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ORDER SHEET
WPO No.1328 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SOMNATH KUNDU
-Versus-
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date:6th September, 2023.

Appearance:
Mr. Raghunath Chakraborty, Adv.
Mr. Supratick Shyamal, Adv.
Ms. Sonali Sengupta, Adv.
Ms. Sabarnee Chatterjee, Adv.
...for the Petitioner.

Mr. Gurudas Mitra, Adv.
Mr. Sundar Gopal Bhattacharya, Adv.
...for the KMC.

Mr. Wasim Ahmed, Adv.
Md. Shehaboddin, Adv.
..for the State.

The Court:-Report filed by the Controller, Kolkata Thika Tenancy is taken on record.

The property in question is premises no. B/38/3/H/3, Shib Narayan Das Lane, Ward No.38, Kolkata-700006 under jurisdiction of Kolkata Municipal Corporation. The petitioner claims to be a purchaser of the subject property.

The mutation of the property has not been allowed allegedly on the ground that the property is recorded as thika.

The petitioner seeks mutation of the property by deleting the name of the erstwhile owner and recording his name as owner and to record the premises as pucca instead of bustee.

By reply dated 26.04.2023 made under the RTI Act, the learned advocate for the petitioner was intimated that the mother premises no. B/38/3/H/3, Shib Narayan Das Lane, was recorded as thika and there are several returns filed in respect of the subject premises.

Report of the Kolkata Municipal Corporation mentions that premises no. 38/3, Shib Narayan Das Lane was divided into four individual premises being premises nos. B/38/3/H/1, B/38/3/H/2, B/38/3/H/3 and B/38/3/H/4 and the names of the recorded persons are reflected in the inspection book.

Report filed by the Controller, Kolkata Thika Tenancy mentions that prima facie, it appears that the subject premises is appurtenant to the premises nos. B/38/3/H/1, B/38/3/H/2 and B/38/3/H/4 out of which B/38/3/H/3, Shib Narayan Das Lane approved as thika tenanted property and the rest two are subject to determination.

Report of the Controller, Kolkata Thika Tenancy further mentions that under Section 2(15) of the West Bengal Thika Tenancy Act (Acquisition and Regulation) Act, 2001 'thika land' means any land comprised in and appurtenant to tenancies of thika tenants irrespective of the fact whether there is any claim of such tenancy or not and includes open areas and roads on such land.

From the submissions made on behalf of all the parties and on perusal of the materials on record, it appears that the premises in respect of which the petitioner claims ownership is a part of the mother premises

no. 38/3 which was originally a thika property. After separation of the mother premises, the status of the property ought not to change.

The Thika Controller has opined that as the appurtenant properties have been declared as thika, accordingly, there is every likelihood that the subject property is also thika property, though no return has yet been filed in respect of the same. Non filing of return does not automatically rob the property of its thika status.

In view of the above, it will be open for the petitioner to approach the Controller, Kolkata Thika Tenancy for ascertaining the proper status of the property whether the same is thika or not.

Till the status of the property is decided by the Controller, Kolkata Thika Tenancy, the recording in the records of the Kolkata Municipal Corporation that the property is thika property cannot and ought not to be changed.

In the event the petitioner approaches the Controller, Kolkata Thika Tenancy for declaration of the status of the property, the Controller shall decide the issue independently on merits without being influenced by any observations made hereinabove.

The writ petition stands disposed of.

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

(AMRITA SINHA, J)