

CONSTITUTIONAL WRIT

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on : June 7, 2010

W.P.No.5362(W) of 2007

Sri Karnadhar Halder

-vs-

The State of West Bengal & Ors.

POINTS

Mutation Of Assessment Records – On the ground that the Sale Deed do not establish that the seller of the property was not the true owner there of – Whether the municipality is justified in withholding the mutation of the assessment records recording the petitioner's name as the owner of the property – Constitution Of India, Article 226 & Municipal law .

FACTS :-

The petitioner in this art.226 petition dated March 15, 2007 is alleging that his application for mutation of the relevant assessment records has not been disposed of by the municipality. The municipality is contesting the case and it has filed an opposition. Facts revealed by the pleadings of the parties are these. The petitioner purchased the property in question under a registered sale deed. Thereupon he duly submitted an application requesting the municipality to mutate the relevant assessment records recording his name as the owner of the property. Since the municipality did not dispose of the application, he brought this petition.

HELD :-

The municipality is not inclined to mutate the assessment records recording the name of the petitioner as the owner of the property on the ground that according to it the things stated in the sale deed do not conclusively establish that the seller of the property was the owner of the property.

Para 5

In the mutation proceedings the municipality is not to examine whether the petitioner has acquired ownership over the property. It is not the municipality's case that some other person has claimed ownership over the

property. Needless to say that mutation of the assessment records recording the petitioner's name as the owner of the property shall not make him the owner, if he is not actually the owner. Decision in the mutation proceedings cannot extinguish or create ownership, it is relevant only for the possession and collection of rates and taxes. Para 6

It is absolutely of no consequence that after the mutation of the assessment records the petitioner may seek the municipality's sanction to erect construction according to building plan. If the petitioner pays rates and taxes and develops the property, though he is not the owner thereof, then he will do the things at his own peril. But anticipating such an eventuality the municipality cannot refuse to mutate the assessment records in the face of the sale deed. The mutation decision ought to have been given by the municipality. Para 7

Mr. Satyajit Mondal
Mr. Sanjib Duttafor the petitioner
Mr. S.P. Ghose
Ms. Mitali Bhattacharyafor the state
Mr. S.P. Purkaitfor the municipality

THE COURT :1) The petitioner in this art.226 petition dated March 15, 2007 is alleging that his application for mutation of the relevant assessment records has not been disposed of by the municipality. The municipality is contesting the case and it has filed an opposition.

2)Facts revealed by the pleadings of the parties are these. The petitioner purchased the property in question under a registered sale deed. Thereupon he duly submitted an application requesting the municipality to mutate the relevant assessment records recording his name as the owner of the property. Since the municipality did not dispose of the application, he brought this petition.

3)Mr Purkait, counsel for the municipality, submits as follows. From the sale deed it does not appear that the person selling the property was the owner thereof. Unless the petitioner establishes that he is the owner of the property, he cannot ask the municipality to record his name in the assessment records as the owner of the property. The municipality is ready and willing to mutate the assessment records recording the name of the petitioner as the occupier of the property.

4)The question is whether the municipality is justified in withholding the mutation of the assessment records recording the petitioner's name as the owner of the property.

5)The municipality is not inclined to mutate the assessment records recording the name of the petitioner as the owner of the property on the ground that according to it the things stated in the sale deed do not conclusively establish that the seller of the property was the owner of the property.

6)In the mutation proceedings the municipality is not to examine whether the petitioner has acquired ownership over the property. It is not the municipality's case that some other person has claimed ownership over the property. Needless to say that mutation of the assessment records recording the petitioner's name as the owner of the property shall not make him the owner, if he is not actually the owner. Decision in the mutation proceedings cannot extinguish or create ownership, it is relevant only for the possession and collection of rates and taxes.

7)It is absolutely of no consequence that after the mutation of the assessment records the petitioner may seek the municipality's sanction to erect construction according to building plan. If the petitioner pays rates and taxes and develops the property, though he is not the owner thereof, then he will do the things at his own peril. But anticipating such an eventuality the municipality cannot refuse to mutate the assessment records in the face of the sale deed. I am of the view that the mutation decision ought to have been given by the municipality.

8) For these reasons, I dispose of the petition directing the municipality to mutate the relevant assessment records recording the name of the petitioner as the owner of the property within four weeks from the date of communication of this order. It is made clear that nothing herein or in the

decision of the municipality shall make the petitioner owner of the property,
if he is not otherwise the owner thereof. No costs. Certified xerox.

(Jayanta Kumar Biswas, J)

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