

(2009) 11 CAL CK 0018
In the Calcutta High Court
Case No : Writ Petition No. 9660 (W) of 2006

Smt. Shakuntala Devi Dalmia and Another	APPELLANT
Vs	
Howrah Municipal Corporation and Others	RESPONDENT

Date of Decision : 20-11-2009

Acts Referred:

Howrah Municipal Corporation Act, 1980 — Section 94B

Citation : (2010) 2 CALLT 257

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : Buddhadeb Ghosal and Mr. Tapas Mukherjee, for the Appellant; Smritikana Mukherjee and Mr. Debjit Mukherjee for the Corporation, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.

The Judgment of the Court was as follows:

1. The Court: The two petitioners in this Article 226 petition dated April 18, 2006 are aggrieved by the decision of the Howrah Municipal Corporation dated August 19, 2005 that has been submitted by a supplementary affidavit dated June 6, 2006. By the decision their application for mutation of assessment records concerning premises No. 37/1, Sailendra Nath Bose Road, Salkia, Howrah was disposed of. The decision was given in compliance with an order of this Court dated March 20, 2003 made in the petitioners' W.P. No. 4131(W) of 2003 that was taken out alleging that the corporation was not giving decision in the mutation application. The impugned decision reads as follows:

In accordance with the order passed by Hon'ble High Court in regard to the matter under above reference, after, verifying the documents submitted at the hearing and obtaining legal opinion by Chairman, Borough-II, from learned Advocate, Calcutta High Court appearing on behalf of Howrah Municipal

Corporation, I am directed by Chairman to inform you, that the prayer for mutation for both shares cannot be considered on the grounds that the property is a Debattor estate and the vendors have transferred the right by excenting sale deed on 20/1 /1986 & 18/12/1986 without the permission of District Judge; Howrah and therefore you being the applicants have not acquired the valid title in respect of the property in question.

2. The Beras of 23/1, Harganj Road, Malipanchghara, Howrah originally owned the land qua zamindars, and they let it out to one Krishnapada Bhunia, who, qua the thika tenant, was residing in the constructions erected thereon at his expense. By a registered instrument dated July 23, 1951 the Beras dedicated the land to their tutelary deity (Kuladevta), Sree Sree Shitalamata Thakurani under a registered conveyance dated May 18, 1954, Annexure P1 at p. 15, Krishnapada sold the property to the deity, represented by its shebait, the Beras. Then under a registered instrument dated July 5, 1965, Annexure P2 at p.20, the deity, through its shebait, leased out the property a permanent basis to one Jatanmani De. It was stated in the instrument that the transaction became necessary for meeting the expenses of repairing the temple and performing, the deity's seba puja. All facts pertaining to creation of the endowment were stated in the instrument. The petitioners purchased a part of the property, from Jatanmani's six (out of seven) children under a conveyance dated January 20, 1986, Annexure P3 at p.25, and the rest from Jatanmani's remaining minor son under a conveyance dated December 18, 1986, Annexure P4 at p. 13. On May 15, 1996 they submitted requisite application to the corporation seeking mutation of the assessment records. Then alleging inaction they took out the previous writ petition that was disposed of directing the corporation to give appropriate decision. This is how the impugned decision came.

3. Mr Ghosal, counsel for the petitioners, has argued that the corporation, possessing no power to go into the question of title while deciding the mutation application, not only wrongfully went into the question, but also proceeded on a wrong premise that, since Jatanmani's children transferred the debutter estate without obtaining leave of the District Judge, Howrah, the petitioners did not acquire any title to claim ownership over the property. He has relied on passages from B.K. Mukherjee's. The Hindu Law of Religious and Charitable Trusts, 5th ed. by A.C. Sen and the decisions in Sree Sree Ishwar Narayan Jiu v. Soler, ILR (1937) Cal 133, Sree Sree Sreedhar Jew v. Kanta Mohan Mullick & Ors., (1945) 50 C.W.N. 14, Sankalchan Jaychandbhai Patel v. Vithalbhai Jaychandbhai Patel and Ors., (1996) 6 SCC 453, K.G. Patel & Company v. Smt. Chandra Devi Bothra & Ors., 1997 (1) CLJ 156, Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, and Shrenik Kumar Singhee v. The State of West Bengal and Ors., (2006) 1 CLT 435 (HC).

4. The corporation is contesting the case. Since in the opposition nothing was stated about the law under which the mutation application was decided. It was directed to file a supplementary opposition stating everything about the law.

Accordingly, it has filed a supplementary opposition dated October 29, 2009 stating that in its meetings held on September 13, 2002 and October 16, 2004 of the Mayor-in-Council prescribed the detailed procedure for dealing with mutation applications. Ms. Mukherjee, counsel for the corporation, has submitted that the corporation was wrong in going into the question of title and holding that the petitioners, purchasing the property without obtaining leave of the District Judge, Howrah, did not acquire any title to claim ownership over it. She has said that, but then, in the affidavits the corporation has stated that the shebait could not transfer the property that was a thika property; that the petitioners did not produce the instrument whereunder the property was dedicated by the Beras to the deity; and that the area of the property mentioned in the conveyances produced by the petitioners does not tally with the area noted in the assessment records which were never mutated consequent upon transfer of the property by the deity whose name is still recorded as the Assessee.

5. Even though counsel for the corporation has conceded, over the course of arguments, that the corporation did not possess any power to go into the question of title, I think it will be appropriate on my part to examine the question and record my opinion on it. As is evident from the impugned decision the mutation application was turned down on the sole ground that having purchased the property that the shebait of the deity leased out to Jatanmani without obtaining leave of the District Judge, Howrah, the petitioners did not acquire any right to claim ownership over it and seek mutation of the relevant assessment records. The other grounds taken in the opposition and argued by counsel were not grounds on which the corporation refused the prayer for mutation. Suffice it to say that the corporation cannot justify the impugned decision by such grounds taken for the first time in the opposition, though I am of the view that there is no merit in anyone of them as well.

6. The principal question is whether the shebait was required to obtain permission from the district judge concerned for alienating the property. As tightly submitted by Mr Ghosal, a complete answer to the question is available from the single bench decision of this Court in *Sree Sree Ishwar Narayan Jew v. Soler* ILR (1937) Cal 133. In that case a shebait of the deity applied to the Court for permission to transfer a part of the debutter as he needed funds for repairing the rest. His Lordship (Ameer Ali, J.) held that a shebait, not a trustee in law has to act for the deity according to the circumstances and his dealings with the property, vested in the deity, are valid transactions, if they complied with certain conditions, generally referred to as necessity; that there, is no power in the Court to grant an application filed by a shebait seeking sanction to transactions on the ground of necessity; and that there is no statute that deals with debutter and there can be no question of a shebait being appointed guardian of the properties of the deity. In *Sree Sree Sreedhar Jew v. Kanta Mohan Mullick and Ors.*, (1945) 50 CWN 14 a single bench of this Court (Gentle, J.) held (on p.28) that whilst there are similarities in the status of a minor and of a thakur, e.g, they are both incapable of managing their property and protecting their

interests, there are also dis-similarities, e.g. the Indian Contract Act, 1872 denies a contractual capacity to a minor, but does not extend that incapacity to a thakur.

7. There are two kinds of religious trusts both of which are ancient and highly popular in Hindu society. One of them is known as debutter or endowment in favour of an idol, while the other can be described as mutt or marham, which means a religious establishment endowed for the benefit of certain classes of ascetics or religious men belonging to particular sects or congregations. An idol is not an infant, it is a juristic person. A shebait is a mere manager, not the owner of the debutter property, the idol is the owner, but only in an ideal sense. There is always a human personality linked up with this ideal personality, and the shebait or manager of the deity must of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property. There is no provision that obliges a shebait to take prior permission of any Court for alienating a property owned by the deity, it is only that if the alienation is challenged at a future date, the alienee, in spite of the order, will have to prove as a fact that there was legal necessity for the transfer or that he made enquiries and was reasonably satisfied that such necessity existed: A shebait is not a trustee in the proper sense of the word and the Indian Trusts Act, 1882 has no application to the case of a Hindu religious endowment. The Court, therefore, has no jurisdiction to, grant an application by a shebait to sanction his transaction on the ground of necessity. (B.K. Mukherjee's The Hindu Law of Religious and Charitable Trusts, 5th ed. by A.C. Sen; paras.4.1A, 6.15, 6.16., 6.38, 6.67 and 6.38).

8. I am, therefore, unable to see on what basis the corporation concluded, that the transaction under which the shebaits of the deity alienated the property to Jatanmani could be entered into only if leave of the District Judge, Howrah was obtained. The question whether any legal necessity of the deity was the warrant for entering into the transaction could be raised only by one claiming interest in the property; and it is nobody's case that any successor in office of the shebaits or any person claiming any interest in the property ever questioned the validity of the transaction through which Jatanmani acquired title to the property. I have not been shown any law that required the parties to the transaction to obtain leave of the District Judge, Howrah. I am, therefore, unable to uphold the decision of the corporation that the petitioners, purchasing the property from Jatanmani's children, did not acquire any title to claim ownership over it. In my opinion, title lawfully passed from the deity, through its shebaits: to Jatanmani: and then from Jatanmani, according to the law of inheritance, to her children, and lastly from Jatanmani's children, through sale, to the petitioners. It is, therefore, wrong to say that the petitioners did not acquire any right to mutation of the assessment records concerning the property.

9. The other decisions have been cited to me in support of the contention that while dealing with the petitioners' mutation application, the corporation could

not go into the petitioners' title to the property. The decisions have been rightly cited for the proposition. In *Sankalchan Jaychandbhai Patel and Others Vs. Vithalbhai Jaychandbhai Patel and Others*, it was held (para.7) that it is a settled law that mutation entries are only to enable the state to collect revenues from the persons in possession and enjoyment of the property; that right, title or interest in the property should be established dehors the entries; that the entries are only one of the modes of proof of the enjoyment of the property; and that mutation entries do not create any title or interest therein. In *K.G. Patel & Company v. Smt. Chandra Devi Bothra and Ors.*, 1997 (1) CLJ 156, it was held (para.9) that it is a settled principle of law that disputed question of title cannot be gone into in any mutation proceedings. In *Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others*, it was held (para.27) that mutation entries do not convey or extinguish title to the property. In *Shrenik Kumar Singhee Vs. State of West Bengal and Others*, relying on *K.G. Patel*, it was held (para.33) that the municipal authority cannot adjudicate the question of title raised by the claimants. Therefore, the consistent view taken by the Courts is that in mutation proceedings the authority dealing with the matter cannot go into the question of title of the parties to the property.

10. In this case, none questioned the petitioners' title to the property. As a matter of fact, the corporation of its own accord raised the question, when there was absolutely no occasion for it to raise it I say so first, for the reason that no provision of law empowered it to raise the question and adjudicate it; and secondly, for the reason that it proceeded on a wrong premise that the transaction through which Jatanmani acquired the property did not create her title to alienate the property, because the deity's property was alienated by the shebait without obtaining leave of the district judge concerned. There is no reason to say that the petitioners were not entitled to an order allowing their mutation application, it is not the case that the application was not in form. At the date the deity transferred the property to Jatanmani it was not a thika property, for Krishnapada, the thika tenant, had already transferred the property to the Beras the landlords. The corporation could not turn down the application on the ground that Jatanmani and her children did not apply for mutation, or that the area of the property mentioned in the conveyances under which the petitioners purchased it, did not tally with the area recorded in its assessment book. It has no reason to concern itself with these things. Inaction on the part of Jatanmani and her children, if any, cannot deprive the petitioners of the benefit of mutation. I am, therefore, of the view that the corporation possessing the power to mutate the assessment records, as is evident from the provisions of Section 94B of the Howrah Municipal Corporation Act, 1980, ought to have allowed the mutation application. In my opinion, the petitioners are entitled to a mandamus.

11. For these reasons, I allow the writ petition, set aside the impugned decision and command the corporation, especially the Mayor-in-Council, to mutate the assessment book and other related records incorporating the names and other

necessary particulars of the petitioners. Order for the purpose shall be issued by the corporation within a fortnight from the date of communication of this order to the commissioner thereof. No costs. Certified xerox according to law.