

Item No.4

In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

01.02.2023
Ct-24

WPA 24483 of 2022
Umesh Prasad Jaiswal

v.

The Kolkata Municipal Corporation & Ors.

Mr. Partha Chakraborty
... for the petitioner.

Mr. Biswajit Mukherjee
Mr. Gopal Chandra Das
Ms. Era Ghose
... for KMC.

Sk. Md. Galib
Ms. Tanwishree Mukherjee
... for the Board of Auqaf.

Mr. Rajarshi Basu
Mr. K.M. Hossain
... for the State.

Mr. Nauroz Rahbar
Mr. Mohd Jawwod
... for the added respondent.

The petitioner is aggrieved by the order passed by the Assessor-Collector (North) on November 27, 2015 whereby the Assessor-Collector directed that the tax bill should be rectified and the names of Mr. Phool Chand Gupta and others be removed from the records of the Kolkata Municipal Corporation forthwith.

The petitioner claims to be the successor-in-interest of one Durga Prasad Shaw in respect of premises no. B/245A/H/7/1, A.P.C. Road.

The impugned order mentions that despite time provided to the occupiers to produce certificate from the

Controller, Kolkata Thika Tenancy, the occupiers could not produce any certificate to substantiate their claims for thika. The Assessor-Collector (North) was of the opinion that the property in question should be brought to its original state as Aga Md Musa Wakf Estate, and the tax bill should be rectified.

The petitioner has annexed a communication made to the Assessor-Collector (North) by the Controller, Kolkata Thika Tenancy dated November 12, 2012 mentioning that premises no. B/245A/H/7/1, A.P.C. Road measuring approximately 02k. 09ch. 12 sft. is recorded as a thika property and the names of the thika tenants are mentioned in the said communication.

Learned advocate representing the Wakf Board submits that the property in question is all along recorded as a wakf property in the register maintained by the Wakf Board. The said property, under any stretch of imagination, cannot be treated as a thika property.

The Mutwalli of the Wakf Estate also submits that the property in question is a Wakf property and not thika.

Learned advocate representing the Kolkata Municipal Corporation submits that the communication of the Thika Controller to the Assessor-Collector (North) dated November 12, 2012 was not readily available at the time of consideration of the case, and accordingly order was passed holding that the property is a wakf property not thika.

It appears from the submissions made on behalf of the parties that the communication of the Controller, Kolkata Thika Tenancy to the Assessor-Collector (North)

dated November 12, 2012 was not produced before the Assessor-Collector (North) at the time of hearing. In the absence of the aforesaid document, the Assessor-Collector decided the issue on the basis of the documents available on records.

As the document dated November 12, 2012 is a pre-dated document, the same is presently required to be taken into consideration for taking a decision in the matter in accordance with the direction passed by this Court on October 28, 2009 in WP 13500(W) of 2009 (Wakf Estate Aga Md. Musa v. The State of West Bengal & Ors.).

In view of the above, the present writ petition is disposed of by directing the respondent no. 2 being the Assessor-Collector (North), Kolkata Municipal Corporation to revisit the issue after taking into consideration the communication of the Controller, Kolkata Thika Tenancy dated November 12, 2012 and to take a fresh decision in the matter.

An opportunity of hearing be given to all the necessary parties.

The aforesaid respondent shall decide the issue within a period of twelve weeks from the date of communication of a copy of this order.

A reasoned order shall be passed and communicated to the parties immediately thereafter.

It is made clear that the present writ petition is only restricted to the premises no. B/245A/H/7/1, A.P.C. Road and the Assessor-Collector (North) is required to revisit the issue only in respect of the above premises and not in respect of any other premises as

mentioned in the impugned order dated November 27, 2015.

The writ petition stands disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

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(Amrita Sinha, J.)