

02 & 03
20.02.2023
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**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**W.P.A 187 of 2023
With
W.P.A. 4602 of 2020**

**Sri Dilip Das
-versus
The State of West Bengal & Ors.**

**Mr. Tanmoy Mukherjee,
Mr. Kajal Roy,
Mr. Souvik Das,
Mr. Rudranil Das.
...For the Petitioner.**

**Mr. Somnath Roy.
...For the Municipality.**

**Mr. Achyut Basu,
Mr. Prasenjit Debnath,
Ms. Punam Basu,
Ms. Pritha Biswas.
...For the Respondent No.7.**

**Mr. Jahar Lal De,
Mr. Shamim Ul Bari.
...For the State.**

The petitioner claims to be one of the owners of certain piece and parcel of land under Bhadreswar Municipality.

The private respondent No.7, Shyamal Mukherjee claims to be the power of attorney holder of the owners of the property.

The petitioner submits that without registration of the power of attorney, the private respondent has executed sale deeds in favour of forty seven buyers. On the strength of the sale deed, the buyers applied before the Bhadreswar Municipality for mutating their names.

At this stage, objection was filed by the petitioner. The Municipality is yet to mutate the property in the name of the purchasers.

The petitioner along with other co-sharers of the property have filed title suit challenging the sale deeds executed by the private respondent. The civil suit is pending consideration.

It has been submitted that the prayer for injunction in the civil suit has been refused.

The Municipality relying on the registered sale deeds directed the owners of the property through the power of attorney holder to deposit certain money with the Municipality and to give a portion of the land in question to the Municipality for development of the infrastructure of the area including the water lines, drainage and roads etc.

According to the petitioner, if the power of attorney is not registered, then title of immovable property does not pass on to the purchaser.

In support of the aforesaid submission, the petitioner relies on the judgment delivered by this Court in the matter of Dulal Ranjan Ghosh Dastidar & Anr. -vs- Rajni Tandon reported in (2004)1CHN, 517.

The petitioner prays for a direction upon the Municipality not to give any effect and/or further effect to the notice dated 25th July, 2022 directing the owners through the power of attorney holder to deposit the amount of Rs.22,92,255/- only and 7 cottahs of land for infrastructural development and also not to take any steps pursuant to the applications for mutation filed by the purchasers.

Learned advocate appearing for the power of attorney holder being the respondent No.7 herein has filed an affidavit before this Court wherein it has been clearly mentioned that the general power of attorney executed in his favour is not registered.

It has been submitted that registration is not essential for the purpose of presentation of the deed before the Registering Authority.

In support of the aforesaid submission, learned advocate relies upon the decision delivered by the Hon'ble Supreme Court in *Rajni Tandon -vs- Dulal Ranjan Ghosh Dastidar & Anr.* reported in (2009)11 S.C.R. 686. It has been submitted that the judgment relied upon by the petitioner has been set aside by the Hon'ble Supreme Court and, accordingly, no reliance can be placed on the same.

Learned advocate appearing for the Municipality submits that several applications for mutation have been filed by the purchasers of the flat in the subject premises. In view of the pendency of the writ petition and the civil suit, the Municipality has not taken any decision till date.

It has been submitted that the property in question is still now recorded in favour of the predecessor-in-interest of the petitioner. It is open for any party to gift a portion of the land to the Municipality for infrastructural development.

It has further been contended that mutation is only for the purpose of identifying the person responsible for payment of property tax and by way of mutation title of the property does not flow from one person to other.

In support of the aforesaid stand, the Municipality relies upon the judgment delivered by the Hon'ble Supreme Court on 6th September, 2021 in Special Leave Petition (C) No.13146/2021 in the matter of Jitendra Singh -vs- The State of Madhya Pradesh & Ors.

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

Learned advocate appearing for the private respondent raises an issue of *res judicata*. It has been submitted that an earlier writ petition being WPA 4602 of 2020 was filed with the same relief as prayed for in WPA 187 of 2023.

It appears that the earlier writ petition being WPA 4602 of 2020 was filed with a prayer upon the respondent Municipality not to grant mutation of the property in question on the basis of the sale deeds executed by the private respondent.

During the pendency of the said writ petition, communication dated 25th July, 2022 was issued by

the Municipality in favour of the predecessor-in-interest of the petitioner through the power of attorney holder.

Apprehending that the private respondent will deposit the money as proposed by the Municipality and may proceed with the mutation, the second writ petition appears to have been filed. Admittedly, on the date of filing the second writ petition, the first writ petition was yet to be decided.

In fact, apart from filing of the first writ petition no further step was taken in the matter. The issue in the first writ petition remained undecided.

Accordingly, the ground of *res judicata* as agitated by the private respondent for dismissal of the subsequent writ petition cannot be accepted by the Court.

It appears that a civil suit challenging forty seven sale deeds is pending consideration before the Learned Civil Court. The purchasers of the property are not parties in the present proceeding.

Admittedly, mutation is only for identification of the person primarily liable to pay tax. The same neither creates nor extinguishes title of any person who legally has a title in the said property.

The Municipality is yet to take a decision whether to mutate the property in favour of the subsequent purchasers.

As it appears that the issue with regard to the authority of the attorney holder to execute deeds of sale

on the basis of unregistered power of attorney is pending consideration before the Learned Court below, accordingly, for ends of justice and to prevent multiplicity of proceedings, the Municipality is restrained from updating the municipal records by incorporating the names of the subsequent purchasers as persons liable to pay tax.

It will be open for the Municipality to continue raising municipal tax bills in favour of the recorded owner as appearing in the municipal records and the person claiming to be the owners of the property as per the earlier records shall be bound and liable to clear the property tax bills raised by the Municipality.

In the event the pending suit is decided against the petitioner and the Learned Court below upholds the deeds of sale, then the Municipality shall act in accordance with the direction passed by the Learned Civil Court.

In that case, the subsequent purchasers shall be liable to refund the property tax which was paid by the erstwhile recorded owner, in appropriate shares.

The Municipality, as of now, is restrained from giving any effect and/or further effect to the impugned notice dated 25th July, 2022 until further orders passed by the Learned Court below in the civil suit that is pending between the petitioner and the private respondent.

Both the writ petitions stand disposed of.

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

(Amrita Sinha, J.)