

Sl. No.12
16.08.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

W.P.A 2934 of 2022

Gour Banga Developer's Association & Ors.
versus
The State of West Bengal & Ors.

Mr. Arabinda Chatterjee, Sr. Adv.
Mr. Arkadipta Sengupta
Ms. Deboleena Ghosh

... for the petitioner

Ms. Sonal Sinha
Mr. Avishek Prasad

... for the English Bazar Municipality

Mr. Malay Krishna De
Mr. Biswajit Dutta

... for the State

The petitioner no.1 claims to be a registered Society represented by the petitioner nos.2 and 3 being the President and Secretary respectively.

The petitioners are aggrieved by the act of the English Bazar Municipality in charging mutation fee contrary to the rates as prescribed in the West Bengal Municipal (Finance & Accounting) Rules, 1999.

The Additional District Magistrate (Municipal Affairs), Malda has filed a report before this Court wherefrom it appears that the Municipality, as per resolution of the meeting No.9 of the members of the Chairman-in-Council, has decided to charge the

applicants for mutation one time security deposit of rupees one lac per katha.

The security deposit is to be deposited at the time of submission of application for sanction of drawing and estimate of the proposed building and the said deposit be kept in a separate Bank account for the purpose. The security deposit is to be refunded to the Developer subject to the condition that the flats/rooms should be duly mutated in favour of the owner/occupier concerned. For taking refund of the security deposit, the concerned Developer will have to apply to the Chairman along with original receipt. The said order is effective from 10th March, 2015.

The petitioners submit that according to the provisions of the West Bengal Municipal (Finance & Accounting) Rules, 1999, mutation fees as per Rule 121 is Rs.200/- where consideration money or such value exceeds Rs.50,000/-. The Municipality could not have charged anything more than that is permissible under the aforesaid Rules.

The petitioners have relied upon a communication made by the Joint Secretary, Department of Municipal Affairs to all the Chairpersons of the Municipality/Notified Area Authority notifying that the authorities are required to act in accordance with Rule 121 of the aforesaid Rule of 1999 and the rates of fees (Mutation fees) for the purpose as prescribed.

The Municipalities were directed to ensure strict compliance of the aforesaid Rules in relation to imposition of the mutation fees in the Municipality and the Municipalities were restrained from levying any other fees/charges as processing fees developing fees in mutation cases.

The English Bazar Municipality in an order dated 4th April, 2012 adopted a resolution to enhance the mutation fees for the purpose of mutation. The nature of land and buildings which falls under the heading 'Commercial' is charged at a revised rate of eight per cent of the value of the property.

Learned advocate representing the Municipality relies upon the provision of Section 429 of the West Bengal Municipal Act, 1993 which gives power to the State Government to suspend any action under the Act after giving reasonable opportunity of hearing to the Board of Councillors.

It has been submitted that the matter may be referred to the State Government for taking a decision.

Upon hearing the submissions made on behalf of all the parties, it appears that the Municipality has not been able to produce any document/rules relying on which the Municipality has imposed enhanced rate for mutation.

According to the provision of the West Bengal Municipal (Finance & Accounting) Rules, 1999, the

Municipality is bound to act in accordance with the rates for mutation as prescribed therein. The department of Municipal Affairs has itself intimated the Municipality regarding compliance of the Rules of 1999.

The Municipalities are bound to act in accordance with the direction given by the Municipal Affairs Department.

As the department has already directed the Municipality to act in accordance with Rule 121, accordingly, the prayer of the Municipality to refer the matter once again to the State Government for taking a fresh decision in the matter cannot be accepted. The Municipality is bound to act in accordance with Rule 121 of the 1999 Rules as well as the direction passed by the Municipal Affairs Department in this regard.

In view of the above, the Municipality is directed to accept mutation fees strictly in accordance with the aforesaid Rule. The Municipality is also directed to refund the security deposit as has been collected from the applicants applying for mutation before the Municipality at the earliest but positively within a period of ninety days from the date of submission of the receipt showing deposit of the security amount before the Municipality.

The Municipality is also directed to refund any amount received from the applicant in excess of what is

chargeable under Rule 121 of the Rules of 1999 within the time limit as specified hereinabove.

The writ petition 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.)