

Item No.6

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

21.03.2023
Ct-24

WPA 7665 of 2022
Arunabha Ghosh

v.

Kolkata Municipal Corporation & Ors.

Mr. Saunak Bhattacharya
Mr. Chandra Nath Sarkar
Mr. Sounak Mondal
... for the petitioner.

Mr. Biswajit Mukherjee
Ms. Tanushree Das Gupta
... for KMC.

Mr. Sujan Chatterjee
Mr. Suvodip Bhattacharjee
... for the respondent no. 4(a)

The petitioner claims to be the heir of one Ajit Kumr Ghosh who was allotted a plot of land in the year 1956 by the Refugee Rehabilitation Commissioner. Possession of the plot being No. 42 was handed over to the said Ajit Kumar Ghosh on July 5, 1956.

After the death of Ajit Kumar Ghosh his son Arunabha Ghosh being the petitioner herein inherited the said property. A formal deed was executed between the Governor of the State as donor and Arunabha Ghosh the petitioner herein in respect of the said Plot No. 42 in C.S. Plot No. 219(Part) of Mouza- Paschim Barisha, J.L. No. 19, P.S.-Thakurpukur comprising of 4 cottahs.

It appears from the documents annexed at page 22 of the writ petition that the name of Ajit Kumar Ghosh was mutated in the records of the Kolkata

Municipal Corporation. The petitioner thereafter came to learn that the Kolkata Municipal Corporation mutated the property in favour of one Jiban Kumar Ghosh. The petitioner prayed for cancellation of the mutation but the prayer of the petitioner stood rejected by the order passed by the Assessor-Collector (Borough-XVI) on February 22, 2022. The said order is impugned in the present writ petition.

On a perusal of the impugned order it appears that the property in question was previously under the jurisdiction of the South Suburban Municipality which was later added to the jurisdiction of the Kolkata Municipal Corporation. The Kolkata Municipal Corporation recorded the name of Jiban Kumar Ghosh in respect of the premises no. 49(New).

The instruction forwarded by the Assessor Collector (Borough-XVI) signed on March 20, 2023 mentions that in the books of records of the Kolkata Municipal Corporation the premises nos. 49 and 27, Dakshin Behala Road, Ward No. 126 were mutated in favour of Jiban Kumar Ghosh and Ajit Kumar Ghosh since the era of the erstwhile South Suburban Municipality.

The instruction further mentions that the Kolkata Municipal Corporation at present has not granted any new mutation against the aforesaid two premises and both the recorded owners are enjoying physical possession. As the mutations were granted long ago, the records are not traceable after thorough search.

The aforesaid Jiban Kumar Ghosh has been impleaded as respondent no. 4 in the present writ petition.

At the time of hearing of the writ petition, learned advocate representing the heir of Jiban Kumar Ghosh submits that the said Jiban Kumar Ghosh expired and left behind two sons, Aniruddha Ghosh and Probuddha Nag as the heirs of the deceased Jiban Kumar Ghosh.

The aforesaid Probuddha Nag is not interested to contest the present proceeding. Aniruddha Ghosh, son of Jiban Kumar Ghosh asserts right over the property.

The petitioner denies that any heir of the deceased Jiban Kumar Ghosh is in possession of the property and it has been asserted that the petitioner Arunabha Ghosh is in possession of the property all along.

From the documents annexed to the writ petition and the report placed before this Court by the Assessor-Collector (Borough-XVI) it appears that there is a confusion with regard to the plot number of the premises in question. The plot which was allotted in favour of the predecessor-in-interest of the petitioner is Plot No. 42 and the indenture executed in favour of the petitioner herein is also in respect of Plot No. 42. The petitioner restricts submissions with respect to the Plot No. 42 only.

There is nothing on record to suggest that Plot No. 42 has been renumbered to Plot No. 49 or any other number. As there are documents in support of ownership of Plot No. 42 with the petitioner, the Kolkata Municipal Corporation ought to record the name of the petitioner in respect of the said plot of land which was

allotted in favour of the predecessor-in-interest of the petitioner and the deed executed with the petitioner herein.

In view of the above, the Assessor-Collector (Borough-XVI) is directed to revisit the issue. The Assessor-Collector shall rely upon the documents annexed to the writ petition, originals of which shall be produced by the petitioner at the time of hearing to be afforded to the petitioner.

An opportunity of hearing shall also be afforded to Aniruddha Ghosh residing at GUF & House No. 165/58, Plot No. 13, Quellosim, Goa, Pin-403710 (Near Kesarral Spring).

The notice of hearing shall be addressed to the petitioner and to Aniruddha Ghosh whose address is recorded hereinabove.

The aforesaid respondent shall take a decision in the matter in accordance with law on the documents relied upon by the parties at the earliest but positively within a period of twelve weeks from the date of communication of this order.

The order impugned in the present writ petition dated February 22, 2022 passed by the Assessor-Collector (Borough-XVI) is set aside.

The department of this Court is directed to amend the cause title of the writ petition in terms of the order dated February 8, 2023.

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.)