

**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**W.P.A 18139 of 2022**

**J. J. Automotive Pvt. Ltd. & Ors.  
-versus  
Kolkata Municipal Corporation & Ors.**

**Mr. Surajit Nath Mitra,  
Mr. Shounak Mukhopadhyay,  
Mr. Sayantan Bose,  
Ms. Ankita Choudhury.  
...For the Petitioners.**

**Mr. Biswajit Mukherjee,  
Mr. Tanushree Dasgupta.  
...For KMC.**

**Mr. Aniruddha Chatterjee,  
Mr. Rahul Karmakar,  
Mr. Debobrata Upadhyay,  
Ms. Munmun Mazumder.  
...For the respondent no. 4.**

Facts of the case have been recorded in the order dated 14<sup>th</sup> November, 2022. The discussion and the conclusion follow.

In the present case, the respondent no. 4 claims to be the lessee relying upon the decree passed by this Court on 8<sup>th</sup> July, 2013 in Suit no. 186 of 1995. The said Suit was filed praying for leave under Order 2 Rule 2 C.P.C. and for decree claiming relief for specific performance of the Memorandum of Understanding dated 30<sup>th</sup> August, 1990, and in the alternative, for an inquiry to the damages suffered by the plaintiff and decree for the sum found due thereon.

The defendants remained unrepresented and the Suit was decreed on the basis of the terms of settlement entered in between the parties. The leasehold right of the private respondent was not an issue to be adjudicated by the Court in the said Suit. The petitioners were not parties to the said Suit and the order passed therein, will not in any manner, determine the inter se right of the parties.

One cannot convey better title than what he has. The title of the defendant in the Suit is under a cloud and disputed by the owners, the petitioners herein. In the absence of clear title, the defendants could not have transferred any of their right in favour of a third party. Despite the Suit being decreed in the favour of the private respondent, clear leasehold right did not accrue in its favour.

The Assessor Collector (South) arrived at an erroneous finding that by virtue of the decree dated 8<sup>th</sup> May, 2014 passed by this Court in Suit No. 186 of 1995, Nilgiri Estate Private Limited acquired perpetual leasehold right of the property. The aforesaid Suit was not for declaration of leasehold right of Nilgiri. The Assessor Collector (South) misinterpreted and misappreciated the order passed by this Court and arrived at a mistaken conclusion that Nilgiri was declared lessee of the subject property.

Mutation entry neither confers nor extinguishes title. The said entry does not have any presumptive value of title and it only enables the authority to identify the person for collection of land revenue. Civil rights of the parties including title can be decided only by the competent civil Court in an appropriate proceeding.

The documents placed before the Court does not in any manner indicate that there has been any declaration as regards the leasehold right of the said property in favour of Nilgiri.

In the absence of an authoritative declaration passed by the court of competent jurisdiction as regards the leasehold right of Nilgiri, it was not proper for the respondent authority to record the name of Nilgiri as recorded owner of the subject premises.

The petitioners have annexed documents to show that there is no outstanding amount on account of unpaid property tax in respect of the subject premises at the end of the petitioners. The petitioners all along cleared the property tax of the property. In such a situation, it was not proper for the Corporation to incorporate the name of Nilgiri in the records of the Corporation as recorded owners of the subject property.

The impugned order of the Assessor Collector mentions that the earlier order of the Chief Manager (Revenue) dated 21<sup>st</sup> May, 2013 dealt with the ownership of the property and presently the leasehold right of the property has been dealt with. It appears that the Assessor Collector usurped the jurisdiction of the civil court and decided the leasehold right of the property which is not permissible and contrary to the settled principles of law.

The petitioners deny and dispute the leasehold right of Nilgiri. This Court is not the proper forum to adjudicate civil rights of the parties. The Chief Manager (Revenue) considered the matter and passed order in 2013. The said order has been acted upon by the parties. There is hardly any change of circumstances for

reopening the issue. Order passed by this Court on a separate issue cannot be the reason to unsettle the position.

In view of the above, the impugned order passed by the Assessor Collector (South) is liable to be set aside and is accordingly set aside. All consequential steps pursuant to the impugned order are also set aside and quashed. The Assessor Collector (South) is directed to take consequential steps and correct the records accordingly.

Writ petition stands disposed of.

No costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

**( Amrita Sinha, J.)**