

03.08.2021
rc/jb.
ct.no.10
Item No.02

WPA No. 5282 of 2018
M/s Western Engineering Works
Versus
The State of West Bengal & Ors.

(VIA VIDEO CONFERENCE)

Mr. Aniruddha Chatterjee
Mr. Srijib Chakraborty ...for the petitioner

Mr. Amitesh Banerjee
Mr. Suddadev Adak ...for the State

The grievance of the petitioner is directed against a communication dated April 06, 2018 passed by the Joint Secretary, Government of West Bengal (“the impugned notice”).

The brief facts of the case culminating in this petition are that the petitioner was awarded a plot of land for a period of 999 years measuring approximately 10 cottahs at Block-CN-3, Sector-V, Salt Lake, West Bengal (“the plot”) by the respondent authorities. The possession of the plot was also handed over to the petitioner on September 05, 1985. It is significant to mention that the lease deed entered into by and between the parties specifically stipulated for a time period by which the petitioner was to complete construction on the plot. The lease deed also provided for restrictions on transfer of the lease deed. On

November 24, 2006 the petitioner was served with a notice for resumption on the ground that the petitioner had failed to carry any construction at the plot for approximately 20 years. Thereafter, the petitioner began a spate of correspondence whereby it sought permission from the respondent authorities on diverse grounds. Ultimately, the petitioner assailed the resumption notice issued by the State-respondent by filing a writ petition being W.P.No. 6670(W) of 2010. By an order passed by a Co-ordinate Bench of this Hon'ble Court, the petitioner was granted a fixed time frame within which to complete the construction on the plot i.e. by March 31, 2015. The order dated December 19, 2013 was subsequently modified on December 19, 2014 whereby the time period for completion of construction was further extended. It appears that notwithstanding the orders passed in W.P.No. 6670(W) of 2010 the petitioner was unable to carry out any construction on the plot. Ultimately, the respondent authorities by the impugned notice cancelled the leasehold right of the petitioner. Hence, this petition.

It is submitted by Mr. Chatterjee, Advocate appearing on behalf of the petitioner, that the impugned notice is liable to be set aside on the ground that the petitioner had requested for grant of permission for change of user of the plot from a Motor Training School to a Hotel with Banquet and

Restaurant facilities which was not considered by the respondent authorities. It is also submitted that the impugned notice does not contain any reasons whatsoever and is liable to be set aside. Mr. Chatterjee, also relies on the order dated 19th December, 2013 and 19th December, 2014 passed in W.P.A. 6670 of 2010 to contend that the time to complete the construction was ultimately extended till 31st December, 2017 subject to a plan being sanctioned which had been submitted by the petitioner to the respondent authorities. The petitioner also relies on diverse correspondence which had been exchanged by and between the parties between 18th December, 2015 till the issuance of the impugned notice whereby the petitioner had sought for several permissions and clearances. It is also submitted that though some construction has taken place at the plot but the primary reason for not completing the construction was because of the delay on the part of the respondent authorities in granting clearances and permissions. Mr. Chatterjee also relies on a judgment reported in the case of *Ashish Kr. Ghosh vs. State of West Bengal* (2009 SCC Online Calcutta 1948) to contend that a lessee has a right to assign leasehold property on certain terms and conditions.

Mr. Banerjee, Senior Advocate appearing on behalf of the State, submits that the petitioners have approached this Court with unclean hands. He submits

that the petitioner was allotted the plot as far back in 1985 and notwithstanding orders passed in an earlier writ petition, the petitioner has failed to carry out construction. On the contrary, the petitioner is seeking to hold on to the plot on frivolous and false pretexts. It is further submitted that the terms of the lease agreement categorically provide for a right of resumption in case that the petitioner was unable to carry out construction and there are no justifiable grounds whatsoever to interfere with the impugned notice. Mr. Banerjee also submits that notwithstanding the correspondence which has been exchanged during the interregnum, there is no earthly reason why the petitioner could not complete construction. Hence, the impugned notice does not warrant any interference.

It is an indisputable and incontrovertible fact that notwithstanding having been given an earlier opportunity in W.P.No. 6670(W) of 2010, the petitioner has been unable to complete construction on the plot. It is pertinent to mention that the petitioner has been in possession of the plot of land for nearly 35 years without adhering to the conditions of the lease agreement dated July 24, 1985 entered into by and between the parties. It is common knowledge that the price of such plots have drastically appreciated over the last three decades. I have also perused the impugned notice and I find that there is no impropriety,

unreasonableness, perversity nor contravention of any law which warrants any interference whatsoever with the impugned notice. The request of the petitioner for change of user cannot be a ground to justify or explain as to why the petitioner had sat idle on the plot without carrying out the necessary construction.

Significantly, the lease executed by and between the parties on 24th July, 1985 stipulated that the plot was meant for the purposes of setting up of a weigh-bridge/motor training school. By the said agreement the petitioner had been inter alia directed to pay 'salami' of Rs.2,00,044/-. It also appears that in the year 2010, the petitioner had also sought for permission for transfer of the leasehold right to one M/s. Prithvi Infra-Project Pvt. Ltd. Thereafter the petitioner sought for change of user from a motor training school to a commercial building. The petitioner may have a plethora of reasons and excuses as to why construction has not been completed, but the fact remains that the petitioner is in violation and breach of its express contractual obligations and now seeks to cling on to the plot on some pretext or the other. In fact, in the light of the subsequent events which have not transpired in respect of the plot and keeping in view the escalation of land prices in the area over the last three decades there ought to be no discretion exercised in favour of the petitioner. It is obvious that the petitioner

is simply attempting to “trade” or “speculate” or “cash in” in respect of the plot when the petitioner company is admittedly in breach of its contractual obligations. The authority cited by the petitioners is clearly distinguishable and inapposite to the facts of the instant case. I am also of the view that to exercise any discretion in favour of the petitioners in the facts of the instant case is to reward a party who is not only in breach of its contractual obligations but has also been deliberately indolent.

It is fundamental to writ jurisdiction that if a claim made by the petitioner is frivolous, vexatious or prima facie unjust, the Court ought to decline to invoke its extra-ordinary power. It is also well settled that the discretion vested in Courts under Article 226 of the Constitution is a judicial discretion to be exercised according to judicial principles. Accordingly, in the light of the admitted failure on the part of the petitioner in complying with its contractual obligations for more than nearly three decades, I find the grievance of the petitioners to be unjust, unfair and unreasonable in the facts and circumstances of the instant case. I am also of the view that the writ jurisdiction was never intended to encourage or facilitate avoidance of contractual obligations voluntarily incurred by a party.

I am also of the view that the bona fides and motive of the petitioner are highly suspect and the

petitioner is simply speculating and trading in respect of the plot of which the petitioner company has a leasehold right for 999 years with ulterior and oblique motive. In fact, in the light of the events which have transpired subsequent to the execution of the lease agreement in 1985 and the original purpose for which such leases had been granted, I am of the view that the conduct of the petitioner company borders on being fraud practiced on the State.

In view of the aforesaid, I find no merit in the writ petition. WPA No. 5282 of 2018 stands dismissed.

There shall be, however, no order as to costs.

The respondents are at liberty to act expeditiously in accordance with law in resuming the plot.

(Ravi Krishan Kapur,J)