

18.01.2022
Item No.40
Crt. No.16.
KB/RP

**MAT 860 of 2021
with
I.A. No. CAN 1 of 2021
CAN 2 of 2021**

**M/s. Realty Pvt. Ltd. & Anr.
-Vs-
Union of India & Ors.**

(Via Video Conference)

Mr. Vinay Shraff
Mr. Himangshu Kumar Ray
Ms. Priya Sarah Paul
... For the Appellant.

Mr. Y.J. Dastoor
Mr. Vipul Kundalia
Mr. Sujit Mitra
... For the Respondent UOI

Mr. A. Ray
Mr. T.M. Siddiqui
Mr. D. Ghosh
... For State

Mr. Tapan Bhanja
... For CGST

Mr. A. Chatterjee
Ms. Sarbani Mukherjee
... For the Respondent No.3

This intra-Court mandamus appeal preferred by the writ petitioner against the order dated 29th June, 2021 whereby the prayer for interim relief was not granted at the stage of admission and the learned Single Judge was of the opinion that affidavit-in-opposition is required to be filed for proper adjudication of the matter.

We fully agree and subscribe to the view taken by the learned Single Judge because one of the prayers sought for in the writ petition is to declare Rule 86A of CGST Rules/WBGST Rules ultra vires and for reading down Section 16(2)(c) of CGST/WBGST Act.

The well-settled legal principle is that there is a presumption attached to the validity of a statute. Therefore, when the prayer is made to declare a statutory provision as ultra vires the question of granting an interim order, which would have the effect of staying the statutory provisions, cannot be granted.

Mr. Shraff, learned Counsel appearing for the appellants submitted that the prayer sought for to declare the statutory provision as unconstitutional and ultra vires is an alternative prayer. However, after going through the order dated 29th June, 2021 impugned before us we do not find any such submission having been made before the learned Single Bench.

Be that as it may, the respondents have filed their affidavit-in-opposition. Though time for filing affidavit-in-reply by the appellants was granted, it appears that till date it has not been filed. Therefore, the proper course for the appellants is to file their affidavit-in-reply for which we shall fix time limit. In the light of the above while refusing to interfere with the impugned order we

direct the appellants to file their affidavit-in-reply to the affidavit-in-opposition filed by the respondents within three weeks from date after serving a copy on the learned Standing Counsel for the respondent. On the affidavit being taken on record the Registry shall place the matter before the appropriate Single Bench for passing necessary orders.

The third respondent/Official Liquidator is also directed to file affidavit-in-opposition with a view to assist the Court on facts.

The appeal and the connected applications are disposed of.

(T.S. Sivagnanam, J.)

(Hiranmay Bhattacharyya, J.)