APO/131/2023
with
WPO/1226/2023
IA NO: GA/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

RAKHI DEB
Vs.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE M. V. MURALIDARAN
Date : MARCH 19, 2024.

Appearance:
Mr. Aniruddha Chatterjee, Adv.
Mr. Sk. Afaz Uddin, Adv.
Ms. Sonali Ghosh Basu, Adv.
….for Appellant/petitioner

Mr. Biswajit Mukherjee, Adv.
Mr. Atish Kumar Biswas, Adv.
Ms. Manisha Nath, Adv.
…for Kolkata Municipal Corporation

The Court: By consent of the parties, the appeal and the application are taken up together for hearing.

This matter has been pending for a long time. Although the respondent no.9 appeared on a few occasions, today that respondent is not represented.

A judgement and order dated June 20, 2023, whereby the appellant's writ petition being WPO 1226/2023, was disposed of by a learned Single Judge of this Court, is the subject matter of challenge in this appeal.

The appellant is the sole and absolute owner of premises No.628, Rabindra Sarani, Kolkata - 700 003. She approached the learned Single Judge with the grievance that without granting her any opportunity of hearing and without any rhyme or reason, a separate premises being No.T628A, Rabindra Sarani has been carved out from the original premises No.628, Rabindra Sarani. She was completely unaware of this. Only in the year 2023, she came to know that T628A, Rabindra Sarani, Kolkata is recorded as a thika property by Kolkata Municipal Corporation (in short, “KMC") with effect from the second quarter of 1988-89.

It was submitted before the learned Judge on behalf of the writ petitioner that premises No. 628, Rabindra Sarani has been separately assessed in the name of her predecessor-in-interest and recording thereof will be found in the Inspection Books of KMC with effect from first quarter of 1986-87. It was further submitted that adjudication with regard to the status of the property as thika is pending consideration before the Thika Controller. Hence, KMC should not have recorded the said property T628A, Rabindra Sarani as thika property.

On behalf of the respondent no.9, it was submitted that he is the successor in interest of an erstwhile tenant of the subject premises. He is not aware about the status of the property.

The learned Judge disposed of the writ application with the following observations and directions:-

"Learned advocate representing the Kolkata Municipal Corporation submits, upon instruction that, the two premises are assessed separately. Premises no.T628A, Rabindra Sarani is recorded as thika property. Proceeding regarding the adjudication of thika is pending consideration before the Controller, Kolkata Thika Tenancy and the recording of thika is in existence since 1988-89.

After hearing all the parties and upon perusal of the documents the Court is of the opinion that it will not be proper at this stage to correct the said recording. As and when there is adjudication by the Controller, Kolkata Thika Tenancy, necessary steps shall be taken by the Kolkata Municipal Corporation to rectify the records in the event there is any error in the recording of the status of the property.

There is no property tax due in respect of the property in question. It will be open for the petitioner to follow up the matter with the Controller, Kolkata Thika Tenancy. After the adjudication is made, the Kolkata Municipal Corporation shall take steps in accordance with the said adjudication.

It is further made clear that the name of the petitioner is already recorded as the person liable to pay tax in respect of the property at 628, Rabindra Sarani".

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

Mr. Chatterjee, learned advocate representing the appellant, says that there is nothing to support the act of KMC carving out a separate premises from the original premises No.628, Rabindra Sarani. It was an arbitrary action. No opportunity of hearing was granted to the appellant who is undisputedly the owner of premises No. 628, Rabindra Sarani. KMC must be immediately directed to correct its records and undo the wrongful act done by it.

We had called for an affidavit from KMC as the learned Judge had disposed of the writ petition without directing exchange of affidavits. In the affidavit that KMC has filed before us, nothing has been disclosed to support the carving out of premises No.T628A, Rabindra Sarani from the original premises No.628, Rabindra Sarani. All that is stated is that in the records of the KMC, from the second quarter of 1988-89, such recording is there.

Mr. Mukherjee, learned counsel representing KMC, in his usual fairness, submitted that no papers could be traced which would support the impugned action of KMC. Mr. Mukherjee has left it to the Court to pass an appropriate order.

Having heard learned counsel for the parties and having gone through the records of the case, we find merit in the grievance of the appellant writ petitioner. There is nothing on record and none could be produced by KMC to justify the carving out of premises No.T628A, Rabindra Sarani from the original premises No.628, Rabindra Sarani. The fact that recording of T628A, Rabindra Sarani is there in the KMC's book from the second quarter of 1988-89 does not, per se, lend validity or legality to such recording just by reason of efflux of time. We are inclined to believe the appellant that she was not aware of such recording earlier and approached the learned Single Judge soon after coming to know of the same. After all, no sane person would waste time to approach Court after coming to know that a separate municipal premises has been carved out of his/her property.

We are of the considered view that carving out of a separate premises No.T628A, Rabindra Sarani from the original premises No.628, Rabindra Sarani and recording the same as thika property by KMC, cannot be sustained. More so, because whether or not the concerned property is a thika property is pending adjudication before the Thika Controller. Before the Thika Controller returns a finding on that score, KMC ought not to have recorded the property as thika property by carving out the same from the mother premises.

Accordingly, we direct KMC to correct its records and restore the position that was prevailing prior to recording T628A, Rabindra Sarani as a thika property. Let such exercise be completed within four weeks from date.

We clarify that this will not prevent KMC from taking appropriate steps, in accordance with law, once the Thika Controller passes final order in the proceedings pending before it concerning the property in question.

The appeal and the connected application are disposed of accordingly.

(ARIJIT BANERJEE, J.)

(M. V. MURALIDARAN, J.)

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