

S/L 17
24.08.2021
Court. No. 19
GB

WPA 9070 of 2021

Narendra Kumar Shaw
Vs.
Kolkata Municipal Corporation & Ors.

(Through Video Conference)

Mr. Debanik Banerjee,
Mr. Mainak Swarnokar,
Mr. Akash Ganguly.

...for the Petitioner.

Mr. Rudraman Bhattacharyya,
Ms. Arunita Panja Moulick,
Ms. Afreen Pareveen,

...for the Respondent No.9.

Mr. Achintya Kumar Banerjee,
Ms. Tanushree Dasgupta,
Ms. Indumouli Banerjee.

...for the K.M.C.

Mr. Bibek Jyoti Basu,
Mr. Debojit Samanta.

...for the State.

The petitioner challenges the mutation granted in the name of the respondent no.9. It is the contention of the petitioner that the respondent no.9 has acquired title in respect of the property situated at Premises No.104/1, Karl Marx Sarani, Kolkata – 700023 illegally. The petitioner further contends that some of the lessees sold the property to the petitioner in violation of the clauses of the lease deed. The petitioner is one of the lessees in possession of a portion of the property. Some of the co-lessees illegally transferred of the said property to the respondent no.9 without the petitioner's consent. The petitioner filed an objection before

the Kolkata Municipal Corporation requesting the authorities not to mutate the name of the respondent no.9 in the Corporation's records. However, the name of the respondent no.9 was mutated and the petitioner is aggrieved because his further prayer for cancellation of the mutation in favour of the respondent no.9 has not been taken into consideration by the Kolkata Municipal Corporation.

Mr. Bhattacharya, learned advocate appearing on behalf of the respondent no.9 submits that the dispute between the parties is civil in nature. A civil suit has been filed by the petitioner. An ad interim order of injunction has been passed restraining the respondent no.9 from disturbing the possession of the petitioner in respect of the premises in question.

Mr. Banerjee, learned advocate appearing on behalf of the Kolkata Municipal Corporation submits that the Kolkata Municipal Corporation is not duty bound to investigate into the title of the persons occupying the property or the co-lessees, who had sold the property. The respondent no.9 furnished the documents required for such mutation and accordingly the mutation was done. He submits that during the pendency of the civil suit, any further action with regard to mutation will have an effect on the civil suit and the Kolkata Municipal Corporation is already a party in the civil suit. He further submits that further relief with regard to the property in question, can be obtained from the civil court.

Mr. Basu, learned advocate appearing on behalf of the State submits that the dispute involved in the writ petition with regard to the title and possession cannot be decided before the Corporation but the petitioner's application may be disposed of in accordance with law.

In the decision (Dinesh Kumar Goyal Versus Kolkata Municipal Corporation, reported in 2013 SCC OnLine 20190) cited by Mr. Bhattacharya, a coordinate Bench of this Court held that when disputes are mainly civil in nature and a civil suit is pending, interference under Article 226 is not called for with regard to the mutation.

Having heard the rival contentions of the parties, the writ petition is disposed of with a direction upon the appropriate authority of the Kolkata Municipal Corporation to pass an order disposing of the petitioner's objection to the mutation in question in accordance with law. This order will not prevent the petitioner from approaching the civil court for appropriate reliefs. A reasoned order shall be passed and communicated to all.

The entire exercise shall be completed by the Kolkata Municipal Corporation within a period of eight weeks from date of communication of this order upon hearing the petitioner as also the respondent no.9.

It is the apprehension of the petitioner, that based on the mutation granted to the respondent no.9, the Kolkata Municipal Corporation may sanction the building plan in respect of the property in question. There is a prima facie

finding of the civil court that the petitioner is in possession of a portion of the 'C' schedule property.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)