

OD-3

ORDER SHEET

WPO No. 1324 of 2007

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SUKANTA BISWAS
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
THE HON'BLE JUSTICE ANIRUDDHA ROY
Date: August 17, 2022.

Appearance:
Mr. Subhasish Pachhal, Adv.
Mr. Siraj Gooptu, Adv.
Mr. Subhajay Sen, Adv.
...for the petitioner

Mr. Tarapada Manna, Adv.
Ms. Chaitali Manna, Adv.
Mr. Purbangshu Chandra Mitra, Adv.
Ms. Piyali Mitra, Adv.
...for the respondents

Ms. Piyali Sengupta, Adv.
...for KMC

The Court: The writ petitioner by virtue of a Will dated March 12, 1982 which was subsequently probated by a competent court of law on April 18, 1990 in respect of the last Will and Testament of one Tarubala Biswas (since deceased), who was the sole and absolute owner of premises no.12/1, Olaichandi Road, Kolkata – 700 037 (in short, the property), claims to be the sole owner of the same. In 2007, the petitioner came to know that the said

property was mutated in the names of respondent nos.3 to 5. Immediately the petitioner on August 2, 2007 lodged its objection before the mutating authority of the Kolkata Municipal Corporation. Such objection is still pending for consideration before the Kolkata Municipal Corporation. The writ petitioner claims that the said mutation recording the names of respondent nos. 3 to 5 in respect of the said property should be set aside and cancelled and the name of the petitioner should be mutated accordingly in place and stead thereof.

Mr. Purbangshu Chandra Mitra, learned advocate appearing for the respondent nos.3 to 5, submits that on the strength of a declaration of right made by the jurisdictional Thika Controller in respect of the said property, his clients applied for and obtained the said mutation. He submits that by virtue of operation of Section 4 of the **West Bengal Thika Tenancy (Acquisition and Regulation) Act, 1981** (for short, the said **Thika Tenancy Act**), his clients as rightful occupiers are in possession of the property and their names are necessarily required to be mutated as has been done.

Ms. Piyali Sengupta, learned counsel appears for the Kolkata Municipal Corporation. She drew attention of this Court to **Annexures R1 and R2** to the affidavit-in-opposition filed by the Kolkata Municipal Corporation and submits that on the strength of the two documents, KMC has mutated the names of the respondent nos. 3 to 5 in respect of the property.

After considering the submissions made on behalf of the parties and on perusal of record, it appears to this Court that, a rival claim arose between the two sets of contending alleged right and/or title holder in respect of the same

property, namely, respondent nos. 3 to 5 and the writ petitioner. The respondent nos. 3 to 5 have disclosed a declaration of right in their favour passed by the Thika Controller. Similarly, the writ petitioner has disclosed a grant of probate dated April 18, 1990 in his favour conferring a right, title and interest on the property.

Mr. Subhasish Pachhal, learned Advocate further contends that the declaration made by the Thika Controller being **Annexures R1** and **R2** to the affidavit-in-opposition filed by KMC are not lawful and binding since the said property cannot be construed to be a property within the meaning of the **Thika Tenancy Act**.

Be that as it may, to adjudicate upon these rival contentions insofar as the claim on the property is concerned, several factual aspects and triable issues are required to be gone into. This Court in exercise of its high prerogative writ jurisdiction should refrain from doing the same considering that an efficacious statutory remedy and forum is available to the writ petitioner for agitating the right of the respondent nos. 3 to 5 and to dislodge their respective claims on the property before the jurisdictional Thika Controller under the relevant provisions of the **Thika Tenancy Act**. The writ Court should not usurp such jurisdiction.

In view of the above discussions and reasons, this writ petition is disposed of with the following directions :-

- (i) The writ petitioner shall apply before the jurisdictional Thika Controller under the relevant provisions of the said **Thika**

Tenancy Act to establish his right, if any, on the property by challenging the declaration being **Annexures R1** and **R2** to the affidavit-in-opposition filed by KMC, within a period of six weeks from date. The writ petitioner shall also be at liberty to challenge the status of the property not being a Thika Tenancy property within the meaning of the said **Thika Tenancy Act** as contended by them.

- (ii) In the event such an application is filed by the writ petitioner before the jurisdictional Thika Controller, the said authority shall come to its reasonable conclusion after granting opportunity of hearing to both the writ petitioner and the respondent nos. 3 to 5 in accordance with law and shall pass a reasoned order within a period of four months from the date of registering such application in strict compliance of the statutory requirement. The Thika Controller shall also communicate his reasoned order to the writ petitioner and the respondent nos. 3 to 5 within a further period of two weeks from the date of such reasoned order to be passed.
- (iii) The mutation already caused in favour of the respondent nos. 3 to 5 by the KMC authorities shall abide by the decision of the said jurisdictional Thika Controller. In the event the decision goes in favour of the writ petitioner, the KMC authorities shall immediately strike out the names of the respondent nos. 3 to 5 from its mutation record and shall include the name of the writ petitioner

and consequently mutate his name in its record within a period of four weeks from the date of communication of the said reasoned order to be passed by the jurisdictional Thika Controller along with the statutory application to be filed by the writ petitioner in strict compliance with the relevant law.

- (iv) The mutation presently prevailing in favour of respondent nos. 3 to 5 shall not create any equity in their favour, if the decision of the jurisdictional Thika Controller goes in favour of the writ petitioner. It is needless to mention that the respondent nos. 3 to 5 shall continue and go on paying all the municipal rates and taxes in connection with the said property strictly in accordance with law and shall not commit any default till the reasoned order to be passed.

On the above terms, this writ petition being **WPO/1324/2007** stands disposed of.

(ANIRUDDHA ROY, J.)