

(2014) 11 CAL CK 0001
In the Calcutta High Court

Case No : A.P.O. No. 261 of 2006 and W.P. No. 1610 of 1995

Ganesh Chandroy

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2015) 1 CHN 735

Hon'ble Judges : Manjula Chellur, C.J.;Arijit Banerjee, J.

Bench : Division Bench

Advocate : P.K. Das and S.L. Mal, for the Appellant; Lalit Mohan Mahata and Prasanta Behari Mahata, for the Respondent

Final Decision : Disposed off

Judgement

1. The appellants were the writ petitioners who approached this Court more than two decades ago complaining change of names in the mutation register of respondent Municipal Corporation without any notice or hearing to the appellant/writ petitioners who are the erstwhile owners of the property. The entire dispute points out two issues for consideration i.e. whether the party respondents who are noted as occupiers of the land or property in question are the tenants under the appellants or by virtue of West Bengal Thika Tenancy Laws they became Thika Tenants as by operation of law, the State of West Bengal becomes the owner of the property. The other question is whether respondent Municipal Corporation could have changed mutation without intimating the said proposal to the owners whose names stand in the records of the Corporation. So far as the property involved whether it is Thika Tenancy property or not, cannot be gone into in this proceeding as the challenge is not with regard to the said issue but the challenge is incorporating the name of State of West Bengal as owner of the property represented by Thika Controller in the place of appellants. It is pertinent to mention that Kolkata Municipal Corporation cannot decide right, title and interest over the property by adjudicating the controversial issue arising between the parties. It is altogether a different forum which has to adjudicate such rights

of the parties. The duty of the Kolkata Municipal Corporation is to effect mutation, changes in accordance with the procedure contemplated in the Act and the Rules and also by following principles of natural justice. Whether the Kolkata Municipal Corporation has complied with the above conditions or not is the only issue that arises for our consideration.

2. According to State of West Bengal Thika Controller will decide whether it is a Thika Tenancy property or not and not the Municipal Corporation. According to the appellants a Civil Court has to decide this issue and not the Thika Controller. Be as it may, the stand of the respondent Corporation, is they have no records pointing out at whose instance such mutation was effected in the year 1994. It is also relevant to mention that none of the party respondents who were initially inducted as tenant under the erstwhile owner, a charitable trust, are not claiming any Thika Tenancy rights and they do not want to declare themselves as such.

3. In the light of the above situation, even if the property by virtue of operation of Thika Tenancy Laws vests in the State of West Bengal but before mutating the record of rights, the Municipal Corporation ought to have informed the erstwhile owner in whose name the property stood and then change the mutation record.

4. So far as disputed fact whether the land in question comes within the purview of Statute of Thika Tenancy Laws or not need not be gone into in this writ appeal and the parties are entitled to sort it out before the appropriate forum. So far as the short question which arises for consideration in this appeal, we direct the respondent Municipal Corporation to indicate the name of the trust as owner of the property who shall pay all the dues pending to be paid, in accordance with law to the Municipal Corporation and if the Controller of Thika Tenancy intends to take further action, he is at liberty to take further action in accordance with the procedure contemplated under the relevant Statute.

5. It is needless to say that the State of West Bengal through its department of Thika Tenancy is entitled to approach the Municipal Corporation if they intend to get their names changed in the name of State of West Bengal and Municipal Corporation shall adhere strictly to the procedure contemplated for effecting mutation changes i.e. after giving opportunity to all the parties concerned.

6. The Municipal Corporation shall make the entries in the mutation register in the name of the appellant/writ petitioners as it was in 1994 within a month from today. The appeal is disposed of in the light of the above observation setting aside the order of the learned Single Judge.