

27.07.2023
Item No. 5.
Court No.6.
AB

**M.A.T. 935 of 2023
With
I A CAN 1 of 2023**

**Md. Hasim
Vs
The State of West Bengal & Others**

Mr. Prosenjit Mukherjee,
Mr. Nirmalya Kr. Das,
Mr. Arghya Kamal Das,
Mr. Saptarshi Chakraborty ...for the Appellant.

Mr. Jahar Dutta,
Mr. Manoj Kumar Mondal ...for the State.

Mr. Achintya Kr. Banerjee,
Ms. Manisha Nathfor the KMC.

By consent of the parties, the appeal and the application are taken up for hearing together.

A judgment and order dated April 17, 2023, whereby the appellant's writ petition being WPA 28753 of 2022 was dismissed by a learned Single Judge of this Court, is assailed in this appeal.

The appellant approached the learned Single Judge contending that the property in question has been inherited by him from his ancestors. The property was mutated in the names of his ancestors. However, relying on certain documents, which are fake, the private respondents have obtained mutation of the said property in their names. The appellant contends that he has made repeated representations to Kolkata Municipal Corporation as also to the Police

Authorities, but in vain. He prayed for a direction on the Corporation to consider and dispose of his representations.

The learned Judge accepted the contention of the Corporation that for effecting mutation, the Corporation is neither required to nor competent to adjudicate whether the documents relied upon by the applicant are fraudulent or not. The Corporation acts in good faith and on the assumption that the documents, which had been submitted in support of a claim for mutation, are genuine documents.

The learned Single Judge dismissed the writ petition with the following observations:

“It appears from the submissions made on behalf of the parties that the petitioner is aggrieved by a recording in the municipal records which took place in the year 2013.

It is settled law that mutation neither creates nor extinguishes title of any person. It is only for the purpose of identifying the person primarily liable to pay tax.

It will be open for the petitioner to approach the appropriate forum for obtaining declaratory rights of his title over the property in question. It will not be proper to direct the Corporation to enquire into the matter and ascertain genuineness of the documents relied upon by the private respondents for obtaining mutation of the subject property.

In view of the above, no relief can be granted to the petitioner in the instant case.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

We are in agreement with the learned Single Judge to the extent that the learned Judge held that

the Corporation is not the competent authority to decide questions of title or genuineness of a document. However, since representations have been made by the appellant, it may be proper for the Corporation to take a decision on such representations in whatever manner the Corporation may deem fit and proper.

We are of the view that a fresh comprehensive representation should be made. Liberty is granted to the appellant to make a fresh comprehensive representation to the Assessor-Collector (South), Kolkata Municipal Corporation, with supporting documents, if any, within a fortnight from date. If such a representation is made within the time period indicated, the Assessor-Collector (South) shall decide such representation in accordance with law by passing a reasoned order within a period of 12 weeks from the date of receipt of the representation, after affording an opportunity of hearing to the appellant or his authorized representative as well as the private respondents or their authorized representative. The appellant and the private respondents will be at liberty to rely on the provisions of Municipal Laws and other relevant documents at the hearing before the Assessor- Collector (South).

We make it clear that the Assessor-Collector (South) shall not enter into the question of any title dispute nor venture to decide the genuineness or otherwise of any document.

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

The order under appeal stands set aside.

MAT 935 of 2023 stands disposed of along with IA CAN 1 of 2023.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)