

14. 13.06.2023
bd. Ct.15

W.P.A. 9326 of 2017

Mohan Khettry

-vs-

The Kolkata Municipal Corporation & Ors.

Mr. Kallol Kumar Basu

Mr. Bratin Kumar Dey ... for the petitioner.

Mr. Bivek Jyoti Basu

Mr. Uttam Kumar De

Ms. Ankita Mukherjee ... for the State.

Mr. Biswajit Mukherjee

Mr. Gopal Chandra Das ... for the KMC.

Mr. Rahul Karmakar

Mr. Arnab Sardar ... for the respondent nos. 8 & 9.

The writ petition is taken up for consideration in presence of the learned advocates representing the petitioner, KMC, State respondents and respondent nos. 8 and 9.

The matter is heard at length today and supplementary affidavit has also been filed by the petitioner in terms of the leave granted by this Court vide order dated 16th May, 2023.

On hearing the learned advocates representing the parties and on perusal of the relevant materials available on record it appears that the writ petition was instituted, inter alia, challenging the order of the Assessor-Collector (N), Kolkata Municipal Corporation dated 16th October, 2014 by which the prayer of the petitioner to mutate his name upon treating the petitioner as thika tenant was spurned on the score that the petitioner

failed to produce any document in favour of his claim that property in question is a thika property.

In the present writ petition said order dated 16th October, 2014 of the Assessor-Collector (N), Kolkata Municipal Corporation, has been questioned and writ of mandamus has been prayed for in order to direct the concerned authority of KMC to mutate name of the petitioner upon treating the petitioner as thika tenant.

Mr. Kallol Basu, learned counsel representing the petitioner submits upon placing reliance on the relevant pages of the supplementary affidavit filed today on behalf of the petitioner that during pendency of this writ petition Controller, Kolkata Thika Tenancy upon disposing of the proceeding pending before him by passing order dated 26th April, 2018 declared that Jagannath Khettry is the thika tenant over an area of 01 Cottah 38 Sq.ft. more or less in connection with premises no. 20, Umesh Dutta Lane and 01 Cottah 08 Chittak 29 Sq.ft. more or less in connection with premises no. 16, Umesh Dutta Lane. The submission made on behalf of the petitioner rests on such order of Controller, Kolkata Thika Tenancy dated 26th April, 2018 and it has been submitted *albeit* pendency of the original application being OA No. 2398 of 2018 before the West Bengal Land Reforms & Tenancy Tribunal (WBLRTT) at the instance of the respondent nos. 8 and 9 the concerned authority of KMC is under obligation to mutate the name of the petitioner based on the order passed by the Controller, Kolkata Thika Tenancy.

Such submission made on behalf of the petitioner is opposed by the learned advocate representing the respondent nos. 8 and 9 since the aforesaid original application is pending before the WBLRTT wherein challenge has been thrown to the order of the Controller, Kolkata Thika Tenancy dated 26th April, 2018.

This Court having considered the submissions of the parties and taking into account the fact that the original application is pending before the WBLRTT questioning the validity of the order dated 26th April, 2018 passed by the Controller, Kolkata Thika Tenancy wherein petitioner is one of the respondents; it would be improper at this stage to give direction upon the KMC to mutate name of the petitioner based on the order passed by Controller, Kolkata Thika Tenancy dated 26th April, 2018. Pendency of the proceeding before the WBLRTT does not wipe out the decision taken by the Controller, Kolkata Thika Tenancy but such pendency of the proceeding puts the order of Controller, Kolkata Thika Tenancy dated 26th April, 2018 in jeopardy.

Since petitioner is one of the respondents in the aforesaid original application pending before the Tribunal it will be open to the petitioner to make appropriate prayer before the Tribunal for grant of interim relief based on the order passed by Controller, Kolkata Thika Tenancy dated 26th April, 2018.

In view of the aforesaid scenario this Court does not find merit in the present writ petition and the same stands dismissed.

However, this order shall not preclude the petitioner to take steps in accordance with law as well as to approach the Tribunal in terms of the aforesaid leave granted by this Court.

It is also made clear that court has not gone into the merits of the orders passed by the concerned authority of KMC and Controller, Kolkata Thika Tenancy; all points are kept open.

However, there shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)