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25.04.2023  
d.p.

**In The High Court At Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**W.P.A 669 of 2023**

**Anandam Banerjee  
-versus  
The Kolkata Municipal Corporation & Ors.**

**Mr. Alak Kumar Ghosh,  
Mr. Souradipta Banerjee,  
Ms. Fatima Hassan.  
...For the Petitioner.**

**Mr. Biswajit Mukherjee,  
Ms. Tanushree Das Gupta.  
...For KMC.**

The petitioner is aggrieved by the act on the part of the Kolkata Municipal Corporation in not taking steps to mutate the premises no. 42, Kalighat Road, Ward No. 73 in the name of the petitioner.

The petitioner claims that he is one of the executors of the Will left behind by his father in his favour in respect of the aforesaid property.

The Will is yet to be probated. The other heirs of the deceased are contesting the probate proceeding and objecting to the grant of probate in favour of the petitioner.

The petitioner submits that as he has been appointed as the executor, it is his responsibility to take care and maintain the property and for which the mutation ought to have been done.

It has been submitted that till the time the probate proceeding is finalized, the Corporation ought to record the name of the petitioner in the records maintained by the Corporation.

The prayer of the petitioner is opposed by the learned advocate appearing for the Corporation.

It has been submitted that the application for mutation filed by the petitioner was accepted by the Corporation and the petitioner was directed to produce the probate and meet the dealing assistant.

As the probate is yet to be granted by the Court, accordingly, at this stage the name of the petitioner cannot be incorporated; more so, because of the objection raised by the other heirs of the deceased.

I have heard the submissions made on behalf of the parties.

It appears that the petitioner claims to derive right from the Will published by the deceased. The Will is yet to be probated. There are several other heirs who are objecting to the grant of probate in favour of the petitioner. Till such time the will is probated, no action ought to be taken relying on the same.

The other heirs of the deceased have not been impleaded as party respondents in the present writ petition.

At this stage, it will not be proper to direct the Corporation to record the name of the petitioner in the records maintained by the Corporation in connection with the said property.

Mutation neither creates nor extinguishes title. It will be open for the petitioner to exercise his right independently in connection with the property in question without relying on the will.

The documents handed over by the Learned advocate appearing for the Corporation showing issuance of notice to the petitioner on 20<sup>th</sup> December, 2022 be retained with the records.

The 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.)**