

26.04.2022
Item No.11
Court No.6.
S. De

M.A.T.352 of 2016

**I.A. No. CAN 1 of 2016
(Old No. CAN/2495/2016)
I.A. No. CAN 2 of 2018
(Old No. CAN/3659/2018)**

**Sushanta Kumar Roy & Anr.
Vs
The State of West Bengal & Anr.**

Mr. Debasish Chattopadhyay,
Mr. Loknath Paul,
Mr. Tirthankar Basu,
...for the appellants.
Mr. Subhabrata Datta,
Mr. Sanatan Panja,
...for the State.

By consent of the parties, the appeal and the connected application are taken up together for hearing.

In re: I.A. No. CAN 2 of 2018 (Old No. CAN 3659 of 2018)

This is an application for condonation of delay of three days in filing the appeal. Causes shown being sufficient, the delay is condoned.

I.A. No. CAN 2 of 2018 (Old No. CAN 3659 of 2018) is, accordingly, disposed of.

In re: IA No. CAN 1 of 2016 (Old No. CAN 2495 of 2016)

One Smt. Sunanda Goswami (in short 'Sunanda') was allotted a plot of land in Kalyani

measuring about 9 kotthas and 13 chattaks by the Government in the year 1963. Possession of the plot was handed over to Sunanda on June 10, 1988. The lease deed was executed on June 22, 1988, wherein the Government of West Bengal was shown as the lessor and Sunanda as the lessee in respect of plot no. B-1/221(A) at Kalyani. However, before such allotment or making over possession to Sunanda by the Government, no clearance was obtained under the Urban Land Ceiling Act.

After taking possession, Sunanda applied to the Government for transferring 50% of the lease-hold land in favour of one Santi Ranjan Bagchi. Such permission was granted. The deed of transfer was executed. 50% of the lease-hold land was transferred to Santi Ranjan Bagchi.

It appears that the remaining 50% of the lease-hold land, Sunanda transferred to one Sushanta Kumar Roy and another who are the present appellants. When the appellants applied for mutating their names in the land records, they were told that the transfer was invalid since the land that Sunanda had purported to transfer to them stood vested in the State under the provisions of the Urban Land Ceiling Act.

The present appellants challenged the refusal of the authority to mutate their names by filing W.P. No.

33258(W) of 2014 before this Court. A learned Single Judge by an order dated January 30, 2015 directed the Estate Manager, Kalyani, to consider the mutation application of the present petitioners and pass a reasoned order thereon. Pursuant to such order, the Estate Manager passed an order dated August 4, 2015, rejecting the present appellants' prayer for mutation in respect of plot no. B-1/221(A). This order was challenged by the present appellants before the learned Single Judge which resulted in the impugned order being passed. The learned Single Judge dismissed the writ petition by observing that the Estate Manager had passed an order which was supported by cogent reasons. The writ Court does not act as an appellate authority. Only in exceptional cases where an order is without jurisdiction or passed in breach of the principles of natural justice or there is grave procedural irregularity, the writ Court would interfere.

We have heard learned counsel for the parties in this appeal. It appears that on the day the Estate Manager passed the order which was challenged before the learned Single Judge in the present proceedings, the appellants were not represented before the Estate Manager. The Estate Manager perused the available records of the case and passed the order.

The appellants say that the order of vesting was challenged by Sunanda by filing W.P. 10487 (W) of 2005. By a judgment and order dated June 23, 2009, a learned Single Judge of this Court set aside the vesting order. A copy of the said order has been handed up. Let the same be kept with the records.

Learned advocate appearing for the appellants says that a copy of the said order setting aside the vesting was available with the Estate Manager. However, there is no reference to such order in the Estate Manager's order which is under challenge in these proceedings.

We find from copy of a letter dated July 22, 2009, written by the learned advocate for the appellants to the Estate Manager, Kalyani, that a copy of the said order of this Court setting aside the vesting in question was received by the Estate Manager. However, it is possible that when the order of the Estate Manager came to be passed on August 4, 2015, copy of the said order of this Court was not available with him or the same escaped his notice. The appellants were not present before the Estate Manager to point out that there is such a subsisting order.

Learned advocate appearing for the State in his usual fairness says that since there is no reference to the order of this Court setting aside the vesting in the order of the Estate Manager, it may be proper to

remand the matter back to the Estate Manager for fresh consideration of the appellants' application for mutation.

In view of such fair stand of the State and since also we are of the opinion that this matter warrants reconsideration since the Estate Manager did not advert to this Court's order setting aside the vesting, we set aside the order under appeal as well as the order of the Estate Manager dated August 4, 2015, and remand the matter back to the Estate Manager, Kalyani, for considering the application for mutation filed by the present appellants, afresh and in accordance with law taking into consideration the order dated June 23, 2009, passed by the learned Single Judge of this Court in W.P. No.10487(W) of 2005.

Let a hearing be held by the Estate Manager, Kalyani, on May 6, 2022, at 12:00 noon which the appellants or their authorized representative will be entitled to attend. No further notice of the meeting need be given to the appellants. The appellants will be at liberty to present their case before the Estate Manager who shall take a reasoned decision on the appellants' application in accordance with law within a period of four weeks after the hearing. The decision taken by the Estate Manager shall be communicated to the appellants within a week from the date of such

decision. Needless to say, if the Estate Manager is satisfied that the appellants are entitled to have their names mutated in respect of the concerned property, necessary consequential orders will be passed by the Estate Manager.

We have not gone into the merits of the appellants' claim. It will be up to the Estate Manager to take an informed decision in accordance with law.

Since we have not called for affidavits, the allegations contained in the stay petition shall be deemed not to be admitted by the respondents.

MAT 352 of 2016 is, accordingly, disposed of along with the connected application being IA No. CAN 1 of 2016 (Old No. CAN 2495 of 2016).

Urgent certified photostat copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance with all the necessary formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)