

ASR 10.
Ct. no. 24.
11.07.2025

WPA 27470 of 2022

Anupam Biswas
Vs.
The State of West Bengal & Ors.

Mr. Diptomoy Talukder
Mr. D. Ghosh
Mr. T. Talukder

.....For the petitioner

Mr. Chindi Charan De
Mr. Anirban Sarkar
Ms. Rashmi Rahaman

.....For the State

Mr. Chandi Charan De, learned Additional Government Pleader appearing on behalf of the State submits that though there is a direction by this court to file affidavit-in-opposition by the State Authority but he received a written instruction from the department containing the merit of this matter.

He submits further that if the written instruction be taken note of the instant writ petition can be disposed of without exchange of affidavits.

Having heard Mr. De, the written instruction issued by Land Manager, Bidhannagar be taken on record.

Perused the written instruction.

Heard the learned counsel for the petitioner.

In a nutshell the facts of the writ petition is that one Susant Kumar Bhaduri was granted lease by the

Governor of State of West Bengal vide a lease deed dated 27th June, 1973 in respect of the demised premises. Possession was handed over to such Susant Kumar Bhaduri vide memo dated 28th October, 1978.

It was the condition of the lessee deed that the said premises shall be used only for residential purposes. During the possession of such premises Susant Kumar Bhaduri has stated some business in the different floor of the said building without any permission, whereby a show cause notice was issued to such Susant Kumar Bhaduri dated 23.11.2009 consequent thereto one hearing was conducted before the Land Manager on 28th April, 2010.

Thereafter, on the said hearing reply of Susant Kumar Bhaduri satisfied the authority accordingly, he was allowed to continue the possession over the said premises. Thereafter, such Susant Kumar Bhaduri has taken NOC from the department to run some business over the premises which was granted by the authority concerned.

Susant Kumar Bhaduri expired on 11th November, 2020.

One Parijat Bhaduri claims himself as a grandson of Susant Kumar Bhaduri informed the department that a registered will was executed by said Susant Kumar Bhaduri in his favour and he applied for probate of the same before the competent court.

On 22nd January, 2021, one Sujay Bhaduri, who was the only legal heir (son of Susant Kumar Bhaduri) applied for intestate mutation in his favour for 100 percent share over the said plot.

He filed several reminders with the department for mutating his name.

On 13.07.2021 petitioner being the executor of the last will of Susanta Kumar Bhaduri has informed that they have applied for probate of the said will before this court and enclosed a complaint letter lodged to the Inspector-in-charge, Bidhannagar Police Station, Salt Lake on 22nd July, 2021.

The concerned department issued a letter to Parijat Bhaduri vide 1261 with a request to submit copy of petition for probate filed by him before this court and also informed about the status of the probate.

The concerned department made departmental enquiry and issued a letter of confirmation of relationship certificate to the concerned authority regarding relation between Sujay Bhaduri and deceased Susant Kumar Bhaduri.

Learned counsel appearing on behalf of the petitioner has informed the concerned department regarding the pendency of the probate proceeding pending before this court.

However, the son of the deceased lessee namely Sujay Bhaduri on 29th September, 2021 submitted an

information slip obtained from District court at Barasat stating that, no such probate application was pending before this court. On the basis of such information slip, the concerned department has issued the impugned memo on 4th October, 2021 whereby intestate mutation for 100 percent share was issued in favour of Sujay Bhaduri with condition **("this mutation has been issued on the condition that such mutation will abide by an order passed by any competent courts")**.

The petitioner has challenged the said memo on the ground that the probate proceeding is yet to be disposed of; till the disposal of the said probate proceeding, the order of mutation in favour of Sujay Bhaduri is arbitrary and illegal.

Having heard learned counsel for the parties and also considering written instruction and issue involved in the instant writ petition, it appear to me that admittedly the disputed premises was granted lease in favour of Sushant Kumar Bhadhuri who enjoyed the same till his death. After his death the dispute cropped up on the question who would be the beneficiary in the said demised premises. The private respondent i.e. Sujay Bhaduri being the only legal heir (son) of deceased Sushant Kumar Bhaduri applied for mutation.

On the other hand, petitioner being a near relative of the said Sushant Kumar Bhaduri and

executor of last will and testament of Sushant Kumar Bhaduri has also before the department for granting mutation in his favour.

The petitioner being the executor of the last will and testament of Sushant Kumar Bhaduri has also initiated one proceeding for probate before this court, the same was intimated to the department, through his learned Advocate.

On the other hand Sujay Bhaduri has informed the department on the strength of an information slip obtained from District court, Barasat containing, inter alia, that no such probate application was pending before the District court. The Department has confused and issued an order in favour of Sujay Bhaduri with a rider that such mutation was abide by an order passed by any competent court.

It appears that the department concerned has acted upon the information slip issued by District Court, Barasat.

The department was well aware that the proceeding of probate is pending before this High court not before the court of Barasat.

However, the department has issued the memo of mutation certificate without following the proper norms in that matter.

The department should restrain themselves for issuing of a mutation certificate, if litigation is pending before a competent court.

Though the department is mentioned in the impugned order that this order would be cancelled in case of any mis-representation of fact. But it appears that the private respondent has already placed information slip of a court, where no probate proceeding was pending.

Consequent thereto the impugned mutation order passed by the department on 4th October, 2021 appears to be on the basis of mis-representation by Sujay Kumar Bhaduri, thus, the impugned order is illegal and is hereby set aside.

It is clarified that the department must not proceed to issue any mutation order in respect of the demised premises till the disposal of litigation/probate proceeding pending before this court.

Under the above observation, the instant writ petition is disposed of.

[Subhendu Samanta, J]