

Form No. J.(2)
Item No.5

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

HEARD ON : 16.06.2023

DELIVERED ON: 16.06.2023

CORAM:

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE UDAY KUMAR

M.A.T. No.889 of 2023
With
IA No. CAN 1 of 2023

M/s. Siddha Real Estate Development Private Limited & Anr.
Vs.
National Anti-Profiteering Authority & Ors.

Appearance:-

Ms. Rishika Goyal
Ms. S. Mohanty

.....For the Appellants

Mr. Asok Kumar Chakrabarti, Ld. A.S.G.
Mrs. Sanjukta Gupta

.....For the Union of India

Mr. K. K. Maiti
Mr. Tapan Bhanja

.....For the C.G.S.T. Authority

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, C.J.)

1. This intra-Court appeal by the writ petitioners is directed against the order dated 11th April, 2023 passed by the learned Single Bench in W.P.A. No.7189 of 2023, by which the learned Writ Court had accepted the

submission made by the learned Additional Solicitor General that if the interim relief sought for by the appellants is granted, it would amount to granting the final relief in the writ petition.

2. The respondent authority has approved the computation of profiteering as done in the DGAP's report and, accordingly held that the first appellant has profiteered an amount of Rs.4,11,40,502/- and the second appellant has profiteered an amount of Rs.2,50,94,164/- during the period of investigation i.e., from 1st July, 2017 to 30th September, 2019.
3. The appellants have filed the writ petition seeking for an issuance of writ of declaration that anti-profiteering provisions contained in Section 171 of the G.S.T. Act and Rules are unconstitutional and *ultra vires* the provisions of the Act. The appellants have also prayed for issue of writ of mandamus to recall the adjudication order dated 30th September, 2022 passed by the first respondent and for other consequential directions.
4. As rightly held by the learned Writ Court, if the prayer for stay of the impugned provisions is granted, it would tantamount to granting the main relief in the writ petition apart from the settled legal position that a statutory provision is deemed to be valid in law unless it is being struck down. However, the appellants restrict the prayer with regard to amount of profiteering as computed by the first respondent in the order dated 30th September, 2022 and have raised various issues, which are all on the merits of the matter, which can be decided only after affidavit in opposition is filed by the respondents in the writ petition.
5. However, considering the fact that as against the order impugned in the writ petition, the appellants did not have any other alternate remedy and

the appellants have also questioned the *vires* of the statutory provision, there will be an order of interim stay of the order passed by the first respondent dated 30th September, 2022 subject to the condition that the appellants deposit with the Registrar General of this Court a sum of Rs.6 crores. On such deposit being made, Registrar General is directed to deposit the said amount in an interest bearing account and the same shall continue in deposit till the writ is disposed of and shall abide by the orders that may be passed in the writ petition.

6. The appellants shall deposit the said amount within a period of eight weeks from the date of receipt of server copy of this judgment and order.
7. With the above observations, the appeal along with the connected application stand disposed of.
8. There shall be no order as to costs.
9. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

I agree,

(UDAY KUMAR, J.)

Pallab/KS AR(Ct.)