

AD-19
Ct No.09
28.06.2023
TN

WPA No. 14632 of 2023

Serampore Municipality and another
Vs.
State of West Bengal and others

Mr. Sounak Bhattacharya,
Mr. Gautam Lahiri,
Mr. Abhirup Halder

.... for the petitioners

Ms. Sangeeta Roy,
Mr. Sujit Chatterjee

.... for the State

Mr. B.L. Molla,
Ms. Anjana Sengupta,
Mr. Samrat Chowdhury,
Mr. Sandip Das,

.... for the respondent nos. 3 & 4

Learned counsel for the petitioners contends that possession of the municipal property-in-dispute is sought to be taken over by the Bank for alleged non-payment of a loan by the private respondent no. 5, with whom the Municipality merely entered into a development agreement.

It is submitted that as per Clause 17 of the said agreement between the Municipality and the developer, the Municipality has no liability whatsoever for any financial help taken by the developer from the Bank, private financial institutions etc.

It is, thus, submitted that in view of the patent rights of the Municipality, which ought not to be

affected by the loan taken by the developer, the Municipality has a relief against the possession notice, which has been impugned in the present writ petition.

At the outset, learned counsel for the respondents takes a preliminary objection regarding the maintainability of the writ petition, in view of availability of an equally efficacious alternative remedy in the form of an application under Section 17 of the SARFAESI Act, 2002 before the appropriate tribunal.

Upon a consideration of Clause 17 of the agreement-in-question, it is evident that a private treaty between the parties cannot have the effect of creating any estoppel against the statute. Since the law is very clear that remedy of any person aggrieved against any action taken under SARFAESI Act is before the tribunal, there is no exceptional occasion in the present matter to interfere in the present writ petition.

Accordingly, WPA No. 14632 of 2023 is disposed of with liberty to the petitioners to approach the appropriate forum in due process of law. Nothing in this order shall prevent the petitioners from making such an application before the concerned tribunal. If so made, the tribunal shall decide the same in accordance with law, without being influenced in any

manner unduly by any of the observations made herein.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)