

15.05.2025
Item No.09
Court No.19.
S. De

W.P.A. 24881 of 2024

Kartick Shaw.

Vs

The State of West Bengal & Ors.

Mr. Shashwat Nayak,
Mr. K.N. Jana, ...for the petitioner.

Mr. Chandi Charasn De, Ld. AGP,
Mr. Anirban Sarkar, ...for the State.

1. Affidavit-of-service filed in Court today, be kept with the records.
2. The writ petitioner and the respondents/State are represented by their respective learned advocates.
3. By filing the instant writ petition, the writ petitioner has prayed for issuance of a writ against the respondent authorities, more specifically, against the respondent no.3 to effect mutation in the name of the writ petitioner in respect of property situated at Plot No.60, Block-CB, Sector-I, Salt Lake, Bidhannagar, Kolkata.
4. In course of his argument, Mr. Nayak, at the very outset, draws attention to this Court to page nos.51 and 52 of the instant writ petition being a copy of the letter dated 12.07.2011 as written by learned advocate for the writ petitioner addressed to the respondent authorities requesting them to dispose of the

application for mutation as made by the writ petitioner.

5. At this stage, Mr. Nayak, draws attention of this Court to page no.62 of the instant writ petition being a copy of the Memo dated 05.09.2011 as issued by the respondent no.3 authority, addressed to the writ petitioner asking him to produce certain documents. It is submitted that though soon thereafter, the writ petitioner has forwarded all the documents to the respondent no.3 authority for effecting mutation as prayed for, the respondent no.3 authority, by issuing a Memo dated 07.09.2012, asked the writ petitioner to pay Government fees in terms of a notification dated 22.06.2012, for effecting such mutation, as prayed for.
6. At this juncture, Mr. Nayak again draws attention to this Court to page no.66 of the instant writ petition being a copy of the order dated 13.08.2014, as passed by a co-ordinate Bench in W.P. 34571(W) of 2013, whereby and whereunder, the said co-ordinate Bench, while disposing of the said writ petition, directed the respondent authorities to carry out mutation in the name of the writ petitioner in terms of the judgment and order dated 27.09.2013, as

passed by another co-ordinate Bench in W.P. No.17025 (W) of 2013, within a specified period.

7. In course of hearing, Mr. Nayak has handed over a server copy of the order dated 22.04.2025, as passed by a Division Bench of this Court in MAT 1520 of 2017 (State of West Bengal Vs. Katick Shaw). It is submitted that from the said order dated 22.04.2025, it would reveal that the appeal of the respondent/State against the judgment and order dated 13.08.2024, in W.P. 34571(W) of 2013, was dismissed for default.
8. In course of hearing, Mr. Nayak also places his reliance upon the judgment dated 27.09.2013, as passed in W.P. 17025(W) of 2013 (***Sri Pawan Kumar Agarwal & Anr. Vs. The State of West Bengal & Ors.***). It is submitted that from the said judgment dated 27.09.2013, it would reveal further that the said co-ordinate Bench, while disposing of a similar such case, directed the respondent authorities to carry out the mutation without insisting upon payment of any permission fees in terms of the notification dated 22.06.2012. It is submitted that despite passing of the judgment and order dated 13.08.2014, the respondent no.3 has practically did nothing and sat tight over the matter.

9. Per contra, Mr. Dey, learned AGP, appearing on behalf of the respondent/State and its functionaries, draws attention of this Court to a report dated 29.11.2024, as submitted by respondent no.3 authority, which is taken on record. It is submitted by Mr. De that by a letter dated 03.04.2019, the writ petitioner was communicated that his request for mutation cannot be entertained on account of non-payment of mutation fees.

10. Considering the rival submissions of the learned advocates for the contending parties and after careful consideration of the entire materials as placed before this Court, this Court considers that for effective adjudication of the instant case, the judgment dated 27.09.2013, as passed in the case of **Sri Pawan Kumar Agarwal & Anr.**(Supra), is required to be looked into. The relevant portion of the judgment of **Sri Pawan Kumar Agarwal** (Supra) is quoted hereinbelow in verbatim :

“As such this court concludes by holding that since lease does not prohibit bequest by will, the vesting of testator’s right with a legatee on the basis of the probated will cannot be declared invalid by the State and since such vesting is made by operation of law under the Indian

Succession Act, the State Authority cannot declare such vesting of leasehold right of the original lessee upon the petitioners, as illegal and as such I hold that no permission of the State authority for such transfer is necessary to legalize such transfer by will inasmuch as such concept of grant of post facto permission by the State to legalize such will is unknown to Indian Succession Act, and for similar reason I hold that State authority cannot demand permission fees in terms of the impugned notification dated 22nd June 2012 for effecting mutation of the names of the petitioners in the official records of the State Authority.”

11. As rightly pointed out by Mr. Nayak that in the judgment of **Sri Pawan Kumar Agarwal** (Supra), it is the categorical finding of a co-ordinate Bench of this Court that the respondent no.3 authority is duty bound to carry out mutation in case of a testate succession without insisting upon payment of any fees in terms of the notification dated 22.06.2012. In fact, another co-ordinate Bench, while disposing of W.P. 34571(W) of 2013, passed similar such order dated 13.08.2014.
12. No material could be placed on behalf of the respondent/State as to why the respondent no.3 is not carrying out the mutation as prayed

for by the writ petitioner on the basis of a probated will in his favour.

13. In view of such, this Court, while disposing of this instant writ petition, directs the respondent no.3 to carry out the mutation in respect of the aforesaid property in the name of the writ petitioner without insisting upon payment of any fees in terms of the notification dated June 22, 2012.

14. The entire exercise as indicated in the foregoing paragraph is to be completed within thirty working days from the date of communication of server copy of this order to the respondent no.3.

15. Liberty is given to the learned advocate-on-record of the writ petitioner to communicate the server copy of this order to the respondent no.3. The respondent no.3 will act on the basis of the server copy.

16. With the aforesaid observation, W.P.A. 24881 of 2024, is, thus, disposed of.

17. Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)