

OD-05

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/509/2018

SHEW PRAKASH JAISWAL & ORS
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:

The Hon'ble JUSTICE RAI CHATTOPADHYAY

Date : 5th December, 2023.

Appearance:
Mr. Ranajit Chatterjee, Adv.
Ms. Shreya Trivedi, Adv.
... For the Petitioners.

Mr. A.K. Banerjee, Adv.
Mr. G. C. Das, Adv.
Ms. Manisha Nath, Adv.
... For KMC.

Ms. Tuli Sinha, Adv.
... For State respondents

Sk. Md. Galib, Adv.
Ms. Tanwishree Mukherjee, Adv.
...For the Board of Auqaf/respondent nos. 6 & 11.

The Court :- Writ petitioners have challenged the impugned order dated November 28, 2015, of the Assessor Collector (North) of the Kolkata Municipal Corporation in this writ petition. The writ petitioners are aggrieved with the said order that they have been mentioned as the illegal 'occupier/encroachers'

in the said order with respect to the property at 245 and 245A, APC Road, Kolkata-700006. The writ petitioners are further aggrieved that the Assessor collector (North), in spite of having knowledge of the fact that the proceeding for certificate being pending before the 'Thika Controller' with respect to the said property, as initiated by the writ petitioners, has directed for restoring the property as a Wakf property belonging to Aga Md. Musa Wakf Estate.

The writ petitioner has been preferred with the prayer for issuance of order for setting aside of the said impugned order of the Assessor Controller (North) dated November 28, 2015. The writ petitioners have also prayed that their possession with respect to the concerned property be recognised by the authorities and a Thika Tenancy certificate be mandated to be issued in their favour with respect to the said property.

Mr. Chatterjee appearing for the petitioners have pointed out that the petitioners have been in possession with respect to the said property for years together and for generations. They have duly submitted the rents and taxes before the respondent authority with respect to their possession over the property. So far as the payment of taxes of the property is concerned by the petitioners, they say that the Kolkata Municipal Corporation, Assessment-Collection Department has also issued no objection certificate in favour of the petitioners.

There is a claim counter to that of the writ petitioners, with respect to the said property by the Aga Md. Musa Wakf Estate (EC No.698). The 'Estate'

claims that the said property, claimed to have been occupied by the present petitioners for years together, do actually belong to the 'Wakf Estate' and is registered with the same, as 'Wakf Property'. The 'Estate' moved the Hon'ble Court for certain relief regarding the said property, when the Court directed the Assessor Collector (North) to afford an opportunity of the hearing to the concerned party and deliver a reasoned order. The order dated November 28, 2015, as impugned in this writ petition, is an outcome of such hearing pursuant to the Court's order.

Mr. Chatterjee, has further argued that the right of the petitioners as to the said property is being jeopardised immensely due to misplaced usage of the words illegal 'occupier/encroachers' by the Assessor Collector (North) in the order as impugned. By referring to the relevant provisions of the Wakf Act, 1995, particularly Section 54 of the same, Mr. Chatterjee has submitted that the question of determination of legality of occupancy of any person as to the Wakf property and/or his eviction there from, is governed under the said provision of law and to be determined by the Wakf Tribunal only, in exclusion of right of any other authority to speak about such an issue.

Mr. Chatterjee has submitted that the Assessor collector (North) has made gross error in the impugned order by addressing his clients as illegal 'occupier/encroachers'.

Secondly, Mr. Chatterjee has submitted that admittedly the certificate proceeding initiated by the petitioners is now pending for adjudication before

the 'Thika Controller'. By referring to various orders of the Hon'ble Division Bench as well as Co-ordinate Bench of this Court, Mr. Chatterjee has submitted that the Courts have time and again decided in favour to put a hold with respect to other proceedings pursuant to the fact that a certificate proceeding is pending before the 'Thika Controller' with respect to any property.

Mr. Chatterjee has pointed out to the other instances where the Thika certificate has been issued in favour of the other occupier with respect to the self same property.

On the ground as above Mr. Chatterjee has sought for adequate and necessary relief to be granted to the petitioners. The State/respondent is represented by Ms. Sinha. The State/respondent is of no different opinion from what has been submitted by the petitioner, so far as pendency of the certificate proceeding, before the 'Thika Controller' is concerned.

Sk. Md. Galib is representing the respondent no. 6 and 11, i.e, Board of Wakf. He has taken the Court to the relevant provision of the Wakf Act, 1995, to justify the steps taken by the Wakf Board and the Tribunal with respect to the said property. He has said that the statute empowers the Board to initiate proceeding for eviction of an unauthorised occupier as regards the Wakf property, who may not show or posses sufficient document as proof of their authorised possession over the Wakf property. Sk. Md. Galib has submitted that his clients have only done what they are empowered to do, within the four

corners of the statutory provisions. Regarding enlistment of the concerned property with the 'Board', Mr. Galib has relied on the relevant document and mentioned the enlistment number. Thus he says that the property being categorised upon registration, with the 'Board' as 'Wakf' property, the 'Board' is empowered to do as per law, for maintaining the same. Mr. Galib has referred to the decision reported in **2023 SCC OnLine SC 1378 (Mumtaz Yarud Dowla Wakf vs. Badam Lalakrishna Hotel Pvt. Ltd & Ors.)**.

So far as the impugned order dated November 28, 2015, is concerned, issued by the Assessor Collector (North), there can be found no error or irregularity as regards the finding of the Assessor Collector, referring non-availability of any 'Thika Tenancy Certificate' with respect of the said property. This fact is admitted in this case. The petitioners are aggrieved also with the prolonged period of time for which the cases are pending for final adjudication before the Thika Controller. Be that as it may, the writ petitioners have not come before the Court with a certificate of Thika Tenancy issued in their favour with respect to the concerned property. On the contrary, the property is found to have been recorded as a Wakf property with respondent no. 6 and 11. Under such circumstances there is no doubt regarding the fact that the Mutawallies, who are entrusted with the maintenance of the Wakf property should be at liberty to exercise the powers vested on them by the statutory provisions, for maintenance of the Wakf property and make it free from all encumbrances. For this, the Court finds inspiration from the decision of the

Supreme Court in ***Mumtaz yarud Dowla Wakf's case (supra)***, where the Supreme Court has held as follows:-

“32. *On a proper analysis of the said decision, we have no hesitation in holding that the Wakf Tribunal has got sufficient jurisdiction to try every suit pertaining to either a Wakf or a Wakf property, notwithstanding the nature of relief concerned, except as mandated under the statute.”*

In this writ petition the sole question is if the impugned order suffers from any illegality or material irregularity, which it is not. The impugned order is based on the available facts and circumstances and passed with due consideration of the applicable laws.

On perusal of the earlier orders of this Court, as referred to, it transpires that the Courts have accepted petitioner's rights as thika tenants, only after issuance of certificate, in their favour, by the 'Thika Controller'.

The arguments made on behalf of the petitioners regarding mentioning of the name of the present writ petitioners as 'illegal occupier/encroachers' in the said impugned order, to be devoid of any section of law, does not inspire much confidence in the mind of the Court, as the Court is unable to accept the proposition that by mentioning as above, the Assessor Controller (North), has determined the rights of the parties in any way, as regards the said landed property. It is no one's case that mentioning the petitioners in the manner as above is the final determination as regards the rights of the parties, over the said property. Instead the respondents have also accepted pendency of the certificate procedure before 'Thika Controller', as initiated by the petitioners. Therefore the same do not formulate a strong ground of violation of the vital

statutory or constitutional right of the petitioner, as alleged, for which this Court may interfere into the said order as impugned.

On the premises as above, this writ petition merits no success.

Writ petition no. W.P.O 509 of 2018 is dismissed. However, the 'Thika Controller' shall dispose of the proceedings pending before it, as expeditiously as possible.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of requisite formalities.

(RAI CHATTOPADHYAY, J.)

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