

OD-10

ORDER SHEET
WPO No.1655 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SRI PARDESHI SINGH
VERSUS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:

The Hon'ble JUSTICE AMRITA SINHA
Date:4th October, 2023.

Appearance:
Mr. Kajal Baran Ray, Adv.
Mr. Biswarup Biswas, Adv.
Mr. Suman Nandi, Adv.
...for Petitioner.

Mr. Gopal Chandra Das, Adv.
Mr. Atish Kumar Biswas, Adv.
... for K.M.C.

The Court:-The matter relates to premises no.9A, Joy Krishna Paul Road, Ward No. 76, Kolkata-700026. The property was declared a thika property by the Deputy Controller, Kolkata Thika Tenancy and the petitioner was declared as substituted thika tenant vide order dated 10.03.2017 passed in proceeding under Section 5(3) of the WBTT (A & R) Act, 2001, Misc. No. 38 of 2015.

By a communication dated 29.06.2017 the Deputy Controller, Kolkata Thika Tenancy intimated the Chief Manager Revenue (South) recording the mutation in respect of the subject property in the name of the petitioner herein. On 19.01.2018 mutation process fee was deposited by the petitioner along with application in Form No. A42.

The Controller, Kolkata Thika Tenancy reiterated the previous intimation regarding mutation in favour of the petitioner to the Chief Manager Revenue (South) in June and July, 2022.

Kolkata Municipal Corporation despite intimation forwarded by the Controller, Kolkata Thika Tenancy proceeded to cancel the application of the petitioner for mutation with the remark that the same is pending for more than 500 days.

The petitioner is aggrieved by the same. It has been submitted that as the property was already declared as thika property and the petitioner was treated as substituted thika tenant, the Corporation ought to have mutated the property in the name of the petitioner.

Learned advocate representing the Corporation submits, upon instruction that, the property in question is incorporated in the list of Wakf property maintained by the Corporation.

It appears from the submission made on behalf of the Corporation that the aforesaid fact of the property being recorded in the list of Wakf property was neither intimated to the petitioner nor to the Controller, Kolkata Thika Tenancy.

After accepting the mutation process fee from the petitioner, it was the duty of the Corporation to intimate the petitioner the reason for not mutating the property in the name of the petitioner. The petitioner was never made aware of the fact that the property was included in the list of Wakf properties maintained by the Corporation.

The property ought not to be recorded in two lists simultaneously. The Controller, Kolkata Thika Tenancy initiated a proceeding and after perusal of all necessary documents and records was of the opinion that the petitioner is the substituted thika tenant of the suit premises. Nothing is mentioned in the order passed by the Controller, Kolkata Thika Tenancy that the property is a Wakf property.

In view of the above, the Chief Manager Revenue (South) is directed to verify its records to ascertain as to whether the property is Wakf property or not.

An opportunity of hearing shall be given to the petitioner for production of all necessary documents in support of the submission that the property is a thika property. Opportunity shall be given to the Wakf Board and other necessary parties for production of necessary documents to show as to whether

the property is Wakf or not. A final order shall be passed by the Chief Manager Revenue (South) after perusal of all documents.

A decision shall be taken in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

If the status of the petitioner as thika tenant is proved after giving hearing to the parties, then the Corporation shall take steps for mutating the name of the petitioner in the municipal records.

All the documents in connection with the aforesaid proceedings be circulated, prior to conducting the hearing by the Corporation.

The impugned rejection whereby the application of the petitioner seeking mutation has been cancelled is set aside.

Writ petition stands disposed of.

Report filed by the Kolkata Municipal Corporation be retained with the records.

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.)