

01.09.2021
Sl. No.5
srm

W.P.A. No. 10676 of 2021

Sri Asoke Kumar Mukherjee

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Kishore Mukherjee,
Mr. Soumyajit Mukherjee

...for the Petitioner.

Mr. Ranajit Chatterjee,
Mr. S. Panda

...for the KMC.

The writ petition has been filed by the owner of Premises No.14B, Roy Para Road, measuring about 5 cottahs 11 chittaks 37 sq.ft. along with a two storied residential building standing thereon.

The petitioner submits that the petitioner and his dead brother were the co-owners. The brother and his wife expired leaving behind their child, namely, Indranil Mukherjee. The said Indranil Mukherjee has been missing since 2003. The petitioner applied for mutation of the property in his name on the presumption of the death of Indranil Mukherjee. As the Kolkata Municipal Corporation did not take any steps, a writ petition was filed. A co-ordinate Bench of this Court by an order dated December 18, 2020 directed the corporation to hear out the petitioner and effect the mutation if the petitioner satisfied the corporation with regard to certain queries.

Accordingly, the petitioner was heard and the corporation was unable to allow the mutation of the property in favour of the petitioner. The view of the corporation was that the missing person may stake a claim to title and ownership over the property in question and as such without declaration from the learned civil court such mutation cannot be done.

Aggrieved by the said order dated April 16, 2021 passed by the Manager, Assessment Collection (North) Department, Kolkata Municipal Corporation, the writ petition has been filed.

The petitioner relies on a decision of this Court in the matter of Smt. Ruda Devi & Anr. vs. Coal India Ltd. & Ors. (In Re: W.P. No.1651 of 2008), wherein the Court held that there was no necessity for a decree of a civil court declaring the death of the missing person in such a situation.

It is an admitted position that Indranil Mukherjee has not been heard of since 2003. Indranil Mukherjee has never staked any claim with regard to the property in question. There is a police report which shows that despite investigation Indranil Mukherjee could not be traced out. It is also an admitted position that Indranil Mukherjee does not have any heirs. It is also to be noted that mutation does not create any right or ownership over the property. It is merely records possession and is relevant for payment of tax. The decision of

the learned Single Bench in Smt. Ruda Devi (supra) was noted by a Hon'ble Division Bench of this Court in the matter of Bharat Cooking Coal Ltd. vs. Smt. Ruda Devi & Ors. (In Re: APOT 78 of 2019 with GA 1740 of 2019) and the ratio of the said judgment was accepted by the Hon'ble Division Bench.

Thus, I do not find any reason for the Kolkata Municipal Corporation not to accord mutation in respect of the property in the name of the petitioner who is the only known surviving owner of the property.

The order impugned dated April 16, 2021 is set aside.

Such mutation will be subject to any further claim to title which may be raised by Indranil Mukherjee or any of his heirs. Such mutation shall be affected upon compliance of all formalities by the petitioner with an undertaking given by the petitioner that Indranil Mukherjee has not been heard of since 2003 and presumed to be died under Section 108 of the Indian Evidence Act and also that the said Indranil Mukherjee does not have any other heirs and legal representatives. The mutation shall be affected within a period of six weeks from the date of compliance of all formalities pursuant to the order of this Court. The petitioner shall approach the corporation and the corporation shall apprise the petitioner of the formalities that the petitioner has to comply with for such purpose.

This writ petition is, thus, disposed of.

There will be no order as to costs.

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

(Shampa Sarkar, J.)