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28.01.2021.
d.p.

**W.P.A. 756 of 2021
(Via Video Conference)**

**Amit Kumar Srivastav & Ors.
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Rahul Karmakar,
Mr. Jibantaraj Dan Roy.
...For the Petitioners.**

**Mr. Debjit Mukherjee,
Ms. Manisha Nath.
...For the KMC.**

**Mr. Rajsekhar Basu.
...For the Respondent
Nos. 6 and 7.**

The petitioners are aggrieved by the action of the Kolkata Municipal Corporation in mutating the premises No. Z3-300/A, Kachari Bari Road, Kolkata-700044 in the names of the private respondents.

The property in question was originally recorded in favour of one Dinabandhu Prasad Srivastav, since deceased. On his death, the private respondents produced documents to show that they were the heirs and legal representatives of the deceased owner and relying on the said documents the Corporation mutated the property in their names.

The documents relied upon by the private respondents, were a copy of the Hindu Marriage Register showing the marriage between Dinabandhu Srivastav and Rita Srivastav, a copy of the order dated 21st April, 1994 passed in Matrimonial Suit No. 30 of 1992 by the Court of the Additional District Judge, 1st

Court at Alipore, a copy of the death certificate of Dinabandhu Prasad Srivastav and an affidavit affirmed before the learned Judicial Magistrate, Alipore by Rita Srivastav wherein it has been declared that Dinabandhu Prasad Srivastav left behind Rita Srivastav and Ritika Srivastav as his legal heirs and successors.

The petitioners, claiming themselves to be the wife and children of deceased Dinabandhu Prasad Srivastav, submit that they are governed by the Mitakshara Law and the right to property accrues in favour of a person immediately on birth, under the said law.

The petitioners pray for recording their names in the records of the Kolkata Municipal Corporation.

It appears that a Title Suit has been filed by Amit Kumar Srivastav, the petitioner No.1 herein, against his father, mother and his sister praying for partition and permanent injunction in respect of the premises in question. The partition suit being Title Suit No. 1275 of 2018 (119 of 2018) is pending consideration in the Court of 3rd Civil Judge (Senior Division) at Alipore.

The Kolkata Municipal Corporation at the time of mutating the property in the names of the private respondents relied upon the documents placed by them.

At that point of time, the application of the petitioners for recording their names was not filed. The Corporation proceeded on the basis of the documents available and mutated the names of the private respondents in their records.

It is not open for the Corporation to decide either the title or ownership of the property. It is also not open for the writ court to decide as to who is the owner of the property in question.

The parties will be at liberty to apply before the appropriate forum for declaration of ownership.

As mutation is not a proof of ownership, accordingly, no order is required to be passed in the instant writ petition. The instant writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Amrita Sinha, J.)