

04. 01.02.2024
Court No.6
(Tanmoy)

MAT 238 of 2024

**Office of the Board of Councillors of Khardah
Municipality
-Versus-
Frontier Warehousing Limited & Ors.**

**With
IA No: CAN/1/2024**

Mr. Joydip Kar, Ld. Sr. Adv.,
Mr. Sirsanya Bandopadhyay, Adv.,
Mr. Arka Kumar Nag, Adv.,
Ms. Payal Mishra, Adv.

...for the appellant.

Mr. S.N. Mookherjee, Ld. Sr. Adv.,
Mr. Chayan Gupta, Adv.,
Mr. Dhruv Chadha, Adv.,
Mr. Subhankar Chatterjee, Adv.

...for the respondent nos. 1&2/
writ petitioners.

Mr. Anirban Ray, Adv.,
Mr. Tanay Mukherjee, Adv.,
Ms. Amrita Panja Moulick, Adv.

...for the State.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

A judgment and order dated January 25, 2024, whereby the writ petition of the respondent nos. 1 and 2 herein being WPA 27340 of 2023, was disposed of by a learned Judge of this Court, is under challenge in this appeal filed by the Board of Councillors of Khardah Municipality.

It appears that the writ petitioners purchased two properties within the territorial limits of Khardah Municipality. The writ petitioners applied for mutation of

the properties in the name of the writ petitioner-company, Frontier Warehousing Limited, (in short, 'Frontier'). The Municipality, by a Memo dated November 7, 2023, raised a demand for Rs.2,18,97,316/- on account of 'charges' in respect of transfer of the said properties in favour of Frontier under Section 116 of the West Bengal Municipal Act, 1993 (hereinafter referred to as the '1993 Act'). Aggrieved by the said demand, Frontier approached the learned Single Judge.

The learned Judge disposed of the writ petition on the very first day at the motion stage. The learned Judge recorded that the demand made in the impugned notice is shocking and the amount *ex facie* appears to be exorbitant, "*if not an attempt to extort money from the petitioner*". The learned Judge quashed the notice of demand dated November 7, 2023, and disposed of the writ petition with the following observations and directions:-

"5. The Chairman of the Khardah Municipality shall communicate the actual mutation fees payable for effecting mutation of the two properties purchased by the petitioners by registered deeds of conveyance dated 21st September, 2023 by 30.01.2024. Upon being deposited, the Chairman of the Khardah Municipality shall personally ensure the mutation in the name of the petitioners within seven days thereof. Any plan submitted for construction shall be processed as expeditiously as possible preferably within 15 days of submission of such plan.

6. The petitioners shall comply with all necessary formalities and pay only the applicable prescribed fees therefor.

7. Since, this Court has noted exorbitant amount of Rs. 2,18,97,316 for mutation, the District Magistrate, North 24 Parganas shall forthwith cause an enquiry and take all

necessary steps under the Bengal Municipal Act against the Chairman of the Khardah Municipality.

8. Let a copy of this order be sent to the District Magistrate, North 24 Parganas as also the Vigilance Department of the State of West Bengal for appropriate action.

9. In the event, the Chairman of the Khardah Municipality is able to produce any document or rules to support the notice dated 07.11.2023, the petitioners shall be at liberty to challenge the same in accordance with law .”

Being aggrieved, the Municipality has come up by way of this appeal.

Mr. Kar, learned Senior Advocate representing the appellant, says that the demand raised on Frontier was not arbitrary. It was on the basis of a notification dated July 25, 2022, issued by the Department of Urban Development and Municipal Affairs, Government of West Bengal, a copy whereof has been enclosed with the stay petition. Mr. Kar further makes a grievance that the observations and comments made by the learned Judge against the Chairman of the Municipality in paragraphs 3, 7, 8 and 9 of the impugned judgment and order are wholly unwarranted. In any event, such comments ought not to have been made without granting the Chairman of the Municipality an opportunity to file an affidavit to explain the basis of the demand raised on Frontier.

Mr. Mookherjee, learned Senior Advocate representing Frontier, says that the notification dated July 25, 2022, which, the Municipality says, is the basis of the demand raised by Frontier, is bad in law. It is a

statutory notification issued under Section 116 of the 1993 Act. It is contrary to the decision of the Hon'ble Supreme Court in the case of ***Calcutta Municipal Corporation & Ors. v. Shrey Mercantile (P) Ltd. & Ors.***, reported at **(2005) 4 SCC 245**. Mr. Mookherjee would like us to strike down the said notification.

Mr. Mookherjee, however, says that Frontier is interested to do business and not enter into a legal battle with the Municipality at this stage. It should be allowed to put in the amount demanded by the Municipality without prejudice to its rights and contentions. Upon receipt of such deposit, the Municipality should immediately process the mutation application made by Frontier and carry the same to its logical conclusion in accordance with law.

Accordingly, we grant liberty to Frontier to pay to the Municipality the sum mentioned in the demand notice dated November 7, 2023, i.e., Rs.2,18,97,316/-, within a week from date, without prejudice to its rights and contentions including the contention that the said demand is not in accordance with law. Upon receipt of such payment, the Municipality shall forthwith process the mutation application of Frontier and dispose of the same in accordance with law at the earliest and in any event, within ten days from the date of receipt of the money. After mutation is effected, if any Building Plan is

submitted to the Municipality by Frontier, the same should also be dealt with expeditiously.

The impugned order is set aside.

Frontier will be at liberty to challenge the notification dated July 25, 2022, before the appropriate forum in accordance with law. Needless to say, the payment to be made now by Frontier to the Municipality, will be subject to the outcome of any proceeding that Frontier may initiate challenging the validity of the notification dated July 25, 2022.

Since we have not called for affidavits, the allegations made in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 238 of 2024 and the connected application being IA No: CAN/1/2024, are disposed of.

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

(Arijit Banerjee, J.)

(M.V. Muralidaran, J.)