

Item No. 102(ML)

23.08.2022
Ct-24

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 10051 of 2021

Smt. Bithika Chatterjee & Ors.

v.

The State of West Bengal & Ors.

Mr. Rudranil De
Mr. Santimoy Bhattacharya
... for the petitioners.

Mr. Subhendu Bandyopadhyay
... for the respondent no. 6.

Mr. Suprabhat Bhattacharya
Mr. Rabindra Nath Dutta
... for the State.

Leave granted to the learned advocate-on-record of the petitioners to implead the Board of Councillors, Serampore Municipality as well as the Serampore Municipality as party respondents in the instant writ application.

The petitioners pray for a direction upon the Serampore Municipality for consideration of their representation filed on March 24, 2021.

According to the petitioners, the names of the private respondents have been erroneously recorded in the records maintained by the Serampore Municipality.

Learned advocate representing the respondent no. 6 submits, upon instruction that, his client by way of gift deed acquired the said property and he accordingly

mutated his name in the records of the Serampore Municipality.

It has been submitted that the name of the respondent no. 6 is also incorporated in the records of the Block Land & Land Reforms Officer and the respondent no. 6 pays the tax in respect of the portion of the land that has been acquired by him.

It has further been contended that over the selfsame cause of action a suit is pending consideration before the Civil Judge (Junior Division), 2nd Court, Serampore being Title Suit No. 352 of 2021.

None appears on behalf of the Municipality, the respondent nos. 5 and 7, despite service.

Affidavit-of-service filed in Court today is taken on record.

Though it has been submitted by the learned advocate representing the respondent no. 6 that the Suit is pending before the learned Court below on the selfsame cause of action, but it appears from the copy of the plaint that has been relied upon that, in the suit, the plaintiff has prayed for a declaration regarding ownership of the property.

It is made clear that mutation has got nothing to do with the ownership. Mutation is only meant to identify the person responsible for payment of taxes.

It will be open for the learned Civil Judge to proceed with the Suit for declaration of title but the pendency of the Suit will not stand in the way of the Municipality to take into consideration the representation of the petitioners relating to mutation.

Submission has also been made by the learned advocate for the petitioners that during pendency of the writ petition, the private respondents have started making illegal and unauthorized construction over the plot of land.

As there is no averment in the writ petition with regard to the illegal construction, accordingly, the said submission of the petitioners cannot be taken into consideration and adjudicated by the Court in the present writ petition.

It will be open for the petitioners to make appropriate application before the Municipality alleging illegal construction.

As regards the prayer of the petitioners for consideration of their representation, the Board of Councillors of the Serampore Municipality is directed to consider the representation filed by the petitioners on March 24, 2021 strictly in accordance with law, after giving reasonable opportunity of hearing to all the necessary parties.

Reasoned order shall be passed by the Board of Councillors at the earliest, but positively within a period of four months from the date of communication of a copy of this order.

The reasoned order shall be communicated to all the parties immediately thereafter.

It is made clear that this Court has not entered into the merits of the claim of the petitioners and all points are left open to be decided by the Board of Councillors at the time of consideration of the representation of the petitioners.

The petitioners are directed to forward a copy of the representation dated March 24, 2021 to the aforesaid respondent at the time of communicating the order of this Court.

The writ petition stands disposed of.

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.)