

ORDER SHEET

WPO/36/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

FARID ISMAIL AND ORS.
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date: 17th February, 2023.

Appearance:
Mr. Bhaskar Ghosh, Adv.
Ms. Rana Zafar, Adv.
...For the Petitioner
Mr. Gurudas Mitra, Adv.
Mr. Debangshu Mondal, Adv.
...For the KMC
Mr. Suman Dey, Adv.
...For the State
Mr. Debayen Bera, Adv.
Mr. Md. Farhaduddin, Adv.
Ms. Basanti Guhathakurta, Adv.
...For respondent nos. 6 to 8

The Court: The petitioners claim to be the thika tenants of the premises at 32, Elliot Lane, Kolkata-16. The petitioners are aggrieved by the act of the Kolkata Municipal Corporation in mutating the name of the private respondents as owners of the subject property.

It appears from records that the private respondents purchased the property in question from the erstwhile recorded owners.

A suit was filed by the erstwhile recorded owners against the predecessor-in-interest of the petitioners seeking eviction. The Learned Court below was pleased to dismiss the said suit. The predecessor-in-interest of the petitioners contested the said suit and submitted that they were the thika tenants of the property and the provisions of the Premises

Tenancy Act do not apply. The Learned Court below held that the relationship between the landlord and tenant does not exist.

Till date there is no declaration that the property is a thika property, vested to the State.

The petitioners rely upon documents to show that return was filed before the thika controller.

A report was filed by the thika controller mentioning that two returns were filed in respect of the subject property but thika tenancy in respect of the premises is yet to be determined under the prevailing statute. Today a further report has been filed by the Controller, Kolkata Thika Tenancy to the effect that intimation was issued to the returnee for payment of Government revenue on adhoc basis.

Learned advocate for the Corporation submits that the petitioners had enough time in their hands to record their names in the municipal records as thika tenants. The same has not been done.

Presently, there is no conclusive decision of the Controller Kolkata Thika Tenancy with regard to the thika status of the land in question. After purchase of the land from the erstwhile recorded owner, the Corporation has mutated the names of the private respondents as owners.

It is settled law that mutation neither creates nor extinguishes title. It is merely for the purpose of identification of the person primarily liable to pay property tax. The status of the petitioners will not be effected in any manner whatsoever by the impugned mutation.

The status of the parties and the land in question will be conclusively decided by the Controller, Kolkata Thika Tenancy.

In view of the above, there is no requirement of passing any further order in the matter. The parties will be at liberty to ventilate their grievances and get the same adjudicated by the Controller, Kolkata Thika Tenancy for declaration of thika tenancy rights.

The writ petition stands disposed of.

As the writ petition is being disposed of without calling for any affidavits, the allegations made therein are deemed not to have been admitted by the parties.

Copy of the mutation approval slip issued by the Assessment Collection Department dated 29th November, 2021 and the instruction given by the Controller, Kolkata Thika Tenancy dated 16th February, 2023 be retained with the records.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all legal formalities.

(AMRITA SINHA, J.)

TR/

