

07.05.2024
Court No. 15
Item No. 12
(Suvendu)

W.P.A. 10805 of 2024

Dolphin Enterprise
-Versus-
Union of India & Ors.

Mr. Kushal Chatterjee
Mr. Sibhasish Mitra
Mr. Shibjit Mitra
.....for the petitioner

Mr. Pinaki Bhattacharyya
Mr. Subit Majumder
.....for the respondent nos. 1-3

Matter relates to maintainability of the proceeding under the relevant provisions of the Bengal Public Demands Recovery Act, 1913 (hereinafter referred to as “said Act of 1913”) which has been initiated at the instance of the concerned authority of Eastern Railway.

Mr. Chatterjee, learned advocate representing the petitioner has drawn attention of this Court to a notice dated 30th May, 2017 issued by the Certificate Officer, South 24 Parganas, Alipore. According to the learned advocate representing the petitioner, in terms of the said notice the petitioner was asked to pay Rs. 70 lakhs and in the event the petitioner

wants to dispute such demand explanation is required to be furnished before the Certificate Officer within the prescribed time.

Now, it has further been contended on behalf of the petitioner that Certificate Officer does not have jurisdiction to initiate proceeding under the said Act of 1913 and in support of same, reliance has been placed on Section 3(6) vis a vis Schedule I Clauses 15 and 18 of the said Act of 1913 in order to demonstrate before this Court that the amount which was directed to be paid by the Hon'ble Division Bench vide order dated 15th July, 2014 passed on FMA 1499 of 2009 by no stretch of imagination can be treated as "public demand" which authorizes the Certificate Officer to initiate recovery proceeding.

Therefore, it has been submitted on behalf of the petitioner that the proceeding initiated by the Certificate Officer is not maintainable.

The learned advocate representing the Eastern Railway at the threshold has brought to the notice of this Court the order of the Hon'ble Supreme Court dated 5th May, 2015 passed on SLP being CC No(s). 7920 of 2015 which was preferred against the aforesaid order of the Hon'ble Division Bench dated 15th July, 2014. A

copy of the order dated 5th May, 2015 passed by the Hon'ble Supreme Court is taken on record.

According to the Eastern Railway, since the Special Leave Petition was dismissed vide order dated 5th May, 2015 there is no impediment so far as Certificate Officer is concerned to initiate proceeding under the said Act of 1913.

It has also been submitted on behalf of Eastern Railway that the petitioner took advantage of pendency of the first writ petition being WPA 21982 of 2017 which led the Certificate Officer to pass order on 22nd August, 2017 to adjourn the hearing till pending writ petition is decided. Subsequently, the said writ petition was not proceeded with and the same was dismissed as not being pressed by this Court vide order dated 4th April, 2024 with liberty to file afresh with better particulars. Based on such leave granted by this Court on 4th April, 2024, the present writ petition has been instituted challenging the proceeding which has been initiated before the Certificate Officer; according to the Eastern Railway the said proceeding cannot be questioned at this stage in view of the conduct of the petitioner.

Having considered the submissions made on behalf of the parties, this Court finds a certificate proceeding was initiated in terms of the said Act of 1913 and matter could not be proceeded with in view of pendency of the earlier writ petition being WPA 21982 of 2017 and the same remained pending for approximately seven years. On 4th April, 2024 this Court passed an order on the said writ petition thereby dismissing the same on the ground of non-prosecution and granted leave to the petitioner to file fresh writ petition with better particulars.

Subsequently, the present writ petition has been instituted where jurisdiction of the Certificate Officer has been questioned based on the relevant provisions of the said Act of 1913.

On perusal of the order dated 15th July, 2014 passed by the Hon'ble Division Bench in FMA 1499 of 2009 and subsequently dismissal of Special Leave Petition by the Hon'ble Supreme Court vide order dated 5th May, 2015, it appears that sum of Rs. 70 lakhs is payable without prejudice to the rights and contentions of the parties in FMA 1499 of 2009 which is still pending before the Hon'ble Division Bench, as submitted by the learned advocates representing the parties.

At the same time, it needs to be recorded that specific point has been agitated before this Court with regard to the jurisdiction of the Certificate Officer to pass order in the proceeding initiated under the said Act of 1913 and argument has been advanced on behalf of the petitioner that the demand raised by the Eastern Railway to the extent of Rs. 70 lakhs is not to be treated as “public demand” being defined under Section 3(6) of the said Act of 1913.

In view of the proceeding which has been initiated before the Certificate Officer in 2017, this Court at this stage is not inclined to interfere with such proceeding but the petitioner is granted leave to take point of jurisdiction of the Certificate Officer in the pending proceeding by filing a petition within a period of 30 days from date and on receipt of such petition the Certificate Officer shall make an endeavour to conclude the said proceeding as expeditiously as possible but not later than three months from the date of filing of the petition by the writ petitioner.

However, it is made clear if no petition is filed in terms of leave granted by this Court

Certificate Officer shall take decision in accordance with law.

Till the decision is taken by the Certificate Officer no coercive steps shall be taken against the petitioner.

With the aforesaid observations and directions, the writ petition stands disposed of.

There shall be, however, no order as to costs.

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

(Saugata Bhattacharyya, J.)