

D/L
Item No. 02
21.09.2023
KOLE

**MAT 813 of 2023
With
IA CAN 1 of 2023**

**Sri Bidyasagar Shaw
-Vs.-
Bhatpara Municipality & Ors.**

*Mr. Tapan Kr. Bhattacharya,
Mr. Aviroop Bhattacharyya,*

...for the appellant.

*Mr. Rajib Mukherjee,
Mr. Shreyasi Bhandari,*

...for the Municipality.

Upon undertaking of learned Advocate on record for the appellant to file affidavit of service in course of the day, this appeal and the connected application are taken up for hearing together by consent of the appearing parties.

By filing WPA 15078 of 2014, the appellant had approached a learned Single Judge of this Court challenging mutation of the name of the respondent no. 5 in connection with the concerned land. The writ petitioner, who is the present appellant, submitted that the land belongs to him and the name of the respondent no. 5 has been wrongly mutated as the owner of the land.

Before the learned Single Judge, learned Advocate representing the respondent no. 5 submitted that the land stands transferred in favour of one Sakina Bibi, the wife of the respondent no. 5, and the land has been mutated in her name. Sakina Bibi was added as the respondent no. 6 in the writ petition. It was further submitted before the learned Single Judge that the insertion of the name of the

respondent no. 6 and/or the respondent no. 5 in the record of rights as the owner of the land in question has been questioned by the writ petitioner by filing OA 2447 of 2017 before the Land Reforms and Tenancy Tribunal. It was further submitted that the original application is pending disposal.

Noting the aforesaid, the learned Judge disposed of the writ petition with the following observations:-

“In view of such submissions being made on behalf of the respective parties it appears that mutation of name of the petitioner in connection with the land in question during pendency of the original application before the tribunal as prayed for by the petitioner cannot be decided.

No order need be passed on this writ petition excepting granting leave to the petitioner to approach the concerned authority of Bhatpara Municipality for mutation of the name of the petitioner after disposal of the original application by the tribunal.”

Being aggrieved the writ petitioner has come up before us by way of this appeal.

From the track report produced before us we see that the private respondents in this appeal have received notice of this proceeding. However, nobody appears for them. Accommodation has been sought for on behalf of the Municipality. We are not inclined to defer the hearing of the matter since the order that we propose to pass is not going to affect the Municipality adversely.

The basic grievance of the appellant/writ petitioner is that his land has been wrongly mutated in the name of the private respondents. He wants the same to be undone. It is

not in dispute that he has challenged the insertion of the names of the private respondents in the record of rights as the owners of the concerned land before the Tenancy Tribunal. The original application is yet to be disposed of by the Tribunal. The Tribunal has been called upon to decide the correctness or otherwise of recording of the concerned land in the names of the private respondents in the record of rights. The same issue cannot be agitated again before the writ court. The learned Judge has rightly granted liberty to the appellant/writ petitioner to approach the Municipality for correction of its records by reinstating the name of the appellant as the owner of the land after disposal of the original application by the Tribunal.

We affirm the order of the learned Single Judge and clarify that in the event the appellant is successful before the Tribunal, the effect would be that the recording of the concerned land in the names of the private respondents in the record of rights would stand nullified and consequently, the Municipality would be obliged to record the name of the appellant in its records as the owner of the concerned land.

We see that the Original Application is pending before the Tribunal since 2017. We request the Tribunal to dispose of the application at an early date and in any event, within a period of six months from the date of communication of this order to the Tribunal.

Learned Advocate for the appellant says that the appellant has come to know that the private respondents are taking steps for obtaining sanctioned plan from the

Municipality for making construction on the disputed land. We restrain the private respondents from making any construction on the disputed land and/or from dealing with the said land in any manner whatsoever till the disposal of the Original Application by the Tribunal.

Since we have not called for affidavits, the allegations made in the stay application are deemed not to be admitted by the respondents.

The appeal and the connected application are, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)