

OD-2

WPO/1888/2023
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

MD. QUASIM
VS
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 5th January, 2024.

Appearance:
Mr. Javed K. Sanwarwala, Adv.
Mr. Shaniq A. Sanwarwala, Adv.
...for petitioner.

Mr. Rudranil Dey, Adv.
Ms. Susmita Chatterjee, Adv.
...for KMC.

Mr. Abbas Ibrahim Khan, Adv.
Ms. Meena Shahaam, Adv.
...for Respondent No.6.

The Court:- The petitioner is aggrieved by the order dated 15th May, 2023 passed by the Deputy Assessor Collector (South) of the Kolkata Municipal Corporation by reverting the mutation as it stood earlier in the joint name of the petitioner and the private respondent. According to the petitioner no valid reason has been provided for reverting the mutation to its earlier position.

It appears from the impugned order that the property in question was recorded in the name of the petitioner and the private respondent jointly. Thereafter, the petitioner's name was mutated singly on the basis of the mutation case of the year 2006-07. The impugned order of mutation was passed upon affording reasonable opportunity of hearing to the petitioner as well as the private respondent. Both the parties were represented by their authorized representatives.

It further appears from the submissions made on behalf of both the parties that a civil suit for partition is pending between the petitioner and the private respondent. It does not appear that at the time of deleting the name of the private respondent from the official records of the Corporation in the year 2006-07 any opportunity was given to the private respondent to place his case.

The petitioner asserts that on the basis of an oral hiba, supported by documents, the private respondent being the son of the petitioner from his earlier marriage, gifted his undivided share in the property in favour of the petitioner relying upon which the mutation took place.

Upon hearing the submissions made on behalf of the parties, it appears that a partition suit in between the parties is pending consideration. Mutation is only for the limited purpose of payment of property tax and the same is not the document in support of ownership or title of the property. The title of the property flows from the title deeds. As a partition suit is pending consideration between the parties before the appropriate forum, the Corporation shall take necessary steps as and when the shares of the parties are declared by the learned Court.

At the present moment, mutation in the names of both the parties is not required to be interfered with.

It is made clear that the mutation will not create any equity in favour of either of the parties and the partition suit shall be decided by the learned Court strictly on merits without being influenced by the fact that the names of both the parties are recorded in the municipal records.

Report filed by the Assessor Collector (South) of the Kolkata Municipal Corporation signed on 04.01.2024 be retained with the records.

Writ petition fails and is hereby dismissed.

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.)

nm.