

06.07.2023
Item No.21
Ct. No.5
CHC
(disposed of)

W.P.L.R.T.164 of 2022

Sri Anil Kumar Gupta & ors.
Vs.
The Controller Kolkata Thika Tenancy & ors.

Mr. Raja Mantosh,
Mr. Tanmoy Mukherjee
...for the writ petitioners

Mr. Animesh Mukherjee,
Md. Ali Ahasan
...for the private respondents

The writ petition is directed against an order dated August 26, 2022 passed by the West Bengal Land Reforms and Tenancy Tribunal in O.A.(P) No.1534 of 2008.

By the impugned order, the Tribunal directed the Controller, Kolkata Thika Tenancy to decide Misc. Case No.53 of 2005 afresh on the point of heritability issue of the applicants of the present original application to the estate of Nanku Shaw, ex-thika tenant, by considering the existing materials on record and giving scope to the parties to advance their argument.

Learned advocate appearing for the writ petitioners submits that Nanku Shaw was a thika tenant in respect of an immovable property. Thika tenancy is admitted by the Thike Controller as also by

the private respondents. That Nanku Shaw was a thika tenant was also admitted. Nanku Shaw died. Prior to his death Nanku Shaw adopted the writ petitioners. Between the heirs and legal representatives of Nanku Shaw, that is his daughter. A suit for partition was filed. In the suit for partition, the immovable property concerned was involved. There, a compromise was entered into. The compromise transcended into a decree. The compromise decree recognises the writ petitioners as the heirs and legal representatives of Nanku Shaw in respect of the thika tenancy concerned. Consequent upon such decree, the writ petitioners approached the Thika Controller for recording the writ petitioners as thika tenants on the demise of Nanku Shaw. The Controller directed writ petitioners to obtain succession certificate.

Being aggrieved by such direction the writ petitioners approached the Tribunal by way of Original Application being O.A.(P) No.1534 of 2008 which was disposed of by the impugned order.

Learned advocate appearing for the writ petitioners submits that, even before the Thika Controller, the private respondents acknowledged that daughter of Nanku Shaw was the only one heir of Nanku Shaw on his demise. That daughter was the plaintiff in the suit for partition where the

compromise decree was entered into. Therefore, the private respondents were also not entitled to contend that, that the writ petitioners did not succeed to the estate of Nanku Shaw on his demise. He submits that the direction contained in the impugned order are unwarranted and that, since the issue of succession to the estate of Nanku Shaw stands settled, it was no longer open to the any of the parties to question the fact that, the writ petitioners succeeded to the estate of Nanku Shaw.

Learned advocate appearing for the private respondents draws attention of the Court to the order passed by the High Court dated November 29, 2010 in C.O.L.R.T. 4 of 2010. He submits that, the writ petitioners should obtain succession certificate.

Nanku Shaw was a thika tenant in respect of an immovable property. This fact is admitted between the parties appearing before us.

The issue is whether or not the writ petitioners before us are the successor-in-interest of Nanku Shaw since deceased in respect to such thika tenancy.

There was a suit for partition being Title Suit No.94 of 1984 filed in the Court of the subordinate Judge at Alipore on June 12, 1985. Such suit was filed by the daughter of Nanku Shaw against the writ petitioners.

In such suit, a compromise was entered into. Such compromise was accepted and decree of compromise was passed on July 25, 1985.

The compromise decree acknowledges the writ petitioners to be the successor-in-interest of the estate of Nanku Shaw. The thika tenancy concerned was a subject-matter of such Title Suit.

The writ petitioner thereafter applied for substitution of the name of Nanku Shaw in the record of compromise decree in respect of the thika tenancy. Such application was disallowed. Writ petitioners carried an Original Application before the Tribunal which was registered as O.A.(P) No.1534 of 2008. During the pendency of such application, the private respondents applied for addition of parties therein. The writ petitioners approached the High Court for being treated as a party to such Original Application which was allowed by the order dated November 29, 2010.

By the impugned order, the learned Tribunal remanded the matter before the Thika Controller to decide the heritability of the estate of Nanku Shaw. With respect, the issue as to the successor-in-interest of Nanku Shaw stood settled between the heirs of Nanku Shaw and the writ petitioners in Title Suit No.94 of 1984.

The private respondents are aware of the decree passed in such suit. The private respondents did not assail the compromise decree passed in such suit.

In terms of such compromise decree, the writ petitioners are the successor-in-interest of Nanku Shaw.

In such circumstances, the impugned order is set aside.

The Thika Controller is directed to substitute Nanku Shaw in his records as thika tenant with that of the writ petitioners within a period of fortnight from the date of communication of this order.

With the aforesaid observations, W.P.L.R.T. 164 of 2022 along with connected applications, if there be any are disposed of without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)