

DL-16

09.06.2023
Court No.5
(AD)

WPLRT 47 of 2023

**Sk. Abdul Azim
Vs.
State of West Bengal & Ors.**

*Mr. Supratim Dhar
Mr. Dhananjay Nayak
... for the petitioner*

*Mr. Siddhartha Banerjee
Mr. Abhisek Baran Das
Ms. Banoshree Mukherjee
Ms. Srijoni Chongdar
... for the respondent no.3.*

*Md. T.M. Siddiqui
Mr. M.K. Ghosh
Mr. S. Adak
... for the State.*

The writ petition is directed against an order dated January 20, 2023 passed in O.A. 3977 of 2022 by the West Bengal Land Reforms and Tenancy Tribunal.

Writ petitioner is aggrieved by the refusal to pass an interim order by the learned Tribunal.

Learned Advocate appearing for the petitioner submits that, there is a pending suit for partition where there subsists an order of injunction passed in appeal restraining the parties to the suit from changing the nature and character of the suit property.

Learned Advocate appearing for the writ petitioner submits that, the private respondent claims to be a purchaser of an undivided share in the suit property. The private respondent applied for mutation in respect of the

immovable property for such undivided share. The Block Land & Land Reforms Officer ought not to proceed with the mutation proceedings during the pendency of the suit for partition. The writ petitioner approached the Tribunal for reliefs with regard thereto. The learned Tribunal erred in not granting interim protection in view of the order passed by the appeal Court and in view of the pendency of the suit for partition. He contends that, the Block Land & Land Reforms Officer while considering the application for mutation would be called upon to determine as to whether the applicant for mutation is in possession in respect of the immovable property concerned. The moment the Block Land & Land Reforms Officer undertakes such an exercise, the writ petitioner as a plaintiff in the suit for partition will stand prejudiced in such suit. Therefore, it is imperative that the Block Land & Land Reforms Officer be restrained from taking further steps in the mutation proceedings.

Learned Advocate appearing for the private respondent draws the attention of the Court to the pleadings of the plaint filed by the writ petitioner. He submits that, the writ petitioner acknowledged the private respondent as a co-sharer to the immovable property concerned. According to him, once the private respondent is acknowledged to be a co-sharer of the immovable property concerned, then mutation of the name of the private respondent in the record of rights in respect of such immovable property is automatic.

There is a suit for partition pending between the private parties being Title Suit No.55 of 2022. In such suit for partition which is in respect of immovable property as described in the schedule therein, the writ petitioner as the plaintiff averred therein that the private respondent at best became the owner of undivided share in the suit property. It is the contention of the private respondent that they purchased the entirety of the immovable property and is the sole and absolute owner thereof and applied for mutation as such.

Mutation of a person in the record of rights is not a document of title.

The private respondent applied for mutation before the Block Land & Land Reforms Officer as a purchaser of an undivided share of the suit property. Such application is under consideration.

By the impugned order, the learned Tribunal directed the concerned Block Land & Land Reforms Officer to submit a status report on the next date fixed.

The mutation proceedings are yet to be finally decided. The original application is yet to be finally decided.

As noted above, mutation *per se* does not confer title to the property.

Moreover, there is a suit for partition pending where the rival contentions of the private parties may be appropriately adjudicated upon.

In such circumstances, we find no material

irregularity in the impugned order of the learned Tribunal warranting interference.

It is clarified that, the observations made herein are for the purpose of considering the writ petition on the ground of refusal to pass interim order. All observations made herein are limited to such aspect. The same will not prejudice any of the parties in any of the two proceedings.

WPLRT 47 of 2023 is disposed of accordingly.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)

