

WPA 14758 of 2022

Sagar Hosiery Mills & ors.
Vs.
The State of West Bengal & Ors.

Mr. N. C. Bihani,
Ms. Sharmistha Laha,

...for the petitioners.

Mr. Chandi Charan De,

...for the State.

Affidavit of service filed by the petitioners is taken on record.

Pursuant to an order passed by this Court on 16th March, 2022 in WPA 19029 of 2007, representation submitted by the petitioners on March 28, 2022 was considered and disposed of by the Additional Secretary to the Government of West Bengal on 24th June, 2022. The said order is under challenge in the present writ petition.

It is submitted on behalf of the petitioners that in the order impugned the authority has accepted the ailments of Ajit Kundu, predecessor-in-interest of the present petitioners from 1994 to 1995. The authority, on one hand, recorded that the predecessor-in-interest of the petitioners failed to take necessary action to take over possession of the plot in question and to commence construction work therein within the stipulated period and, on the other hand, has stated that since the lease deed was executed and registered, symbolic possession of the plot was handed over to the lessee. Learned counsel has further pointed out

that admittedly Clause 2(6)(a) of the deed of lease requiring the petitioners to raise construction in the plot within three years from the date of possession has not been complied with but, at the same time, learned counsel has taken this Court to proviso in Clause 4 of the deed of lease which reads as follows:

“Provided nevertheless the Lessor shall not exercise the right without serving the lessee a notice in writing giving six months’ time to remedy the breach.”

This proviso, according to learned counsel, has not been complied with by the respondent authorities. As such, learned counsel has prayed for setting aside the order impugned and direction upon the authorities to reconsider the prayer of the petitioners.

Per contra, learned counsel for the respondents submits that the authority may be directed to comply with the proviso to Clause 4 of the deed and take a fresh decision in the matter in terms of the deed.

It transpires from the order impugned dated 24th June, 2022 that the illness of Ajit Kundu in 1994-1995 has been accepted by the authority. The observation of the authority in respect of handing over possession of the plot to the petitioners/their predecessor-in-interest is contradictory. The authority appears to be in a dilemma as to whether possession of the plot was handed over to the petitioners/their predecessor-in-interest in terms of the deed of lease. Also, though admittedly the petitioners have

failed to comply with the provisions laid down in Clause 2(6)(a) of the deed, the petitioners are entitled to a notice granting six months' time to remedy the said breach in terms of Clause 4 of the deed. Such opportunity was admittedly not given to the petitioners.

In view of the above, this Court is inclined to hold that the concerned authority should be directed to comply with the proviso to Clause 4 of the deed of lease and thereafter reconsider the case of the petitioners afresh in terms of the deed in addition to what has been recorded in the order impugned.

The entire exercise should be completed within a period of two months from the date of communication of this order.

Pending disposal of the entire exercise, there will be a stay of operation of the impugned order dated 24th June, 2022.

With the aforesaid observations and directions, WPA 14758 of 2022 is disposed of. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J.)