12
12.10.2023
Court No. 24
AGM

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 20474 of 2023
With
CAN 1 of 2023
CAN 2 of 2023

Hindustan Motors Limited & Anr.
-versus
Uttarpara Kotrung Municipality & Ors.

Mr. Siddhartha Banerjee
Mr. Niladri Khanra
Mr. Dipranjan Mukhopadhyay
Mr. Soumajit Majumdar
...For the petitioners.

Mr. Santanu Kumar Mitra
Ms. Rama Halder
... For the State.

Mr. Dipak Kumar Mukherjee
Mr. Rajib Mukherjee
...For the Uttarpara Kotrung Municipality.

The petitioner no. 1 Company has been declared as a weak industry by the department of Land and Land Reforms by order dated 13th September, 2006. Due to financial crisis faced by the petitioner no. 1 Company, a reference was made to the Board for Industrial and Financial Reconstruction in the year 2014. All works of the Company has been suspended on and from the year 2014.

On and from the year 2015, the Company made repeated representations before the Municipality highlighting excessive hardship and prayed for waiver of municipal tax. None of the representations has been considered.

On the contrary, the Municipality has raised a tax demand amounting to Rs. 3,03,29,723/- only.

The petitioners rely upon Section 103 of the West Bengal Municipal Act, 1993. It has been submitted that despite repeated requests sought for waiver of municipal tax, the same has neither been considered nor disposed of by the Municipality.

It has further been submitted that the Municipality lodged objection to the draft valuation list published by the West Bengal Valuation Board. The valuation of the property is yet to be finalized.

The immediate threat, which the petitioners are facing right now is a notice dated 3rd October, 2023 issued by the Municipality under Section 151(1) of the West Bengal Municipal Act, 1993.

A further notice has been issued on the same date indicating that if the tax due is not paid within thirty days, then the property in question shall be put up on auction for recovery of the dues.

The petitioners submit that since the Company is running through severe financial crunch, it is not in a position to clear the municipal tax dues as assessed by the Municipality.

The application seeking reduction of the rate of tax on account of excessive hardship is pending consideration at the end of the Municipality.

A prayer has been made to restrain the Municipality from proceeding any further for recovery of the tax amount till a decision is taken on the application filed by the petitioners.

Learned advocate representing the Municipality opposes the submission made on behalf of the petitioners. It has been submitted that huge sum is due and payable from the petitioners. On account of non-payment of tax, the Municipality is suffering. The

Municipality does not have any power to exempt payment of tax.

According to the provision of Section 103 of the Act, the Board of Councillors of a Municipality may, if circumstance arise, reduce the amount of tax payable on a holding or may realise the same by installments if the person liable to pay tax is under excessive hardship.

Application made by the petitioners seeking reduction of the tax is pending consideration at the end of the Municipality. The land is the fixed asset of the Company which cannot be removed or taken away.

Prior to taking recourse to the extreme step of putting up the Company on auction, the Board of Councillors of the Municipality is directed to take a decision on the representation filed by the petitioners on 30th May, 2023 in accordance with law after giving reasonable opportunity of hearing to the representative of the Company. The Municipality shall permit the representative of the Company to produce documents in support of the relief sought for.

A reasoned order shall be passed and communicated to the petitioners.

Decision shall be taken in the matter at the earliest.

The Municipality, for the time being, is restrained from taking any steps in furtherance to the impugned notices dated 3rd October, 2023 till the matter is finally decided by the Board of Councillors of the Municipality.

Learned advocate representing the petitioners is directed to immediately forward a copy of the representation dated 30th May, 2023 along with all supporting documents to the Municipality at the time of communicating the order of the Court.

The petitioners, to show bona fide, shall make an honest effort to clear as much tax as possible from the due amount so that the quantum of tax that has piled up may be reduced to some extent.

The writ petition stands disposed of.

As the main writ petition stands disposed of, all connecting applications are also disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)