

22
30.03.2022
Ct. No.10
b.das

WPA 13851 of 2021

Amitava Bhattacharjee
Vs.
The State of W.B. & Ors.

Ms. Sayani Roy Chowdhury
...for the petitioner.

Mr. A. Ray, Ld. G.P.
Mr. Soumitra Bandyopadhyay
Mr. D. Ghosh ...for the State.

Mr. Debabrata Saha Roy
Mr. Arka Kumar Nag
Mr. S. Das
...for the Bidhannagar Municipality.

The petitioner is the subsequent transferee of the property in question and seeks direction upon the concerned authority for mutation of his name in respect of the same.

One Asim Narayan Bhattacharyya, since deceased, was the lessee in respect of the property by virtue of a deed of lease executed on 9th May, 1972 for a period of 999 years and after demise of the said lessee on 26th January, 1999, his wife being his sole legal heir mutated her name with regard to the property and became a subsequent lessee under the State. The said lessee bequeathed the property in favour of the writ petitioner who is the nephew-in-law of the lessee and upon demise of the lessee on 9th November, 2017, the petitioner obtained probate of the said Will on

18th June, 2020 and stepped into the shoes of the erstwhile lessee.

The petitioner filed an application before the authority on the strength of such probate for mutating his name with regard to the plot and was informed by the authority that he should deposit an amount of Rs.21,19,750/- towards permission fee for mutation in terms of the Notification No.2709-SL(AL)/4S-9/2000(Pt-I) dated 22nd June, 2012.

The petitioner has prayed for an order setting aside such notice and direction upon the concerned authority to mutate his name with regard to the property concerned.

Placing reliance on the report submitted by the Land Manager, Bidhannagar on 11th March, 2022, the learned counsel for the State respondents has submitted that in terms of the notification dated 22nd June, 2012, transfer of leasehold right to a property by the lessee is permitted by imposing transfer fees at the rate of Rs.5 lakhs per cottah and only transfer in favour of close blood relations is exempted from payment of such fees.

Learned counsel has taken the Court to a subsequent notification dated 22nd September, 2013 which has clarified the term 'close blood relations'.

It is not in dispute that the notification dated 22nd June, 2012 is applicable in cases where there is a clause in the deed of lease itself restricting transfer of leasehold right.

Admittedly, in the deed pertaining to the present matter, no such restriction clause is available. Therefore the notification dated 22nd June, 2012 has no manner of application in the case of mutation as prayed for by the petitioner before the authority. There being admittedly no restriction to transfer the leasehold right of the erstwhile lessee in the deed itself, the authority was not entitled to claim any transfer fee from the petitioner for alleged unauthorised transfer of the leasehold right.

The petitioner having acquired leasehold right by virtue of probate after demise of the erstwhile lessee is entitled to mutate his name in respect of the property.

It appears from the e-challan produced by the petitioner that the processing fee for mutation has been deposited by the petitioner on 2nd December, 2020.

In view of the above, the writ petition is disposed of directing the 2nd respondent herein to consider the application made by the petitioner dated 7th December, 2020 and cause mutation of the petitioner's name in respect of the leasehold property subject to compliance of all legal formalities by the petitioner. Such exercise is expected to be completed within six weeks from the date of communication of this order.

The decision taken by the authority shall be communicated to the petitioner within a week thereafter.

With the above observations and directions this writ petition being WPA 13851 of 2021 is disposed of.

However, there shall be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)