

42 09.10.2023
rkd Ct.15

W.P.A. 20620 of 2018
(IA NO: CAN 1/2022, CAN 2/2022)

Biplab Basak

-vs-

Kolkata Municipal Corporation & Ors.

Mr. Dipayan Kundu

....for the petitioner.

Dr. Arka Paratin Chowdhury,
Ms. Tuhina Choudhury,
Ms. Shreya Chakraborty

....for the respondent no7.

Mr. Amitava Chaudhuri,
Mr. Samrat Pal

....for the State.

Mr. Biswajit Mukherjee,
Ms. Manasha Nath

....for the KMC.

Petitioner is aggrieved by the order of mutation issued by the concerned authority of Kolkata Municipal Corporation dated 17th March, 2017 whereby name of one Sunidhi Developers Private Limited being the respondent no.7 has been mutated in connection with the property in question.

The learned advocate representing the petitioner has drawn attention of this Court to the order dated 25th November, 2014 passed by a coordinate Bench on the writ petition being WPA 29529 of 2014 (Sunidhi Developers (Private)

Limited & Anr. –vs- Kolkata Municipal Corporation & Ors.) wherein it was directed that if respondent no.7 herein submits an application for recording its name in the Assessment Register of Kolkata Municipal Corporation in respect of the premises in question in that event the competent authority of Kolkata Municipal Corporation was directed to dispose of the application of the respondent no. 7 by passing a reasoned order in accordance with law after granting opportunity of hearing to all concerned including the petitioner within a stipulated time.

It has been submitted that contrary to the directions as contained in the order dated 25th November, 2014 passed by the coordinate Bench the mutation order dated 17th March, 2017 has been issued by the Corporation in favour of the respondent no.7 without granting opportunity of hearing to the petitioner. According to the petitioner since no opportunity was granted before issuing mutation order the same is erroneous.

At the same time notice of this Court has been drawn to the order passed by the Deputy Controller, Kolkata Thika Tenancy dated 26th April, 2023 wherefrom it emanates that Diamond Paper and Board Mills was declared as Thika Tenant in

respect of an area of 43 Cottah (2 Bighas 03 Cottah) under Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation), Act, 2001.

It has also been submitted that the present petitioner is the proprietor of said Diamond Paper and Board Mills. Therefore, according to the petitioner the entire issue is required to be revisited afresh by the Kolkata Municipal Corporation since respondent no.7 was not found to be Thika Tenant in connection with the property as indicated in the order dated 26th April, 2023 passed by the Deputy Controller, Kolkata Thika Tenancy and a fresh mutation order needs to be issued.

Respondent no.7 is represented by the learned advocate who has opposed the prayer made in this writ petition and it has been submitted that mutation order was passed in favour of respondent no.7 on 17th March, 2017 whereas the Deputy Controller has passed order in favour of the petitioner on 26th April, 2023. According to the respondent no.7 at the time of issuing mutation order on 17th March, 2017 it was not open to the concerned authority of Kolkata Municipal Corporation to treat the petitioner as Thika Tenant.

However, it has been submitted that one

original application being OA No.3054 of 2023 has been filed before the West Bengal Land Reforms and Tenancy Tribunal questioning the legality and validity of the said order dated 26th April, 2023 passed by the Deputy Controller, Kolkata Thika Tenancy. It is also stated that said original application is still pending for final adjudication before the Tribunal.

It has been submitted by Mr. Mukherjee, learned advocate representing the Kolkata Municipal Corporation that in view of pendency of the aforesaid original application before the Tribunal the issue of granting mutation in connection with the property in question cannot be delved into at this stage.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials including the order dated 26th April, 2023 passed by the Deputy Controller, Kolkata Thika Tenancy this Court finds that the situation which was prevailing at the time of issuing mutation order dated 17th March, 2017 in favour of the respondent no.7 is altered substantially in view of the order passed on 26th April, 2023 by the Deputy Controller, Kolkata Thika Tenancy. It is also submitted on behalf of the

respondent no.7 that such order dated 26th April, 2023 is questioned before the WBLRTT and the original application is pending.

Unless the fate of this order dated 26th April, 2023 of the Deputy Controller, Kolkata Thika Tenancy is decided finally by the Tribunal it would not be proper to allow the parties especially respondent no.7 to take steps based on the mutation order dated 17th March, 2017.

The mutation order dated 17th March, 2017 shall be kept in abeyance till the original application is decided by the Tribunal.

Accordingly, the writ petition stands disposed of directing the parties to maintain status quo with regard to nature and character of the property in question till the disposal of the original application by the Tribunal.

After the said original application is decided by the Tribunal it will be open to the parties to approach the concerned authority of Kolkata Municipal Corporation for mutation of the property in question.

Applications, if pending, also stand disposed of.

Affidavit-of-service filed on behalf of the petitioner is taken on record.

The copy of the order dated 26th April, 2023 passed by the Deputy Controller, Kolkata Thika Tenancy is also taken on record.

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.)