13 rkd 07.06.2023 Ct.15

W.P.A. 15443 of 2017

Uday Narayan Mitra
-vs-
The State of West Bengal & Ors.

Mr. Sandip Ghosh,
Ms. Moumita Ghosh,
Ms. Mousumi Chatterjee
....for the petitioner.

Mr. Mrityunjoy Goswami,
Mr. Parkshit Goswami
....for the respondent nos.3 to 5.

Petitioner purchased flat under Block-E being Unit No.003 situates at Jessore Road, Kolkata-700132 under Ward No.16 of Madhyamgram Municipality, in the year 2014.

Petitioner is claiming to have his name mutated and incorporate his name in the Assessment Register maintained in the office of Madhyamgram Municipality upon compliance of necessary formalities. It appears from page 49 of the writ petition that Rs.26268/- was paid by the petitioner in favour of Madhyamgram Municipality and a receipt was acknowledged on 3rd March, 2017. According to the petitioner the amount was paid by him for having his name mutated and it has also been contended that in spite of depositing the aforesaid amount the name of the petitioner has not been mutated till date.

Mr. Goswami, learned advocate representing the Madhyamgram Municipality contends that the aforesaid amount i.e. Rs.26268/- was paid by the petitioner towards property transfer fee and this is not related to mutation of name of the petitioner.

On such submission being made on behalf of the Municipality this Court has made a query to the learned advocate representing the municipality that whether the municipality is authorized to demand transfer fee from the petitioner being transferee in connection with the aforesaid flat which he purchased in 2014.

In order to answer such query of the Court Mr. Goswami has relied upon Sections 116 & 117 of the West Bengal Municipal Act, 1993 to demonstrate before this court that such transfer fee can be demanded from the petitioner being transferee.

For better understanding of the issue involved in this writ petition Section 116 is quoted below:

> ***"116. Notice of transfer.—****(1) Whenever the title of any person to any land or building is transferred, such person, if primarily liable for the payment of property tax on such land or building,*

and the person to whom the title is so transferred, shall, within three months [of the registration of the instrument,] give notice of such transfer in writing to the [Executive Officer].

(2) On the death of any person primarily liable for the payment of property tax as aforesaid, the person on whom the title of the land or the building referred to in sub-section (1) devolves shall, within six months from the date of death of the former, give notice, in writing, of such devolution to the [Executive Officer].

(3) The notice under this section shall be in such form as may be prescribed, and the transferee or the person on whom the title devolves shall, if so required, be bound to produce before the [Executive Officer] any document evidencing the transfer or devolution.

(4) If any person, who transfers his title to any land or building, fails to give any notice under this section to the [Executive Officer], he shall, in addition to any penalty to which he may be subject under this Act, continue to be liable for payment of property tax on such land or building until he gives such notice, but nothing in this section shall be deemed to affect the liability of the transferee for payment of the property tax on such land or building.

[(5) The Executive Officer shall, on

receipt of a notice of transfer or devolution record the transfer or devolution of property in such form and in such manner as may be determined and upon payment of such fee as may be prescribed.]

[(6) The District Registrar of the district or the Sub-Registrar of the local registration office shall co-operate with the [Executive Officer] or his representatives, sent in this behalf, for collecting the particulars regarding the registration of instrument, transfer of immovable property and periodical returns containing the detailed periodical list of registration of instruments.]"

On perusal of Section 116, it appears that sub-section (1) of Section 116 provides requirement so far transferee is concerned to give notice of transfer to the Executive Officer of the Municipality within three months from the date of registration of conveyance deed, in writing.

It has also been provided under sub-section(4) of Section 116 that in the event of failure to give written notice the transferor in addition to any penalty to which he may be subjected to under this Act shall continue to pay property tax until he tenders such notice but that will not absolve the transferee of remitting property tax in favour of the municipality.

Therefore it does not appear from the contemplation of Section 116 that the petitioner being transferee is liable to pay transfer fee as submitted by the learned advocate representing the municipality.

Section 117 does not come in aid of the municipality since it deals with levying of surcharge on the transfer of immovable property situated within the municipal area that too in the form of stamp duty.

In view of aforesaid discussion collection of transfer fee from the petitioner at the instance of the municipality appears to be erroneous and accordingly the concerned authority of the municipality is directed to refund the transfer fee to the tune of Rs.26268/- to the petitioner within a period of four weeks from the date of communication of this order along with interest @ 6% per annum from the date of payment by the petitioner till the date of refund.

Though petitioner made application for mutation on 30th December, 2016 but the same has not been processed as submitted by Mr. Goswami, learned advocate representing the municipality due to pendency of the writ petition. It has also been contended that at present municipality is accepting online application for mutation and if petitioner makes such application online seeking mutation the same shall be considered by the municipality in accordance with law within a stipulated time.

In view of such submission being made on behalf of the municipality this Court grants leave to the petitioner to make online application for mutation before the concerned authority of Madhyamgram Municipality within three weeks from date and if such online application is made the concerned authority of Madhyamgram Municipality on receipt of such application shall take decision relating to mutation within a period of eight weeks thereafter in accordance with law.

With the aforesaid direction and observation the writ petition stands disposed of.

However, there shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)