

APO/19/2024
with
WPO/72/2019

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

SHRI MAHENDER KUMAR GUPTA
VS.
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
AND
The Hon'ble JUSTICE M.V. MURALIDARAN
Date : APRIL 2, 2024.

Appearance:

Mr. Amal Kumar Mukhopadhyay, Advocate
Ms. Malabika Roy Dey, Advocate
Mr. Palash Kanti Chakraborty, Advocate
Ms. Anindita Banerjee, Advocate
Mr. Debopriya Chakraborty, Advocate
....for Appellant

Mr. Gopal Chandra Das, Advocate
Mr. Debangshu Mandal, Advocate
...for KMC

Mr. Purnendu Das, Advocate
Mr. Kinjal Kumar Baral, Advocate
Mr. M. Manna, Advocate
Ms. Gitika Mullick, Advocate
Mr. Kaustav Seal, Advocate
...for private-respondent No.6

The Court: By consent of the parties, the appeal is taken up for hearing.

A judgement and order dated July 18, 2023, whereby the appellant's writ petition being WPO/72/2019, was dismissed by a

learned Judge of this Court, is under challenge in this appeal at the instance of the writ petitioner.

The appellant approached the learned Single Judge challenging an order dated December 17, 2018, passed by the Chief Municipal Law Officer, Kolkata Municipal Corporation (in short, 'KMC'). Although this litigation has a chequered history, we need not, for the present purpose, delve into the same. Suffice it to say, an order had been passed on a writ petition being WPO/320/2017, filed by the private-respondent herein, on August 31, 2018, by a learned Judge of this Court, the operative portion whereof reads as follows:

"Accordingly, the impugned order dated 28th February, 2017 is quashed and set aside. I direct the respondent, Kolkata Municipal Corporation to revisit the entire case strictly in the light of the order passed in W.P. No. 1322 (W) of 2015 on 22nd November, 2016 after giving an opportunity of hearing to the petitioner or his authorised representative and the private respondent or his authorised representative and thereafter pass a reasoned order within six weeks from the date of communication of this order and shall communicate the reasoned order within a week thereafter."

Pursuant to the aforesaid order, the Chief Municipal Law Officer, KMC, passed the order which was challenged before the learned Single Judge by the appellant herein. What the Chief Municipal Law Officer was required to decide was, in whose name premises No.131, Chittaranjan Avenue, Kolkata, should stand mutated.

The operative portion of the order of the Chief Municipal Law Officer reads as follows:

“In view of the above reason and discussion the portion of the questioned property admeasuring 7 cottahs as shown in mark 'A' and mark 'B' in the map and plan annexed to the registered Deed of Conveyance dated 17.09.1996 may be mutated in the name of Sri Kanak Lall Seal, trustee to the Trust Estate of Kedar Lall Seal and remaining 3 cottahis , as shown in mark 'C' in the map and plan annexed to the registered Deed of Conveyance dated 17.09.1996 may be mutated in the name of Jyoti Lall Seal subject to an affidavit sworn in by Jyoti Lall Seal before the Id. Judicial Magistrate, 1 Class declaring inter alia that he is the only legal heir and successor percolating from the branch of deceased Bijoy Lall Scal.

Since the Hon'ble High Court has been pleased to direct that only in case of changed circumstances necessary mutation may be carried out, it is worthwhile to mention that the entire fact if taken into consideration chronologically will go to suggest that this actual fact were never considered at the time of mutation and as such it may be construed that the circumstances upon consideration of the entire fact has changed the circumstances and accordingly the aforesaid reasoned order is being passed in compliance with the solemn order of the Hon'ble ligh Court at Calcutta”.

The learned Single Judge noted the submissions made on behalf of the parties. The learned Judge then dismissed the writ petition with the following observations:

“From the submissions made on behalf of the respective parties it transpires that the predecessor-in-interest of the petitioner had been a lessee with respect to the property concerned. His leasehold right has seized after termination of the lease period. Dispute relating to the right/title of the said property went upto the Court for decision and was ultimately decided in favour of the original owner/lessor/respondent in this case, in an appeal in this High Court. The decree has been executed and the respondent has been granted with the freehold possession of the property. All these facts have been elaborately dealt with by the Chief Municipal Law Officer in his order as impugned in this case.

It is not the case of the petitioner that he has not been given the opportunity of hearing, excepting the fact that he might have produced other document also. However, as it is found that the order of the Hearing Officer, as impugned in this case, is elaborate enough and covers all aspects relating to this matter, the same is found just and proper and that no interference of this Writ Court would be necessary as to the same. The question of title, having been finally decided by the competent Court, the Hearing Officer of the respondent Corporation would not have any authority, to go into the same question and even otherwise also. It appears that the authority's decision is based on record as to the title and actual possession of the property. This being the Court of equity and not a fact finding Court, would not travel to the dispute raised by the petitioner, as

to the identification of the premises, or the possession thereof.

What the Court finds here is that, in the impugned order, the respondent authority has taken into consideration all relevant points and its decision is a well reasoned one.”

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

We have heard learned advocate for the appellant at some length. He emphatically submitted that his predecessor-in-interest, namely, Angira Debi, was the owner of the property in question. Although the private respondent says that Angira Debi was a lessee, that is incorrect. By virtue of probate being granted to the Will of the erstwhile owner of the property, Angira Debi became the owner. Angira Debi's name was reflected in the records of KMC. Her name was suddenly removed unilaterally. KMC did not consider its own records. Obviously, KMC is biased in favour of the private-respondent. KMC should be directed to revisit the issue and the private parties should be granted liberty to produce all relevant records before the Chief Municipal Law Officer or any other officer who may reconsider the issue.

Mr. Gopal Chandra Das, learned advocate representing KMC, says that there is no apparent infirmity in the order of the Chief Municipal Law Officer. It is a well reasoned order, taking into consideration all relevant facts of the case, as has been observed by the learned Single Judge also. There is no reason to interfere with that order.

Learned advocate for the private-respondent adopts the submission made on behalf of KMC. He further says that the appellant is only interested in keeping litigation alive. After the civil court decree in respect of the concerned premises which was upheld even by the Hon'ble Supreme Court, the appellant has not even an iota of right, title or interest in respect of the concerned property. Therefore, the question of the appellant's name or name of his predecessor-in-interest being reflected in the records of KMC in connection with the concerned property, cannot and does not arise.

We have given our anxious consideration to the rival contentions of the parties.

We must keep in mind that the High Court, while exercising the high prerogative writ jurisdiction under Article 226 of the Constitution of India, does not act as a Court of appeal. It is not so much, or at all, concerned with the correctness or otherwise of a

decision challenged before it. What the writ Court sees is whether or not the procedure adopted by the concerned authority in arriving at the impugned decision suffers from any infirmity. That is why, it is often said that judicial review is not concerned with the merits of a decision but with the decision making process.

Disputed questions of fact including disputed title to a property, cannot be adjudicated by the writ Court. The obvious forum for resolution of such a dispute is the civil Court or Tribunal if the concerned statute provides for any.

In the present case, we are in agreement with the learned Single Judge that the order of the Chief Municipal Law Officer impugned before the learned Single Judge, is a well reasoned and comprehensive order. The order takes into account the past history of the litigation and orders and decrees of Court passed in relation to the concerned property.

We are also told that the order was passed after granting all concerned, including the appellant herein, due opportunity of hearing. Hence, the order was passed observing the principles of natural justice.

We, therefore, keeping in mind the principles governing judicial review, are of the view that the learned Single Judge rightly declined to interfere with the order of the Chief Municipal Law Officer.

Disputed questions of fact including disputed questions of title to the property in question are involved which the writ Court cannot conveniently decide. We, therefore, see no apparent infirmity in the order under appeal before us as would persuade us to interfere with the order.

This order will, however, not prevent the appellant from assailing the order of the Chief Municipal Law Officer dated December 17, 2018, before any other appropriate forum including the civil Court, if the appellant is entitled to do so in law.

If any other proceeding is initiated by the appellant before any competent forum, to challenge the aforesaid order of the Chief Municipal Law Officer, the same shall be decided in accordance with law, without being influenced by any observation made in this order or in the order of the learned Single Judge impugned in this appeal.

The appeal is disposed of accordingly.

(ARIJIT BANERJEE, J.)

(M.V. MURALIDARAN, J.)