

27.04.2022  
Item No.52  
Court No.6.  
S. De

**F.M.A. 1170 of 2019**

**Nakul Mondal.**  
**Vs**  
**The State of West Bengal & Ors.**

Mr. Jayak Gupta,  
Ms. Prativa Ghatak,  
...for the appellant.  
Mr. Tapas Kr. Chatterjee,  
Mr. Sanjoy Ghosh,  
Mr. S. Sahu,  
...for the respondent nos. 4 & 5.  
Mr. Debnath Mahato,  
...for the respondent nos. 6 to 16.  
Mr. Lalit Mohan Mahata,  
Mr. Prasanta Behari Mahata,  
...for the State.

The petitioner on an earlier occasion had approached this Court filing a writ petition praying, inter alia, for mutation of his name with regard to a plot of land on the strength of a registered deed executed in the year 2004. By an order dated September 11, 2015, a direction was passed by a learned Single Judge of this Court upon the Chairman of the Old Malda Municipality to consider the prayer for mutation in accordance with law.

In compliance with the said order, the Chairman of the Old Malda Municipality, by an order dated

November 28, 2015, decided that the land in question could not be mutated until the dispute regarding title of the land was cleared.

It appears from the said order that the writ petitioner, namely Sri Nakul Mondal, purchased the plot in question in the year 2004. An inspection carried out by the Municipality revealed that the said plot was in possession of some persons for about 25 years. They raised their residential buildings on the said plot and they have been paying the municipal holding tax since 1998. The petitioner was not in possession of the plot even after his purchase.

Mr. Joyak Gupta, learned advocate representing the writ petitioner/appellant submits that there is no dispute regarding the title of the petitioner with regard to the land in question. The persons who are in possession, admittedly are not the owners of the land. At best they can be said to be illegal encroachers. When the petitioner approached the municipality with a registered title deed executed in accordance with law, it was the duty of the municipality to mutate the name of the petitioner in terms of Section 116 of the West Bengal Municipal Act, 1993.

Learned advocate appearing for the municipality on the other hand submits that the land in question was never recorded in the name of the vendor of the writ petitioner and as such the petitioner could not

claim that his name should be recorded in the relevant records of the municipality on the strength of the sale deed.

We do not see any illegality in the order of the municipality. The municipality did not reject the case of the petitioner finally. It was observed that unless and until the dispute regarding the title with regard to the land in question was resolved the petitioner's name could not be mutated.

When the petitioner purchased the land in question, he was aware that the said land was in possession of other occupants since long. The name of the vendor of the writ petitioner was not recorded in the relevant municipal records. The name of the petitioner could not have been mutated by annulling the mutation made in favour of the said occupants as long back as in the year 1998.

In our view, unless the petitioner perfects his title as against the occupants of the land by obtaining a decree from a competent Civil Court, the Municipality cannot be asked to mutate his name against the relevant plot.

In that view of the matter, we do not find any illegality in the order of the municipality and we are not inclined to interfere with the order of the learned Single Judge which upheld the order of the

municipality in rejecting the claim of the petitioner for mutation.

Accordingly, F.M.A. 1170 of 2019 is dismissed.

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible upon compliance with all the necessary formalities.

**(Kausik Chanda, J.)**

**(Arijit Banerjee, J.)**