

**Circuit Bench of Calcutta High Court
at Jalpaiguri**

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sm **30.08.
2019**

W.P.A. 402 of 2019

**Subrata Sarkar
Versus
The State of West Bengal & Ors.**

Mr. Sunil Kumar Sarkar.
.....for the petitioner.

Mr. Bhaskar Roy Mahashya.
.....for the respondent no.6

Mr. Haider Ali.
.....for the respondent no.8.

Mr. Subir Kr. Saha,
Mr. Bikramaditya Ghosh.
.....for the State.

The affidavit of service filed in Court today be kept on record.

The grievance of the petitioner is that, although the petitioner is one of the sons of the respondent no.6 and belongs to a refugee family having settled in India from East Pakistan (now Bangladesh), gift deeds were executed by the respondent-authorities only in favour of the father, that is respondent no.6, and the other two sons, being respondent nos.7 and 8, thereby leaving out the present petitioner, although the scheme of the refugee rehabilitation jurisprudence in West Bengal pertains to conferment of title initially on

the *Karta* of the family by way of allotment, on behalf of all the family members in occupation of the premises-in-question, and thereafter by executing deeds of gift in favour of the members of the family in possession of the property in question.

Learned counsel for the petitioner cites a judgment in support of his contention, reported at *AIR 1958 Calcutta 257*, for the proposition that the State or the Government cannot be a 'person' as contemplated under the General Clauses Act and as such the deeds of gift were bad in law.

It is further submitted that the petitioner's representation for rectification of the gift deed, thereby restoring the petitioner's title to the suit property as well, was never considered by the respondents, which was contrary to law.

As regards the first submission of the petitioner, the same cannot be accepted in the present case, if not for any other reason, for the simple reason that the relevant gift deed was executed by the Governor of the State of West Bengal, who, it cannot be disputed, is an individual, coming within the expression of a 'person' as contemplated in the General Clauses Act. That apart, the cited judgment was rendered in a different context and pertained to certain government orders passed in connection with the Essential

Commodities Act, 1955 and are not directly applicable in the present context.

As far as the other contention of the petitioner is concerned, the respondent-authorities, once the gift deed was executed by them and registered, do not have any power or authority to cancel such registered deeds and/or to carry out any rectification in the said deeds which, within the contemplation of the Specific Relief Act, 1963, is entirely within the domain of a civil court.

As such, no useful purpose will be served in the authorities looking into the representation given by the petitioner, which, in fact, would waste further time for the petitioner in getting his legitimate dues and rights, if any, from an appropriate forum.

Accordingly, W.P.A.402 of 2019 is dismissed. However, the petitioner is given the liberty to approach an appropriate civil court having jurisdiction, with the grievance ventilated in the present writ petition. If such a proceeding is taken out, the same shall be adjudicated in accordance with law upon due consideration of the evidence and materials placed on record before the said court, without being influenced unduly by any observation made herein.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties upon compliance of usual formalities.

(Sabyasachi Bhattacharyya, J.)