

Appellant Vs. Respondent

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Court : Kolkata

Decided On : Apr-28-2014

Judge : I. P. Mukerji

Appellant : Appellant

Respondent : Respondent

Judgement :

ORDER

SHEET ACR22012 IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction ORIGINAL SIDE IN THE MATTER OF :DEITY BEING BRINDABAN BEHARI JEW -ANDIN THE MATTER OF :DEBESH CHOWDHURY & ANR.

BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 28th April, 2014.

Mr.S.K.Mallick, Adv.appears for the applicants.

Mr.S.Roy Chowdhury, Adv., appears for the State.

The Court : This is an application by the shebait and the trustees of four debottar properties for their sale.

The application is made under section 7 of the Charitable and Religious Trusts Act, 1920, read with section 34 of the Indian Trust Act, 1882.

The four properties involved are premises no.17, Gallif Street, Kolkata; premises no.17/1A, Gallif Street, Kolkata, premises no.11, Mariaditch Lane, Kolkata; and 16, Gallif Street, Kolkata.

Gallif Street is now known as Mahatma Sisir Kumar Sarani, Kolkata-700003.

Learned counsel appearing for the Thika Controller takes the objection that all these four properties are vested in the State under the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001.

According to Mr.Mallick, learned counsel appearing for the applicants, there is no such determination as of now.

He further submits that sufficient evidence has not been brought on record by the Thika Controller to prove that these properties are so vested.

Whatever may be the case, section 21 of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 imposes a clear bar on the Court to decide any question which is to be determined by the Thika Controller.

Section 5(3) of the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 very plainly provides that the question whether a person is a thika tenant or not is to be decided by the Thika Controller.

Since the decision whether these properties are thika properties or not is within the domain of the Thika Controller, this Court should not embark upon adjudication of this issue.

In fact, there is clear prohibition in that respect by the statute.

In those circumstances, this application is disposed of by directing the Thika Controller to decide by July 31, 2014 the question whether the above four properties are thika properties or not.

This Court also notes that for so many years this determination has not been made by the Thika Controller.

If the Thika Controller cannot make such determination by July 31, 2014, it will be taken that the subject properties are not thika properties and the applicants may proceed accordingly.

Thika Controller upon notice to all Such determination will be made by the the interested parties including the applicants herein and upon giving them hearing and by passing a reasoned order.

Urgent certified photocopies of this order, if applied for, be supplied to all the parties subject to their compliance with all the requisite formalities.

(I.P.MUKERJI, J.) tk

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