01.03.2021
SL No. 16
Court No.24
(P.M.)

WPA 13616 of 2019

Papiya Mukherjee
Vs.
Baidyabati Municipality & Ors.

Mr. Prasenjit Burman
... for the petitioner

Mr. Basudeb Gayen
... for the Municipality

Mr. Ayan Banerjee,
Mr. Soumo Chaudhury
.... For the State.

The petitioner purchased two cottahs twelve chittacks of Sali land in J.L. No. 4, Adarshanagar, Nursery Road, R.S. 258, 735, L.R. 8223, R.S. 4640, 4642, L.R. 5401 Mouza Dhirghanga by a registered Deed of Sale in December, 2018.

The petitioner is aggrieved by the act of Baidyabati Municipality by which a sum of Rs. 20,900/- (Rupees twenty thousand nine hundred) only has been charged on account of surcharge, and a sum of Rs. 3,168/- (Rupees three thousand one hundred sixty eight) only has been charged on account of Town and Country Planning Charges for the purpose of mutating the aforesaid land in her name.

According to the petitioner, the aforesaid two charges are not liable to be paid by her.

The learned advocate representing the Baidyabati Municipality relies upon an Administrative Order bearing Memo No. 2291/A-45 dated 18th January, 2021 wherein a decision has been adopted by the Board of Administrators for collection of Town and Country Planning Charges with effect from 1st February, 2021 and the prescribed rates have been indicated therein.

It appears that the purpose for collection of Town and Country Planning fees has been made leviable if the land is used for residence/industry/commerce or if there is change of user or for carrying out any other development. None of the purposes for which the charges have been mentioned in the said Administrative Order is attracted in the instant case as the petitioner categorically submits that the classification and nature of land has not been changed and the same is used for agricultural purpose only.

The petitioner submits that the land was originally a 'Sali' land meant for agricultural. Still now there has been no conversion of the nature of the land and the land remains to be a 'Sali' land and accordingly fees in respect of Town and Country Planning Charge will not be applicable in the instant case.

With regard to the surcharge, that has been assessed the learned advocate for the Municipality relies upon the provisions of Section 117(1) of the West Bengal Municipal Act, 1993 which permits the Board of Councillors to levy surcharge on transfer of immovable property in the form of additional stamp duty. Section 117(2) mentions that the rate of surcharge and the manner of collection, payment shall be such as may be prescribed.

Admittedly, neither the Municipality nor the State Government has prescribed any manner pursuant to which the aforesaid surcharge may be levied.

Reliance has also been placed upon Section 417 of the said Act that permits the State Government to make Rules for carrying out the purpose of this Act. The State Government has not framed any Rule pursuant to which surcharge for the purpose of transfer of land has been prescribed.

In the absence of a specific Rule prescribing the rate of surcharge and the manner for collection and payment, on account of transfer of immovable property, this Court is of the opinion that the Municipality is not entitled to collect any surcharge from the applicant at the time of mutating the land in question in her name.

The writ petition is accordingly disposed of by directing the Baidyabati Municipality to take steps for mutating the land of the petitioner in her favour by deleting the charges which has been directed to be paid by her on account of surcharge and the Town and Country Planning fees, within a period of eight weeks from the date of communication of a copy of this order.

WPA 13616 of 2019 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)