

WP(C) 4213/2016
BEFORE
HON'BLE MR JUSTICE ARUP KUMAR GOSWAMI
JUDGMENT & ORDER

Heard Mr. G. N. Sahewalla, learned Senior counsel, appearing for the petitioners. Also heard Mr. Y. Doloi, learned standing counsel, Jorhat Municipal Board, appearing for the respondents No. 1 and 2 and Mrs. M. Goswami and Mr. S. K. Hazarika, learned State counsel, appearing for the respondents No.3, 4 and 5.

[2] As agreed to by the learned counsel appearing for the parties, this writ petition is taken up for disposal at the admission stage.

[3] The writ petition was filed praying for a writ of mandamus to the respondent Jorhat Municipal Board (for short, the Board) to grant trade licence in favour of the petitioner No.1 to operate its Retail Outlet for sale of footwear (Reliance Footprint) and electrical and electronic goods (Reliance Digital) from the tenanted premises of the respondent No.2 situated at Dag No.4772/5256, 4773/5257 of Annual Patta No.252/418 of Block No.2, Jorhat Town and Dag No.4807/5059 of Periodic Patta No.294 of Block No.2 of Jorhat Town as well as direction to the respondent Board not to insist upon trade licence for operating the Retail Outlet for sale of footwear (Reliance Footprint) and the electrical and electronic goods (Reliance Digital). Prayer is also made for a writ of certiorari to set aside and quash an order dated 18.06.2016, whereby the Chairperson of the Board informed the petitioner No.1, amongst others, that licence for Reliance Footprint could not be renewed immediately as there is a dispute of the land where the building is standing.

[4] Relevant facts necessary for the purpose of disposal of the writ petition are that the petitioner No.2 claims herself to be the absolute owner in possession of land measuring 2 Kathas 2 Lechas (2K 2L), covered by Dag No.4772/5256 comprising of 1 Katha 14 Lechas (1K 14L) and Dag No.4773/5257 measuring 8 Lechas (8L) and also an adjacent plot covered by Dag No.4807/5059 of P.P. No.294 measuring 13 Lechas (13L). It is pleaded that the petitioner No.2 purchased the aforesaid land measuring 2 Kathas 2 Lechas by a registered Sale Deed dated 04.02.2008 from Shri Jayanta Koomar Doss, Smti. Joya Doss, Smti. Bijaya Doss and Shri Sujay Doss and the plot of land measuring 13 Lechas from Jayanta Koomar Doss vide registered Sale Deed dated 25.03.2008.

[5] An order dated 27.03.2006 was passed by the Additional Deputy Commissioner, Jorhat in P.P. Case No.5/2005-06 in respect of 2K 2L land in favour of Shri Jayanta Koomar Doss, Smti. Joya Doss, Smti. Bijaya Doss and Shri Sujay Doss by way of partition, which was subject matter of an appeal before the Assam Board of Revenue in Case No.86RA(J)/2006 at the instance of Tapan Koomar Doss and 9(nine) others. The appeal was dismissed by an order dated 11.09.2008 and the matter attained finality in absence of any challenge. During the pendency of the appeal, the Sale Deed dated 04.02.2008 was executed and possession was delivered. Tapan Koomar Doss instituted Title Suit No.7/2008 in the Court of the learned Civil Judge, Jorhat, wherein Shri Jayanta Koomar Doss, Smti. Joya Doss, Smti. Bijaya Doss and Shri Sujay Doss and the petitioner No.2 were impleaded as defendant Nos.1 to 5 and the Schedule 'B' of the land thereto is the land measuring 2K 2L, which was also the subject matter of the order dated 27.03.2006 and Case No.86RA(J)/2006. In Misc. (J) Case No.10/2008, registered on the basis of an application under Order 39 Rule 1 and 2 of the CPC, the learned trial Judge passed an order dated 01.07.2008 granting ad-interim injunction restraining the defendants/opposite party Nos.1 to 4 from alienating the Schedule 'B' land to the defendant/opposite party No.5 and to maintain status quo. An appeal being FAO No.1/2008 was preferred before this Court and this Court set aside the order dated 01.07.2008 by an order dated 30.03.2010 and, therefore, there was no injunction order in force

in respect of the Scheduled 'B' land. Thereafter, the petitioner No.2 obtained permission for construction on 21.12.2010 from the Jorhat Development Authority for construction of a five-storied RCC building and commenced construction in the year 2010. With the constitution of the Board, permission was also obtained from the Board on 22.04.2014 and the permission was renewed on 19.08.2015. A Lease Deed was entered into on 20.01.2015 with one Jubilant Foodworks Limited (Dominos) for letting out a portion of the building and it obtained licence from the Board on 20.08.2015 and thereafter it started operating from the building in question.

[6] A complaint was lodged by Shri Tapan Koomar Doss, the plaintiff of Title Suit No.7/2008 and his son Shri Manash Doss on 12.11.2015 before the Deputy Commissioner, Jorhat praying for rejection of the trade licence in respect of land involved in Title Suit No.7/2008 alleging that the building was constructed encroaching upon 8L land of Dag No.4773/5257, which has no connection with 1K 14L of land. Allegation was also made with regard to installation of generators over their land. Based on the said complaint, a report was called for by the Deputy Commissioner from the respondent No.5 and a report was submitted by the respondent No.5 without the knowledge of the petitioner No. 2 but having come to learn that report purportedly showed encroachment of the land, the petitioner No.2 raised objection. On the basis of the report and the complaint, which were forwarded to the Board, the Board, by a letter dated 23.12.2015, directed the petitioner No.2 to stop construction till demarcation of the land is done on 31.12.2015 in presence of both the parties.

[7] A Letter of Intent (LOI) was entered into on 10.09.2014 between the petitioner No.2 and M/s Reliance Corporate I.T Park Limited, an associate of petitioner No.1 for taking on rent carpet area of 2200 Sq. Ft. in the ground floor for setting up of Reliance Footprint. Another Letter of Intent was entered into for setting up of Reliance Digital with carpet area of 8100 Sq. Ft. and an agreement was entered into to that effect on 18.02.2016 and M/s Reliance Corporate I.T Park Limited authorized the petitioner No.1 to operate its business from the said premises. Though not required, because of practice in vogue, the petitioner No.1 applied for and obtained trade licence for Reliance Footprint for sale of footwear, leather goods and related accessories. Application was filed for trade licence which was duly received by the Board on 27.04.2016 for sale of electrical and electronic goods. Application for renewal of licence of Reliance Footprint was filed on 29.04.2016 for the year 2016-17 as the licence granted was stated to be nearly expiring.

[8] Averments are made that a writ petition was filed by the petitioner No.2 being aggrieved by the non-issuance of trade licence and non-renewal of trade licence, registered as WP(C) NO.3821/2016, which was withdrawn on 23.06.2016 with liberty on account of the fact that the petitioner No.1 was not a party in the said writ petition. On 18.06.2016, the impugned order had come to be passed. Thereafter, on 14.07.2016 at around 11:00 AM, the Executive Officer of the Board along with some other officials including police personnel came to Reliance Footprint Retail Outlet and seized 2(two) numbers of generators and the Manager of the petitioner No.1 was directed to close down the shop on the ground that trade licence had not been renewed and as coercive action was threatened if the shop was not closed, the shop was closed and till date the shop remains closed.

[9] An affidavit-in-opposition was filed by the respondent Nos.1 to 3 raising a preliminary objection that the instant writ petition is not maintainable on the ground of res-judicata as no liberty was granted to the petitioner No.2 to file the present writ petition. Even otherwise, the petitioner No.2 has no locus-standi to file this application as no legal or fundamental rights of the petitioner No.2 is violated and thirdly, the writ petition was filed by the petitioner No.2 violating the Court's order dated 23.06.2016. The stand taken in the affidavit is that an enquiry was made by the Board and measurement of the land was taken.

aken consequent upon receipt of a complaint from one Tapan Koomar Doss. Demarcation of the land was required to verify the documents submitted along with the application for permission of construction as there was no record/information about any dispute or litigation in connection with the building and the land in question. The Board came to know about the dispute on receipt of the complaint from Tapan Koomar Doss. The petitioner No.1 mislead the Board while declaring that there is no litigation where it ran its business and, therefore, the Board is not in a position to issue any trade licence in favour of the petitioner No.1. The generators were set up on the footpath and furthermore, the petitioner No.1 continued to run its business without trade licence despite issuance of the letter dated 18.06.2016.

[10] An affidavit-in-reply was filed by the petitioners stating that that the petitioner No.2 has to array herself as a party only to furnish the necessary facts relating to the land dispute about which the petitioner No.1 has no knowledge. It is averred that after measurement of the building, Board noticed some violation in respect of construction and the same being compoundable, the petitioner No.2 submitted an application on 06.08.2015 for renewal and regularization and also paid a sum of Rs.1,78,160/- on 19.08.2015 and thereafter, the Board issued renewal of permission and regularization on 19.08.2015. The building was also assessed at Rs.1,00,576/- annually.

[11] An additional affidavit was filed by the petitioners, sworn by the authorized attorney holder of the petitioner No.1 in respect of the shops in question, which were set up in the building. It is stated that licence was applied for by way of abundant caution. It is pleaded that in the application for renewal of licence dated 29.04.2016, address was inadvertently wrongly given and subsequently, the same having come to notice, a corrected renewal form was submitted.

[12] An additional affidavit-in-opposition was filed by the Board stating that from the sketch map provided by the respondent No.5, it is found that the 3(three) plots of land, which the petitioner No.2 purchased are not adjacent and, therefore, construction permission was obtained by submitting/providing false, fabricated and wrong documents. As the land dispute was not to the knowledge of the Board, the Board had issued demand notice under Section 106 of the Assam Municipal Act, 1956 (for short, Act) which was paid by the petitioner No.2. But on coming to know about the dispute relating to the land and building, the petitioner No.2 was informed to take back the municipal tax deposited. It is also asserted that the Board is not in a position to provide renewal of trade licence to the petitioner No.1 in view of pending dispute and litigation.

[13] Mr. Sahewalla, learned senior counsel for the petitioners has submitted that in the earlier round of litigation, which was relating to non-issuance and non-renewal of licence to the present petitioner No.1, the petitioner No.2 in the present petition, who filed WP(C) No.3821/2016, could not have been an aggrieved party and as such, the writ petition was closed giving liberty to the actual aggrieved persons to approach the Court. He has submitted that non-issuance and non-renewal of licence in favour of the petitioner No.1 has a direct bearing and affect on the petitioner No.2 as in the event of petitioner No.1 not being able to run its business in the building of the petitioner No.2, the petitioner No.2 may be deprived of earning any income by way of rent by letting out any other portion of the building also and as such, it cannot be said that the petitioner No.2 is not an aggrieved party. He, however, concedes that only at the instance of the petitioner No.2, the petition would not have been maintainable and precisely for the same reason, the earlier writ petition was withdrawn. He has submitted that the respondent Board has, in colourable exercise of power, refused to grant licence and renew licence, at the instance of the plaintiff of Title Suit No.7/2008 and, therefore, the actions of the Board is arbitrary and discriminatory. He has also submitted that the construction of the building was started in the year 2010 and after the building is constructed and also assessed by the resp

ondent Board, the plaintiff of Title Suit No.7/2008 have started raising questions that the petitioner No.2 had not constructed the building in her purchased land. He has submitted that so far as the petitioner No.1 is concerned, it has not suppressed any material facts in its application praying for licence when it is stated that there is no litigation with regard to the premises, where it is conducting business. Such statement was made based on the knowledge and information of the petitioner No.1. It is contended that the construction of the building having been completed based on a valid permission granted, the respondent Board cannot refuse to issue licence on the untenable ground that there is a dispute and litigation with regard to the land and building and such action of the Board is violative of Articles 14 and 19(1)(g) of the Constitution of India.

[14] It is submitted by Mr. Sahewalla that there is no requirement of taking licence for the purpose of carrying on trades and business which is undertaken and proposed to be undertaken by the petitioner No.1. The petitioner No.1 had taken licence in respect of Reliance Footprint by way of abundant caution, in view of the prevalent practice and there is also no requirement under the law for obtaining licence for carrying on business of electrical and electronic goods and, therefore, writ of mandamus may be issued directing the respondent Board not to insist on licence for carrying on the business of 'Reliance Footprint' and 'Reliance Digital'. He has drawn my attention to Paragraph 16 of the writ petition in this connection. He has also drawn the attention of the Court to Section 229 of the Municipal Act in support of the aforesaid submission that licences are not required for the trades in which the petitioner No.1 is engaged.

[15] Placing reliance on the affidavit filed, Mr. Doloi, learned counsel appearing for the respondent Board has submitted that the writ petition was filed in violation of the principles of res-judicata since no liberty was granted to the petitioner No.2 and the writ petition is also not maintainable as no legal or fundamental right of the petitioner No.2 is infringed for refusal of the Board to grant and issue licence to the petitioner No.1 and, therefore, the writ petition is liable to be dismissed on this short ground alone. Mr. Doloi has submitted that the petitioner No.2 has constructed the building encroaching upon the land of others and permission was granted by the Board based on the information supplied by the petitioner No.2, which has subsequently turned out to be incorrect on measurement being taken by the respondent No.5 on the basis of a complaint lodged by Tapan Koomar Doss. In this connection, he has specifically drawn the attention of the Court to Annexure-3 of the affidavit of the respondent Nos.1 to 3 filed on 01.08.2016. The Board was also not aware of the pending litigation earlier and as the Board now has the information about the litigation with regard to the land and building, the Board had issued the letter dated 18.06.2016 and the Board is justified in refusing to issue licence to the petitioner No.1.

[16] I have considered the submissions of the learned counsel appearing for the parties and have perused the materials on record including the pleadings of the parties.

[17] The order dated 23.06.2016 passed in WP(C) No.3821/2016 reads as follows :-

Mr. G.N. Sahewalla, the learned senior counsel prays for the liberty to withdraw the case, as the trade license was applied for by the tenant and hence the petitioner as a landlady can't be the aggrieved party when the license is not issued. In view of such submission made by the petitioner's lawyer, the case is closed by allowing the actual aggrieved party to approach the Court.

[18] The WP(C) No.3821/2016, demonstrably, was not adjudicated on merits and, therefore, the plea of res-judicata raised by Mr. Doloi is entirely misplaced. Question may arise as to whether in absence of any liberty granted to the petitioner No.2, she can maintain this writ petition on the principles of withdrawal.

1 and adjustment of suits under Order 23 of the CPC.

[19] Having regard to the core issue presented in the instant writ petition as well as in WP(C) No.3821/2016, as reflected in the order dated 23.06.2016, is grant and/or refusal of trade licence to the petitioner No.1 of the present writ petition, who is the tenant of the petitioner No.2. In that sense, petitioner No.1 is undoubtedly the aggrieved party and nobody else would be able to espouse the cause on behalf of the petitioner No.1 and the landlady, on her own motion, in absence of the tenant, could not have challenged the decision to refuse to issue trade licence. Can it be said that the petitioner No.2 has no rights attached in connection with issuance of trade licence to the tenant? The term 'person aggrieved' cannot be ascribed a very constricted meaning and the same has to be viewed and considered in the factual matrix of each case. The reason for refusal to grant licence, professedly, is due to the disputed litigation over the land about which petitioner No.1 is not aware. No doubt the petitioner No.1, on searching of records, could have traced out the history of the litigation. The landlady, by joining as petitioner No.2, has volunteered to give the outline of the litigation over the land in which her building is constructed. Refusal to grant licence to the petitioner No.1 tenant would have wide ranging ramifications as the petitioner No.2 would not be able to let out space available in the building for commercial purposes to others on the same ground. Therefore, the petitioner No.2 also has stake and substantial interest and legal right to vindicate that the Board cannot refuse to issue licence on the ground of pending litigation.

[20] Considered in the above perspective, I am of the considered opinion that the writ petition cannot be held to be not maintainable.

[21] It appears that for Reliance Footprint, trade licence was issued being Trade Licence No.8893 on 19.01.2016, which was valid up to 31.03.2016. Application for renewal of the aforesaid Trade Licence was made on 29.04.2016, which was after the licence had expired. Application for Reliance Digital, as it appears, was made on 27.04.2016. The grievance expressed is that due to non issuance of trade licence of Reliance Digital as well as Reliance Footprint, the petitioner No.1 is prevented from conducting its lawful business and such refusal to issue licence is based on wholly irrelevant and extraneous grounds.

[22] Perusal of the order dated 30.03.2010 passed in FAO No.1/2008 goes to show that Tapan Koomar Doss was the respondent/opposite party. Complaint dated 12.11.2015 to the Deputy Commissioner, Jorhat, was submitted by Tapan Kumar Doss and Manash Koomar Doss in connection with construction of the said building. Manash Koomar Doss, as stated by the petitioner, is the son of Tapan Koomar Doss. Report dated 07.01.2016 by the respondent No.5 (Annexure-3 of the affidavit-in-opposition of the respondent Nos.1 to 3 filed on 01.08.2016) refers to the complaint of 'Manash Kumar Das' and 'Tapan Kumar Das' against the petitioner No.2. It is on record that Tapan Koomar Doss and some others had filed Title Suit No.7/2008 in respect of the land where building is constructed and ad-interim injunction as well as direction to maintain status quo was vacated by order dated 30.03.2010 passed in FAO No.1/2008. The construction of the building, as it appears, is complete and floor area of the building was let out to petitioner No.1 as well as, at least, to one Jubilant Foodworks Limited (Dominos).

[23] When the civil suit is pending, the writ Court will not make any observation with regard to the issues raised therein in respect of the land and the building. The petitioner No.2, in absence of any restraining order from the Civil Court, is entitled to make lawful use of the building in the manner as considered to be appropriate. In the circumstances, refusal of the Board to issue licence to the petitioner No.1, only because of pending dispute and litigation, is not a relevant consideration and the same is clearly arbitrary, irrelevant and extraneous, resulting in violation of Articles 14 and 19(1)(g) of the Constitution of India.

[24] In view of the above discussion, the impugned order dated 18.06.2016 is quashed. The Board is directed to issue licence/renew licence for the purpose of carrying out the business in the name and style of 'Reliance Footprint' and 'Reliance Digital' in accordance with law, within a period of 2(two) weeks from the date of receipt of the certified copy of this order.

[25] The plea set up by the petitioners in paragraph 14 that licence was applied for as a measure of abundant caution and practice in vogue though there is no requirement for obtaining licences for the trades and business in which the petitioner No.1 is engaged, is not even traversed by the Board. When the power to issue licences is questioned, the Board was expected to respond in an appropriate manner but this issue has remained totally out of focus in the affidavits filed by the Board. However, during the pendency of the proceedings, Mr. Doloi had produced a Notification dated 16.08.1991 issued by the Commissioner & Secretary to the Government of Assam, Municipal Administration Department, issued in exercise of powers under Clause-(n) of Sub-Section (1) of Section 68 of the Act, sanctioning imposition of licence fees in respect of various trades to be levied by Municipal Boards and Town Committees as set out in the schedule which includes electrical good shop as well as shoe shop. The petitioner No.1 had also applied for licence to the Board. Save and except the statement that licence was obtained by way of abundant caution, there is nothing on record to show that the petitioner No.1 wanted to operate the business without taking any licence and there was insistence from the Board to obtain licence. That apart, to address the issue as raised by the petitioners regarding the competence of the Board to issue licences, Municipal Administration Department of the Government of Assam ought to have been made a party respondent as any decision on that issue would have been applicable to all urban local bodies. Therefore, the question raised regarding power of the Board to issue licence as raised by the petitioners is not gone into and left open to be decided in a more appropriate case.

[26] With the above observations and directions, the writ petition stands allowed. No costs.