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ORDER SHEET

WPO No.61 of 2021
With
WPA No.4660 of 2020
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DR. PRAKASH CHANDRAKESHARI AND ANR.
Vs
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE SAUGATA BHATTACHARYYA
Date : 1st May, 2024

Appearance:
Mr. Subrata. Kr. Basu, Adv.
Mr. Kumar Gupta, Adv.
Mr. Deepak Kr. Jain, Adv.
..for the Petitioners.

Mr. Alak Kr. Ghosh, Adv.
Ms. Manisha Nath, Adv.
...for KMC.

Mr. Ajoy Kumar Roy, Adv.
Mr. Biplob Majumder, Adv.
Ms. Sanjana Rawat, Adv.
..for Respondent No.5.

The Court:- Both the writ petitions on the Original Side and another on the Appellate Side are taken up for consideration in presence of the learned advocates representing the parties.

Mr. Basu, learned counsel representing the petitioners first has relied upon order passed by the co-ordinate Bench on 28th February, 2019 in the writ petition being WPO 87 of 2019 which was instituted by the petitioners praying for necessary directions for mutation and amalgamation of the premises situate at 49/5/2R and 49/5/2S, Karl Max Sarani, Kolkata-700023. Co-ordinate Bench while disposing of the writ petition directed the Chief Manager (Revenue-South), Kolkata Municipal Corporation (hereinafter referred to as 'KMC') to take a decision in accordance with law after granting opportunity of hearing to the petitioners and other interested parties.

It is also submitted on behalf of the petitioners that pursuant to the order dated 28th February, 2019, the issue was heard by the Chief Manager (Revenue-South), KMC on several occasions and orders were passed on different dates out of which order dated 10th June, 2019 which is at pages 162 to 165 of the writ petition is relied upon. On perusal of the said order dated 10th June, 2019, it comes to the light that the petitioners relied upon one Deed of Conveyance dated 8th August, 1974 executed by one Ganesh Chandra Saha and others in favour of Smt. Janki Devi Keshary.

According to the petitioners, said Smt. Janki Devi Keshary is the mother of the present writ petitioners and from Smt. Janki Devi Keshary the premises in question have devolved upon the petitioners. It is further submitted that the said Deed of Conveyance dated 8th August, 1974 was not taken into consideration. In addition thereto it is contended that certain other documents were also submitted before the Corporation in support of the prayer of the petitioners for mutation and amalgamation which were not considered by the concerned authority of the KMC and the impugned order dated 6th March, 2020 is bereft of reasons.

This Court has also heard the learned advocate representing the petitioners in the writ petition being WPA 4660 of 2020 and Mr. Ghosh, learned advocate representing the Corporation.

On perusal of the said writ petition on the Appellate Side, this Court is astonished that in prayer[a], writ of Mandamus was prayed for preventing the concerned authority of the KMC from hearing of the matter which the concerned authority of the KMC was under obligation to hear in terms of the order passed by the co-ordinate Bench on 28th February, 2019. Query is

posed to the learned advocate representing the petitioner being WPA No.4660 of 2020 that whether this prayer is maintainable or not, this Court has not received any satisfactory reply.

Learned advocate representing the Kolkata Municipal Corporation has made submissions in order to defend the order passed by the Chief Manager (Revenue-South), KMC dated 6th March, 2020. It has been submitted on behalf of the KMC that apart from pendency of the writ petition being WPA 4660 of 2020, it was found by the authority that unless the issue is decided by the appropriate court, final decision relating to mutation and amalgamation of the aforesaid property may not be taken. Therefore, according to the KMC, the issue needs to be decided by the appropriate Court first which would enable the concerned authority of the KMC to take decision on mutation and amalgamation.

Having considered the submissions made on behalf of the parties and on perusal of the materials available on records, this Court is required to consider the validity of the order dated 6th March, 2020 passed by the Chief Manager (Revenue-South), KMC. At first blush it appears that the order is devoid of cogent reasons. In the said impugned order dated 6th March, 2020, the documents which have been relied upon by the parties were indicated and thereafter prayer of the petitioners for mutation and amalgamation was not acceded to simply due to pendency of the writ petition on the Appellate Side. According to the concerned authority, there is requirement of appropriate order which needs to be passed by the court of law on title and ownership of the property. If order dated 6th March, 2020 is considered in the context of the order passed by the co-ordinate Bench on 28th February, 2019 in

connection with the first writ petition being WPO 87 of 2019 it can be concluded that the said order dated 6th March, 2020 is not passed in consonance with the directions and observations made by the co-ordinate Bench.

Having heard learned advocates representing the petitioners in WPO 61 of 2021 it appears that along with other documents which were relied upon by the petitioners Deed of Conveyance dated 8th August, 1974 ought to have been taken into consideration by the Chief Manager (Revenue-South), KMC while passing order. Another aspect does not escape consideration that the writ petition being WPA 4660 of 2020 was filed on 5th March, 2020 which was just one day before the final order was passed by the Chief Manager (Revenue-South), KMC on 6th March, 2020. From the said facts, it transpires that the writ petition being WPA 4660 of 2020 was filed only to frustrate the hearing proceeding which was pending consideration before the Chief Manager (Revenue-South), KMC in terms of the previous order of the co-ordinate Bench on 28th February, 2019.

Since it is also observed above that the prayer couched in the writ petition being WPA 4660 of 2020 is not maintainable in view of the order passed by the co-ordinate Bench on 28th February, 2019, the said writ petition stands dismissed.

In view of the dismissal of the writ petition on the Appellate Side, now the matter is remanded to the Chief Manager (Revenue-South), KMC for re-visiting the issue relating to mutation and amalgamation as prayed for by the petitioners in connection with the aforesaid premises. Order dated 6th March, 2020 stands set aside.

Chief Manager (Revenue-South), KMC is directed to grant opportunity of hearing to the petitioners and other interested parties or their representatives and pass a reasoned order within a period of four months from the date of communication of this order.

However, it is made clear while taking decision on mutation and amalgamation along with other documents Deed of Conveyance dated 8th August, 1974 as relied upon by the petitioners shall also be taken into consideration. If the prayer of the petitioners for mutation and amalgamation is refused, cogent reasons shall be assigned disclosing as to why documents relied upon by the petitioners do not merit consideration.

With the aforesaid directions and observations, the writ petition being WPO 61 of 2021 stands disposed of.

There shall be no order as to costs.

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

(SAUGATA BHATTACHARYYA, J.)