

02.12.2021
Court No. 19
Item no.04
CP

WPA 11316 of 2021
with
CAN 1 of 2021

Mrs. Sophia Ali
Vs.
The Kolkata Municipal Corporation & ors.

Mr. Syed Nurul Arefin
Mr. Sanju Chakraborty
Mr. Rajesh Kumar Shaw
Mr. Rahul Singh

.....for the petitioner.

Mr. Ananda Dulal Sarkar

....for the State.

Mr. Alok Ghosh
Mr. Subhrangsu Panda

....for the K.M.C.

The petitioner claimed to be the rightful owner of C.S. Dag No. 675/866 corresponding to J.L. No. 5, Khatian No. 355, Ward No. 66, P.S. Pragati Maidan. The petitioner was aggrieved by the overt act of the Kolkata Municipal Corporation (hereafter referred to as the corporation), in attempting to make some constructions on the area in question. The aggrieved petitioner approached this court. Initially, the matter was moved before this court and the grievance of the petitioner was that without any acquisition proceeding, the corporation could not have entered

into the lands of the petitioner for the purpose of making the alleged construction.

Reliance was also placed on an answer given to the agent of the petitioner by the Assistant Land Acquisition Collector, Kolkata intimating him that there was no proposal for acquisition of the said land. Considering such answer, the court was of the opinion that the First Land Acquisition Collector, Kolkata must file a report with regard to the status of the said land in question, specially because it was the specific case of the corporation that the land had been acquired for extension of the Dhappa Square Miles and the remaining vacant land could be used for construction of a drain and other developmental works for public purpose.

A report was filed on the earlier occasion by the First Land Acquisition Collector. From the said report it appears that the land in question is a 'bata' plot of the original Plot No. 866, Holding No. 166 under J. L. No. 46 and the same was acquired by the Government for the corporation as a requiring body vide L. A. Case No. C2/11 of 1930-31.

Records also reveal that the award had been published and the predecessor of the vendor of the petitioner had been paid the compensation. The petitioner claims to be the transferee of the heirs of Ram Lakshman Kairi, but according to the records

and the report of the First Land Acquisition Collector, the heirs of Ram Lakshman Kairi did not have any right to sell the property in question after the acquisition of the same in 1930-31 and payment of awarded sum thereof. The petitioner allegedly has purchased from the heir of Ram Lakshman Kairi by a sale deed dated September 14, 2007. The name of the petitioner was subsequently mutated. The petitioner further claims that the land was a khas mahal land and the same could not have been transferred to the Ram Lakshman Kairi and the entire process by which this khas mahal land was earlier leased out to Ram Lakshman Kairi and, thereafter acquired from the said Ram Lakshman Kairi, was not done in accordance with law.

However, the writ court cannot go into the question as to whether the process of acquisition was correct or not after so many years when the award has also been published. Whether the corporation has actually encroached into the lands of the petitioner or has been using the acquired land cannot be decided in a writ proceeding. The question of title, possession etc. are matters to be decided in a civil court. The challenge to the acquisition also cannot be decided by this court under this jurisdiction.

Neither the reply under the RTI Act nor can the mutation confer title upon the petitioner and the opinion of the Assistant Land Acquisition Collector that there was no proposal for acquisition of the land of the petitioner may have been restricted only to the query whether the bata plot was proposed to be acquired. The records were not consulted by the said Assistant Collector. Mutation also does not create any title and, as such, remedy of the petitioner will be in a civil suit if the petitioner asserts his rights over the land in question on the basis of the deed of sale, as opposed to the rival claims of the respondents to the effect that the land of the petitioner is a part of the plot No.866 which had been acquired in its entirety in the year 1930-1931. The question as to the identity, demarcation, boundary etc. of the land in question, the petitioner must approach the civil court, strictly in accordance with law. The question of limitation etc. has not been gone into and all points are kept open.

The writ petition is, thus, disposed of. The connected applications, if any, are also disposed of accordingly. There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)