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W.P.A. 17412 of 2018

Usha International Limited

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Saptansu Basu,
Mr. Subhabrata Das

....for the petitioner.

Mr. Sudeep Sanyal,
Mr. Lopa Mudra Moitra,
Mr. Chandrachur Lahiri

....for the private respondents.

Mr. Alak Kumar Ghosh,
Ms. Era Ghose

.... for the KMC.

By presenting the instant writ petition petitioner has prayed for review of the order passed by the coordinate Bench on a writ petition being WPA 9434 of 2018 (Chandi Charan Sardar & Ors. – vs- The State of West Bengal & Ors.). The order was passed by the coordinate Bench on 2nd July, 2018 and the writ petitioners in the said writ petition are respondents in the present writ petition.

The prayer (A) of the present writ petition runs infra:

“A) Issue a Writ in the nature of Mandamus for recalling, reviewing, modifying and/or set aside the order dated 2nd July, 2018 passed in W.P. No.9434 (W) of 2018 by His Lordship the Hon’ble Justice Debangsu Basak.”

At the time of hearing of the present writ petition petitioner, Kolkata Municipal Corporation and private respondents are represented by learned advocates. Parties are heard to some length.

During course of hearing question has arisen for consideration whether the present writ petition is maintainable seeking review of the order dated 2nd July, 2018 passed by a coordinate Bench on the aforesaid writ petition.

According to the understanding of the Court appropriate remedy which was available to the present writ petitioner was to file review application before the coordinate Bench which passed order on 2nd July, 2018.

Mr. Basu, learned senior advocate representing the petitioner in order to satisfy the query of the Court has placed reliance on the following judgments:

- i) **AIR 1963 SC 1909 (Shivdeo Singh & Ors. -vs- State of Punjab & Ors.).**
- ii) **(2009) 4 CLT 301 (HC) (Smt. Diblu Naskar -vs- State of West Bengal & Ors.).**
- iii) **(2018) 2 CLJ (Cal) 505 (Sri Pabir Agasty & Ors. -vs- The**

State of West Bengal & Ors.).

In addition to placing reliance on the aforesaid three judgments on factual issue it has been submitted on behalf of the petitioner that in the writ petition being WPA 9434 of 2018 petitioners prayed for conclusion of proceeding pending before the concerned authority of Kolkata Municipal Corporation (for short “KMC”) in connection with mutation and according to the present writ petitioner said proceeding was initiated at the instance of the writ petitioners in the aforesaid writ petition.

Petitioners in the aforesaid writ petition claimed conclusion of mutation proceeding by the concerned authority of KMC by giving necessary directions. It has also been submitted on behalf of the present writ petitioner that the present writ petitioner was not made party to the aforesaid writ petition and without hearing the petitioner the aforesaid writ petition was disposed of vide order dated 2nd July, 2018 giving direction upon the concerned authority of KMC to intimate the parties who were heard by the concerned authority of KMC the result of the hearing in connection with mutation proceeding.

It was also directed vide order dated 2nd

July, 2018 that such mutation proceeding would be completed within a period of six weeks from the date of communication of the order dated 2nd July, 2018.

It has been contended on behalf of the present writ petitioner that the present writ petitioner was required to be arrayed being necessary party to the aforesaid writ petition since according to the present petitioner the land in connection with which mutation proceeding was initiated at the instance of the petitioners in the aforesaid writ petition is owned by the present writ petitioner and reliance is placed on the deed of conveyance which is annexed at page 33 onwards of the present writ petition. According to the present writ petitioner the said deed of conveyance was executed in favour of the petitioner on 4th May, 1956.

Mr. Sanyal, learned advocate representing the private respondents has disputed the title of the present petitioner in connection with the land in respect of which mutation proceeding was initiated at the instance of the petitioners in the aforesaid writ petition and the deed has been disputed on behalf of the private respondents.

In the aforesaid backdrop of facts as

narrated in the preceding paragraphs, this Court is of the view that on the strength of deed of conveyance executed in favour of the present petitioner in the year 1956 in connection with the land in question albeit disputed on behalf of the private respondents, in the aforesaid writ petition the present writ petitioner ought to have been made party. Since behind the back of the present writ petitioner an order was passed by the coordinate Bench on the aforesaid writ petition filed by the private respondents it appears that it is an instance of abuse of due process of law as well as Court.

However, in order to find an answer with regard to maintainability of the present writ petition seeking review of the order dated 2nd July, 2018 passed in the aforesaid writ petition this Court is required to rely upon the judgments placed before this Court on behalf of the petitioners. In **Shibdeo Singh (supra)**, the Hon'ble Supreme Court has held that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. This decision of the Apex Court was considered in two

subsequent judgments one in **Diblu Naskar (supra)** and another in **Sri Prabir Agasty (supra)**.

In both the judgments passed by two coordinate Benches the judgment of the Apex Court delivered in **Shivdeo Singh (supra)** has been duly considered and it has been held therein that second writ petition seeking review of the order passed in the first writ petition is maintainable if it is found that the order was passed in the first writ petition in abuse of due process of law. It has also been held that this Court while exercising the writ jurisdiction is having plenary jurisdiction under Article 226 of the Constitution of India therefore the writ Court is empowered to cure the defects and pass necessary order to obviate miscarriage of justice.

As it has been discussed in the preceding paragraphs that this Court finds that the present writ petitioner ought to have been made party in the first writ petition which was disposed of vide order dated 2nd July, 2018, the order dated 2nd July, 2018 needs to be recalled.

Accordingly, the order dated 2nd July, 2018 passed in WPA 9434 of 2018 stands recalled and the said writ petition stands revived.

The department is directed to implead the

present writ petitioner as respondent in the writ petition being WPA 9434 of 2018 within ten days from date.

Let the aforesaid writ petition appear under the heading “Motion (Group-V) (Municipality)” in the monthly combined list of September, 2023.

The present 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.)