

OD-5

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO No.1510 of 2023

ARSHAD ALI & ORS.

-Versus-

THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA

Date:29th August, 2023.

Appearance:

Mr. Biswajit Mukherjee, Adv.
Mr. Subhrangsu Panda, Adv.
Ms. Ina Bhattacheryya, Adv.
Ms. Sumitava Chakraborty, Adv.
...for the Petitioners.

Mr. Alak Kumar Ghosh, Adv.
Mr. Dilip Kumar Chatterjee, Adv.
...for the KMC.

Mr. Shareq Siddique, Adv.
Ms. Dona Ghosh, Adv.
Mr. Shahnawaz Alam, Adv.
...for the Respondent Nos.5 to 7.

The Court:- Heard submissions made on behalf of all the parties.

The matter relates to premises No.9, Kripanath Dutta Road, Kolkata-700002, under Ward No.6, bearing Assessee No.11-0061900032.

The order passed by the Assessor Collector (North), Kolkata Municipal Corporation dated 26th July, 2023, allegedly in compliance of the direction passed by this Court in WPA No.1744 of 2022 (Mohammed Reazullah & Ors. vs. The Kolkata Municipal Corporation & Ors.), is impugned in the present writ petition.

According to the petitioners, they are the present owners of the subject premises. On submission of the registered deed of sale, the Kolkata Municipal Corporation mutated the property in their names.

The private respondents, claiming to be the owners of the subject property, filed an objection before the Corporation seeking for rectification of the records maintained by the Corporation.

The Corporation considered the representation filed by the private respondents and reverted the recording to the earlier position.

The Assessor Collector (North), Kolkata Municipal Corporation recorded in the impugned order that the Kolkata Municipal Corporation being an urban civic body has no statutory power to decide the right, title or interest of any property. The Kolkata Municipal Corporation has no jurisdiction to decide authority of any registered instrument.

The Assessor Collector (North), Kolkata Municipal Corporation took note of the fact that an order was passed by the learned civil Court to maintain status quo in respect of the subject property. The Assessor Collector (North), Kolkata Municipal Corporation noticed that mutation in favour of the writ petitioners was done after the order was passed by the learned Court below.

The Assessor Collector (North), Kolkata Municipal Corporation was of the opinion that the adjudication and determination of the right, title or interest of the property was pending consideration before the learned civil Court and the mutation done during pendency of the order of status quo was not in accordance with law.

The Assessor Collector (North), Kolkata Municipal Corporation cancelled the mutation and restored the recording in favour of the persons in whose name the property stood recorded earlier.

According to the petitioners, the property has been reverted in the name of Kaniklal Hela and Smt. Mohania Methrani. It has been submitted that both Kaniklal Hela and Smt. Mohania Methrani have expired.

As the petitioners have stepped into the shoes of the deceased recorded owners by virtue of the registered deed of sale, accordingly, records ought to be mutated in their favour as was done earlier.

Learned advocate representing the private respondents submits that, the issue of ownership of the subject property is to be decided by the learned Court below. The private respondents claim to be the heirs of one Sk. Abdul Gaffar, who was allegedly the owner of the subject property.

It has been submitted that the petitioners were the occupiers of the subject property but they were never the owners of the same.

Learned advocate representing the Kolkata Municipal Corporation submits that the Assessor Collector (North), Kolkata Municipal Corporation has passed a well reasoned order. The Corporation is not the appropriate authority to decide the title.

Upon hearing all the parties, it appears that the title of the said property has been sought to be disputed by the private respondents. A civil suit is pending consideration before the learned Court below.

Neither the petitioners nor the Corporation are parties in the said suit. The order passed by the learned Civil Court is restricted only to the parties and not to the Corporation. The Corporation took note of the order of status quo and reverted the recording to its earlier position.

As of now, it appears that there is a civil dispute pending in connection with the premises No. 9, Kripanath Dutta Road, Kolkata-700002. The presently recorded owners of the subject property have expired. None of the heirs of the recorded owners have yet approached the Corporation for incorporating their names in the municipal records.

Sale deed in respect of the premises No.9, Kripanath Dutta Road, Kolkata-700002 has not been challenged by any party till date.

The Corporation, accordingly, ought to act in accordance with the said sale deed which was duly registered before the registering authority. The Corporation cannot accept tax from the persons who have died. The petitioners claim that they are depositing tax in respect of the subject property.

In view of the above, the Corporation is directed to update the records in accordance with law relying on the title deed of the property in question.

It is made abundantly clear that recording of the name in the municipal records will not confer or decide title. Recording will not create any equity in favour of the person(s) in whose name the property is recorded. Title and ownership of the property will be decided by the competent civil forum.

The order passed by the Assessor Collector (North), Kolkata Municipal Corporation is, accordingly, set aside.

Writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

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

(AMRITA SINHA, J.)