Sl. No.2
11.11.2022
Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 16042 of 2022

Genius Consultants Limited & Anr.
v.
New Town Kolkata Development Authority & Ors.

Mr. Arijit Bardhan
Mr. Biswajib Ghosh
Mr. Avirup Chatterjee
… for the petitioners.
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Chayan Gupta
Mr. Sandip Dasgupta
Mr. Saaqib Siddiqui
Mr. Aviroop Mitra
… for the N.K.D.A/respondent nos.1 to 3

The petitioner no.1 claims to be a Company registered under the Companies Act, 2013 and the petitioner no.2 claims to be the authorised representative of the petitioner no.1.

The petitioner no.1 is the owner of two office spaces at Synthesis Business Park under the New Town Kolkata Development Authority.

The submission of the petitioners is that the petitioner no.1 paid property tax dues in respect of the said property till the 4th quarter 2020-2021 but thereafter stopped paying the property tax allegedly on the ground of erroneous calculation of the property tax bill raised in respect of the said property. A representation was filed by the petitioner no.1 before the Administrative Officer in February, 2022 and the petitioners allege that the said representation has not been taken up for consideration till date.

The petitioner no. 1 applied for renewal of trade license on 25th May, 2022 but the same has not been renewed allegedly on account of non-payment of the property tax.

According to the petitioners, as the bills raised were erroneous, the petitioners applied for revision of the same. The authority failed to take into consideration the objection seeking revision and, as such, it was not possible for the petitioners to deposit the current property tax.

It has been contended that non-payment of property tax ought not to be a ground for not renewing the certificate of enlistment. The representation filed by the petitioners objecting to the non-renewal of the certificate of enlistment is also pending consideration.

The petitioners rely upon the provision of Section 36A of the New Town Kolkata Development Authority Act, 2007 in support of the contention that the person engaged or intending to be engaged in any profession or trade is not required to submit the clearance of property tax prior to either obtaining or renewing the certificate of enlistment.

Provision of Section 36ZE has been placed before this Court. It has been submitted that the authority has the power to impose penalty for non-payment of property tax.

The petitioners rely upon the judgment delivered by this Court in the matter of Layeeque Ahmed Akhtar vs. State of West Bengal & Ors. reported in (2006) 1 CHN 634, in respect of the contention that the municipal authority at the time of grant of certificate of enlistment is only required to consider as to whether the person is engaged or is intending to be engaged in any profession, trade or calling in the municipal area.

It has been submitted before this Court that the nature of the business of the petitioner is such that same cannot be held up under any circumstances and the petitioners are compelled to continue with the business despite the fact that the certificate of enlistment is pending renewal at the end of the authority.

Prayer has been made for a direction upon the Municipal Authority to renew the certificate of enlistment without insisting upon the property tax receipt.

On behalf of the New Town Kolkata Development Authority it has been submitted that, as per the New Town Kolkata Development Authority (Certificate of Enlistment of Profession, Trade & Calling) Regulations, 2010, a person engaged or intending to be engaged in any profession, trade and calling is required to submit the property tax receipt in respect of the place of business.

It has been pointed out that till the last renewal the petitioners produced the property tax receipt at the time of renewal of the certificate of enlistment. Presently, renewal could not be made as the petitioners failed to submit the property tax receipt as required under the aforesaid regulations.

It has been contended that the petitioners never filed any objection to the scheme that was published by the authority and there is hardly any provision for revision of the property tax at this stage.

It has been submitted that erroneous calculation of property tax is not a ground for not paying the tax.

According to the authority, the petitioner no.1 is obliged to produce the current property tax receipt for obtaining renewal of the certificate of enlistment.

Upon hearing the submissions made on behalf of both the parties and upon perusal of the materials on record, it is an admitted fact that the petitioner no.1 stopped paying the property tax on and from the 1st quarter of the year 2021-2022.

The petitioner is carrying on business even though the certificate of enlistment has expired and the renewal is pending.

At this stage without deciding the issue as to whether payment of property tax will be a pre-condition for renewal of the certificate of enlistment, the matter is remanded to the Chairman, New Town Kolkata Development Authority to take a decision with regard to the objection raised by the petitioners regarding erroneous calculation in the property tax bill.

The Chairman is also directed to consider the representation filed on behalf of the petitioners praying for renewal of the Trade License.

The Chairman shall take a decision upon consideration of both the objections filed by the petitioners strictly in accordance with law, after giving reasonable opportunity of hearing to the representative of the petitioners and pass a reasoned order in the matter at the earliest, but positively within a period of six weeks from the date of communication of this order. The aforesaid respondent shall pass a reasoned order and communicate the same to the petitioners immediately thereafter.

It is made clear that this Court has not entered into the merits of the claim of the petitioners and all points are left open to be decided by the aforesaid respondent at the time of consideration of the representations.

Learned advocate for the petitioners is directed to forward a copy of the representations dated 11th

February, 2022 and 9th June, 2022 to the aforesaid respondent at the time of communicating the order of the Court.

As the petitioners is continuing with the business, accordingly, the petitioners is directed to deposit with the Chairman the outstanding property tax in respect of the said property prior to consideration of their representations.

The amount that is due and payable by the petitioners shall be calculated and intimated to the petitioners positively within a fortnight from date.

The said amount shall be deposited with the Chairman without prejudice to the rights and contentions of the parties and the said amount will be duly adjusted by the Chairman against the property tax which will be adjudicated by the Chairman after consideration of the objections filed by the petitioners.

The Chairman shall also take a decision with regard to renewal of the certificate of enlistment which is kept pending for quite some time keeping in mind that it will not be proper for the petitioners to run the business without the license.

The writ petition stands disposed of.

As the writ petition is being disposed of without calling for affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

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

(Amrita Sinha, J.)