

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**WPA No. 11406 of 2020**

**Jyoti Sankar Bera and others  
Vs.  
The State of West Bengal and others**

|                                |   |                                               |
|--------------------------------|---|-----------------------------------------------|
| For the petitioners            | : | Mr. Soumen Dutta,<br>Mr. Subhadeep Chatterjee |
| For the respondent-authorities | : | Mr. Samrat Sen,<br>Mr. Amrita Panja Moulick   |
| Hearing concluded on           | : | 24.02.2021                                    |
| Judgment on                    | : | 02.03.2021                                    |

**Sabyasachi Bhattacharyya, J:-**

1. The writ petitioners are unemployed youth. The scheme 'Karma Tirtha' was introduced by the Government of West Bengal to grant opportunity to such unemployed youth in different Districts to do business in order to mitigate their financial distress.
2. Funds were duly allocated by the Government to the Medinipur District Industrial Centre for development of shop rooms on Government land and 30 shops were constructed accordingly by the concerned Block Development Officer under the supervision of the District Industrial Centre, Paschim Medinipur. The petitioners were selected for being allotted shops.
3. Under the scheme, the General Manager, Paschim Medinipur District Industrial Centre (on behalf of the State Government) entered into an

agreement of lease with the Narayangarh Karma Tirtha, a registered society formed for the purpose of looking after the stalls. The said society was to act as a Special Purpose Vehicle (SPV) to implement the scheme. The lease was in respect of the property where the shops-in-question are housed.

4. On January 15, 2019, the said Samity executed sub-lease agreements with the petitioners, thereby allotting the shops to the latter. Possession of the shop-rooms/stalls were also handed over formally to the petitioners.
5. The petitioners invested the precious little money which they had on decorating and furnishing shop rooms, the inauguration of which was scheduled to be held on July 3, 2019. However, on July 2, 2019 several villagers assembled near the shops and locked all the shop rooms, thereby ousting the petitioners therefrom. Consequently, the inauguration of the said shop rooms never took place.
6. On July 16, 2019, the petitioners sent a letter to the Block Development Officer, highlighting the situation and requesting immediate steps to be taken to open the shop rooms by breaking the padlocks affixed by the miscreants, for the petitioners to use those. According to the petitioners, the Block Development Officer (B.D.O.) assured the petitioners that steps would be taken on their complaint after discussion with the General Manager, Paschim Medinipur District Industrial Centre.

7. However, on November 23, 2020, the General Manager, District Industrial Centre, Paschim Medinipur issued a notice to the Secretary, Narayangarh Karma Tirtha Pariseba Samabay Samity Ltd, cancelling the lease agreement in favour of the Samity. Consequently, the petitioners apprehended that their sub-leases would also stand terminated, due to no fault of their own. The lessee issued a reply to the notice dated November 23, 2020 indicating the prevailing situation at the campus of their shops and the reasons why those could not be operated by the sub-lessees.
8. However, the Additional District Magistrate (Panchayat), Paschim Medinipur (respondent no.4) floated a tender on December 4, 2020, inviting fresh applications for allotment of the shops/stalls which were already allocated to the petitioners.
9. The writ petition has been preferred, challenging the notice of termination dated November 23, 2020 and the notice inviting tender dated December 4, 2020.
10. Learned counsel for the petitioners argues that in terms of Clause 10 of the agreement of lease dated December 10, 2018 between the Government of West Bengal and the SPV, the said agreement would come to cease in certain situations as stipulated therein. The clause further provides that if the said agreement for lease is so terminated, it will not prejudice the right of the users to whom the shops/stalls/space were allotted through sub-lease by the lessee during subsistence of the agreement and the sub-lease shall be

deemed as it was executed by and between the superior lessor and the sub-lessees. In other words, even if the said lease agreement was cancelled, the State would step into the shoes of the lessee and become the lessor vis-a-vis the sub-lessees.

- 11.** It is further argued that Clause 23 of the agreements of sub-lease executed between the lessee and the petitioners on January 15, 2019 provides that the lessee and the sub-lessee shall be competent to terminate the agreement before the normal period of validity (five years) by giving 30 days' notice in writing. The said clause further provides that in the event the lessee (SPV) serves such notice upon the sub-lessee, the reason for foreclosure of the sub-lease shall be specifically mentioned and the termination of sub-lease shall not take effect until the sub-lessee is given an opportunity of being heard on his/its submission against such notice, which will be duly considered and disposed of by the lessee by sending communication to the sub-lessee in writing as quickly as possible, provided that such action will not debar the right of the sub-lessee to make further appeal in terms of the relevant clause of the agreement as subsequently mentioned.
- 12.** Thus, learned counsel for the petitioners argues, the State Government could not have terminated the sub-leases arbitrarily but would have to comply with Clause 23 of the sub-lease agreements, having stepped into the shoes of the lessee.
- 13.** That apart, it is argued, the notice dated November 23, 2020 was illegal and *de hors* the agreement of lease entered into between the

State Government and the lessee. Clause 10 of the said agreement, dated December 10, 2018, provided specific situations which would entitle the termination of the lease agreement. The impugned notice did not disclose any such ground as envisaged in Clause 10.

14. In view of the termination notice being itself illegal and the specific termination clause in the sub-leases executed in favour of the petitioners, the subsequent tender dated December 4, 2020 was also palpably illegal.
15. It is thus submitted that the impugned termination notice as well as the subsequent notice inviting tender ought to be set aside. In other words, even if the said lease agreement was cancelled, the State would step into the shoes of the lessee and become the lessor vis-a-vis the sub-lessees. In other words, even if the said lease agreement was cancelled, the State would step into the shoes of the lessee and become the lessor vis-a-vis the sub-lessees.
16. Learned senior counsel for the State-respondent submits at the outset that the parent agreement of lease as well as the sub-lease contained arbitration clauses. As such, the writ petition is not maintainable. Moreover, it is argued that, by the impugned notice dated November 23, 2020, the parent lease agreement was terminated, which could only be challenged by the lessee therein. The petitioners, being sub-lessees, have no *locus standi* to challenge such notice.
17. It is further argued that the termination contemplated in the impugned notice was not in terms of Clause 10 of the parent

agreement dated December 10, 2018, since it was not on any of the grounds stipulated therein. Hence, the concluding portion of Clause 10, providing that the rights of the sub-lessees would not be prejudiced on such termination, is not attracted at all.

- 18.** Learned senior counsel further argues that each of the petitioners have separate causes of action, since independent agreements of sub-lease were entered into with each of them. As such, a single writ petition by all the said petitioners is not maintainable on court fees being paid for a single application under Article 226 of the Constitution.
- 19.** Furthermore, petitioner no.20, who affirmed the affidavit, has not produced any document in support of his authority to represent the other petitioners. It may very well be, it is submitted, that the other petitioners are agreeable to the floating of the new tender and might intend to participate therein. Hence, it is argued that the writ petition ought to be dismissed as not maintainable in its present form.
- 20.** Learned senior counsel for the State-respondent submits that the petitioners are the alter-ego of the lessee (SPV) since all the functionaries of the lessee, being the President, Vice-President, and Directors thereof, are petitioners herein. In support of such contention, learned senior counsel relies on the order of registration of the lessee-society dated December 31, 2018, annexed at page 32 of the writ petition. Thus, the petitioners are espousing the cause of the lessee without the lessee itself having come up with a challenge to the

termination notice. The writ petition ought to be dismissed on such score as well.

- 21.** Thus, it is argued by the State that the writ petition ought to be dismissed.
- 22.** Clause 10 of the parent lease deed dated December 10, 2018 clearly stipulates the conditions under which the said lease could be terminated. Such conditions pertain to dissolution or liquidation or bankruptcy of the lessee or its collapse due to any action of the authority under which the lessee was constituted, in which event the control of Karma Tirtha shall vest in the Government, the lessor. It would be the liberty of the lessor to revive the place Karma Tirtha to the liquidator/receiver/administrator/assign as may be appointed by the authority under which the lessee is incorporated, by a fresh agreement of lease. However, the second part of Clause 10 clearly stipulates that if the said lease deed is “so terminated” it will not prejudice the right of the users to whom the shops/stalls/spaces were allotted through sub-lease by the lessee during subsistence of the lease agreement and the sub-lease would be deemed as if it were executed by and between the lessor and the sub-lessee, the user.
- 23.** The impugned termination notice dated November 23, 2020, however, did not disclose any reason for termination which falls within the ambit of Clause 10 of the parent lease, which is the only termination clause therein. Thus, the said notice is vitiated, being *de hors* the lease agreement itself.

- 24.** Even assuming the termination was under Clause 10, the necessary consequence would be that the right of the users, being the present petitioners, would not be prejudiced. The superior lessor would then step into the shoes of the lessee and would be deemed to have granted the sub-leases to the petitioners.
- 25.** In such event, the lessor would be bound by the clauses of the lease agreements dated January 15, 2019, executed between the lessee and the sub-lessees.
- 26.** Clause 23 of the sub-lease agreements provides that the lessee and the sub-lessee shall be competent to terminate the agreement before the normal period of validity in terms of Clause 2 (five years) by giving 30 days' notice in writing. The Clause further provides that in the event the lessee serves such notice upon the sub-lessee, the reason for foreclosure of the sub-leases shall be specifically mentioned and the termination of sub-lease shall not take effect until the sub-lessee is given an opportunity of being heard on his/its submission against such notice and such submission by the sub-lessee will be duly considered and disposed of by the lessee by sending communication to the sub-lessee in writing as quickly as possible provided that this would not debar the right of the sub-lessee to prefer further appeal in terms of the relevant clause of the agreement.
- 27.** In the present case, in the garb of terminating the lease, the impugned termination notice also effectively terminated the sub-leases granted

to the petitioners without complying with the stipulations of Clause 23 of the sub-leases. Thus, the notice is vitiated on such score as well.

- 28.** Even apart from the above reasons, the impugned notice dated November 23, 2020 cited reasons which are not tenable in the relevant facts and law. The petitioners repeatedly approached several authorities including the B.D.O., informing the authorities regarding the unlawful closure of the shop rooms by miscreants, for which the petitioners were not being able to commence business from the stalls. Such complaints fell on deaf ears. Thus, due to no fault of the petitioners, rather the inaction of the administration, business could not be commenced from the said stalls.
- 29.** However, the termination notice dated November 23, 2020 cited the closure of the shop rooms, leading to hindrance in satisfactory running of the Karma Tirtha scheme, as the reason for termination. The respondents could not take advantage of their own wrong in failing to redress the grievance of the petitioners on the one hand and terminating the lease, and consequently the sub-leases, on the other.
- 30.** The objection as to non-maintainability of the writ petition has to be turned down on all scores. Even if petitioner no.20 had no authority to affirm the affidavit supporting the writ petition on behalf of the rest of the petitioners, such technical bar cannot impede at least petitioner no.20 from moving the writ petition. The jurisdiction under Article 226 of the Constitution is wide enough to be exercised merely on an illegality/arbitrary action of the State being brought to the notice of

the court. Even if petitioner no. 20 alone came up with the writ petition, the same would be maintainable. In any event, in view of the petitioners having signed the Vakalatnama filed with the writ petition and there being no objection on the part of the rest of the petitioners regarding representation of their interest by petitioner no. 20, the maintainability point has to be decided in the negative on such aspect.

- 31.** Regarding the objection that each of the petitioners have distinct and separate causes of action and separate writs ought to have been filed, such contention cannot be accepted as well, since the present challenge is against a common cause of action, being the notice dated November 23, 2020, which had the effect of terminating the sub-leases. In the present writ petition, a single notice of termination and a consequential notice inviting tender have been challenged, which have the composite effect of curtailing the legal rights of the petitioners, conferred by virtue of their sub-leases. As such, since there was no separate termination of each of the sub-leases, the cause of action of the petitioners is common in the writ petition.
- 32.** The contention as regards the lessee being an alter-ego of the sub-lessees is neither here nor there and cannot debar the petitioners from challenging the interference with their rights.
- 33.** As far as the arbitration clauses in the two sets of agreements are concerned, the State respondent is not a party to the sub-leases and cannot take shelter under the arbitration clause in such sub-leases to

object to the maintainability of the writ petition. As regards the arbitration clause in the parent lease agreement, the writ petitioners are not bound by it since they were not parties to the agreement. That apart, it is well-settled law that mere presence of an arbitration clause cannot fetter the power of judicial review of High Courts under Article 226 of the Constitution of India. The actions of the State, unlike private litigants, have to be fair, impartial and in consonance with principles of Natural Justice. Arbitrary action on the part of the State can be struck down, even in the domain of private contracts. In the present case, the lease and sub-lease agreements were for work of public nature, directly affecting the right of the petitioners to earn a livelihood. The Karma Tirtha scheme was floated for providing employment opportunities to unemployed youth. Thus, the agreements fall within the domain of public law and are amenable to the writ jurisdiction despite the existence of arbitration clauses.

- 34.** The other argument advanced by the State-respondent, that the petitioners have no cause of action since the impugned termination notice merely terminated the parent lease and not the sub-leases, is belied by the subsequent floating of tender for allotment of the same shop rooms. Although the notice dated November 23, 2020 purportedly terminated the parent lease, the effect of such termination was to obliterate the rights of the sub-lessees, that is, the present petitioners. Hence, the petitioners have sufficient cause of action to challenge the said notice of termination. Since the notice of termination has already been held to be invalid, the consequential

notice inviting tender for allotment of the same shop rooms as covered by the termination notice is automatically rendered invalid.

- 35.** In such view of the matter, WPA No.11406 of 2020 is allowed, thereby quashing the termination notice dated November 23, 2020 and the notice inviting tender dated December 4, 2020, which are challenged in the present writ petition. The respondent-authorities shall immediately take steps to ensure that the illegal closure of the shop rooms by miscreants is interdicted by breaking the padlocks affixed on the shop rooms and handing over physical possession of such shop rooms to the petitioners at the earliest.
- 36.** There will be no order as to costs.
- 37.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**