

01. 26.07.2023
Court No.6
Tanmoy Ghosh

MAT 1254 of 2023

**Md. Moinuddin
-Versus-
Kolkata Municipal Corporation & Ors.**

**With
IA No: CAN/1/2023**

Mr. Piush Chaturvedi, Adv.,
Mr. Bhaghat Choudhury, Adv.,
Mr. Sk. Nizamuddin, Adv.,
Ms. Barnali Gupta, Adv.

...for the appellant/
writ petitioner.

Mr. Biswajit Mukherjee, Adv.,
Mr. Atis Kumar Biswas, Adv.

...for the KMC.

Affidavit of service filed in Court today be kept with the records.

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

This appeal is directed against a judgment and order dated June 7, 2023, whereby the appellant's writ petition being WPA 19672 of 2017 was disposed of without any effective relief being granted to the writ petitioner.

The appellant approached the learned Single Judge with the case that his father and another gentleman had jointly purchased premises no. 53, Dilkhusa Street, Kolkata – 700017. He contended before the learned

Single Judge that by way of inheritance he has become joint owner of the premises in question. He accordingly had applied for having his name mutated in the Corporation records. His application was disallowed. He was informed that the property in question has been mutated in the Assessment Register of Kolkata Municipal Corporation (KMC) in the name of the General Manager, Eastern Railway.

It may be noted that in an earlier round of litigation the present appellant had approached a learned Single Judge of this Court in the writ jurisdiction by filing WP 1342(W) of 2017, with the grievance that his representation to the Corporation for correction of the Corporation records was not being considered. By an order dated February 3, 2017, the learned Judge granted liberty to the appellant herein to file an application in prescribed form for mutation of his name with the KMC Authorities.

Pursuant to such leave, the appellant had filed an application in Form A-42. By an order dated May 31, 2017, the Assessor-Collector (South) Kolkata Municipal Corporation, rejected the appellant's application with the following observations:-

"After having considered the factual aspects of the matter and also the inspection report as stated above, I am of the view that it is not a case of simple mutation of the name of the petitioner and another against a particular premise. The factual background raises a highly disputed question on title to the property, if at all. The KMC is not the authority to go into any issue on title which is apparently a highly disputed issue. The

KMC goes by his own records which clearly indicate that the Eastern Railway is the recorded owner of both the premises and Eastern Railway has never sold out the properties at the said premises to anyone. It cannot be said that the name of Eastern Railway was recorded against the premises in question erroneously and hence, the question of deletion of the name of Eastern Railway and recording the name of the petitioner and another in place of Eastern Railway does not arise.

If the petitioner Md Moinuddin and Iftekar Ahmed Khan have any right, title or interest in either of the said two premises, the petitioner and the said Iftekar Ahmed Khan may approach the Civil Court for obtaining appropriate declaration in their favour.

That being the position, the application for mutation as submitted by Md Moinuddin cannot be allowed and the same is rejected with the findings and observations as recorded hereinabove.”

Challenging the said order of the Assessor-Collector, the appellant herein approached the learned Single Judge in the present round of litigation.

The learned Judge, after hearing the parties including the Eastern Railways, disposed of the writ petition with the following observations:-

“The decision of the municipal body like KMC to mutate the name of a person or authority in connection with the property enables that person or authority to pay municipal taxes and such decision is taken based on relevant materials produced by the parties before the concerned municipal body/corporation. The decision relating to mutation does not vindicate right, title and interest of the party/authority over the property in question; it only confers right upon the party/authority to pay municipal taxes, not beyond that.

In the present case the petitioner has laid claim to have his name mutated in the assessment register based on the right of his predecessor-in-interest on the strength of registered conveyance deed which is alleged to have been executed in the year 1957. The right of the petitioner being the successor-in-interest in connection with the said property needs to be

decided by the appropriate civil court and the same is not to be decided by the KMC while taking decision on mutation.

In view of the dispute involved in the present writ petition and in consideration of the decision taken by the Assessor-Collector (South), Kolkata Municipal Corporation dated 31st May, 2017 at present no relief can be granted to the petitioner save and except granting him leave to take appropriate steps in accordance with law for vindication of his grievance relating to his right, title and interest over the property in question.”

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

We have heard Mr. Chaturvedi, learned Counsel for the appellant/writ petitioner and Mr. Biswajit Mukherjee, learned Counsel for the KMC. From the affidavit of service filed in Court today, it appears that Eastern Railway Authorities have been served. However, the Railways are not represented.

We, in principle, do not find any infirmity in the order under appeal or in the order of the Assessor-Collector which was assailed before the learned Single Judge. The Corporation records reflect that the General Manager, Eastern Railways is the recorded owner. The appellant has staked his claim to be mutated as a joint owner of the property in question. The Assessor-Collector held that he is not in a position to decide a title dispute. The learned Single Judge also was of the same opinion. We are also in agreement with them that the Corporation cannot decide title disputes.

However, the Railway Authorities were not before the Assessor-Collector when the order dated May 31,

2017 was passed. It may have helped the Assessor-Collector to hear the Railway Authorities as to on what basis they got themselves recorded as the owners of the property in question. Unfortunately, the Railway Authorities are also not before us, in spite of having been served with notice of this appeal.

We are of the view that ends of justice will be served if the concerned Assessor-Collector revisits the issue of mutation of the name of the present appellant as joint owner of the property in question and passes a fresh order after hearing the appellant herein and the Eastern Railway Authorities. We make it clear that we are not directing the Assessor-Collector to decide any question of title or any title dispute. We are also not directing the Assessor-Collector to allow the appellant's application for mutation. The Assessor-Collector will be at liberty to come to any conclusion, in accordance with law, but only after hearing both the appellant herein and the Eastern Railway Authorities. Let such exercise be completed within six weeks from the date of communication of this order by the appellant to the concerned Assessor-Collector. The fresh order that the Assessor-Collector will pass, will naturally be in supersession of the earlier order.

Since we have not called for affidavits, the allegations in the stay petition shall be deemed not to have been admitted by the respondents.

The appeal being MAT 1254 of 2023 and the connected application being IA No: CAN/1/2023 are disposed of.

Let urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance with all requisite formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)