

D/L
Item No. 5
16.03.2023
KOLE

**MAT 215 of 2023
With
IA No. CAN 1 of 2023**

**Om Prakash Jaiswal & Ors.
-Vs.-
The Kolkata Municipal Corporation & Ors.**

*Mr. Partha Chakraborty,
Ms. P. Dutta,*

...for the appellants.

*Mr. Biswajit Mukherjee,
Mr. Gopal Chandra Das,
Mr. Era Ghosh,*

...for the KMC.

*Mr. Moloy Singh,
Mr. B. Tripathy,*

...for the State.

*Mr. Sk. Md. Galib,
Ms. T. Mukherjee,*

...for the Board of Wakf,

*Md. N. Rahber,
Mr. M. Jawwad,
Mr. A. Mehebab,*

...for the respondent no. 10.

By consent of the parties the appeal and the application are taken up for hearing together.

A judgment and order dated February 1, 2023, whereby the writ petition of the appellants being WPA 24486 of 2022 was dismissed, is the subject matter of challenge in this appeal.

The appellants/writ petitioners claim to be thika tenants in respect of the concerned property. They say that they have been paying rent to the Office of the Thika Controller and receipts are issued against such payment in their favour. They approached the learned Single Judge with

two prayers. Firstly, they challenged an order dated November 27, 2015, passed by the Assessor-Collector (North), Kolkata Municipal Corporation, whereby the names of the appellants were directed to be removed from the records of the Corporation and the property in question was directed to be recorded in the name of Aga Md. Musa Wakf Estate. Secondly, they prayed for a writ of mandamus directing the respondent authorities to recognize them as thika tenants of the property in question and issue certificate to that effect in their favour.

The Learned Judge noticed that proceedings before the Thika Controller are pending. In such proceedings, the appellants/writ petitioners have claimed a declaration that they are thika tenants in respect of the concerned property. The learned Judge observed that mere payment of rent by the appellants and acceptance thereof by the Office of the Thika Controller would not be ground enough to declare that the appellants are thika tenants. The learned Judge noticed that the appellants were unable to produce any certificate from the Controller of Thika Tenancy, before the Officer-Collector (North), to substantiate their claim of thika tenancy. Being of the view that there is no error in the order of the Officer-Collector (North), the learned Judge dismissed the writ petition. Hence, this appeal.

We have heard learned Counsel for the parties. The appellants are aggrieved by removal of their names /names of their predecessors from the records of the Kolkata Municipal Corporation. However, it is an admitted position that the proceedings before the Thika Controller pertaining

to the appellants' claim of thika tenancy, are still pending. No certificate of thika tenancy has yet been issued by the Controller in favour of the appellants. We are told that the appellants applied before the Thika Controller in the year 2017, claiming thika tenancy. Almost six years have gone by. The proceedings must now come to an end at least in so far as the present appellants are concerned.

Accordingly, although we find no apparent infirmity in the order under appeal and, therefore, we do not interfere therewith, we direct the Thika Controller to conclude the proceedings in so far as the appellants are concerned within a period of two months from the date of communication of this order by the appellants to the Thika Controller. We make it clear that we have not gone into the merits of the claim of the appellants at all. The Thika controller will decide the claim of the appellants in accordance with law after giving an opportunity of hearing to all concerned including the appellants herein, Mutwali of Wakf Estate and the Board of Wakf. Needless to say, the order that the Thika Controller will pass will be supported by reasons.

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

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Apurba Sinha Ray, J.) (Arijit Banerjee, J.)