

Item No. 140

31.08.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 8351 of 2022
Abdul Kalam & Ors.

v.

Kolkata Municipal Corporation & Ors.

Mr. Partha Chakraborty
Ms. Sharmistha China
... for the writ petitioners.

Mr. N.C. Bihani
Mr. Dwijadas Chakraborty
... for KMC.

Mr. Pankaj Halder
Mr. Sk Afrajul Haque
Mr. Razzak Hossain
Mr. Tapas Manna
... for the respondent nos. 7 & 8.

The petitioners pray for a direction upon the Kolkata Municipal Corporation for consideration of the representation filed on behalf of the petitioners on April 11, 2022.

The matter relates to the property standing at R.S. Dag No. 3723, Mouza-Kasba, J.L. No. 13, Ward No. 107 under the jurisdiction of the Kolkata Municipal Corporation.

The petitioners submit that the private respondent no. 7 & 8 have obtained mutation of the property in question by mis-representation.

Learned advocate representing the respondent Nos. 7 & 8 submits that a Civil Suit being TS No. 1289 of 2022 is pending before the learned Judge, 12th Bench City Civil Court at Calcutta. An order has been passed by the Court on August 30, 2022.

Prayer in the Suit are as follows:-

- a) A decree for declaration against the defendants that the plaintiffs, being owners are entitled to carry on the works of construction of building as per sanctioned plan as has been sanctioned by the K.M.C. on the said suit property without any interruption by any of the defendants.
- b) A decree of permanent injunction restraining the defendants, their men and agents from interfering with the works of construction works is being carried on as per sanctioned plan and possession of the plaintiffs on the suit property.
- c) Order for temporary injunction in terms of the prayer (b) above till the disposal of the suit.”

The learned Court was pleased to fix September 27, 2022 for hearing of the injunction application for filing the written statement and written objection.

The defendants of the Suit were restrained by an order of injunction from interfering with the construction work and the possession of the plaintiff in the suit property.

Learned advocate representing the petitioner submits that a Title Suit filed by the petitioner is also pending consideration before the 5th Civil Judge (Senior Division), South 24 Parganas. An order has been passed in the said Suit directing both the parties to maintain

status quo in respect of the property with regard to possession, structure, nature and character of the suit property.

It appears from the submissions made on behalf of both the parties that there is an issue with regard to the title of the property in question. The petitioners challenge the act of the Corporation in mutating the property in favour of the private respondent.

It is settled law that mutation neither creates nor extinguishes any title. Ownership of the property is derived from the title deed. Mutation by the Corporation will not stand in the way of the petitioners' right of ownership of the property in question.

The representation of the petitioner cannot be allowed to be considered by the respondents as there are several disputed questions of facts and the parties are already agitating the same before the learned Courts below.

In view of the above, no relief can be granted to the petitioners in the instant writ petition.

The writ petition fails and is hereby dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties after completion of all legal formalities.

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(Amrita Sinha, J.)