

GAHC010137852017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 4988/2017

1:M/S. SHREE PRIME PROJECTS
A PARTNERSHIP FIRM HAVING ITS PRINCIPAL PLACE OF BUSINESS AT
ROOM NO.201, AAC COMMERCIAL COMPLEX, ATHGAON, P.O. GUWAHATI-
781001, DIST. KAMRUP M, ASSAM REP. BY ONE OF ITS PARTNERS, SRI
RAJESH AGARWAL, S/O. SRI BANAWARILAL AGARWAL.

VERSUS

1:THE GUWAHATI MUNICIPAL CORPN. AND 2 ORS.
PANBAZAR, P.O. GUWAHATI-781001, DIST. KAMRUP M, ASSAM.

2:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
P.O. GUWAHATI-781001
DIST. KAMRUP M
ASSAM.

3:SHRI NAURATANMAL KOTHARI
S/O. LATE MAHALCHAND KOTHARI
PRESENTLY RESIDING AT ONTARIO
CANADA
PERMANENT RESIDENT OF KOTHARI BUILDING
M.S. ROAD
FANCY BAZAR
GUWAHATI-781001
DIST. KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR.T C DAS

Advocate for the Respondent :

**BEFORE
HON BLE MR. JUSTICE PRASANTA KUMAR DEKA**

ORDER

Date : 27-04-2018

Heard Mr. O. P. Bhati, the learned counsel for the petitioner. Also heard Mr. B. D. Das, the learned Senior counsel, assisted by Mr. P. Bhowmick, the learned counsel, appearing for respondent No. 3 as well as Mr. S. Bora, the learned Standing Counsel, GMC.

The petitioner, being aggrieved with the act of the respondent, Gauhati Municipal Corporation (GMC) for not granting the trade licence to the petitioner to run the hotel business from the premises standing over the plot of land measuring 4 Katha 3 Lecha, has preferred this writ petition. After completion of the multistoried building over the said plot of land, the petitioner, keeping in view of running of hotel business under the name and style "City Walk International Hotel", sought for issuance of the trade licence by filling up the requisite form, which was duly received by the GMC authority on 31.03.2017. As required in the format, the petitioner recorded his own name as the owner of the business premises. As per the building permission annexed to the present writ petition, the said multistoried building was constructed under the NOC issued by the GMDA dated 08.09.2010. On the basis of the said building permission and its completion, the GMDA issued a part occupancy certificate dated 02.01.2018 to the present petitioner represented by one of its partners Shri Rajesh Agarwal. In the said occupancy certificate, it is seen that the construction of the commercial (Banquet Hall/hotel G+M+7) was under NOC No. GMDA/BP/134/19012010/195 dated 21.05.2015. This part occupancy certificate dated 02.01.2018 was submitted to the GMC on 30.01.2018. This writ petition was filed on 11.08.2017, claiming that there is delay on the part of the GMC in granting the trade licence.

During the pendency of this writ petition, the respondent No. 3, on the basis of an impleadment application, was permitted to be impleaded as the respondent.

The said respondent No. 3 has filed an affidavit-in-opposition thereby raising a dispute against the petitioner that it has encroached an area of 2000 sq.ft. of land belonging to the respondent No. 3 with a view to be used as the parking space for running the hotel business. It is also brought on record that the Chief Executive Officer, Guwahati Metropolitan Development Authority (GMDA), vide letter dated 09.03.2018 issued a show cause notice under Sections 87 and 88 of the GMDA Act, 1985 to the writ petitioner alleging violation to norms of Zoning Regulations and Building

Bye-Laws as the ground floor parking space was converted to hotel/banquet hall. As the notice had been issued by the GMDA, as such, the respondent has taken the plea that the GMDA is a necessary party in the writ proceeding. It is further stated that while filling up the form to get the trade licence, the petitioner had misrepresented the GMC by claiming the premises supposed to be used for hotel business to be its own inasmuch as it is the contention that about 2000 sq.ft. of land had been encroached by the petitioner in order to facilitate its parking space.

Mr. Bhati submits that under the provisions of the GMC Act, 1971 and its bye-laws, there are no specific rules and/or regulation, the manner in which the trade licence is to be issued or granted to a party. Referring Section 180 of the GMC Act, 1971, Mr. Bhati submits that every person, who exercises or carries out in the city any profession, trades, shall annually take a licence before the 1st day of April in each year from the date of taking out of the profession and pay for the same such fee as mentioned in that behalf in the schedule. Referring the said provision, Mr. Bhati submits that except the said provision, there is no specific provision thereby showing and stipulating the requisites prescribed for granting the trade licence by the GMC. Referring to the dispute raised by the respondent No. 3, Mr. Bhati submits that if at all there is any dispute, the same is a dispute, which is to be resolved in a forum of competent jurisdiction. The same being disputed facts and the same is a dispute of private nature between the two private parties, under such circumstances, the GMC had nothing to do even if for the argument's sake the dispute exists. The GMC vide order dated 26.04.2018, which was served on the petitioner, pointed out some discrepancies with respect to issuance of the occupancy certificate issued by the GMDA, which is with respect to G+7 floors for the commercial part. On the other hand, the commercial part consists of the GF+MF+6th floors and another part against which the occupancy certificate is issued is in respect to the residential GF+7th floors. Accordingly, vide the said order dated 26.04.2018, the GMC has raised the discrepancy that the occupancy certificate is not in consonance with the actual construction. Mr. Bhati submits that on the basis of the complaint lodged by the respondent No. 3, the GMC had sought for a report from the Circle Officer. But, from the point of view of the GMC as per submission of Mr. Bhati, the said report from the Circle Officer is not at all relevant, while considering the case of the petitioner for granting the trade licence and to that effect, Mr. Bhati submits that in the event there is a dispute, the same is private dispute and the person aggrieved is to go to the appropriate forum for redressal of the said dispute. Accordingly, Mr. Bhati submits that the GMC on its own volition has been delaying the issue of granting trade licence thereby causing irreparable losses to the petitioner and sought for an appropriate direction from this Court for issuance of the said trade licence.

Mr. Das, on the other hand, submits that once it has come to the knowledge of the respondent No. 3, a duty is cast upon the said respondent No. 3 at least to bring on record the objection and the act of misrepresentation by the petitioner, while submitting the requisite information in order to get the trade licence. It is submitted that the building and the land appurtenant does not belong to the petitioner. Rather, the ownership as mentioned is wrong inasmuch as there is a specific case of encroachment of the land of the respondent No. 3 and, as such, the GMC is supposed to look into the objection raised by the present respondent No. 3. In addition to that, it is further submitted that the GMDA had also raised its objection for violation of the Zoning Regulation so far as the ground floor of the proposed hotel premises is concerned. Accordingly, Mr. Das submits that in the event of any grant of trade licence to the present petitioner, the point raised by the respondent No. 3 here in this writ petition is to be looked into by the GMC.

Mr. Bora submits that the allegations levelled by the petitioner against the GMC cannot be accepted inasmuch as, there are objections being raised against the issuance of the trade licence to the present petitioner. In addition to that as reflected in the order dated 26.04.2018, there are discrepancies with respect to the occupancy certificate, so produced by the petitioner on 30.01.2018. Mr. Bora submits that the required occupancy certificate was submitted to the GMC on 30.01.2018 and the allegations of dilly-dallying the matter by the GMC is totally baseless. It is on the part of the petitioner itself and for the reasons, which can be attributed to the petitioner, the matter had got delayed. Coupled with the various objections raised by the various interested parties, it is also submitted that the GMC by issuing the trade licence would earn revenue. There is no point for refusing the trade licence to the petitioner subject to the requisites are supplied to the officials of the GMC duly on time.

I have considered the submissions of the learned counsels.

As per the GMC Act, 1971, there are no specific prescribed Rules and the requisites for issuance of the trade licence. The Annexure-F of the writ petition is the form to be filled up by any person seeking trade licence.

Mr. Das has raised his objection that the petitioner has shown the house to be its own. The said input of the present petitioner is false and is an act of misrepresentation. Once, the notice of such misrepresentation comes to the GMC, the concerned authority is bound to get it clarified inasmuch as Section 378 of the GMC, Act, 1971, while prescribing powers, procedures, offences and penalty under Sub-Section 3 specifically stipulates that any licence or written permission granted by

the GMC may at any time be suspended or revoked by the Commissioner, if he is satisfied that it has been secured by the grantee through misrepresentation or fraud. Accordingly, Mr. Das wants to project that as because it has been brought to the notice of the GMC that element of misrepresentation is impregnated in the form filled up by the petitioner, the GMC is bound to get it clarified as per the procedure known to law.

The intent and purpose of issuing the trade licence, as submitted by Mr. Bora, is mainly for earning the revenue of the GMC and as submitted by Mr. Bora that the GMC is always eager to issue the trade licence keeping in view the revenue return of the Corporation. The order dated 26.04.2018 is clear and specific that the GMC has kept in abeyance the request for issuance of trade licence by the petitioner till such time, the discrepancy, so raised in the said order, is rectified. In my opinion, leaving aside the objections raised by the GMC, the other limb of the objections raised by the respondent No. 3 is not of that prime consideration from the point of view of the GMC inasmuch as the trade licence doesn't give any right, title and interest to any person except the imposition of the relevant bye-laws as prescribed by the GMC in running and doing the trade or any other purpose. Even then, as the GMC had sought for clarification from the Circle Officer with regard to the status report of the plot of land upon which the hotel premises is standing, the same may be obtained or any other documents to the satisfaction of the GMC may be directed to be produced by the petitioner for its satisfaction. Accordingly, as the discretion of issuance of the trade licence lies with the GMC, whatever necessary for the grant of the said licence, leaving aside the discrepancy as referred herein above, the same will be considered and directed to the petitioner to be rectified and on the basis of the said enquiry, the GMC shall issue the trade licence subject to the requirements to that effect and the whole process shall be completed within a period of 2 weeks from today. The GMC is at liberty to call the necessary parties in order to grant the trade licence. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant