Item No. 2 30-05-2019

sg/G.S. Das

Ct. no. 37

W.P. 9625 (W) of 2019

Pioneer Cooperative Car Parking Servicing
and Construction Society Ltd. & Anr.
versus
The State of West Bengal & Ors.

Vacation Bench

Mr. Milon Bhattacharya, Sr. Adv.
Mr. S.S. Saha, Adv.
… for the petitioners

Mr. Prithu Dudhoria, Adv.
Mr. Debasish Ghosh, Adv.
… for the respondent nos. 1 to 9

Mr. Alok Kr. Ghosh, Adv.
Mr. Swapan Kr. Debnath, Adv.
… for KMC

Two jurisdictional errors of a fatal nature have been brought before the Court in this petition. Service has been effected on the principal respondents. The respondent nos. 1 to 9 are represented.

Mr. Bhattacharya, learned Senior Advocate appearing on behalf of the petitioners, very concisely points out that the exercise of power by the respondent no. 8 who is below the rank of the Joint Commissioner in the case of such seizure and other acts under Section 67(2) are wholly without jurisdiction. He also points out that so far as the annexure P/21 is concerned, the last paragraph violates the exemption granted under the Notification annexed to the writ petition at annexure P/3 at page 98. He points out that under Article 3 of the Notification, pure service by way of any activity in relation to any function entrusted to a Municipality under Article 243W of the Constitution is exempted from payment of Goods and Service Tax Act. He further submits that it is the GST authority’s own case that the functions entrusted to a Municipality under Article 243W of the Constitution includes public amenities including street lighting, parking lots, bus stops and public conveniences. It is trite that a Municipal Corporation is also a Municipality within the meaning of Articles 243P and 243Q of the Constitution of India and, therefore, is covered by the exemption given in respect of all functions under Article 243W of the Constitution.

In such view of the matter, the exercise commenced by the respondent no.8 and his associates under the thin disguise of legality is prima facie without jurisdiction and violates the law as applicable in West Bengal as I have briefly summarized above. The dispute arises in respect of parking fees which are collected by Mr. Bhattacharya's client, members and employees in respect of the Municipal parking lots under the Kolkata Municipal Corporation and Mr. Bhattacharya is not at present challenging the payment of GST in respect of parking lots in the Railways, which he may have done in view of the same notification. Accordingly, I find a strong prima facie case in favour of the writ petitioners and urgency since search and seizure has happened more than once by a authority who clearly does not have jurisdiction and a case of harassment has been made out in the writ petition by the respondent no.8.

Accordingly, there shall be an interim order staying all further proceedings in respect of annexure P/21 of the search and seizure conducted in the premises of the petitioners and its employees and directors shall not be subjected to any coercive process for realization of GST for municipal parking lots which, prima facie, is not payable. This order shall be in effect for a period of eight weeks from date and until further orders whichever is earlier. Further service has to be completed in respect of the non-appearing respondents with a copy of the order being served on them and affidavit of service shall be filed showing such service on the next date when the matter appears subject to the convenience of the Regular Bench. The matter will appear before the Regular Bench two weeks after reopening.

Observation made above is on tentative question of maintainability of the writ petition and all other grievances are kept open.

(Protik Prakash Banerjee, J.)