GAHC010070572020

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 2144/2020

1:M/S SELVEL ADVERTISING PVT LTD AND ANR
SELVEL HOUSE 10/1B, DIAMOND HARBOUR ROAD, KOLKATA, INDIA-700027

2: M/S SELVEL ADVERTISING PVT. LTD.
H.NO.-90
A.K.AZAD ROAD
REHABARI
GHY
ASSAM- 781008
REP. BY ITS BRANCH MANAGE

VERSUS

1:THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY., GUWAHATI DEVELOPMENT DEPTT., GOVT. OF ASSAM, DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPTT.
DISPUR
GHY-06

3:THE GUWAHATI MUNICIPAL CORPORATION (GMC)
REP. BY ITS COMMISSIONER
PANBAZAR
GHY-01

4:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION (GMC)
PANBAZAR
GHY-0

Advocate for the Petitioner : MR. S BHATTACHARJEE

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 30.04.2020

Heard Mr. S. Bhattacharjee, learned counsel for the petitioners. Also heard Mr. D. Saikia, learned Senior Counsel, assisted by Mr. S. Bora, learned standing counsel for the respondents.

The learned counsel for the petitioners has referred to the photographs annexed to the writ petition to project that the outdoor hoardings/ billboards erected by the petitioners are sought to be removed by the Guwahati Municipal Corporation (GMC for short) authority in this lockdown period. By referring to the 101st amendment to the Constitution of India, it is submitted that a consequent amendment has been made in the Assam Goods and Service Tax Act and Clause-(d) of sub-Section (1) of Section 144 of the Guwahati Municipal Corporation Act, 1971 has been omitted. Accordingly, it is submitted that the GMC does not have the power to levy tax on outdoor advertisement and, as such, a representation was submitted by the counsel for the petitioner to the GMC authorities not to take coercive measure.

The learned Senior Counsel for the respondents, seriously objecting to this writ petition has raised the issue of maintainability of the writ petition on the ground that the writ petition is neither supported by any board resolution of the petitioners, nor any authorization letter has been annexed to this writ petition. It is also submitted that a company does not have the fundamental right.

It is also submitted that the premise on which this writ petition is structured is without any basis because the demand notes/ bills for the year 2016-17 was issued by the GMC on 27.04.2016 (Annexure-4) for 61 numbers of outdoor advertisement for Rs.67,16,884/- which has not yet been paid by the petitioners. It is also submitted that the said demand is for a period prior to the coming into force of the 101st amendment to the Constitution of India.

It is further submitted that notwithstanding the omission made by way of an amendment in Section 144 of Guwahati Municipal Corporation Act, there still exists provision of Section 173 in the said Act which permits tax on advertisement. Accordingly, it is submitted that the further demand of tax on advertisement for the period 2017-18 for Rs.61,24,300/- and the current demand is fully justified and the coercive action taken by the respondents is stated to be justified. It is submitted that as an pre-condition for grant of stay, the revenue interest of the respondents be also protected.

Having considered the submissions made by both sides, the Court is inclined to provide that the question of maintainability of the writ petition be kept open to be decided on the next date or as per the convenience of the court.

Let a notice returnable on 13.05.2020 be issued.

The petitioners shall serve additional copies of the writ petition either by way of soft copy or by way of hard copy to the learned SC, GMC in course of the day today.

As an interim measure, in view of the current lockdown operating in the State, the Court is inclined to provide that the GMC authorities shall refrain from removing outdoor advertisement of the petitioners till the next date of listing. At this stage, owing to the lockdown operating, no pre-condition to deposit part of the revenue to GMC is made. However, the Court is inclined to put the petitioner to notice that in view of the revenue demand by the GMC, why the Court shall not pass an order directing the petitioner to deposit a part of the revenue demanded as a pre-condition of extension of order of the stay on the next date fixed.

List on 13.05.2020 by which time, the learned SC, GMC shall file affidavit-in-opposition.

Let a copy of this order be provided to both sides.

JUDGE

Comparing Assistant