha, J.—The Court : In this application the petitioners have prayed for the following reliefs :

"(a) A writ of or in the nature of Mandamus do issue commanding the Respondents and each one of them, their men and agents to forthwith grant to the petitioner No. 1 Certificate of Enlistment as envisaged u/s 200 of the Calcutta Municipal Corporation Act, 1980 to enable the petitioners to pay tax on profession, trade and calling as envisaged u/s 199 of the said Act;

(b) Order directing the Respondents to forthwith certify and transmit to this Hon''ble Court all records pertaining to the petitioners case for doing conscionable justice by quashing any order refusing to grant the Certificate of Enlistment to the petitioners ;

(c) Rule be issue in terms of prayers (a) and (b) above ;

(d) Rule be made absolute upon hearing ;

(e) Injunction restraining the Respondents and each one of them from taking any action or proceeding against your petitioner or from preventing the petitioners to carry on their business and trade from premises No. 237, Karnani Mansion, 25A, Park Street, Calcutta-16 till the disposal of the petition ;

(f) Ad-interim order in terms of prayer (d) above ;

(g) Cost of, and incidental to, this petition ;

(h) Such other or further order or orders as to Your Lordships may deem fit and proper."

2. The facts of the matter are as follows :

One Mrs. Denise Sethna is said to be the petitioners'' Immediate landlord. The petitioners filed an application for grant of certificate of enlistment before the Calcutta Municipal Corporation. The said prayer of the petitioners was refused, inter alia, on the ground that as the petitioners have not obtained the consent of their landlord and furthermore as the premises is said to be meant for residential purposes and not for commercial purposes, no licence can be granted to the petitioners. The petitioners have, inter alia, contended that in the building in question the petitioner No. 1 is a tenant, there are a large number of commercial establishments having obtained Certificate of Enlistment and the names of the, few of such commercial establishments have been stated in paragraph 25 of the writ application. Further contention of the petitioners is that upon a bare perusal of the provisions contained in Section 199 and 200 of the Calcutta Municipal Corporation Act (hereinafter referred to as the said Act), it would be evident that it is not necessary for a tenant to obtain consent of the landlord. The learned Counsel appearing for the petitioners in support of this aforementioned contention has relied on a decision of this Court in the case of Abdul Rashid Vs. Calcutta Minicipal Corporation and others, .

3. The learned Counsel appearing on behalf of the Calcutta Municipal Corporation, however, placing reliance on the aforementioned provisions as also the provisions contained in sections 103, 193, 232 and 416 of the said Act, submitted that in a case of this nature the consent of the landlord is a must. It was further submitted that in terms of the provisions of the said Act a consolidated rate may have been fixed which will be first charge on the property and thus in case of default on the part of the petitioners, the landlord will suffer and in that view of the matter the consent of the landlord is a must. The learned Counsel distinguished Abdul Rashid''s case (supra) and submitted that in that case the business was going on and taking into consideration the said fact the aforementioned decision had been rendered.

4. Sections 193, 199, 200, 232 and 416 of the said Act read as follows :

Section 193. Incidence of consolidated rate on lands and buildings shall be primarily leviable.

(a) if the land or building is let, upon the lessor;

(b) if the land on building is sublet, upon the superior lessor;

(c) if the land or building is sublet, upon the person in whom the right to let such land or building vests.

(2) The consolidated rate on any land or building, which is the property of the Corporation and the possession of which has been delivered under any agreement or licensing arrangement, shall be leviable upon the transferee or the licensee, as the case may be.

(3) The liability of the several owners of any (land or) building constituting a single unit of assessment, which is or purports to be severally owned in part or flats or rooms, for payment of consolidated rates or any instalment thereof payable during the period of such ownership shall be joint and several;

Provided that the Municipal Commissioner may apportion the amount of consolidate rate on such (land or) building among the co-owners.

(4) Notwithstanding the vesting of any land in the State under the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981, in the case of any land comprised in a thika tenancy, the consolidated rate assessed in respect of such land and any hut or building made thereon shall be primarily leviable upon the thika tenant."

Section 199. Tax on professions, trades and Callings.

Every person engaged in any profession, trade or calling in Calcutta as mentioned in Schedule IV shall be liable to pay to the Corporation a tax at the rate mentioned in the said Schedule :

Provided that the payment of such tax shall not absolve such person from any liability to take out any licence under this Act or any other law for the time being in force.

Section 200. Enlistment for payment of tax on profession, trade or calling.-(1) Every person liable to pay tax u/s 199 shall obtain a certificate of enlistment from the Municipal Commissioner.

(2) Every person required to obtain a certificate of enlistment shall, within ninety days from the date of coming into force of this Act, or if he was not engaged in any profession, trade or calling on that date, within ninety days of his becoming liable to pay tax or within ninety days of his becoming liable to pay tax at a rate higher or lower than the one mentioned in his certificate of enlistment, apply for a certificate of enlistment or a revised certificate of enlistment, as the case may be, to the Municipal Commissioner in such form as may be specified by the Corporation.

(3) The Municipal Commissioner shall, after making such enquiry as may be necessary and within thirty days of the receipt of the application, grant him such certificate, if the application is in order. The application, if it is not in order, shall be rejected.

(4) The Municipal Commissioner shall, mention in every certificate of enlistment the amount of tax payable by the holder thereof in accordance with Schedule IV and the date by which it shall be paid, and such certificate shall serve as a notice

of demand for the purposes of Section 217.

(5) Where a person liable to enlistment wilfully fails to apply for such certificate within the period referred to in Sub-section (2), the Municipal Commissioner may, after giving him a reasonable opportunity of being heard, impose upon him a penalty for each day of default.

(6) Where a person liable to enlistment has given false information in any application submitted under this section the Municipal Commissioner may, after giving him a reasonable opportunity of being heard, impose upon him a penalty not exceeding one thousand rupees.

Section 232. The consolidated rate on lands and buildings to be first charge on premises.-The consolidated rate on lands and buildings due from any person shall, subject to the prior payment of land revenue (if any) due to the Government thereupon, be a first charge upon the land or the building belonging to such person and upon the moveable property (if any) found within or upon such land or building.

Section 416. Prohibition on charge of use of building-(1) No person shall, without any written permission of the Municipal Commissioner or otherwise than in conformity with the conditions, if any, of such permission-

(a) use or permit to be used for the purpose of human habitation any part of a building not originally erected or authorised to be used for such purpose;

(b) change or allow the change of the use of any building for any purpose other than that specified in the sanction u/s 396;

(c) change or allow the change of the use of any building erected before the commencement of this Act contrary to the use for which such erection was originally sanctioned ;

(d) convert or allow the conversion of a tenement under a particular occupancy or use group to a tenement under another occupancy or use group ; Provided that no such permission shall be given if the new occupancy or use group is the otherwise than in conformity with the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being.

(2) If, in any case, such permission is given, no change of occupancy or use group shall be allowed before any necessary alterations or provisions have been made to the satisfaction of the Municipal Commissioner and in accordance with the provisions of this Act or the rules and the regulations made thereunder or of any other law in force for the time being.

5. The question which has arisen for consideration in this application is no longer was integra. In the case of Abdul Rashid v. The Calcutta Municipal Corporation & Ors. (supra) the learned Single Judge, inter alia, held that the writ petitioner therein should have at least produced a rent receipt before the Authorities as also a licence u/s 435 read with Schedule V, Part I, Item 22 (i) of the Calcutta

Municipal Corpora-lion Act, 1980 which is a condition precedent for carrying on trade and business for car repairing in a residential premises. Reversing the said decision the Division Bench of this Court in its judgment reported in Abdul Rashid Vs. Calcutta Minicipal Corporation and others, held that it is not necessary for a person applying for grant of trade licence that he must carry on business at a particular place. The Division Bench in agreement with the decision of Susanta Chatterjee, J. in Venode Kumar Jalan v. Calcutta Municipal Corporation 1987(1) Cal L T 333, held that the Corporation cannot refuse certificate of enlistment u/s 200 and payment of tax u/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.

6. The scheme and purport of the Act clearly envisages that a certificate of enlistment has to be obtained only by a person who is liable to pay tax. An application for obtaining certificate of enlistment is to be filed within a period of ninety days from the date when a person has become liable to pay tax. It is, therefore, clear that a certificate of enlistment is not necessary to be obtained before a person starts his profession trade or calling either in a premises or without a fixed place of business. Thus, while a person files an application for grant of certificate of enlistment, the same must be held to be for a limited purpose. Only because a certificate of enlistment is granted, the same does not mean that a licence is granted in his favour to carry on business. The right of a person to carry on a particular type of business or the question as to whether the business carried on by him in the premises in question is in violation of other provisions of the Calcutta Municipal Corporation Act or other law for the time being in force, is de hors the said provisions. It is true, that Sub-section 3 of the Section 200 of the Act contemplates holding of an enquiry but a bare perusal of the said provision together with other sub-section of the said provisions leaves no manner of doubt that such enquiry is required to be held for a limited purpose, i.e. inter alia, for the purpose as to whether the contents of the application are correct or not. In my opinion, enquiry contemplated under Sub-section 3 of Section 200 of the Act does not envisage a detailed enquiry and particularly enquiry relating to legality or validity of the right of the person applying for grant of certificate of enlistment or otherwise. Sub-sections 4 and 5 of Section 200 contain a penal provisions which also indicate that an application for grant of. certificate of enlistment is required to be filed so as to enable the concerned applicant not to invite the penal provisions as contained therein. In this view of the matter, in my opinion, despite the grant of certificate of enlistment it would be appropriate for the authorities of the Calcutta Municipal Corporation to take suitable action as against a person who has violated other provisions of the Act. Similarly, a landlord or for that matter any other person who has objection to the petitioners'' carrying on any business in the premises in question will not be debarred from so doing before a proper forum only because a certificate of enlistment has been granted.

7. For the reasons aforementioned and keeping in view the decision of the

Division Bench of this Court in the case of Abdul Rashid (supra), I have no other option but to allow this writ application and direct the respondents to consider the application filed by the petitioners at an early date and pass an appropriate order in accordance with law.

The application is accordingly disposed of.

All parties are to act on a signed xerox copy of this judgment on the usual undertaking.