IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
<u>Original Side</u>

<u>Present</u>:-
Hon'ble Mr. Justice Aniruddha Roy

WPO 146 of 2019

Amitabha Datta & Anr.
vs.
The Kolkata Municipal Corporation & Ors.

For the petitioner:	**Mr. A.C. Kar, Advocate,** **Mr. T.K. Aich, Advocate.**
For KMC:	**Mr. Alak Kr. Ghosh, Advocate,** **Ms. M. Nath, Advocate.**
Reserved on:	**02.09.2022**
Judgment on:	**16.09.2022**

<u>ANIRUDDHA ROY, J.:-</u>

<u>Facts:-</u>

1. **Premises Nos. 22, 24, and 26 Nandalal Bose Lane, Kolkata-700003** altogether measuring an area of about 2 bighas 12 cottahs and 1 chittak, originally belonged to Sri. Bata Krishna Pal. By virtue of a decree dated February 18, 1955 passed by this Hon'ble Court in a partition suit the properties had vested in favour of several family decedents of the said Bata Krishna Pal and/or successors in interest.

2. The writ petitioners are the present co-owners of the said premises nos.22, 24 and 26 Nandalal Bose Lane, Kolkata-700003 with the **Municipal Assessee Nos. 5007230005, 110072300300 and 110072300324** respectively.

3. **Premises No.22 Nandalal Bose Lane, Kolkata-700003** had been declared and earmarked as ***"Bustee"*** land by the Kolkata Municipal Corporation (for short, KMC). At all material time the Municipal Rate Cards had been issued describing the said premises as **Bustee** land, **Annexure P-3** to the writ petition.

4. In respect of **Premises No.24 Nandalal Bose Lane, Kolkata-700003.** The KMC had raised the rate bills and property tax bill for the year 2016-17, **Annexure P-4** to the writ petition.

5. In respect of **Premises No.26 Nandalal Bose Lane, Kolkata-700003.** The KMC had also raised this rate bills for the year 2016-17, **Annexure P-5** to the writ petition.

6. The petitioners through its letter dated August 20, 2018 made representation, **Annexure P-6** to the writ petition, asking the KMC to segregate all the said three premises individually by specifying their respective areas and to demarcate them accordingly. Since the KMC had failed to do so the petitioners through its advocate's letter dated October 05, 2018 further asked the KMC to demarcate the said three premises.

7. Since the respondent Corporation Authority failed to demarcate the said three premises individually by their respective municipal premises number, the

petitioners filed the instant writ petition, inter alia, praying for the following reliefs:-

> *"a) A Writ in the nature of Mandamus may be issued commanding the respondent Authorities to indicate the demarcation of the "Bustee" land, being premises No.22, Nandalal Bose Lane, Kolkata-700003 within the Police Station-Shyampukur;*
>
> *b) A Writ in the nature of Mandamus may be used commanding the respondent Authorities to demarcate the area of premises No.24, Nandalal Bose Lane, Kolkata-700003 within the Police Station-Shyampukur on the basis of which the Annual Valuation has been made;*
>
> *c) A Writ in the nature of Mandamus may be issued commanding the respondent Authorities to demarcate the area of premises No.26 Nandalal Bose Lane, Kolkata-700003 within the Police Station-Shyampukur;*
>
> *d) Mandamus directing the respondents to assess the compensation for vesting payable to your petitioner in terms of Section 449 of the Kolkata Municipal Corporation Act, 1980;*
>
> *e) Rule NISI in terms of prayers (a) to (c) above;*
>
> *f) Ad-interim order directing the respondent Authorities to immediately issue intimation to the petitioners showing the correct area of premises Nos. 22, 24 and 26, Nandalal Bose Lane, Kolkata-700003 within the Police Station-Shyampukur within such time to this Hon'ble Court may deem fit and proper;*
>
> *g) Costs of and/or incidental charges to this application be paid by the respondents;*
>
> *h) Such further or other order or orders be made and/or direction or directions be given as to this Hon'ble Court may deem fit and proper".*

8. Pursuant to the direction made by this Court, the parties had filed and exchanged their respective affidavits.

9. The parties had also filed their respective written notes.

<u>Submission:-</u>

10. Mr. Adhip Chandra Kar, Learned Counsel appearing for the writ petitioner drew attention of this Court to **Annexure P-3** to the writ petition and submitted that, from the said consolidated rate card through which the corporation raised its demand for payment of taxes in respect of **premises**

no.22 was shown to be and classified as **Bustee**. The **assessee number** was mentioned as **5007230005**.

11. Referring to Section 2 (8) of the KMC Act he submitted as to the nature and character of **Bustee** as defined thereunder. He submitted that, even on the basis of the assessment record of the KMC, **premises no.22** had been earmarked as **Bustee** comprising of various huts. Such huts were never declared as thika tenants and the petitioners do not claim any right on the said **Bustee**.

12. Mr. Kar, learned counsel for the petitioner referred to the provisions laid down under Chapter XXVI of ***The Kolkata Municipa Act, 1980*** (for short, the KMC Act) and submitted that, Sections 444 to 550 several provisions under this chapter deal with ***"Bustee".*** He submitted that, in terms of Section 444 of the KMC Act, it is the statutory obligation of the KMC authority to define the external limit of a Bustee. He submitted that, it is the bounden statutory obligation of the KMC authority to demarcate premises no.22, which was classified as Bustee according to the statute. Accordingly he prayed for necessary direction in the nature of mandamus upon the KMC authority **to demarcate premises no.22 as Bustee.**

13. Specifically referring to Section 444 of the KMC Act he submitted that, the expression ***"may"*** used therein denotes a mandatory obligation upon the KMC Authority to fix the external limit of a Bustee and thereby to demarcate premises no.22 in segregation of other two premises. Under Section 444 of the KMC Act, the expression **"may"** should be read as **"shall"**. In support, he

relied upon the judgment of the Hon'ble Supreme Court ***In the matter of: State of U.P. vs. Jogendra Singh, reported at AIR 1963 Supreme Court 1618.***

14. Premises no.24 had been recorded under the joint ownership of Smt. Sulata Dutta representing Kanailal Pal and Gour Hari Pal, whereas premises no.26 had been shown to be under the ownership of Parul Bala Pal, the executrix of the State of Kanailal Pal. Hence, in the records of the KMC, premises nos. 24 and 26 had been segregated with their respective ownership. Under Sub-Section 4 to Section 178 of the KMC Act, it is the duty of the Municipal Commissioner to separate the properties in case of sub-division amongst the co-sharers. Despite repeated demands such separation with proper demarcation in respect of said ***Premises No.24 and Premises No. 26*** was not done by the KMC Authority. Hence the petitioner prayed for directions in the nature of mandamus for the same.

15. Mr. Alak Kumar Ghosh, learned counsel appearing for the respondent nos. 1, 3, 4 and 5 (the KMC) submitted that, all the said three premises were private premises the petitioners who claimed to be the owners thereof. He submitted that, it was the obligation of the owner of the private property to demarcate the same. Referring to the scope and ambit of the KMC Act he submitted that, there was no provision under the KMC Act that, on request of any private individual the KMC would demarcate his private property. The petitioners did not have any legal right to claim such demarcation and to seek direction upon

the KMC Authority for the same. The KMC had no statutory obligation in this regard.

16. Mr. Ghosh then submitted that, the property tax bill relied upon by the petitioners were of July to September, 1979 in respect of premises no.22 in which the expression **"Bustee"** was mentioned. He submitted that, the Bustee lands are dealt with by a particular department of KMC, namely, Bustee Services Department. The Assessment-Collection Department had their definite role to maintain the assessment records, to provide assessee numbers, to assess the annual valuation of the property and to collect property tax. The assessment collection department on its visual observation recorded the nature of premises no.22 and its structures erected thereupon as **Bustee.**

17. Referring to the affidavit-in-opposition, Mr. Ghosh submitted that, there were as many as nine huts at premises no.22 and several persons were in occupation thereof. Presently, there is no existence of premises no.22 and in its place hut numbers were allotted to the respective occupiers. Recording of any particular nature or user of any premises, in any property rate bill did not amount to a automotic declaration of the premises as Bustee. On inspection the Assessment Collection Department of KMC found the nature and character of premises no.22 was alike Bustee. In the data base of the assessment collection module 12 types of assesses were considered as Thika/Bustee premises.

18. Mr. Ghosh then submitted that, had premises no.22 been accepted as Bustee existing since before 1981, the same had been already vested with the State of

West Bengal and hence the petitioners did not have any right over the vested property in terms of **Section 5 of the Calcutta Thika and Other Tenancies and Lands (Acquisition and Regulation) Act, 1981**.

19. Leaned counsel for the KMC Authority then submitted that, the records available in the Bustee services department did not reveal that premises no.22 had reveal been declared officially as a Bustee land by the KMC. There were several numbers of enlisted Bustee premises and/or slums within the jurisdiction of KMC under Borough-I to XVI. Nandalal Bose Lane situates under Ward No.7, Borough-I. From the said list it appeared that Serial No.155 mentioned premises no.16/1, 16/2, 16/3, 18A and 20, Nandalal Bose Lane, Kolkata-700003, shown to be recorded Bustee/Thika/Slums. He submitted that, there might be occasion to include more premises as Bustee subject to the condition of arriving at such decision by KMC, if any, claim or question would be raised.

20. Referring to Section 2 (8) of he KMC Act he submitted that, as per the definition of Bustee, whether a particular premises is Bustee or not, the Corporation shall decide the question and its decision shall be final. According to him, it is, therefore, clear that, the KMC holds the absolute power either to declare or not to declare any particular area/premises as Bustee on the question being raised therefor. He submitted that, in any event, the petitioners cannot have and cannot claim any right or interest on premises no.22 if the same is accepted to be a Bustee. If ultimately the KMC decides premises no.22 being a Bustee then the same should be enlisted accordingly in the record of the Corporation. He

submitted that, as per the assessment record there is no identified Bustee at premises no.22.

21. Per contra the argument of Mr. Kar in respect of operation and application of Section 444 of the KMC Act, learned counsel for the respondents submitted that, Section 444 of the KMC Act would be operative in case a decision is taken by the Corporation that premises no.22 is a Bustee. In absence of such decision, as in the instant case, there was no question to define premises no.22 as Bustee. He submitted that, to define the external limit of Bustee did not denote any demarcation of the premises within which a Bustee exists. He submitted that, the application and operation of Section 444 of the KMC Act did not and does not arise in the facts of this case.

22. Learned counsel for the Corporation further submitted that, insofar as the claim of the petitioner on account of demarcation of Premises No.24 and Premises No.26 was concerned, the Corporation has no obligation far to speak of any statutory obligation under the statute to demarcate any private property. The said Premises No.24 and Premises No.26 are already separated and identified to the knowledge of the petitioners. He submitted that, the provisions under Section 178(4) does not provide for any obligation on the Corporation to demarcate a private property even after separation. According to him, to ascertain the proper scope and effect of Section 178(4) of the KMC Act, all the Sub-Sections under Section 178 to be read together and conjointly. The identified and independent two Premises Nos. 24 and Premises No. 26 do not appear to have been sub-divided in separate shares. Mr. Ghosh, specifically

submitted that, if the necessary obligation was to separate the said two premises in terms of Section 178(4) of the KMC Act, the premises were already sub-divided into separate shares amongst the owners for the purpose of separate assessment and with separate premises numbers. The provisions under Section 178(2)(i) of the KMC Act were satisfied.

23. In the light of the above submissions Mr. Ghosh submitted that, the writ petition is misconceived and the same should be dismissed.

Decision:-

24. After hearing the rival contentions argued on behalf of the parties and on perusal of materials on record, it appears to this Court that, the documents disclosed by the writ petitioners on record are not disputed.

25. From a copy of a consolidated Rate Card, **Annexure P-3** to the writ petition it appears that, the said **Premises No.22 Nandalal Bose Lane** against an **Assessee No. 5007230005** is a premises which is earmarked as **"BUSTEE".** The Corporation did not deny the correctness, authenticity of the said document. The Corporation had all along accepted and received the property tax on the basis of such document accepting Premises No.22 as **"BUSTEE"**.

26. The issue raised by the petitioners in the writ petition, whether, it is the mandatory obligation under the statute on the part of the corporation to limit and to demarcate the **Bustee** being premises no.22 which was denied by the corporation, required to be addressed at the outset.

27. The relevant provisions from the KMC Act, for decision on the issue are quoted herein below:-

*“**Section-2***

(8) “bustee” means an area containing land not less than seven hundred square meters in area occupied by or for the purposes of any collection of huts or other structures used or intended to be used for human habitation.
Explanation:- if any question arises as to whether any particular area is or is not a bustee, the corporation shall decide the question and its decision shall be final.

***444. the power of Corporation to define and to alter limit of Bustee:-** The Corporation may define the external limit of any bustee and may, from time to time, alter such limits”.*

28. From a combined and harmonious reading and construction of the said two provisions of the KMC Act, at it appeared that, first the KMC Authority upon a detail fact finding enquiry arrives at a finding that a particular land or premises is to be characterized as **“bustee”.** Then the KMC Authority should exercise its power to define the external limit of such a bustee. The explanation to sub-section 8 under Section 2 of the KMC Act provides for that, if any, question arises as to whether any particular area is or is not a bustee, the corporation shall decide the question and its decision shall be final. It is also clear to this court from a harmonious construction of the said two provisions of the act that, when corporation comes to its conclusive finding free from any dispute that a land or a premises is bustee then it is the obligation of the corporation to define the external limit of such bustee.

29. Section 444 of the KMC Act has two independent and separate limbs. The first limb casts an obligation or a duty on the part of the corporation to define the external limit of any bustee and the second limb specifies that the corporation may from time to time alter such limits. Unless the first limb is satisfied by

defining the external limit, the second limb cannot be satisfied for alteration of such limit. For the purpose of alteration of such limit at the threshold, the limit has to be defined specifically and without any dispute. Unless the external limit is fixed the same cannot be altered in terms of the said provision.

30. The expression ***"limit"*** has been explained in the **SEVENTH EDITION OF BLACK'S LAW DICTIONARY at page 939** thereof in the following manner:-

> *"**limit,** n.1. the restriction or restraint.2. a boundary or defining line. 3. The extent of power, right, or authority.-**limit**, vb.-**limit**, adj".*

31. The expression ***"limit"*** has been explained in **LEGAL THESAURUS, DELUXE EDITION BY WILLIIAM C. BURTON at page 317** thereof in the following manner:-

> "***Limit,*** *verb*
> *Bind, bridle, check, circumscribe, circumscribere, confine, constrain, constrict, contain, curb, deter, enclose, finire, hamper, hem in, hinder, hold back, impede, leash, modulate, narrow, proscribe, repress, restrain, restrict, set bounds, suppress, terminare".*

32. On a plain reading of the meaning of the expression **limit** as referred to above and in the light of the said meaning, if a harmonious construction is made of the of the provisions laid down under Section 444 of the KMC Act, this would mean that it is the obligation of the corporation to define the external limit of any bustee by circumscribing the same with its own boundary with a specific defining line to set bound the **bustee** under the statute.

33. The Hon'ble Supreme Court ***In the matter of: Jogendra Singh (supra)*** had observed as under:-

> *"8.…………………………………………………………………………………*
> *…………………………………………………………………………………*
> *…………………………………………………………………………………*
> *…………………………………………………………………………………*
> *It is also clear that where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command. Sometimes, the legislature uses the word "may" out of deference to the high status of the authority on whom the power and the obligation are intended to be conferred and imposed. In the present case, it is the context which is decisive".*

34. From a reading of Section 444 of the KMC Act and on a harmonious construction thereof, this Court is of the considered opinion that, a discretion conferred upon the corporation being a public authority is coupled with an obligation **to define the external limit of any bustee** and the expression ***"may"*** should be construed and accepted as a **command of the legislation upon the corporation** to define the external limit of a bustee. Unless the said command is there to define the external limit of a bustee, the same cannot be altered from time to time as mentioned in the second limb of Section 444 of the KMC Act. **It is the statutory obligation of the corporation to define the external limit of a bustee by causing proper demarcation and putting a boundary at the external limit of the bustee.**

35. The moment a land is earmarked as bustee by operation of the relevant law, the same comes out of the ownership of a private individual and stands vested with the State. If such land being a **bustee** situates within the jurisdiction of the Kolkata Municipal Corporation, then under Section 444 of the KMC Act, it is the statutory obligation of the corporation to define the external limit of such

bustee by way of proper demarcation of its external limit and by putting the necessary boundary thereupon.

36. Since the corporation through its affidavit-in-opposition had raised a dispute on the character of premises no. 22 not being a bustee, though it had raised its rate bills and accepted the municipal rates and tax on the basis of the said rate bills considering the said premises no.22 at bustee, such issue is required to be decided by the corporation after causing the necessary fact finding enquiry as to the character of premises no.22. The explanation to sub-section 8 under Section 2 of the KMC Act provides for the same.

37. In the premises, the Commissioner of Municipal Corporation shall decide the question as to whether **premises no.22 Nandalal Bose Lane, Kolkata-700003** is **bustee** or not upon giving a hearing notice of at least 7 days to the petitioners and also upon such necessary party and/or the department of the State of West Bengal and after giving an opportunity of hearing to them shall pass a reasoned decision/order. The municipal commissioner then shall communicate his reasoned decision/order to the petitioner and to such other State Government Department as it thinks fit and proper. It is made clear that, the petitioner shall be at liberty to urge all points before the Municipal Commissioner at the time of hearing and shall be at liberty to rely upon whatever documents and records they wish to rely upon.

38. The entire exercise as directed above shall be carried out by the Commissioner Kolkata Municipal Corporation within a period of 10 weeks from the date of communication of this judgment and order and the commissioner then shall

communicate its said reasoned decision/order to be passed to the petitioner and to such other state department within a further period of 2 weeks from the date of such reasoned decision/order to be passed.

39. In the event, the said reasoned decision/order goes in favour fo the petitioner holding that premises no.22 Nandalal Bose Lane, Kolkata-700003 is **bustee**, then the Municipal Commissioner shall direct the appropriate authority of the Corporation to carry out and to give effect to such reasoned order and shall define the external limit of the **bustee** premises by causing necessary demarcation thereof and also shall put the boundary to define the external limit of the **bustee** premises positively within a further period of 4 weeks from the date of communication of the said reasoned decision/order to the petitioner. The Municipal Commissioner shall also direct the appropriate authority to carry out the necessary incorporation in the record of the corporation showing the said premises no.22 to be a **bustee** forthwith thereafter.

40. The claim of the writ petitioner as mentioned in prayers (b) and (c) to the writ petition are concerned, in respect of premises no.24 and 26 respectively, it is evident that, separate Assessee numbers are there. Separate Municipal Premises Numbers are there. The properties are assessed separately independent to each other.

41. The relevant provision under Sub-Section 4 to Section 178 of the KMC Act is quoted below:-

"178. Municipal Assessment Code ……………………………..

> …………………………………………………………………………………
> …………………………………………………………………………………
> …………………………………………………………………………………
> *(4) If the ownership of any land or building or a portion thereof is sub-divided into separate shares or if more than one land or building or portions thereof by amalgamation come under one ownership, the Municipal Commissioner may on an application from the owners or co-owners, separate or amalgamate, as the case may be, such lands or buildings or portions thereof so as to ensure conformity with the provisions of this section".*

42. On a harmonious reading of the said provision referred to above, it appears that, it is the obligation of the Municipal Commissioner that if the ownership of any land or building or a portion thereof is sub-divided into separate shares, the Municipal Commissioner may on an application from the owners or co-owners, separate such lands or buildings or portions thereof so as to ensure conformity with the above provisions of the statute.

43. Premises no.24 and 26 as it appeared were shown as separate properties in the record of the corporation. The said two premises were private properties. To demarcate the said two properties and to get it physically separated by putting the necessary boundary on their respective outer limits, would involve several fact finding enquiries with regard to the nature, character and measurement of the said two private properties. Such was not definitely the job of the corporation. Therefore, so long the two premises stood separated from each other in the records of the corporation for the purpose of their respective assessment and to provide the necessary facilities towards such properties by the corporation in terms of the statute, the obligation of the corporation came to an end. In the facts of this case, the corporation was not obliged to demarcate or to put any boundary on the external limit either at **premises**

no.24 or at premises no.26 Nandalal Bose Lane, Kolkata-700003. Thus, prayers (b) and (c) of the writ petition were considered and rejected.

44. In view of the above, this writ petition **WPO No. 146 of 2019** stands partly allowed and disposed of accordingly.

45. There shall, however, be no order as to costs.

(Aniruddha Roy, J.)