

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 15358 of 2014

Smt. Jayanti Bose

Versus

The State of West Bengal & Ors.

Mr. Achyut Basu

Ms. Punam Basu

Ms. Sonam Basu

.....For the Petitioner

None

.....For the State

Heard on : 16.02.2022

Judgment on : 23.02.2022

Krishna Rao, J.: In spite of notice upon the respondents none appears on behalf of the respondents. The petitioner has challenged the order dt. 07.06.2010 passed by the Estate Manager, Kalyani, Urban Development Department, Government of West Bengal.

The plot No. B-11/64, Kalyani, District- Nadia was originally allotted to one Smt. Kalyani Pakrashi. Smt. Kalyani Pakrashi had executed a General

Power of Attorney in favour of Arup Kumar Bose, husband of the writ petitioner on 01.09.1994. On the basis of the General Power of Attorney, the husband of the petitioner had executed Indenture of Transfer of plot No. B-11/64 in favour of his wife (writ petitioner) on 31.08.2000. The petitioner made an application along with General Power of Attorney for transfer of the said plot. The authorities failed to transfer the same and accordingly, the petitioner has filed writ petition before this Court being WP No. 16568 (w) of 1999. The said writ petition was disposed of by the Coordinate Bench, directing the registering authority to register the concern deed of transfer in accordance with law within 8 weeks from the date of receipt of the communication of the order. In terms of the order passed by the Coordinate Bench the petitioner has placed the deed before the registering authority accordingly the same was registered in the name of the petitioner on 31.08.2000.

On 01.11.2002 and 23.11.2002 the petitioner has submitted an application before the respondents no. 2 and 3 for transfer/mutation of the said plot in her favour in accordance with the Transfer Deed. In spite of the receipt of the application, the respondents have not taken any steps and again the petitioner has filed a writ petition before this Court being WP No. 2188 (w) of 2009. The writ petition was disposed of by the Coordinate Bench on 16.02.2010, directing the Estate Manager, respondent no. 2 to consider and disposed of the grievance of the petitioner.

In terms of the order passed by the Coordinate Bench of this Court dt. 16.02.2010, the respondent no. 2, the Estate Manager, Kalyani had passed an

order rejecting the request of the petitioner on 07.06.2010 which is impugned in the instant writ application.

The respondent no. 2 had rejected the request of the petitioner on the ground that whether the transfer deed which was executed by Sri Arup Kumar Bose being the Power of Attorney holder of the principal i.e. Smt. Kalyani Pakrashi is valid or not and in absence of any proof that Principal/donor was alive on the date of execution of transfer dt. 31.08.2000, the mutation cannot be allowed.

The General Power of Attorney executed by Smt. Kalyani Pakrashi in favour of Arup Kumar Bose is a registered document and the said document was executed on 01.09.1994. Clause 13 of the General Power of Attorney reads as follows:-

“To sign and execute the Deed of Lease/Transfer Deed and conveyance or Agreement for Transfer and present all or any of those before the concerned Sub-Registrar for registration and admit and get those registered at the expense of the purchaser/transferee for the above stated plot of land with or without construction.”

On the basis of the Power of Attorney, Shri Arup Kumar Bose executed an Indenture of Transfer of the plot in favour of the petitioner and the said Deed of Transfer duly registered by the competent authority.

Section 32 of the Registration Act, 1908 deals with person who was eligible to present documents for registration before the proper registration office. Section 32 specifies three categories of persons who can present documents for registration. The use of word “or” between the Clause of Section 32 demonstrates that the legislature intended the said clauses to be read

disjunctive and not conjunctively. It is settled law that the use of word “or” is used to signify the disjunctive nature of a provision.

Clause (a) of Section 32 specifies that a document can be presented for registration by:

- (i) by the person executing the document;
- (ii) any person claiming under the document presented for registration;
and
- (iii) In the case, the said document is a copy of a decree or order, any person claiming under the decree or order:-

Clause (b) and (c) deal with cases where the document is presented not by any person mentioned i.e. (i), (ii) and (iii) above but by their agent, representative or assign. This is also because the case of the words “Such person” in Clause (b) and (c) can be understood to mean only persons referred to i.e. (i), (ii) and (iii) above.

The words “executed and authenticated in the manner herein after mentioned” in Section 32 (c) would mean that the procedure specified in Section 33. This is clear from the opening words of Section 33 which reads “for the purpose of Section 32, the following power of attorney shall alone be recognized.” Section 32 refers to documents presented for registration by holder of “Power of Attorney” in Clause (c) and it, therefore, follows that the procedure specified under Section 33 would be attracted where a document is presented by heading “Power of Attorney” of person mentioned in Clause (a) of Section 32.

It is important to bear in mind that one of categories of person who are eligible to present document before registration office in terms of Section 32 of the Act is the “Person executing” the document. The expression “Person executing” used in Section 32 of the Act, can only refer the person who actually signs or marks the documents is taken of execution, whether for himself on behalf of some other person. Thus, “Person executing” as used in Section 32 (a) of the Act signifies the person actually executing the document and includes a principal who executes by means of an agent. Where a person holds a Power of Attorney which authorises him to execute a document for someone case, and he executes a document under the terms of Power of Attorney, he is, so far as the registration office is concern, the actual executants of the document as is entitle under Section 32 (a) to present it for registration and get it registered.

In the instant case, it is quite clear that Arup Kumar Bose was given the full attorney by Smt. Kalyani Pakrashi under the Power of Attorney to transfer the plot and to execute the necessary document. It is an accepted position that the said document had been executed by Arup Kumar Bose in the name and on behalf of Smt. Kalyani Pakrashi thereof. Therefore, for the purposes of registration office under Section 32 (a) of the Act Arup Kumar Bose is clearly the “Person executing” the document. Therefore, it follows that the Deed of Transfer which is executed and authenticated by Arup Kumar Bose could be presented for registration by him. This Court is of the considered view that Arup Kumar Bose acted in the aforesaid manner mandated Under Section 32 (a) of the Act.

The Power of Attorney and the Deed of Transfer have been duly registered before the competent authority by following the procedure as mentioned above and thus the Estate Manager, cannot sit over the registered document and compel the petitioner for production of proof of the principal/donor i.e. the original allottee Smt. Kalyani Pakrashi was alive on the date of execution of transfer deed dt. 31.08.2000 for mutation of plot No. B-11/64 in favour of the petitioner.

The Estate Manager, Kalyani, Urban Development Department, W.B has exceeded his jurisdiction by questioning the registered deed of transfer. The impugned order dt. 07.06.2010 is thus set aside.

The Estate Manager, Kalyani, Urban Development Department, West Bengal is directed to mutate the Plot No. B-11/64 in favour of petitioner in terms of Transfer Deed within a period of four weeks from the date of communication of the order.

WPA No. 15358 of 2011 is thus allowed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)