

19-02-2021
Item no. 5
Subrata

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

MAT No.1673 of 2014
Chittaranjan Debnath
-vs-
The State of West Bengal & Ors.

Mr. Debasish Chattopadhyay
Mr. Kaustav Mukherjee ...for the appellant

Mr. Tapan Kumar Mukherjee
Mr. Bipin Ghosh ...for the State

The question which falls for consideration in this appeal is whether the respondents can demand from the appellant permission fee in terms of a notification dated 12th July 2005 issued by the Urban Development Department, Government of West Bengal.

The notification provides very specifically that with prospective effect all transferees of plots of land at Kalyani Township leased out by the government would have to obtain permission from it for transfer and pay permission fee, as stipulated.

One Tribhuban Pal Goyal, on 26th November 1987, obtained lease from the government of 9 cottahs 7 chitaks 30 sq.ft. of land in Kalyani, and thereafter built a house on it.

Clause 2(x) of the deed of lease provided that in case the lessee was desirous to sublease or assign the lease in favour of a transferee, he would have to seek permission from the government, and that if there was silence on the part of the government for a period of two months from the date of receipt of such request, permission would be deemed to have been given.

In a supplementary paper book allowed by this court to be used by the appellant, an application of the lessee received on 18th July 2000 by the government has been brought on record. By this application Goyal sought its permission to grant a sublease or execute a deed of assignment of the lease to the appellant-writ petitioner.

There was no response to the application. By operation of clause 2(x) of the 1987 lease, there was deemed permission to transfer accorded to Goyal in favour of the appellant.

The factum of this application was recited in the registered deed of assignment or sublease between Goyal and the appellant dated 14th June 2001.

Therefore, there was a valid transfer of the leasehold interest in favour of the appellant on or about 14th June 2001. Subsequently, on 29th April 2009, the appellant asked for mutation in his favour by the respondent-authorities. At that time the transfer fee in terms of the said notification was demanded by the respondents and mutation was refused.

We are of the opinion, there was deemed consent of the government to the transfer of the leasehold interest by Goyal in favour of the appellant. It was followed by execution of the valid sublease or assignment of lease on 14th June 2001. Therefore, the transfer became effective much before coming into operation of the notification dated 12th July 2005. In our opinion, no transfer fee in terms of this notification, which was prospective in operation, was payable by the appellant.

In view of the above, we allow this appeal by setting aside the impugned judgement and order dated 3rd September 2014 passed by the learned single judge by directing the respondent-authorities to forthwith mutate the

name of the appellant as a sub-lessee/assignee of lease by virtue of the lease deed or deed of assignment dated 14th June 2001, within two months from communication of this order.

[I.P. Mukerji, J]

[Md. Nizamuddin, J]