

01.04.2024
Item No.5.
Court No.6.
AB

M.A.T. 1641 of 2023
With
CAN 1 of 2023
CAN 2 of 2023

Anandam Banerjee
Vs
The Kolkata Municipal Corporation & Others

Mr. Alok Kumar Ghosh, Sr. Adv,
Mr. Souradipta Banerjee,
Ms. Fatima Hassanfor the Appellant.

Mr. Biswajit Mukherjee,
Mr. T. Dasguptafor the KMC.

By consent of the parties, the appeal and the connected applications are taken up for hearing together.

Affidavit of service filed in Court today, be kept with the records.

In re : IA CAN 2 of 2023

This is an application for condonation of delay of 17 days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I A CAN 2 of 2023 is, accordingly, disposed of.

In re : MAT 1641 of 2023, CAN 1 of 2023

A judgment and order dated April 25, 2023, whereby the appellant's writ petition being WPA 669 of 2023 was disposed of by a learned Judge of this Court, is the subject matter of challenge in this appeal filed by the writ petitioner.

It appears that one Probir Kumar Banerjee was a man of property. He owned several properties in and outside Kolkata. One of the properties that he owned in Kolkata is premises no.42, Kalighat Road, Kolkata.

Probir passed away in the year 2016, having made and published, what the appellant claims, is his last will and testament. The appellant is Probir's son. The appellant has three sisters who are not parties to this proceeding.

The appellant has applied for probate of the aforesaid will in the Alipore Court. His sisters are contesting such prayer.

It appears that during his lifetime, Probir had entered into a development agreement in respect of the aforesaid property. He died in 2016 leaving behind the appellant, the appellant's mother and the appellant's three sisters as the surviving legal heirs. The appellant's mother also passed away in the year 2017.

It appears that the building plan that was sanctioned by Kolkata Municipal Corporation (in short "KMC") in favour of Probir, has lapsed by efflux of time. The appellant wants to have the validity of such plan extended. Accordingly, he had approached KMC for mutating his name in his capacity as executor of Probir's will and for extending the validity of the building plan. KMC declined his request and directed him to produce probate of the will in question. Being

aggrieved, the appellant approached the learned Single Judge.

The learned Judge disposed of the writ petition with the following observations:

“It appears that the petitioner claims to derive right from the Will published by the deceased. The Will is yet to be probated. There are several other heirs who are objecting to the grant of probate in favour of the petitioner. Till such time the will is probated, no action ought to be taken relying on the same.

The other heirs of the deceased have not been impleaded as party respondents in the present writ petition.

At this stage, it will not be proper to direct the Corporation to record the name of the petitioner in the records maintained by the Corporation in connection with the said property.

Mutation neither creates nor extinguishes title. It will be open for the petitioner to exercise his right independently in connection with the property in question without relying on the will.”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Appearing for the appellant, Mr. Alok Ghosh, learned Senior Counsel, assisted by Mr. Souradipta Banerjee, learned Advocate, submitted that as an executor of Probir’s will, the appellant is entitled to do all acts that may be necessary for the proper care and management of any property belonging to the estate of the deceased i.e. Probir. Learned Counsel drew our attention to Sections 307 and 308 of the Indian Succession Act, 1925. Our attention was also drawn to Section 211, which is referred to in Section 307. Section 211 says that the Executor or Administrator,

as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Learned Counsel submitted that the appellant does not want mutation in his favour as owner or co-owner of the property in question. He wants his name to come on record only in his capacity as executor of Probir's will.

Mr. Mukherjee, learned Advocate appearing for KMC submitted that as per the prevalent Rule, mutation can be granted in favour of all the legal heirs of the deceased as representing the estate of the deceased. Mutation cannot be permitted only in favour of one or some of the legal heirs.

As we understand, what really the appellant wants, is extension of the validity of the sanctioned building plan or sanction of a fresh building plan, as the case may be. For such purpose his name has to be brought on record as otherwise, his request for extension of the validity of the building plan will not be considered by KMC.

Accordingly, we direct KMC to mutate the property in question in the name of the estate of the deceased, represented by all the legal heirs of the deceased, pending disposal of the probate proceedings within six weeks from date. Once the probate proceedings are disposed of finally, KMC may make appropriate amendment to its records.

Once KMC grants provisional mutation in the names of all the legal heirs of Probir as representing the estate of Probir, the appellant may renew his prayer for extension of the validity of the sanctioned building plan or for sanction of a new building plan, as the case may be. If such a request is made, KMC shall consider the same in accordance with law.

The appeal and the connected application stand disposed of.

Since we have not called for affidavits, the allegations in the stay application are deemed not to be admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after compliance with all the necessary formalities.

(Arijit Banerjee, J.)

(M. V. Muralidaran, J.)