

OD-6

ORDER SHEET
WPO/72/2019
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SHRI MAHENDER KUMAR GUPTA
Vs
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date: 18th July, 2023.

Appearance :
Mr. Amal Kumar Mukhopadhyay, Adv.
Mr. Palash Chakraborty, Adv.
Ms. Anindita Banerjee, Adv.
For the Petitioner

Mr. Purnendu Das, Adv.
Mr. Kinjal Kumar Baral, Adv.
Mr. Lalratan Mandal, Adv.
Mr. Meghanil Manna, Adv.
Ms. Gitika Mallick, Adv.
For the Respondent No.6

Mr. Gopal Chandra Das, Adv.
Mr. Debangshu Mondal, Adv.
...For KMC

The Court: The petitioner is challenging the order of the Chief Municipal Law Officer of the Kolkata Municipal Corporation dated December 17, 2018, by dint of which the said authority has finalized mutation with respect to the property situated at 131, Chittaranjan Avenue, Kolkata 700073.

The petitioner's contention, inter alia, is that the respondent authority has erred in considering premises Nos. 131, Chittaranjan Avenue and 7/1, Halliday Street to be the same premises, which is not;

and has thus based its decision, in the impugned order, on erroneous considerations, rendering that to be a nullity. It is the grievance that the entire hearing and final decision of the respective authority has been with respect to 131, Chittaranjan Avenue and petitioner's specific case of being the legal heir and successor of the leaseholder with respect to 7/1, Halliday street has not been considered at all.

Learned Advocate appearing for the petitioner has very thoroughly and candidly placed two earlier decisions of the respective co-ordinate Benches of this Court dated November 22, 2016 and August 31, 2018, to submit that this Courts on previous occasions, have specifically allowed him the liberty to participate in the hearing before the respective authority and to show the relevant documents justifying change in circumstances and his right as to the property for mutation. The petitioner alleged that by dint of the impugned order, such liberty granted to him by the Hon'ble Court, has been violated and he has not been given appropriate opportunity to place the relevant document.

Learned Advocate appearing on behalf of the petitioner has also relied on the assessment record with respect to premises Nos. 7/1, Halliday Street and also 131, Chittaranjan Avenue, to show that previously his predecessor-in-interest was in occupation of the respective property at 7/1, Halliday Street and therefore according to him, his client cannot be deprived of the appropriate opportunity to represent before the concerned officer to be heard in a case of mutation of his name with respect to the property. Such submission of the petitioner has, however,

been vehemently objected to on behalf of the corporation as well as the private respondent.

From the submissions made on behalf of the respective parties it transpires that the predecessor-in-interest of the petitioner had been a lessee with respect to the property concerned. His leasehold right has seized after termination of the lease period. Dispute relating to the right/title of the said property went upto the Court for decision and was ultimately decided in favour of the original owner/lessor/respondent in this case, in an appeal in this High Court. The decree has been executed and the respondent has been granted with the freehold possession of the property. All these facts have been elaborately dealt with by the Chief Municipal Law Officer in his order as impugned in this case.

It is not the case of the petitioner that he has not been given the opportunity of hearing, excepting the fact that he might have produced other document also. However, as it is found that the order of the Hearing Officer, as impugned in this case, is elaborate enough and covers all aspects relating to this matter, the same is found just and proper and that no interference of this Writ Court would be necessary as to the same. The question of title, having been finally decided by the competent Court, the Hearing Officer of the respondent Corporation would not have any authority, to go into the same question and even otherwise also. It appears that the authority's decision is based on record as to the title and actual possession of the property. This being the Court of equity and not a fact finding Court, would not travel to the dispute

raised by the petitioner, as to the identification of the premises, or the possession thereof.

What the Court finds here is that, in the impugned order, the respondent authority has taken into consideration all relevant points and its decision is a well reasoned one.

Under such circumstances, the writ petition would not succeed.

Writ petition being WPO No.72 of 2019 is dismissed.

(RAI CHATTOPADHYAY , J.)

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