S/L. 48
14.12.2021
Court no.13
pk

WPA 20587 of 2019

The Lucky Trading Company Limited and another
Vs.
The Cantonment Board, Barrackpore and another

Ms. Manju Bhutoria,
Mr. Sidhartha Banerjee,
Mr. Rajesh Upadhyay,
Mr. Meghnath Datta
...for writ petitioners.

Mr. Indrajeet Dasgupta,
Ms. Puspita Bhowmick
...for the respendents.

The writ petitioner challenges the enhancement of tax payable in respect of 7 bighas of land under the Barrackpore Cantontment along side of river Hooghly.

The proposal for enhancement was served on the petitioners sometime in January, 2016. Upon objection being raised by the petitioners, a hearing is stated to have been fixed. It is submitted that when the petitioners appeared before the respondents, no such hearing took place.

It is further submitted that several dates were fixed for hearing when the petitioners attended but in vain. On 28th June, 2018, a bill for Rs.5,89,809/- on account of arrears and current dues has been raised. Admittedly, the writ petitioners claim to have made all payments only until the year 2015.

Jurisdiction under Article 226 of the Constitution of India is invoked by the petitioners for violation of principles of natural justice. It is submitted that the petitioners, who were mandated to have been heard either in person or through legal representatives under Section 76(3) of the Cantonments Act, 2006 were denied the same. It is also submitted that no copy of the order indicating that the petitioners' objection was considered by the respondents was ever served on the writ petitioners.

Per contra, counsel for the Cantonment Board submits that the writ petition is barred for availability of efficacious alternative remedy before the District Judge under Section 93 of the Act of 2006. It is submitted that enhancement of tax was valid and fair and on a rough estimate, came to Rs.1 per square foot per month.

Counsel for the petitioner relies upon judgement of the Supreme Court in the case of **Magadh Sugar and Energy Ltd. Vs. The State of Bihar and others** in Civil Appeal No. 5728 of 2021. Paragraph 19 thereof is placed to support that the exceptions carved out to the rule of alternative remedies would entitle the writ petitioners to come before this Court as there has been clear case of denial of natural justice.

Counsel for the Cantonment Board relies upon a decision of the Supreme Court in the case of **Institute of Hotel Management and another Vs. Union of India and others** reported **in (2017) 11 SCC 72**. It was held that a challenge to levy of property tax may not be entertained under Article 226 of the Constitution of India without exhausting alternative remedy under the Cantonment Act, 2006.

Having considered the rival contentions of the parties, this Court notes that there are some disputed questions as to whether the writ petitioners were actually heard or the order, if any, passed by the respondents, was in fact not received or served on the writ petitioners.

In any event, the Court would be required to go into the propriety of enhancement of tax which is itself a disputed question of fact and may require consideration of some evidence. This Court notes that Section 93 of the Act of 2006 is a complete and comprehensive remedy. The district court could not only test the propriety of the enhancement of tax imposed, but is also empowered to refer the matter to the High Court for a suitable opinion.

This Court, is, therefore, of the view in the given facts and circumstances of the case that the writ petitioners should avail the remedy of an appeal under Section 93 the Act of 2006. There is yet another reason why Court is not inclined to exercise discretionary jurisdiction under Article 226 of the Constitution of India. The writ petitioners have not paid any tax since 2015 and it is submitted that the respondents have refused to accept any tender of tax. Sufficient evidence of such tender is not available before this Court. The writ petitioners have, therefore, been enjoying the property of the Cantonment Board that is seven bighas land thereof without paying any tax.

Counsel for the petitioners, however, submits that they have paid water tax. She further submits that they are the owners of the property-in-question, which is seriously disputed by the counsel for the Cantonment Board.

The writ petition must fail and is hereby dismissed with the following liberty reserved to the petitioners.

If the writ petitioners approach the District Judge with an appeal under Section 93 of the Cantonments Act within a period of one month from date, the appeal shall be entertained and heard by the District Judge condoning any delay in filing the same.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)