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01.02.2023
d.p.

**In The High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

W.P.A 24486 of 2022

**Om Prakash Jaiswal & Ors.
-versus
The Kolkata Municipal Corporation & Ors.**

**Mr. Partha Chakraborty,
...For the Petitioners.**

**Mr. Biswajit Mukherjee,
Mr. Gopal Chandra Das,
Ms. Era Ghose.
...For KMC.**

**Mr. Malay Singh,
Mr. Bibekananda Tripathy.
...For the State.**

**Md. Galib,
Ms. Tanushree Mukherjee.
...For the Board of Waqf.**

**Mr. Nauroz Rahbar,
Mr. M. Jawwod.
...For the Added Respondent.**

The petitioners are aggrieved by the order dated 27th November, 2015 passed by the Assessor Collector (North) whereby the names of the petitioners have been directed to be removed from the records of the Kolkata Municipal Corporation and the property in question has been directed to be brought in the original state as Aga Md Musa Wakf Estate.

The petitioners claim to be the thika tenants of the subject premises.

Admittedly, as on date, the proceeding for declaration of thika tenancy is pending consideration before the Controller, Kolkata Thika Tenancy.

The petitioners claim that they should be treated as thika tenants as they regularly pay ground rent to the Controller, Kolkata Thika Tenancy and receipts are issued by the said authority in favour of the petitioners.

The Court is not inclined to accept the aforesaid submission that mere payment and acceptance of rent by the State amounts to a declaration that the person tendering rent is a thika tenant.

The issue of declaration of thika tenancy is still pending consideration before the competent authority.

The Assessor Collector (North) was of the opinion that the parties were unable to produce any certificate from the Controller, Kolkata Thika Tenancy to substantiate their claims as thika tenants.

It does not appear that there is error on the part of the Assessor Collector (North) in not recording the petitioners as thika tenants, as there is no document in support of the thika tenancy right of the petitioners.

In view of the above, no relief can be granted to the petitioners in the instant case.

The writ petition, accordingly, fails and is hereby dismissed.

Dismissal of the writ petition will, however, not stand in the way of the petitioners from approaching

the appropriate forum for declaration of thika tenancy right in their favour.

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

(Amrita Sinha, J.)