

Sl. No.188
24.06.2022

Court No.24
B.M.

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 1202 of 2019

Smt. Jaya Barik
Versus
The State of West Bengal & Ors.

Mr. Siddhartha Banerjee
Mr. Ghanashyam Patra
Mr. Subrata Mukherjee
Mr. S. N. Ghosh

... for the petitioner

Mr. Saptansu Basu, Sr. Adv.

Mr. Anirban Tribedi

... for the State respondent no.4

Mr. Malay Krishna De
Mr. Debojit Samanta

... for the State

Mr. S. M. Hassan

Ms. Anupama Yasmin

... for the Haldia Municipality

The matter relates to a property at Holding No.N-442, Mouza-Basudevpur, Ward No.10, under the Haldia Municipality. The property in question was jointly purchased in the name of the petitioner and the respondent no.4.

The petitioner happens to be the wife of the respondent no.4. The parties are in an acrimonious relationship and several legal proceedings are pending between the parties before several forums.

The petitioner is aggrieved by the order dated 30th August, 2018 passed by the Chairman, Haldia Municipality, wherein it has been mentioned that the

holding in question was recorded in favour of Rangalal Barik alone from the very beginning and no change or mutation has so far been made against the said holding.

The case of the petitioner is that initially relying upon the title deed of the said property, the Municipality mutated the name of both the petitioner as well as the respondent no.4 in their records but all on a sudden without giving any opportunity to the petitioner to defend herself, the Municipality deleted her name from the municipal records.

She approached this Court on an earlier occasion by filing writ petition being W.P. 5133 (W) of 2018. The Court by order dated 17th May, 2018 was pleased to set aside the decision of the Municipality deleting the name of the petitioner from the official records being contrary to the principles of natural justice. The Municipality was directed to hear both the parties before passing a final order with regard to mutation of the property involved.

The impugned order was passed allegedly in compliance of the order passed by the Court in the earlier writ petition filed by the petitioner.

The petitioner has annexed documents in the writ petition to show that the title deed of the property is in the name of both the parties. The permission to make construction over the said plot of land was issued by the Municipality in the name of both the parties.

The impugned order records that the respondent no.4 adduced an occupancy certificate/completion certificate of the three storied building during the 'Bari Bari Abhijan' conducted by the Haldia Municipality.

The impugned order also records that the respondent no.4 has admitted taking full consent from the petitioner, that is, his wife and co-sharer of the land in question prior to making construction.

The Municipality was of the opinion that the name of the petitioner was not found in the municipal records pertaining to the aforesaid holding.

The petitioner prays for a direction upon the Municipality to incorporate her name in the municipal records in respect of the said property.

Learned senior advocate representing the respondent no.4 submits that the petitioner has made out a case of deletion of her name from the official records of the Municipality.

It has been submitted that there is no existence of any record in the Municipality in the name of the petitioner. All along the property stood in the name of the respondent no.4 individually.

Provision of the West Bengal Municipal Act, 1993 has been relied upon to show that the notice of transfer is to be served upon the Municipality after a property is transferred. The sole purpose for updating the records of the Municipality is for payment of taxes. The person whose name is recorded in the Municipal records is

responsible for payment of taxes in respect of the said property. The same neither creates nor extinguishes title of any person.

Learned advocate representing the Municipality submits that there has been a change in the Board of the Municipality and the old records are not readily available.

It appears from the submissions made on behalf of both the parties that the petitioner seeks for a direction upon the Municipality to incorporate her name in the Municipal records primarily relying upon the sale deed which stands in the joint name of the petitioner and the respondent no.4 and also relying upon the documents of the Municipality permitting construction over the said plot of land and the notice of completion of work up to the plinth level which was in the name of both the parties.

Admittedly, neither the respondent no.4 nor the Municipality challenges the deed relying upon which the petitioner seeks incorporating her name in the municipal records. It is not the case of the respondent no. 4 that the petitioner is not the co-owner of the property in question.

From the records annexed to the writ petition it appears that, the name of the writ petitioner is already recorded in the records maintained by the Block Land and Land Reforms Officer.

As the deed in question stands in the name of both the parties, there is no reason whatsoever on the part of the Municipality not to incorporate the name of the petitioner in their municipal records.

It is settled law that incorporating the name in the records of the Municipality neither creates nor extinguishes the title of any person claiming to be the owner on the basis of the title deed. Whether the name of the petitioner was earlier recorded and thereafter deleted hardly makes a difference. As long as the title deed stands in the name of the petitioner, the Municipality is legally obliged to record the name of the petitioner in their official records.

Assuming that the petitioner has tried to make out a case of deletion of her name from the Municipal records, but the petitioner has made a prayer in the writ petition praying for incorporating her name in respect of the holding no. N-442 on the basis of the sale deed which stand in the joint name of the petitioner and the respondent no. 4.

The Municipality is duty bound to incorporate the name of the transferee in their official records as and when the notice of transfer of the property is brought to the knowledge of the Municipality. The Municipality is presently aware that the name of the petitioner is recorded in the title deed of the property and she happens to be a co-owner of the said property. The

Municipality is liable to record the names of both the owners of the property in their official records.

Accordingly, the instant writ petition is disposed of by directing Haldia Municipality to incorporate the name of the petitioner in the records maintained by the Municipality subject to compliance of the necessary formalities and upon payment of requisite fees by the petitioner.

Necessary correction shall be made by the Municipality at the earliest but positively within a period of four weeks from the date of completion of all formalities.

The Municipality is directed to intimate within a fortnight the formalities that are required to be complied by the petitioner for the purpose of incorporating her name in the municipal records.

The order impugned dated 30th August, 2018 is accordingly set aside.

Writ petition stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on completion of usual formalities.

(Amrita Sinha, J.)