

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Before:

**The Hon'ble Justice Subrata Talukdar
and**

The Hon'ble Justice Hiranmay Bhattacharyya

**MAT 797 of 2020
With
I.A. No. CAN 1 of 2020**

**The North Dum Dum Municipality & Anr.
Vs.
Sri Goutam Ganguly & Ors.**

For the Appellants : Mr. Debayan Ghosh,
Mr. Sudarshan Roy,
..... Advocates

For the Petitioner : Ms. Malabika Saha,
Mr. Subhankar Das,
.....Advocates

Heard on : 13.04.2021

Judgment on : 02.07.2021

Hiranmay Bhattacharyya, J.:-

The instant appeal is at the instance of North Dum Dum Municipality (for short "NDM") and is directed against an order dated February 20, 2020 and March 4, 2020 passed by an Hon'ble Single Judge in WP No. 14599 (W) of 2018.

By the order impugned the Hon'ble Single Judge allowed the writ petition directing the NDM to refund the excess amount paid by the writ petitioners/ respondent nos. 1 and 2 herein on account of scrutiny fees (surcharge) upon holding that the surcharge demanded by the NDM was contrary to the notification dated May 4, 2015.

The writ petitioners/respondent nos. 1 and 2 herein claiming to be the owner of a flat by virtue of purchase applied for mutation of their name in the records of the NDM. The NDM realized a sum of Rs. 500 as mutation fee and Rs. 24300 as scrutiny fee from the writ petitioners for mutating their names in the records of the NDM. The respondent nos. 1 and 2 filed this instant writ petition challenging the authority of the NDM to collect such exorbitant fee for the purpose of mutation alleging that the fee charged by the NDM was in violation of Rule 121 of the West Bengal Municipal (Finance & Accounting) Rules, 1999 (for short "the 1999 Rules").

Heard the Learned Advocate for the parties and have considered the materials on record.

The core issue involved in the instant appeal is identical with the issue already decided by this Court in FMA 422 of 2021 wherein this Court has specifically held that the NDM can charge mutation fees only at the rates specified in Rule 121 of the 1999 Rules and cannot realise surcharge in exercise of powers under Section 117 of the 1993 Act at the time of mutation.

The Hon'ble Single Judge was thus, perfectly justified in allowing the writ petition directing the NDM to refund the excess amount which has been paid by the writ petitioner.

The impugned order does not suffer from any infirmity warranting interference by this court in an intra-court mandamus appeal.

MAT 797 of 2020 according stands dismissed. There shall be, however, no order as to costs. In view of dismissal of appeal, the application being **CAN 1 of 2020** has become infructuous and the same also stands **disposed of** accordingly.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)

Later:-

02.07.2021

After the judgment was delivered the learned Counsel for the appellants prayed for stay of operation of the said judgment.

Ms. Malabika Saha, appearing in person, opposes such prayer for stay.

Having considered the submissions of the parties and, for the reasons as indicated above in this judgment, we are not inclined to pass an order of stay.

The prayer for stay stands accordingly rejected.

All parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Subrata Talukdar, J.)

(Hiranmay Bhattacharyya, J.)