

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APO/106/2020
in
WPO/256/2020
IA No:GA/1/2020
JAYGRIH NIRMAN PRIVATE LIMITED AND ANR.
Vs.
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

AND

APO/114/2020
IA No:GA/1/2020
THE KOLKATA MUNICIPAL CORPORATION AND ORS.
Vs.
JAYGRIH NIRMAN PRIVATE LIMITED AND ANR.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

AND

The Hon'ble JUSTICE ARIJIT BANERJEE

Date: December 21,2020

Appearance:

Mr. Sakya Sen, Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Debdut Mukherjee, Adv.

Ms. Debjani Chatterjee, Adv.

Mr. Alok Kumar Ghosh, Adv.

The Court: These two appeals arise out of an order of September 23, 2020 passed on a writ petition.

The writ petitioners' appeal is against the refusal of an interim order. The Corporation's appeal is against the finding rendered in the order that the writ petition is maintainable.

At the outset, this appellate Court had enquired of the writ petitioners if the writ petitioners would be agreeable to deposit a substantial part of the amount claimed by the Corporation for an interim order to be granted. However, the writ petitioners do not appear to have the means to put

up the money. When such a claim is made by a statutory body and the claim does not, *ex facie*, appear to be hopeless, an unconditional interim order should, ordinarily, not be passed. Since the writ petitioners are unable to put up a substantial part of the amount claimed by the Corporation, the writ petitioners will not be entitled to any interim order. The writ petitioners are left free to urge all grounds at the final hearing of the writ petition.

As far as the Corporation is concerned, it says that it entered into an agreement with the first writ petitioner pertaining to a portion of S. S. Hog Market. The dispute is on account of “separation charges” that the Corporation has sought upon the first writ petitioner seeking the Corporation’s permission to divide the area into small spaces and sell them out to prospective purchasers. The basis of the writ petition is that the governing Act of 1980 does not permit any separation charges to be obtained. It is also the writ petitioners’ contention that the agreement between the parties contains no provision for separation charges to be levied.

A writ petition may be maintainable against a State or authority within the meaning of the expression in Article 12 of the Constitution. Ordinarily, there has to be an element of public law involved for a writ petition to be maintained and a purely contractual dispute *qua contract* is not received in the extraordinary jurisdiction under Article 226 of the Constitution.

The Corporation, in this case, carried several judgments before the Court of the first instance, as have been indicated in the impugned order, to suggest that in the context of the case made out by the writ petitioners, they could not have invoked Article 226 of the Constitution. The simple but wholesome ground indicated by the Court of the first instance to repel such argument was that the contract between the parties did not conceive of any separation charges and the Corporation had invoked the Act of 1980 and its

authority as a statutory body to levy such charges. The Court of the first instance perceived the Corporation's demand which has been challenged to be a demand not merely as a contracting party but as a statutory body entitled to make such demand under its governing statute.

In the light of such view taken by the Court of the first instance, which appears to be quite appropriate, the order impugned does not call for any interference at the behest of the Corporation. The writ petition is eminently maintainable and the matter should now be heard out on merits by the Writ Court.

It is made clear that the merits of the Corporation's demand or the permissibility thereof have not been gone into and it will be open to the Court of the first instance to adjudicate upon such issue uninfluenced by any observation herein.

The time for the Corporation to file its affidavit before the first Court is extended till January 10, 2021; reply thereto, if any, may be filed within a week thereafter. The parties will be at liberty to seek an early listing of the matter immediately after the next Republic day.

APO No.106 of 2020 and APO No.114 of 2020 along with GA No.1 of 2020, in either case, stand disposed of.

There will be no order as to costs.

(SANJIB BENERJEE, J.)

(ARIJIT BANERJEE, J.)