D/L
Item No. 9
23.03.2023
KOLE

WPA 23591 of 2022

Amit Sarkar
-Vs.-
The State of West Bengal & Ors.

Mr. Arnab Roy,
Mr. S. Mukherjee,
Mr. S. Ahmed,
... for the petitioner.

Mr. Piyali Sengupta,
Mr. S. Samanta,
... for the State.

Mr. T. Coomer Dey,
Ms. S. De,
... for the KMC.

Mr. D. Basu,
Mr. S. Das,
Mr. A. Bandopadhyay,
Mr. C. Lahiri,
... for the respondent no. 8.

Mr. Suchismita Dutta,
Mr. P. Singh,
... for the proforma respondent.

The matter relates to mutation of premises no. 19/1B/1, East Topsia Road. The property tax bill in respect of the said property mentions the names of Arun Kumar Sarkar and Robin Sarkar as owners.

The petitioner submits that he is one of the sons of late Arun Kumar Sarkar and accordingly on the death of his father his name ought to be incorporated in the municipal records. The municipal assessment book at one point of time recorded the name of the petitioner Amit Sarkar as one of the owners of the subject property.

The petitioner has not been made aware as to why and how his name stood deleted from the current property tax bill raised by the Kolkata Municipal Corporation.

The petitioner approached this court by filing writ petition being WPA 19543 of 2021 which stood disposed of on 17th March, 2022 by directing the Assessor-Collector Tollygunge Tax Department to dispose of the application of the petitioner seeking mutation upon hearing all the parties. Opportunity was given to the parties to file respective documents in support of their claim.

The Assessor-Collector allegedly after going through the papers of the case and the records of inventory of immovable properties of the Corporation directed the parties to maintain *status quo* in the records, in view of the pendency of Title Suit No. 897 of 2019.

The said order is impugned in the present writ petition.

The Assessor-Collector has forwarded a report before this Court signed on 17.03.2023 mentioning that the premises no. 19/1B/1, East Topsia Road is recorded in the records of inventory of immovable properties of the Kolkata Municipal Corporation prepared under Section 540 (2) of the KMC Act, 1980 for the year 2021-22, wherein C.S. dag no. 146 of Mouza-Purba Topsia is recorded as KMC property.

By order dated 18th January, 2023 the court directed the Corporation to forward the records of mutation case no. O/066/06-JUN-09/4217 dated 6th June, 2009 before this court for review.

At the time of hearing of the petition it has been submitted by learned Advocate representing the KMC that since the mutation case records are quite old, it could not be readily traced out and accordingly, the same could not be produced in court.

It appears that the order impugned was passed on 1st September, 2022 and instruction forwarded to the court by the Assessor-Collector on 17.01.2023.

The court fails to understand as to how instructions could be prepared and the prayer of the petitioner seeking mutation be disposed of without verifying the relevant mutation case records.

It can never be that the mutation case records were available at the time of taking a decision in September 2022 and at the time of preparing the instruction in January 2023, but thereafter, suddenly, the case records went missing and could not be produced in court.

The court is convinced that the Assessor-Collector, Tolly Tax Department did not consult the relevant records prior to disposing of the case in terms of the direction passed by the Court in the earlier writ petition filed by the petitioner.

It is settled law that mutation neither creates nor extinguishes title. It is only for the purpose of identifying the person responsible for paying property tax.

By the impugned order, the Assessor-Collector directed maintenance of *status quo* in the records of the Corporation. If the records are not updated correctly, then the person responsible for paying tax cannot be identified.

In view of the above, the order impugned dated 1st September, 2022 is set aside and quashed.

The Assessor-Collector, Tolly Tax Department is directed to revisit the issue strictly in terms of the direction passed by this Court on 17.03.2022 in WPA 19543 of 2021. The Assessor-Collector shall positively verify the mutation case records in respect of the subject premises prior to taking a final decision in the matter.

The said officer shall also keep in mind that though instruction has been forwarded that the property is recorded in favour of KMC but the tax bills are still being raised in favour of the private parties. The private parties are not liable to pay tax in respect of any property owned and maintained by KMC.

A decision shall be taken in the matter at the earliest but positively within a period of four months from the date of communication of this order. Reasonable opportunity of hearing shall be given to all the necessary parties to arrive at a decision in the matter.

WPA No. 23591 of 2022 is, accordingly, disposed of.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(**Amrita Sinha**, **J**.)