

WPA 17504 of 2019

Santosh Bhusan Nandy
Vs
The Kolkata Municipal Corporation & Ors.

Mr. Mrinal Kanti Ghosh

.....for the petitioner

Mr. Swapan Kumar Debnath

.....for the KMC

Mr. Bipin Ghosh

.....for the State

Mr. Sanjib Bandyopadhyay

Mr. Manoj Kr. Mondal

Ms. Nandita Baksi

.....for the respondent No. 5

The petitioner is aggrieved by the action on the part of the Kolkata Municipal Corporation in altering the records maintained by the Kolkata Municipal Corporation by incorporating the name of the private respondent herein as owner of the property in question. The name of the private respondent has been incorporated without giving any prior notice to the petitioner whose name was earlier incorporated as owner in respect of the said premises.

The petitioner immediately raised objection to the said recording in response of which the Assistant Assessor Collector (South), Division – XVIII A by a communication dated 10th July, 2017 requested the

petitioner to appear before the said authority for a hearing on 8th September, 2017 to confirm the ownership of the property of the aforesaid premises.

A further communication was made by the said Assistant Assessor Collector dated 17th November, 2017. The petitioner was requested to submit copy of the plaint, Court order, if any, in respect of Title Suit No. 773 of 2014 and to inform the present status of the said Suit.

As per request of the Assistant Assessor Collector the petitioner forwarded the documents as sought for by the letter dated 17th November, 2017.

Copy of the Title Suit No. 773 of 2014 has been annexed to the writ petition.

The petitioner alleges that despite the documents forwarded to the Assessor Collector, no steps were taken by the said authority to restore the records in its original position.

From the Affidavit-in-opposition that has been filed by the Kolkata Municipal Corporation, it appears that the private respondent Sukumar Bhusan Nandy was a party in a Title Suit being No. 1943 of 2001. The Suit was filed by Sukumar against the petitioner Santosh praying for a declaration that the plaintiff (Sukumar Bhusan Nandy) is the bona fide occupier of the premises situated at 47A, Surendra Nath Banerjee Road, P.S. – Taltala, Kolkata –14 and for an injunction restraining the defendant and/or

its men and/or its agents not to evict the plaintiff from the Suit premises.

The said Suit was decreed in favour of Sukumar on 22nd January, 2014. The Court passed order that the plaintiff is the *bona fide* occupier of the room and the permanent injunction as sought for is also granted.

On the application made by Sukumar Bhusan Nandy, that is the private respondent, the Kolkata Municipal Corporation mutated the property in his favour in November, 2016.

The private respondent submits that the parties are uterine brothers. The private respondent is also owner of a portion of the said property. The Suit filed by the petitioner, that is, Santosh Bhusan Nandy is pending consideration before the learned Court below.

The affidavit of the Kolkata Municipal Corporation does not mention as to whether a prior notice was given to the petitioner before incorporating the name of the private respondent as owner of the said premises. It has been submitted that the mutation was done on a single day and there was no scope for offering any opportunity of hearing to the petitioner prior to effecting the mutation.

It has been submitted by the learned advocate representing the Kolkata Municipal Corporation as well as the private respondent that the record has been updated only for the purpose of incorporating the name

of the person liable to pay tax. The recording does not confer or extinguish any title of any person who happens to be the owner of the property.

It appears from records that the name of the private respondent, that is, Sukumar has been incorporated in the records of the Kolkata Municipal Corporation as owner of the property. In the Title Suit that has been filed by Sukumar, ownership has neither been pleaded nor claimed. Sukumar only prayed for a declaration of his right of occupation, which has been allowed by the Court.

It was not proper for the Corporation to incorporate the name of the private respondent, that is Sukumar as owner of the property in the absence of an order being passed in his favour by the learned Court in the Suit that is pending, or in the Suit already decreed in his favour. The Title Suit filed by the petitioner, that is Santosh claiming ownership of the property is pending consideration. Name of Santosh already appeared in the tax bills raised by the Kolkata Municipal Corporation. Prior to making any changes in the said records, an opportunity of hearing ought to have been given to the petitioner.

It appears that there has been violation of principles of natural justice by not giving the petitioner an opportunity of hearing prior to incorporating the name

of the private respondent in the records of the Kolkata Municipal Corporation.

It is settled law that recording name in the rate card is a mere indication of the person liable to pay tax and the same neither confers nor extinguishes title of any person who claims to be the owner of the property. The Corporation ought not to enter into the issue of title but ought to limit its action only with regard to collection of tax from the person liable to pay tax.

Accordingly, the respondent No. 3, that is the Assessor-Collector (South), Kolkata Municipal Corporation is directed to revisit the issue with regard to incorporating the name of Sukumar as owner in respect of the said property.

The matter shall be considered upon giving an opportunity of hearing to all the necessary parties. A decision shall be taken by the aforesaid respondent positively within a period of four weeks from the date of communication of this order.

The original affidavit-in-opposition on behalf of the Kolkata Municipal Corporation has not been filed in Court. A copy of the same has been handed over by the learned Counsel appearing on behalf of the Corporation.

Let the copy of the affidavit in opposition be returned to the learned advocate upon submission of the original affidavit-in-opposition by the Corporation.

Affidavit-in-opposition by the respondent No. 5 has been filed in the department vide filing No. 13741 dated 3rd December, 2021. The department is directed to tag the same with the records of this case.

Affidavits-in-reply to the affidavit-in-opposition filed by the respondent Nos. 1, 2, 3 and the respondent No.5 be retained with the record.

The writ petition is disposed of.

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

(Amrita Sinha, J)