

(2013) 11 CAL CK 0023

Calcutta High Court

Case No: W.P. No. 25915 (W) of 2013

Dinesh Kumar Goyal

APPELLANT

Vs

Kolkata Municipal Corporation

RESPONDENT

Date of Decision: Nov. 6, 2013

Citation: (2014) 1 CHN 467

Hon'ble Judges: Soumen Sen, J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

Soumen Sen, J.

An affidavit of service is filed, let the same be kept on record. The writ petitioner claims to be the owner of a property situated at No. 2 Debendra Ghosh Road, Police Station-Bhowanipore, Kolkata - 700025, by virtue of a registered deed of conveyance dated May 4, 1990.

2. The writ petitioner alleges that in the later part of the year 2011 and/or early 2012, his maternal aunt being the respondent No. 3 having close relation with respondent No. 4, who is a promoter realtor, impressed upon the petitioner that the said proposal put forward by the said respondents No. 3 and 4. The petitioner, accordingly, had executed various documents including a registered power of attorney dated April 25, 2012.

commercial exploitation of the premises in question by raising a multi-storied building would be profitable and on the basis of such representation, the petitioner agreed to

3. The petitioner also claims to have paid municipal rates and taxes in respect of the premises and the last payment was made on December 10, 2012 in respect of the taxes upto third quarter for assessment year 2012-13.

4. It is contended that towards the end of the year 2012, the petitioner became suspicious about the conduct and reluctant attitude shown by the private respondents vis-à-vis the development assignment. The petitioner after making enquiry came to learn that on the basis of the purported power of attorney dated April 25, 2012, a registered deed of conveyance was executed by the respondent No. 3 in favour of the respondent No. 4 on December 10, 2012. Over and above, the petitioner also learnt that Kolkata Municipal Corporation on the basis of the said purported deed of conveyance allowed mutation in favour of the respondent No. 4 by flouting all norms.

5. The petitioner also filed a Civil Suit being Title Suit No. 13657 of 2013 in the Court of the learned Civil Judge (Senior Division), Fourth Court at Alipore, South 24-Paraganas for cancellation of the deed of conveyance dated December 10, 2012 and for injunction. In the said proceedings, the learned Trial Judge passed an order restraining the defendants No. 1 and 2, who are the private respondents No. 3 and 4 in the writ application, from transferring and/or alienating the property in suit to any third party till July 10, 2013. The respondent No. 4 in this proceeding was, also, restrained from interfering with the peaceful enjoyment and occupation of the plaintiff/petitioner in respect of the property in suit till July 10, 2013. The said interim order was, however, extended from time to time. Curiously in the said civil suit, Kolkata Municipal Corporation was not made a party. In this proceeding, a bifurcated claim was made by the petitioner in so far as mutation proceeding is concerned, which had taken place before filing of the suit, on the basis of the deed of conveyance the legality and propriety has been adjudicated by the Civil Court.

6. The averments made in the writ petition would clearly show that the dispute is civil in nature and, in my view, the appropriate remedy of the writ petitioner would have been to agitate all such points in civil suit and not in the writ proceeding. The corporation had granted mutation on the basis of a registered deed of conveyance and apparently it does not appear that the corporation has committed any illegality, since the corporation is not there to decide the right, title and interest of the parties in respect of the suit premises. Prima facie, it appears that when the deed was executed, the registered power of attorney was not revoked. Accordingly, the respondent No. 4 could claim some right under the law, which need not be discussed and elaborated while disposing of this writ application.

7. Since the dispute, essentially, is civil in nature and the petitioner has filed a suit in which the deed of conveyance has been challenged, it would not be proper for this Court to pass any order in the writ application. The petitioner is, however, free to approach the Civil Court, if the petitioner is, otherwise, entitled in law to ventilate his grievances.

8. In view of the aforesaid finding, this Court is not inclined to interfere with the mutation granted by the corporation. This Court is, however, of the opinion that it would be open to the petitioner to agitate all points that have been raised in this

writ petition in the pending civil suit.

9. It is made clear that the observations made while disposing of this writ petition are tentative and only for the purpose of disposing of the same and it shall not influence the pending proceeding in the event the same and similar points are raised.

10. With the aforesaid observations, the writ petition is disposed of without, however, any order as to costs. Xerox certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.