(1992) 12 CAL CK 0013

In the Calcutta High Court

Case No : Matter No. 4239 of 1991

Bijay Shankar Tripathi	APPELLANT
Vs	
Calcutta Municipal Corporation and others	RESPONDENT

Date of Decision : 17-12-1992

Acts Referred:
Calcutta Municipal Corporation Act, 1980 — Section 183(5), 193, 196

Citation : AIR 1994 Cal 152 : (1993) 1 CALLT 501

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Judgement

1. The present writ petition is at the instance of one Bijay Shankar Tripathi praying, inter alia, for a writ of Mandamus to command the respondents to mutate the name of the petitioner in place of Ram Shankar Tripathi and/or Smt. Ramkali Tripathi as the owner of the said premises and to grant other consequential reliefs. It is stated in details that Ram Shankar Tripathi was the recorded owner of the premises No. 163, Rabindra Sarani, Calcutta, Ward No. 43 and he died intestate on September 26, 1974 leaving behind him his wife Ramkali Tripathi as the only heir and legal representative. Ramkali Tripathi inherited the said property. The respondent No. 2 Municipal Commissioner, Calcutta instituted a suit for non-payment of arrear municipal taxes against Ram Shankar Tripathi being Suit No. 2342 of 1966. It is stated further that Ramkali Tripathi died on March 24, 1978 leaving a will and the said will was probated on March 18, 1986 by the Chief Judge, City Civil Court, Calcutta. It is further stated that the respondents i.e., the Municipal Authorities instituted a suit against the petitioner before the learned Judge City Civil Court at Calcutta being Title Suit No. 2244 of 1986 for recovery of arrear taxes for the third quarter of 1968-69. On December 15, 1989 the petitioner made an application for mutation of his name in regard to the said premises. The grievance of the petitioner is that in spite of specific prayer for mutation the same has not been effected although the petitioner has paid taxes without prejudice. Against the assessment an appeal was preferred and the petitioner was successful. Further grievance of the

petitioner is that municipal authorities are denying the mutation in favour of the petitioner on certain frivolous claims and in view of certain decrees which are barred by law of limitation. The petitioner has come to this Court on the grounds that the petitioner is the lawful owner of the property and there is no bar and/or impediment to mutate his name in respect of the said property and while the property remains as first charge the corporation authorities can ask for realisation of any lawful dues in accordance with law. It is alleged that the acts done and/or caused to have been done by the Municipal Authorities to deny mutation of the petitioner''s name are irregular and illegal and necessitating interference of this Court.

2. The writ petition is opposed by the Corporation Authorities by filing affidavit-in-opposition. The allegations of the petitioner have been controverted. It is further stated that the Corporation instituted a suit before a competent court against Ram Shankar Tripathi for recovery of the arrear taxes with a declaration of first charge of the premises No. 163, Rabindra Sarani and the said suit was decreed for Rs. 23,628.77. It is disclosed that it does not appear from the records that after the death of Ram Shankar Tripathi any intimation was given to the concerned department of the Corporation so as to change the relevant records and/or registers in respect of the said premises. As a matter of fact no one took any step until the date hereinafter mentioned on mutation in respect of the said premises consequent upon the death of the said Ram Shankar Tripathi. The concerned department at whose instance the said suit was filed was not at all aware of the death of Ram Shankar Tripathi and the death certificate was issued by another department of the Corporation and the copy of the death certificate was not properly concerned, which is annexure A to the said application. In any event the concerned department, at whose instance the suit was filed, was not aware of the demise of the said Ram Shankar Tripathi and no step was taken to execute the decree. It is further stated that a small portion of the decretal amount was paid and it was represented that the Government would not disapprove the waive of interest and penalty. It is recorded that the petitioner in fact gave an undertaking by writing a letter dt. 30th May, 1988 that the petitioner would pay all the dues towards penalty in case the government disapproves the proposal and/or scheme for payment of the outstanding dues. It is further stated that the petitioner was requested on several occasions to pay the outstanding dues so as to enable the authority concerned to deal with the matter relating to mutation in an effective manner but the fact remains that the petitioner has not yet paid all arrear taxes and thus the authority could not mutate his name.

3. Having heard the learned lawyers of both the parties it appears that the petitioner has lawful title to the property and the application for mutation has been made disclosing the fact that he has become the owner in 1987. Attention of the Court has been drawn to Section 183(5) of the Calcutta Municipal Corporation Act, 1980. The said section envisages inter alia, that the "Municipal Commissioner shall, on receipt of a notice of transfer or devolution of title under

this section, records such transfer or devolution in a book in such form and in such manner as may be prescribed and also in the Municipal Assessment Book". It is thus mandatory on the part of the corporation authorities to mutate the name of the petitioner in the assessment book immediately knowing the demise of the recorded owner as is the case of devolution of title. Such mutation cannot wait till clearance of the outstanding dues, if any. Attention of the Court has been drawn to Section 193 of the Act which indicates as to instance of consolidated rate of land and building and also to Section 196 regarding payment of consolidated rate of land and building. The Court asked Mr. Aloke Kumar Ghosh, appearing for the corporation authorities to point out as to whether there is any provision in the Calcutta Municipal Corporation Act, 1980 that the Municipal Authorities can withhold mutation of name in case of devolution of title for payment of arrear of tax. A title to the property devolves immediately after the demise of the recorded owner and/or occupier. u/s 183(5) of the Act municipal authorities will have to record in the municipal assessment book the death of the recorded owner and the name of the person who succeeds accordingly. There is nothing in law that the mutation can wait till clearance of the dues in the manner as alleged in the instant case. In the instant case the court finds that the petitioner is ready and willing to pay all the dues. Besides, in several litigations, the corporation authorities have recognised the locus standi of the petitioner and filed a suit against him treating him as a person liable to pay taxes in respect of the said premises. As such this court fails to appreciate as to why the corporation authorities withhold mutation of the name although prayed in 1987 in a circuitous way to demand decretal dues not by execution but by demanding dues in a process which is unknown in law. A statutory body is expected to act in terms of the statute as it is a creature of law. Although, it is argued that the corporation authorities have issued a circular that no mutation would be effected unless the arrear taxes are being paid but curiously enough such a case has not been made out in the affidavit. In such a case this court should have observed that no circular can override the provisions of law. In the instant case Mr. Ghosh inspite of his best efforts has not been able to satisfy the conscience of the Court that the provisions of the C.M.C. Act stand in the way of mutation of the name of the petitioner in the manner as prayed for, particularly regard being had to the materials on record.

4. For the aforesaid reason this court holds that the acts done and/or caused to have been done by the Corporation Authorities in withholding the mutation of the name of the petitioner are not just and proper. The writ petition thus succeeds. The Corporation Authorities are directed to effect mutation of the name of the petitioner in respect of the premises in question within a period of 2 months from the date of communication of the order. An appropriate writ is issued accordingly. This judgment will not however prevent the Corporation Authorities to take effective steps to realise the taxes dues in respect of the said premises, if any, and the mutation will not absolve any liability of the petitioner in any manner whatsoever. No order as to costs.

5. All parties to act on the operative part of this judgment on the usual undertaking.

6. Petition allowed.

