
(2015) 03 CAL CK 0078
In the Calcutta High Court
Case No : Writ Petition 13574(W) of 2003

Dhurjati Prasad Das

APPELLANT

Vs

The Chairman, Diamond Harbour Municipality and Others

RESPONDENT

Date of Decision : 27-03-2015

Acts Referred:

West Bengal Municipal Act, 1993 — Section 116

Citation : (2015) 03 CAL CK 0078

Hon'ble Judges : Ashis Kumar Chakraborty, J.

Bench : Single Bench

Advocate : Dipankar Dhar and Rudra Dhar, for the Appellant; Shyama Prasad Purkait and Moumita Mondal, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashis Kumar Chakraborty, J.—In this writ petition, the petitioner has challenged the order dated May 24, 2003 passed by the respondent No. 1 [the Chairman of Diamond Harbour Municipality, 24 Parganas (South)] rejecting the petitioner's application for mutating his name in the records of the Diamond Harbour Municipality (hereinafter stated as "the Municipality") in respect of the plots of land at village Muragacha Mouza - Roynagar, P.S. Diamond Harbour, in Khatian No. 1, Dag No. 3 (sub-plot E in English and Bengali letter in G) R.S. Plot No. 3/573, 3/574, 3/575, R.S. Khatian No. 276 (hereinafter stated as "the said plots of land").

2. The case of the petitioner is that by a registered conveyance, his maternal uncle Late Hari Prasad Basu, purchased the said plots of land together with other plots of land. The name of Late Hari Prasad Basu is duly recorded in the records of the Land Revenue Authorities as the owner of the said plots of land. After the death of the Hari Prasad Basu the said plots of land, including some other plots of land, devolved upon his only daughter Bani Basu, since deceased. On August 02, 1999, the said Bani Basu died leaving behind a Will dated July 29, 1999 bequeathing her various assets and properties, including the said plots of land in

favour of the petitioner. On September 15, 2000 the said Will of late Bani Basu was duly probated by this Court in its original jurisdiction (at pages 25 to 45A of the petition). On the strength of the probate granted by this Court in respect of the said Will of late Bani Basu, the petitioner sought to obtain the mutation application form for the Municipality for mutating his name, in respect of the said plots of land, but he was unsuccessful. Thus, the petitioner through his advocate, submitted an application to the respondent No. 1 for mutating his name, in the records of the Municipality, in respect of the said plots of land. The respondent No. 1, being Chairman of the Municipality, however, did not consider the application and as such the petitioner filed a writ petition, W.P. No. 6570(W) of 2003, before this Court against the respondent No. 1 and other officers of the Municipality. In the said writ petition an association, namely Bani Basu Sishu Uddyan Samity (the respondent No. 3 in this petition), intervened and sought to raise objection to the petitioner's claim for mutation. By an order dated May 07, 2003 a learned Single Judge of this Court disposed of the said writ petition W.P. 6570(W) of 2003 by impleading the said association as the respondent No. 5 and directing the respondent No. 1 (being the Chairman in council of the Municipality) to consider and dispose of the application for mutation submitted by the petitioner in accordance with law by passing a reasoned order. By the said order dated May 07, 2003, even the date of hearing by the respondent No. 1 was fixed on May 24, 2003.

3. It appears that on May 24, 2003, the respondent No. 1, Chairman, held a hearing which was attended by the advocate of the petitioner and the advocates of the respondent No. 3 who opposed the petitioner's said prayer for mutation. After hearing the respective advocates for the petitioner and the respondent No. 1, the respondent No. 1 passed the impugned order dated May 07, 2003.

4. It is the said Bani Basu Smiriti Shishu Uddyan who raised the objection to the mutation of the name of the petitioner in respect of the said plots of land both in the land revenue records of the B.L. and L.R.O. and the records of the said Municipality. By the impugned order, the respondent No. 1 upheld all the grounds of objection raised by them. The said association and its Chairman and Vice Chairman have been impleaded in this writ petition as respondent Nos. 3, 4 and 5. On March 12, 2015 when the writ petition was taken up for hearing, none appeared to represent any of the respondents and I directed the petitioner to serve a notice on all the respondents that the writ petition will be taken up for hearing on March 20, 2015. The petitioner complied with the said direction and from the tracking report of the postal department, it is evident that the respondent No. 3 association refused to accept the said notice but the respondent No. 4, the Chairman of the respondent No. 3 association received the said notice. However, on March 20, 2015, Mr. Shyama Prasad Purkait, the learned Advocate appeared to represent the respondent Nos. 1 and 2, the Chairman and Vice-Chairman of the Municipality but none appeared on behalf of the respondent Nos. 3 to 5.

5. From the impugned order, it is evident that the respondent No. 1 rejected the prayer of the petitioner to mutate his name of the petitioner in respect of Plot No. 3/574 which is recorded as Pukur, on the ground that no mutation can be allowed to raise construction of building over the tank. So far as the other two plots being Plot Nos. 3/573, 3/575 are concerned, the respondent No. 1 rejected the prayer of the petitioner for mutation on three grounds. Firstly, the name of the said Bani Basu since deceased or the name of the petitioner has not been mutated in the L.R. records of right of B.L. and L.R.O., secondly the plots were not demarcated that which part of the plot is vested and thirdly the title of the parties are in dispute. From a reading of the entire order dated May 24, 2003 it is evident that the aforesaid grounds on which the respondent No. 1 rejected the prayer of the petitioner to mutate his name, in respect of the said plots of land, were the grounds of objection urged by the respondent No. 3 association.

6. Assailing the ground of rejection to mutate the name of the petitioner in respect of plot No. 3/574. Mr. Dhar, the learned Advocate appearing for the petitioner submitted that the petitioner has filed no application to the respondent to construct any building on the said pukur/tank and as such the finding of the respondent, in the impugned order, that the name of the petitioner cannot be allowed in respect of plot No. 3/574 on the ground of proposed construction of building is perverse. On my enquiry Mr. Shyama Prasad Samanta, the learned Advocate appearing for the respondent Nos. 1 and 2 could not point out any document to substantiate the finding in the impugned order about proposed construction of any building at the said plot No. 3/574, a pukur/tank. Mr. Purkait only submitted that the Municipality had received some information that the petitioner is claiming mutation, in respect of the said three plots of land, as he intends to construct a building thereon. It could not be and it was not the submission of Mr. Purkait that a person, being an owner of a pukur/tank, is not entitled to simpliciter have his/her name mutated in the records of the Municipality. Therefore, I have no hesitation to hold that the impugned order dated May 24, 2003 passed by the respondent No. 1 refusing to mutate the name of the petitioner in respect of the said plot No. 3/574 is absolutely arbitrary and perverse.

7. So far as the plot Nos. 3/573 and 3/575 are concerned, from the records disclosed in the writ petition (at page.70) it is evident that the B.L. and L.R.O. by his Memo dated May 23, 2002 informed the respondent No. 1, the full details of plot Nos. 3/571, 3/570 and 3/576, which are pukurs/tanks and stood vested in the State. Thus, once again the decision of the respondent No. 1 refusing to mutate the name of the petitioner in respect of the said plot Nos. 3/573 and 3/575 (which are not pukurs) on the ground the plots of land cannot be demarcated from the said vested plot Nos. 3/571, 3/570 and 3/576, that is, the pukurs/tanks is arbitrary and perverse.

8. Further, from the documents disclosed in the writ petition it is evident the name of Late Hari Prasad Basu, the father of Late Bani Basu, the testator is

reflected in the record of rights in respect of all the three plots of land. By a letter dated March 29, 2003 the petitioner submitted the copies of the receipts evidencing payment of all taxes (Khazna Dakhila), in respect of the all the said plots of land, in the name of Late Hari Prasad Basu. Even respondent No. 3 association, in their resolution (appearing at page 69 of the petition) admitted the ownership of late Bani Basu, in respect of the said three plots of land.

9. In any event, the petitioner submitted the mutation application under Section 116 of the West Bengal Municipal Act, 1993 disclosing the probate of the said Will dated July 29, 1999 of Late Bani Basu granted by this Court. In spite of my query Mr. Purkait appearing for the respondent No. 1 could not point out any provision of law or a decision of any Court that without mutation of his/her name in land revenue records of B.L. and L.R.O., an owner of a property situated within the municipal area covered by the West Bengal Municipal Act, 1993 is not entitled to mutate his/her name in the records of the concerned Municipality. Recording of a person's name, in the land revenue records only substantiate that the land has not vested in the State. In the instant case the respondent No. 3 could not challenge the title of Late Bani Basu in respect of the said plots of land and the petitioner produced the probate granted by this Court of the said Will of Late Bani Basu and admittedly none of the said plot Nos. 3/573 and 3/574 vested in the State. In these facts, the respondent No. 1 could not hold that there is any dispute with regard to the title of any of the said plots of land or reject the prayer of the petitioner for mutating his name in respect of the said plot Nos. 3/573 and 3/575 and such decision is vitiated by patent illegality.

10. It is the well settled principle of law that an executive and quasi judicial authority while discharging their function to adjudicate an issue between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or the other.

11. The petitioner had a legitimate expectation that the respondent No. 1 being the Chairman of the Municipality, discharging public duties would act impartially and without any bias in favour of the respondent No. 2. However, in paragraph 24 of the writ petition, the petitioner has stated that before passing of the impugned order dated May 24, 2003, the respondent No. 1 never disclosed either before this Court or to the petitioner that he was also a member of the executive committee of respondent No. 3 association. This factum was also suppressed by the respondent No. 3 and its Chairman and Vice-Chairman that is the respondent Nos. 4 and 5. Now of the respondent Nos. 3, 4 and 5 has not filed any affidavit to dispute the said statements made in the writ petition. An affidavit has been filed on behalf of the respondent Nos. 1 and 2 which has been affirmed by the subsequent incumbent to the post of respondent No. 1, Sri Pannalal Halder, on April 02, 2004. In paragraph 11 of the said affidavit-in-opposition, there is no specific denial of the fact that the Chairman who passed the impugned order dated May 24, 2003 was also a member/Chairman the respondent No. 3 and that this fact was never disclosed before the learned Judge of this Court while

obtaining the said order dated May 07, 2003. From the tenor of the statements made in paragraph 11 of the affidavit-in-opposition, it appears that deponent of the said affidavit justified the action of the erstwhile Chairman of the Municipality, to pass the impugned order, by stating that the said Chairman may be a nominated Chairman of the respondent No. 3 but he passed the impugned a reasoned order, as the Chairman by the Municipality and he was bound to deal with the application to comply with the said order dated passed by the learned Single Judge in W.P. No. 6570(W) of 2003.. The respondent No. 4, was the Chairman of both the respondent No. 3 association as also of the Municipality. In the writ petition, the petitioner has disclosed documents by which the respondent No. 3 association requested the respondent No. 1/Chairman of the Municipality not to mutate the name of the petitioner in respect of the said plots of land. This act of the respondent No. 1/Chairman in passing the impugned order while remaining associated with of the respondent No. 3 association, who raised objection to the petitioner's claim for mutation in respect of the plots of land is nothing but an act vitiated by personal bias, resulting in violation of principle of natural justice and rendering the impugned order dated May 24, 2003 void. Today, on my query Mr. Purkait representing the respondent Nos. 1 and 2 admitted that the respondent No. 4, Asit Basu was the Chairman of the Municipality and he passed the impugned order dated May 24, 2003.

12. For all the foregoing reasons, the impugned order dated May 24, 2003 being Annexure - P10 to the writ petition is set aside and the respondent No. 1, the Chairman, Diamond Harbour Municipality, 24 Parganas (South) is directed to forthwith, within a period of twelve weeks from today, mutate the name of the petitioner in respect of the plots of land situate at village Muragacha Mouza - Roynagar, P.S. Diamond Harbour, in Khatian No. 1, Dag No. 3 (sub-plot E in English and Bengali letter in G) R.S. Plot No. 3/573, 3/574, 3/575, Khatian No. 276 in the records of Diamond Harbour Municipality.

13. With the aforesaid direction the writ petition being W.P. No. 13574(W) of 2003 is allowed. However, there shall be no order as to costs.

Later

14. After the delivery of the judgment Mr. Purkait, learned advocate appearing for the Diamond Harbour Municipality, prays for stay of operation of this order. The same is considered and rejected.