

07
16.11.2023
Court Room No. 24
AGM

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 8140 of 2023

**Ramchandra Saha
-versus
The State of West Bengal & Ors.**

**Mr. Bhagbat Chaudhuri
Mr. Mahbub Asfakul Zinna**

... For the petitioner.

**Mr. Sirsanya Bandopadhyay
Mr. Arka Kumar Nag
Ms. Deboleena Ghosh**

... For the Raiganj Municipality.

Affidavit-of-service and the notice showing service upon Mrs. Durga Pathak Saha be retained with the records.

The postal receipt showing posting of the envelope to Sri Mohan Pathak is also retained with the records.

The petitioner seeks mutation of a property which he purchased from one Mrs. Durga Pathak Saha, daughter of Sri Mohan Pathak and wife of Mr. Arjun Saha.

The application seeking mutation stood rejected by the Raiganj Municipality on the ground that there is litigation in the deed executed by the seller.

In response to an application made under the Right to Information Act, the Raiganj Municipality

intimated the petitioner that as per records, Sri Mohan Pathak is the owner of the plot of land and, accordingly, the sale deed executed by Mrs. Durga Pathak Saha in favour of the petitioner cannot be accepted and hence the application for mutation was rejected.

The Information Officer of the Municipality intimated the petitioner that there is no information as regards pendency of any court case over the plot in question.

Specific case of the petitioner is that the property in question was gifted by Sri Mohan Pathak in favour of her daughter Mrs. Durga Pathak Saha from whom the petitioner purchased the same.

The petitioner is not aware whether the original recorded owner Sri Mohan Pathak is alive or not. The petitioner is not aware whether Sri Mohan Pathak has any legal heir(s) or not.

Learned advocate representing the Raiganj Municipality submits, upon instruction that, a deed of gift was executed by Sri Mohan Pathak in favour of Mrs. Durga Pathak Saha on 21st March, 2012. The said gift deed was thereafter cancelled by Sri Mohan Pathak on 17th October, 2014. On cancellation of the gift deed by the owner, the donee Mrs. Durga Pathak Saha, did not have any right to transfer the property in favour of the petitioner on 3rd February, 2021.

From the submissions made on behalf of both the parties, it appears that the Municipality is also not aware as to whether the recorded owner is alive or not and whether he has any other legal heir(s) apart from Mrs. Durga Pathak Saha.

The Municipality does not have the authority to decide upon the title of the property and the mutation is only for the purpose of collection of taxes in respect of the subject property. On account of not recording the name of the petitioner, claiming to be present owner of the property, there will be none to take the responsibility to clear the property tax and the Municipality will not be able to collect/recover tax from any person.

It is, however, true that the Municipality cannot record the name of a stranger in respect of a subject property.

There are several disputed questions of facts which are required to be answered prior to the application for mutation being disposed of by the Municipality.

The answers to the queries may be supplied by the erstwhile recorded owner or his legal representative(s). The matter ought not to be left undecided as the same may result in loss of revenue by the Municipality.

In view of the above, the Municipality is directed to reconsider the issue by granting an opportunity of hearing to the recorded owner and in his absence his heirs and legal representatives as well as the petitioner prior to taking a decision on the application filed by the petitioner seeking mutation of the property in his name relying upon the deed of sale executed in favour of Mrs. Durga Pathak Saha. The Municipality shall, however, refrain from deciding the title of the property.

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

The impugned order of rejection of the application made by the petitioner seeking mutation is set aside.

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.

(Amrita Sinha, J.)