

10.05.2022
Court No.13
Item No. 20
pk

WPA 28282 of 2012

**Phul Kumari Verma alias Phul Kumari
Vs.
The State of West Bengal and Ors.**

Mr. Anand Bhandari
... for the petitioner.

Mr. Ashim Kumar Ganguly,
Mr. Bellal Shaikh
... for the State.

The short question that comes for consideration in the instant writ petition is the validity of the order dated 30th August, 2011 passed by the S. D. O., Kalimpong.

By the said order a Sale Deed executed on the basis of a Power of Attorney was held null and void. Two grounds are indicated, firstly that the Sale Deed dated 16th June, 2008 was in violation of Management of DIF Rules 17, 28 and 29 and DIF Account Rules Appendix IV-2 and 3. It is also held that in terms of DIF Lease Clause 10, permission of the Administrator of the D. I. Fund, Darjeeling was not sought. The power of attorney was itself found without legal authority to execute the sale deed. The concerned S. D. O. has proceeded to direct the A. D. S. R., Kalimpong for cancellation of Power of Attorney executed on 26th July, 2005 and sale deed executed on 16.06.2008.

There is some force in the contention of the counsel for the petitioner that a registered instrument can be cancelled for being contrary to law only by an appropriate court or a tribunal or forum constituted under the statute therefor.

By judgement and order dated 18th May, 2006 in O A No. 2338 of 2003 (LRTT) the West Bengal L. R. T. T. in the case of Kalimpong Raiyats Welfare Association and others Vs. State of West Bengal and others has held that the Fund Rules cannot prevail over the provisions of the West Bengal Estates Acquisition Act, 1953 and the West Bengal Land Reforms Act, 1955.

However, one cannot ignore the fact that the Sale Deed itself is executed on the basis of a disputed Power of Attorney. Since the Power of Attorney and Sale Deed are disputed, parties may have the issue adjudicated before an appropriate civil forum seeking appropriate declaration.

The Sale Deed and the Power of Attorney shall not be given any further effect and shall abide by any decision of the civil court that may be approached by the parties.

With the aforesaid observations, the writ petition is disposed of.

There will be no order as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)