

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/1167/2024

SRI PARDESHI SINGH
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

WPA/27473/2024

MIRZA ALI ABBAS SHIRAZI
VS
KOLKATA MUNICIPAL CORPORATION AND ORS.

BEFORE:
The Hon'ble JUSTICE KAUSIK CHANDA
Date : 8th January, 2025

Appearance:

*Mr. Tanmoy Mukherjee, Adv.
Mr. Kajal Ray, Adv.
Mr. Suman Nandi, Adv.
...for the petitioner*

*Mr. Biswajit Mukherjee, Adv.
Mr. Atin Kr. Biswas, Adv.
...for KMC*

*Mr. Arindam Banerjee, Sr. Adv.
Mr. Arif Ali, Adv.
...for the respondent no. 6*

*Sk. Md. Galib, Adv.
Abu Siddique Mallik, Adv.
...for respondent no.7.*

The Court: Although WPA/27473/2024 does not appear on the list, both writ petitions are taken up for hearing and are disposed of, treating them as part of the day's list due to the common facts and legal issues involved.

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The petitioner seeks the mutation of assessment records for the premises at 9A, Jay Krishna Pal Road, Kolkata – 700023.

The undisputed facts of this case are summarized as follows:

The property in question was declared a Thika property by the Deputy Controller, Kolkata Thika Tenancy, who, by an order dated March 10, 2017, recognized the petitioner as a substituted Thika tenant in proceedings under Section 5 (3) of the West Bengal Thika Tenancy (Acquisition & Regulation) Act, 2001.

Subsequently, by a letter dated June 29, 2017, the said Deputy Controller requested the Chief Manager Revenue (South) to record the petitioner's name in the relevant property records. In response, the Corporation accepted the mutation fees deposited by the petitioner in the prescribed form. However, the Corporation later rejected the petitioner's application, citing a delay of more than 500 days.

Challenging this action, the petitioner filed WPO/1655/2023 before this Court.

On October 4, 2023, a Co-ordinate Bench disposed of the writ petition with the following directions:

“In view of the above, the Chief Manager Revenue (South) is directed to verify its records to ascertain as to whether the property is Wakf property or not.

An opportunity of hearing shall be given to the petitioner for production of all necessary documents in support of the submission that the property is a thika property. Opportunity shall be given to the Wakf Board and other necessary parties for production of necessary documents to show as to whether the property is Wakf or not. A final order shall be passed by the Chief Manager Revenue (South) after perusal of all documents.

A decision shall be taken in the matter at the earliest, but positively within a period of twelve weeks from the date of communication of this order.

If the status of the petitioner as thika tenant is proved after giving hearing to the parties, then the Corporation shall take steps for mutating the name of the petitioner in the municipal records.

All the documents in connection with the aforesaid proceedings be circulated, prior to conducting the hearing by the Corporation.

The impugned rejection whereby the application of the petitioner seeking mutation has been cancelled is set aside.

Writ petition stands disposed of.”

In compliance with this order, the Chief Manager Revenue (South) by an order dated July 29, 2024, declined to entertain the petitioner's request, observing that the property is classified as 'Khariz Towliat'. The Chief Manager referred to a letter from the Chief Executive Officer, Board of Wakf, West Bengal, dated May 27, 2024, which, inter alia, states:

“... There being a legal fiction, no legal authoritative is forthcoming in defiance of ‘Khariz Towliat’ property as not a Wakf, whereas in contradiction the same is constituted to support, the religious institution for the purpose as recognized by Muslim Law as pious, religious and charitable pinpoint such as ‘Wakf’. The same cannot be separated from waqf character and would certainly be a ‘waqf’ from very foundation.

More so, Wakf Act in any event does not reflect an idea as to how Wakf Property is to be created. It cannot be. Creation of Wakf is based on Islamic law wherein the concept of Wakf has been

etymologically conceptualized as also evaluated and developed at different stages of Islamic era.”

Considering the above, the Chief Manager held that the name of the owner as recorded in books of record of KMC cannot be changed.

The learned advocate for the petitioner submits that the Wakf Board was a party in the proceedings before the Thika Controller but did not contest the petitioner’s claim. The Thika Controller had declared the petitioner a substituted Thika tenant, and therefore, the Corporation should have acted in accordance with that declaration to mutate the relevant records. He places reliance on a judgment passed by this Court reported at **2021 SCC OnLine Cal 2338 (*Bijoy Modi v. Alauddin Ahmed*)**.

Mr. Arindam Banerjee, learned Senior Advocate for respondent no. 6, submits that 'Khariz Towliat' is not considered as a Wakf property, and consequently, the Corporation had no basis for treating the property as such.

On the other hand, Mr. Biswajit Mukherjee, learned Advocate for the Corporation, states that the property is recorded in the inspection books as belonging to the Committee of Management of the Wakf Estate of Hooghly Imambarah, respondent no.6.

Mr. Galib, learned Advocate for the respondent no. 7, argues that a Special Leave Petition is pending before the Hon’ble Supreme Court concerning the *Bijoy Modi* judgment. However, he does not submit that the judgment’s operation has been stayed by the Supreme Court. Mr. Galib further submits that the Thika Controller merely declared the petitioner’s status as a Thika tenant but did not declare the property as Thika property.

In my view, the order dated July 29, 2024, passed by the Chief Manager Revenue (South) cannot be upheld.

The petitioner has correctly relied on the judgment ***Bijoy Modi (supra)*** which held that if the Thika Controller declares a property as Thika property, the Wakf Tribunal cannot override that classification and declare the same as Wakf property. The relevant part of the judgment is quoted below:

“28. As per Section 3 of the 2001 Act, the provisions of the said Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or in any custom, usage or agreement or in any decree or order of a court, tribunal or other authority.

29. As such, the Tribunal acted patently without jurisdiction in placing reliance on *Lakshmimoni Das v. State of West Bengal*, reported at AIR 1987 Cal 326, by overlooking the specific contrary proposition laid down by the Supreme Court in *Zamir Ahmed Latifur Rehman Sheikh v. State of Maharashtra*, reported at (2010) 5 SCC 246, despite the Full-Bench decision of this Court of 1987 being a pre-2001 Act decision, which is inapplicable in the present case by virtue of the amendment effected in 2010 of the 2001 Act and in view of the promulgation of the 2001 Act itself.

30. The power to decide on the issue as regards whether a property is a Thika land is now within the specific domain of the Thika Controller and not the civil court anymore. That apart, Section 21 of the 2001 Act stipulates a bar to jurisdiction of the civil court to decide or to deal with any question or to determine any matter which, by or under the 2001 Act, is required to be, or has been, decided or dealt with, by the Controller or the appellate or other authority specified in the 2001 Act and no order or judgment passed, or proceedings including execution proceedings commenced, under the provisions of the said Act shall be called in question in any civil court.

31. Even if it is assumed that the Waqf Tribunal exercises the jurisdiction of a civil court for the purpose of deciding the questions covered by the Waqf Act, 1995, such jurisdiction is barred in respect of matters falling within the domain of the Thika Controller.

32. It is to be noted here that Section 16 of the 2001 Act specifically provides that nothing in any contract between a Thika tenant and a Bharatia shall take away or limit the rights of a Thika tenant as provided for in the said Act and that any contract which is made in contravention of, or which is inconsistent with, any of the provisions of the Act shall be void and without effect to the extent of such contravention or inconsistency, as the case may be.

33. Hence, even if the Waqf Tribunal was of the opinion that the disputed property does not appear to be a Thika tenancy on the basis of the lease deeds executed in respect of the property, the operation of such deeds could not extend to contracting away from the purview of the 2001 Act in terms of Section 16 thereof. Hence, the Tribunal acted patently without jurisdiction in holding that the property-in-dispute is not a Thika tenancy on the basis of the lease agreements.”

In light of the above, I find that the Chief Manager Revenue (South) erred in considering the property as a Wakf property. As long as the Thika Controller's order dated March 10, 2017, remains in force, the Corporation is bound to act in accordance with it.

Accordingly, the order dated July 29, 2024, is set aside. The Corporation shall, within one month from the date of this order, mutate the petitioner's name in the relevant records, subject to the compliance with the necessary formalities.

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The petitioner in this writ petition, who is respondent no. 6 in WPO/1167/2024, has challenged the order of the Chief Manager Revenue (South) dated July 29, 2024. In view of the order passed in WPO/1167/2024, this WPA 27473/2024 is also allowed.

(KAUSIK CHANDA, J.)