
(1994) 01 CAL CK 0034
In the Calcutta High Court
Case No : C.O. No. 10375 (W) of 1991

Bhupendra Lal Sen

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 21-01-1994

Acts Referred:

Evidence Act, 1872 — Section 92

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1)

Citation : (1994) 1 CALLT 334

Hon'ble Judges : Ruma Pal, J

Bench : Single Bench

Advocate : Anupam Chatterjee, Srimanta Dutta, Ashit Chakraborty and Indranil Nandi, for the Appellant; A.C. Sinha Roy and L.M. De, for the Respondent

Judgement

Ruma Pal, J.—The petitioner was a member of the respondent-society. In 1966, the society conveyed by a registered deed of conveyance dated 25th July, 1966, tank and garden lands to the petitioner in consideration for payment of a sum of Rs. 7,700/-. The petitioner applied to the respondent- municipality for mutation of his name in respect of the holding No. 115. The application of the petitioner was rejected by the Chairman of the respondent-municipality on the ground that the petitioner's prayer could not be considered in view of an objection against mutation of the petitioner's name without obtaining the consent from the respondent-society. The petitioner has accordingly filed this writ application and has challenged such refusal of the municipality. According to the petitioner, it is no part of the respondent-municipal authority's duties to go into any question of title. In any event, the petitioner had absolute title as he had purchased the premises in question by a registered deed of conveyance. Furthermore, it is submitted that in view of undisputed occupation by the petitioner of the premises sought to be mutated, the respondent-authorities were bound to mutate the holding No. 115 in favour of the petitioner as applied for and that the vendor society had no right whatsoever to interfere in the matter.

2. Learned counsel appearing on behalf of the society has submitted that the petitioner had ceased to be a member of the respondent society in 1990 by virtue of a resolution taken at a meeting held on 14th January, 1990. It is stated that the petitioner had failed to abide by the provisions of the West Bengal Co-operative Societies Act, Rules and Bye-laws and failed to carry out the lawful orders of the Board and was persistent defaulter in respect of Municipal Taxes, as also society dues for a considerable long period of the time and causing damage to overall interest of the society. It is further recorded in the resolution that "your membership is hereby ceased and the tank No. 6 allotted to you by the society is cancelled.

3. It is therefore stated that the allotment was made to the petitioner conditionally in terms of the Regulation 87 of the Act and was subject to the petitioner's being a member of the society. As the petitioner's membership was treated as ceased, he has no right whatsoever to hold on the land/tank allotted.

4. Learned counsel appearing on behalf of the municipality has submitted that it was because of the objection of the society that the mutation was not carried out. Furthermore, it is stated that the Notice u/s 10(1) of the Urban Land Ceiling and Regulation Act, 1976 had been issued in respect of premises held by the petitioner and that in view of that notice, the municipality could not mutate the petitioner's name. A short submission was also sought to be raised, namely, that the subject-matter of sale being a tank, no sale could, in fact, be effected. Neither this nor the previous ground has been referred to in the impugned order as the consideration which held the municipality for rejecting the petitioner's application for mutation. It is well-established that the authorities concerned cannot by affidavit add too or supplement reasons which have been given in the impugned order.

5. In my view, the petitioner's submissions must be accepted. The document dated 25th July, 1966, being annexure "A" to the petition, is a registered deed of conveyance and appears to have absolutely conferred title to the properties covered by the deed to the petitioner. It does not state anywhere in the deed that the transfer was made subject to any condition such as the petitioner's continuing to be a member of the respondent-society. As long as the documents stand, the court should not act on the basis of the contradictory submissions specially in view of Section 92 of the Evidence Act. It may be noted that several decades have passed since the deed was executed. No step has been taken by the respondent-society to set aside the deed.

6. Section 87 of the Act also does not assist the respondent-society as subsection (1) of that section states that an allotment shall entitle the member to hold such plot of land and the certificate of allotment shall be conclusive evidence of such title. Even assuming that the deed of sale is a certificate of allotment and not an absolute transfer, even then it is conclusive evidence in terms of the Section 817 of the absolute right of the petitioner to the property in question.

7. In any event, the respondent-authorities should have addressed their minds only to the question of establishment of title according to the records. When the records showed title and occupation, the mutation should have been made as prayed for by the petitioner. The municipality should not have entertained an objection of the vendor in the face of registered document such as the deed dated 25th July, 1966. In that view of the matter, the impugned order dated 9th March, 1991, being annexure "C to the petition is quashed. The respondent-municipality will re-consider the petitioner application within a period of two weeks from the date of communication of this order to them, in the light of the observations contained in this judgment.

8. It is being made clear that this order will not prejudice the respondent-society from taking any action against the petitioner, as they may be entitled to in accordance with law.

The writ application is, accordingly, disposed of.

There will be no order as to costs.

Let xerox copies of this order be given to the learned advocates appearing for the parties on their usual undertakings.