

Item No.2

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

21.03.2023
Ct-24

WPA 4249 of 2023
Rajesh Kumar Poddar

v.

The Kolkata Municipal Corporation & Ors.

Mr. Chayan Gupta
Mr. Niladri Banerjee
Mr. P. Bandopadhyay
Mr. Dipankar Thakur
Mr. Tirthajit Roy Chowdhury
... for the petitioner.

Mr. Biswajit Mukherjee
Mr. Gopal Chandra Das
... for KMC.

Mr. Ratul Das
Mr. Shameek Ray
Mr. Himanshu Bhawsinghka
... for the respondent nos. 3 & 4.

The matter relates to premises no. 62/2, Strand Road. The property in question is presently mutated in the name of Ruchira Poddar and Manoj Kumar Poddar. Both are impleaded as party respondents in the instant writ petition.

The specific contention of the petitioner is that the property is a joint property and the private respondents are not the absolute owners of the said property. Mutation has been done without affording an opportunity of hearing to the heirs of the erstwhile recorded owner.

The learned advocate representing the private respondents submits, upon instruction that, the properties of the recorded owner were amicably

partitioned amongst the heirs and the subject property fell within the portion settled in favour of the private respondents.

No document in support of the amicable partition has been produced before the Court. There is nothing on record to suggest that the private respondents are the absolute recorded owners of the subject property and have the right to deal with the property independently without consent of the other owners.

The communication made by the Assessor-Collector (North) & S.P.I.O., Assessment-Collection (North) Department being 'Annexure-P-5' at page 43 of the writ petition mentions that it is a case of simple mutation and mutation has been effected relying on the documents submitted by the private respondents over the counter.

As dispute has been raised with regard to the ownership of the property in question and absolute title of the private respondents has been challenged by the petitioner, accordingly, the concerned Assessor-Collector is required to revisit the issue of mutation upon giving an opportunity of hearing to all the necessary parties.

The Assessor-Collector (North) is accordingly directed to afford a reasonable opportunity of hearing to all the necessary parties including the petitioner and the private respondents and take a decision with regard to mutation of the subject property in accordance with law. The parties will be entitled to rely upon all documents in support of their claim.

Though, it is settled law that mutation neither creates nor extinguishes title but document has been

annexed in the supplementary affidavit to show that the private respondents, whose names have been recorded as owners of the property, were trying to transfer/alienate the property in favour of third party.

To prevent multiplicity of legal proceedings, the issue is required to be revisited by the concerned authority.

Till a decision is taken by the Assessor-Collector, the mutation granted in favour of the private respondents shall not be required to be acted upon by the parties.

A decision shall be taken by the aforesaid respondents at the earliest but positively within a period of twelve weeks from the date of communication of this order.

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.

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(Amrita Sinha, J.)