OD-3 **ORDER SHEET**

WPO No.2274 of 2022

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

ORIGINAL SIDE

ABRARUL HAQUE

VS

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 5th July, 2022.

Appearance:
Mr. Ranajit Chatterjee, Adv.
Mr. Aniruddha Mitra, Adv.
..for Petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
..for KMC.

Mr. Dhiraj Trivedi, Adv.
Mr. Varun Kothari, Adv.
Mr. Rajdeep Mantha, Adv.
Mr. Amit Sharma, Adv.
...for Respondent No. 3.

The Court:-The matter relates to the Wakf Estate at premises no.6, Kasaipara Lana, Kolkata-700017. The petitioner has been appointed as Mutwalli of the said Wakf Estate by the office of the Board of Auqaf on 13th September, 2018.

The appointment of the petitioner as Mutwalli was challenged before the Tribunal. The suit was dismissed and the appointment of the petitioner as Mutwalli was upheld by the Tribunal. A civil revision application challenging the order of the Tribunal is pending before this Court for disposal.

The property tax bill issued by the Kolkata Municipal Corporation in respect of the said property reflects the name of the previous Mutwalli who has since expired. The petitioner submits that as he has stepped into the shoes of Mutwalli, accordingly the name of the Wakf Estate along with the name of the present Mutwalli be reflected in the property tax bill to be raised by the Kolkata Municipal Corporation.

The prayer of the petitioner stood rejected by the order of the Chief Manager (Revenue/South) dated 11th May, 2022. The same is under challenge in the present writ petition.

The Chief Manager (Revenue/South) was of the opinion that it is the duty of the Kolkata Municipal Corporation to adhere to the Citizen Charter, 2021 of the Assessment Collection Department of the Kolkata Municipal Corporation wherein clearance of the Auqaf Board is necessary for mutation of Auqaf property. The Auqaf Board has submitted a letter requesting the Kolkata Municipal Corporation to mutate the concerned premises in the name of the Estate only, without including the name of any Mutwalli. At present, the Kolkata Municipal Corporation opines to adhere to the letter which has been submitted by the Auqaf Board.

Learned advocate for the petitioner relies upon the provision of Section 183(5) of the Kolkata Municipal Corporation Act, 1980. Reliance has been placed on the decision delivered by this Court in the matter of Asian Leather Limited & Anr. Vs. Kolkata Municipal

Corporation & Ors. reported in 2007(3) CHN 476 paragraph 12. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court of India in the matter of Calcutta Municipal Corporation and Others Vs. Shrey Mercantile (P) Ltd. & Ors. reported in (2005) 4 SCC 245 paragraph 18.

Prayer has been made by the petitioner to incorporate the name of the Estate represented by the Mutwalli.

The prayer of the petitioner has been vehemently opposed by the respondents.

Learned advocate representing the respondent no.3 submits that the Mutwalli has openly declared not to pay either the property tax or the Wakf contribution. It has been submitted that the respondent no.3 all along paid the property tax in respect of the said property. Since the appointment of the petitioner as Mutwalli is pending challenge before this Court in the civil revision application, accordingly the name of the Estate may be recorded in the tax bill bereft the name of the Mutwalli.

Learned advocate representing the Kolkata Municipal Corporation submits that according to provision of Section 599 of the Kolkata Municipal Corporation Act, 1980, the Corporation is duty bound not to disrespect any law for the time being in force.

Reliance has been placed on provision of Section 32(2)(o) of the Waqf Act, 1995 which mentions that the Board shall generally do all such acts as may be necessary for the control, maintenance and administration of Auqaf. Reliance has also been placed on the Citizen Charter 2021 wherein clearance from the Auqaf Board is necessary for mutation of the Auqaf property.

Primarily, from the submissions made on behalf of the respondents, it appears that the allegation against the petitioner is with regard to non-payment of the wakf contribution. The petitioner has annexed documents with the writ petition to show that the audited accounts and statement of income and expenditure of the Estate for the financial years ending 31.03.2019, 31.03.2020 and 31.03.2021 have been submitted before the Chief Executive Officer, Board of Auqaf. A statutory appeal under Section 72(7) of the Waqf Act, 1995 is pending consideration before the Wakf Board.

There is no allegation with regard to non-payment of property tax in respect of the said property. The impugned order does not mention that there is any property tax due in respect of the said premises.

According to Section 183(5) of the Kolkata Municipal Corporation Act, 1980, the Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title under this section and upon payment of such fee as may be determined by regulations, record such transfer or devolution in a book and also in the Municipal Assessment Book. The proviso to the aforesaid Section mentions that the Corporation may refuse mutation in a case where there is arrear of any dues to the Corporation on account of the transfer.

In the present case, admittedly, there is no due on account of property tax.

The Hon'ble Supreme Court of India in the matter of Shrey Mercantile (P) Ltd. (supra) held that the purpose of mutation is to register the transfer in the records of the Corporation which in turn would help the Corporation to recover taxes from the existing tax payer. No special benefit would result to the transferee who is made statutorily liable to inform the Corporation of the change, if any, of name of the person primarily liable to pay the taxes.

Learned Advocate representing the Respondent No.3 has contended that there is neither any transfer nor devolution of title and accordingly, it is not necessary to record the name of the Mutwalli in the property tax bill.

The Court in Asian Leather Limited (supra) has reiterated the well settled principle that a natural person has the capacity to do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in case of a statutory Corporation, it is just the other way. The Corporation has no power to do anything unless those powers are conferred on it by the statutes, which create it.

It is well settled that recording the name in the property tax bill neither creates nor extinguishes title of any person. In the present case, the earlier bills raised by the Kolkata Municipal Corporation indicate the name of the Mutwalli of the Wakf Estate. The said Mutwalli has expired. The petitioner has been appointed as Mutwalli by the Board of Auqaf. The initial challenge to the Mutwalliship of the petitioner stood dismissed from which a civil revision application is pending before this Court. As of now, there is no order by which the Mutwalliship of the petitioner has been terminated, revoked or cancelled.

The property in question is a Wakf Estate. The Mutwalli being the Manager of the Wakf Estate is liable to pay property tax. For the purpose of identifying the person primarily liable to pay tax, it is better that the name of the Mutwalli is reflected in the property tax bill along with the name of the Estate. The said recording will not enure to any benefit of the Mutwalli. No special advantage or privilege can be derived by the Mutwalli by recording his name in the property tax bill. The same is solely for the purpose of identification of the person liable to pay tax. It will be convenient for the Corporation to recover tax from the person liable to pay tax, rather than to hunt for the person from whom tax can be collected.

The respondent no. 3 will also not be disadvantaged in any manner as the recording of the name will always be subject to the order passed by the Court in the civil revision application.

The Chief Manager (Revenue/South), in the impugned order, has opined that the name of the Estate be recorded without the name of the Mutwalli. The Chief Manager (Revenue/South) is directed to modify the said order by recording the name of the Mutwalli in the tax bill as representative of the Estate, who will primarily be liable to pay tax. Necessary steps in this regard shall be taken by the Chief Manager (Revenue/South) at the earliest so that the Mutwalli may be able to pay tax on proper time.

Writ petition stands disposed of.

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

(AMRITA SINHA, J.)

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