

09.02.2023
Item No.23
Court No.32
Avijit Mitra

**FMA 622 of 2022
with
IA No. CAN 1 of 2022**

**Arnab Roy
- Versus -
State of West Bengal & ors.**

Mr. Tanmoy Mukherjee,
Mr. Amal Kumar Saha,
Mr. Iresh Paul,
Mr. Soumyadip Panda
....for the appellant
Mr. Naba Kumar Das,
Mr. Pathik Bandhu Banerjee
...for the respondent nos. 1 & 2
Mr. Joydeep Guha
...for the respondent nos. 3 & 4

Affidavit of service filed by the appellant be kept on record.

The present appeal has been preferred challenging an order dated 21st March, 2022 passed in a writ petition being WPA 8456 of 2021.

Records reveal that the writ petitioner approached the respondent authorities to mutate his name in respect of share of his predecessor-in-interest with regard to a plot of land at Salt Lake. It was disclosed in the writ petition that a suit for specific performance being Title Suit No.731 of 2017 preferred by one Sandhya Podder and Reetika Gupta against the writ petitioner and others pertaining to the plot of land in question was pending.

However, the plaintiffs in the said suit were not impleaded in the writ petition.

It appears that the learned Single Judge refused to exercise discretion in favour of the writ petitioner due to pendency of the said title suit. According to the learned Judge, prior to disposal of the suit, the writ petitioner ought not to have applied for mutation and the writ petition was, accordingly, dismissed observing that the same was a premature one.

As the plaintiffs were not impleaded in the writ petition, we directed the appellant to implead the plaintiffs in the present appeal. Such direction has been complied with.

Mr. Mukherjee, learned advocate appearing for the writ petitioner submits that the original lessee, namely, Apurba Kumar Garai (in short, Apurba) died intestate on 23rd February, 1993. Thereafter his wife, Sikha Garai (in short, Sikha) got her name mutated in the records. She died intestate on 3rd February, 2009. Apurba and Sikha had no issue and as such their interest devolved upon Apurba's sisters, namely, Meenakshi Sadhu (in short, Meenakshi) and Manjusha Ray (in short, Manjusha) and their names were duly mutated in the records. Manjusha thereafter died intestate on 3rd May, 2017 and the appellant is her sole legal heir and accordingly, the appellant applied to the respondents to mutate his name

in respect of the share of his predecessor-in-interest but the said application has not been considered.

According to Mr. Mukherjee, due to pendency of the title suit for specific performance, the appellant's application for grant of mutation cannot be kept pending and as such the learned Judge erred in law in dismissing the writ petition as a premature one.

Mr. Das, learned advocate appearing for the State respondents denies and disputes the contention of the appellant.

Mr. Guha, learned advocate appearing for the respondent nos.3 and 4 files an affidavit-in-opposition to the said application. In the said opposition, the added respondents have, *inter alia*, stated that they have no objection if the appellant's application for grant of mutation is considered in respect of the share of his predecessor-in-interest, namely, Manjusha. However, the appellant should not alienate or create any third party interest in the concerned property.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

It appears that the appellant applied to the respondent no.2 for mutation in respect of the share of his predecessor-in-interest, namely, Manjusha in the concerned land. The said application, as annexed at page 31 of the stay application, has not been finally decided by

the said respondent no.2. Mere pendency of the suit for specific performance cannot be a ground for non-consideration of the appellant's application for mutation more so when there is no restraint order to that effect in the pending title suit.

In view thereof, the order impugned in the present appeal is set aside and the respondent no.2 is directed to consider the appellant's application for mutation, upon granting an opportunity to the appellant and other interested parties and to take a decision, in accordance with law and to communicate such decision to the appellant.

The above exercise shall be completed by the respondent no.2 within a period of four weeks from the date of communication of this order.

The learned advocate appearing on behalf of the appellant submits, upon instruction, that the appellant shall not alienate or create any third party interest in the concerned land till the disposal of the appellant's application for mutation by the respondent no.2.

It is made clear that we have not gone into the merits of the appellant's claim and all points are kept open to be decided by the respondent no.2.

With the above observations and directions, the appeal and the connected application are disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Partha Sarathi Chatterjee, J.) (Tapabrata Chakraborty, J.)