IA NO.GA/1/2022
In
APO/72/2022
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

HAMIDUL HAQUE
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE APURBA SINHA RAY
Date : 6TH SEPTEMBER 2022

<u>*Appearance:*</u>
Mr. Varun Kothari, Advocate
...for the appellant
Mr. Gopal Chandra Das, Advocate
Mr. Debangsu Mondal, Advocate
. . . for KMC.
Mr. Ranajit Chatterjee, Advocate
... for private-respondent

The Court : By consent of the parties, the appeal and the connected application are taken up for hearing.

This appeal is directed against the judgement and order dated July 5, 2022 whereby the writ application of the private respondent/writ petitioner was allowed by the learned single Judge.

The writ petitioner was appointed as Mutwalli of a Wakf Estate by the Board of Auqaf on September 13, 2018. Such appointment was challenged before the Wakf Tribunal. Such challenge failed. A civil revisional application challenging the order of the Tribunal is pending before this Court. The prayer of the writ petitioner before the Competent Officer of the Corporation was that he having been appointed as Mutwali, his name should be reflected in the property tax bill which the Kolkata Municipal Corporation would raise on the Wakf Estate. Such prayer was rejected. Challenging such rejection, the writ petitioner approached the learned single Judge.

The learned Judge heard the parties at length. The present appellant was the respondent No.3 in the writ petition who vehemently opposed the prayer of the writ petitioner. He says that he is a beneficiary of the Wakf Estate and he is currently in occupation of the property in question. He has also made an application to the Corporation for recording his name as the person responsible for payment of property tax as he is in occupation of the property.

Having considered the arguments of the respective parties, the learned Judge disposed of the writ petition by holding as follows :-

"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."

Being aggrieved, the respondent No.3 in the writ petition has come up in appeal before us.

It has been argued on behalf of the appellant that only the name of the Estate should be reflected in the property tax bill to be raised by KMC. The appointment of the writ petitioner as Mutwalli is sub-judice in the civil revisional application pending before this Court. The learned single Judge ought not to have directed inclusion of the name of the writ petitioner in the property tax bills.

It has been argued on behalf of the writ petitioner that during the tenure of the previous Mutwalli, the property tax bills raised by KMC reflected the name of the Mutwalli. Erroneously the estate's name was not mentioned at all. Both the estate's name and the Mutwalli's name should appear in the property tax bills. The submission made on behalf of the appellant that he is in possession and/or occupation of the property in question is strongly disputed by the writ petitioner.

We have given our anxious consideration to the rival contentions of the parties. We do not find any infirmity in the order assailed before us. The learned Judge has been careful to protect the interest of the appellant. If the appellant succeeds in the civil revisional application that is pending in this Court, the result would be that the appointment of the writ petitioner as Mutwalli would stand quashed and consequently, the name of the writ petitioner would stand removed from the property tax bills. The learned Judge has clarified that inclusion of the writ petitioner's name in the property tax bills to be raised by KMC will, in no manner, confer any benefit on him. We also clarify that mentioning the name of the writ petitioner in the property tax bills will create no special equity in his favour. The inclusion of the writ petitioner's name is only for the purpose of convenience inasmuch as, in our opinion, somebody's name who represents the Estate, whether as Manager or in any other capacity, should appear on the property tax bills.

No observation made in this order shall have any effect on the civil revisional application pending in this Court. We find no reason to interfere with the order under challenge.

The appeal and the connected application are accordingly disposed of.

There will be no order as to costs.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

(ARIJIT BANERJEE, J.)

(APURBA SINHA RAY, J.)

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