

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

Chabi Chowdhury

State of West Bengal & Ors.

Mr. Rajdip Ray, Adv.,
Mr. Sandip Ray, Adv.

Judgment on: 12 July, 2023.

BIBEK CHAUDHURI, J. : –

1. It is the case of the petitioner that pursuant to an advertisement and/or public notification issued by the Government of West Bengal for allotment of plot of land at Kalyani in the district of Nadia subject to payment of premium and/or salami on lease for a period of 999 years, one Gouri Dutta made an application for allotment of a plot of land in Kalyani in the year 1963. The Government of West Bengal agreed to allow the said Gouri Dutta a plot of land being B-4/28 at Kalyani on receipt of the payment of consideration price on lease for a period of 999 years in the year 1963. Accordingly, an agreement for lease was executed between the state government and the said Gouri Dutta on 12th July, 1963. On the date of execution of the agreement the said allottee disputed a sum of Rs.460 being 10% of the premium and salami. Further case of the petitioner is that her husband died in an accident. She had no issue. Her

cousin sister used to look after her. Therefore, during the last days of her life she desired to bequeath her leasehold right and interest in the said plot of land in favour of the petitioner. Accordingly she executed a will in favour of the petitioner on 26th December, 2003. The said will was duly probated by this Court on 28th April, 2014 in PLA No.291 of 2001. After obtaining the said probate the petitioner submitted an application before the respondent No.4 on 15th May, 2014 and thereafter a reminder on 22nd August, 2014 for mutation of her name in respect of the plot of land which was leased out to one Gouri Dutta by executing a deed of lease. Since the State Government failed to take any decision on the representation made by the petitioner for mutating her name in respect of the leasehold property in place of the original lessee on the strength of her last will and testament, she made last and final representation on 13th May, 2015 before the respondent No.4. It is the grievance of the petitioner that in spite of receipt of all such representations, the respondent did not pay any heed and sat tight over the matter and thus failed to record her name as lessee in respect of the said plot in question at Kalyani. This led the petitioner to file a writ petition being WP No.11567(W) of 2015 with appropriate relief commanding the respondents to mutate her name in the record of rights as lessee. A Coordinate Bench of this Court disposed of the said writ petition on 15th June, 2015 directing the respondent No.4 i.e. that Estate Manager to consider and take final decision and the prayer of the petitioner in accordance with law within a period of four weeks. The respondent No.4 directed the petitioner to attend a hearing in his office

chamber on 6th August, 2015. At the time of hearing a question was raised by the respondent No.4 as to why the said leasehold land remained unutilized and the final lease deed not executed by the original allottee Smt. Gouri Dutta during her life time. It was informed by the petitioner that during the life time of the original allottee the possession of the land in question was not handed over to her and therefore execution of lease deed by her did not arise. The respondent No.4 passed an order dated 24th August, 2015 holding, inter alia, that the original allottee did not take possession of the land in question. She did not come forward to execute the lease deed and the said plot is still lying vacant in contrary to the provision of the lease agreement. Therefore, the agreement for lease was terminated on 26th May, 2015. The said order dated 24th August, 2015 is impugned in the instant writ petition. The petitioner has also alleged that she was not served with the order dated 26th May, 2015 at any point of time.

2. On such factual background the petitioner has prayed for issuance of a writ in the nature of mandamus directing the respondents and each one of them to show cause as to why the order dated 26th May, 2015 as well as the order dated 21st August, 2015 shall not be set aside and further directing the respondents to record the name of the petitioner as lessee in respect of the said plot of land at Kalyani, Nadia on completion of necessary formalities. The petitioner has also prayed for issuance of a writ in the nature of *certiorari* and other consequential reliefs.

3. Respondents were not represented at the time of hearing of the instant writ petition. Therefore, this Court proceeds to dispose of the instant writ petition on the basis of the submission made by the learned Advocate for the petitioner.

4. I have heard the learned Advocate for the petitioner who makes his submission to the tune of the case made out by the petitioner.

5. Section 105 of the Transfer of Property Act defines lease as hereunder:-

“105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”

Thus, a lease is a partial transfer of right in a property by the transferor to transferee to enjoy the subject property for certain period of time on payment of agreed consideration.

6. An agreement to lease of an immovable property, on the other hand, indicates that there is no transfer of possession or right of enjoyment with immediate effect. An agreement to lease is a contract under which a person promises to grant lease on a future date upon fulfillment of certain conditions. Agreement for lease binds the parties for grants of lease to become effective in future. It is in the nature of an executor contract just like a contract to sale, an agreement to lease

creates only personal obligation which may be enforced and accompanied by delivery of possession.

7. In the instant case the agreement for lease was executed by and between the governor of the State of West Bengal, through the Assistant Secretary, Development Department, Government of West Bengal and Smt. Gouri Dutta to lease out 8 cottas of land in plot No.28 of Block No.B-4 of Block B in the Kalyani town (Kachrapara Development Scheme) on certain terms and conditions. Clause 3 of the said agreement regarding payment of premium or salami is important and reproduced below:-

“3. That I/we shall pay at least one-third of the premium or salami in respect of the said plot (inclusive of the amount deposited as earnest money) at the rate of Rs. 575 per cottah within two months from the date of acceptance of this offer. In default of payment as aforesaid of the one-third of the premium or salami I/we shall pay interest on the amount thereof at the rate of 6 percent. per annum and should I/we make default in payment of one-third of the premium or salami as aforesaid with interest, if any payable thereon, for the period of six months from the date of the acceptance of this offer, I/we shall be liable to forfeit the amount deposited as earnest money to the Government. I/we shall pay interest at the rate of 6 per cent. per annum on the balance of the premium or salami or any part thereof which may be allowed by you to remain outstanding in respect of the said plot and on completion of the lease in respect of the said plot in my/our favour the said amount so remaining outstanding will form a first mortgage and charge on the demised land and the building or buildings to be erected thereon, and the lease

shall contain an appropriate provision thereof. The balance of the premium or salami so remaining outstanding together with interest due thereon in respect of the said plot shall be paid by me/us in six equal annual instalments the first of such payments to be made within one year from the date of acceptance of the offer and should I/we make default in payment of 3 such instalments of premium, I/we shall be liable to forfeit the amount already paid to the Government who will also have the right of resumption without payment of any damages :

Provided however that should I/we pay the annual instalments of the balance of premium or salami payable by me/us with the interest payable thereon duly and punctually the Government shall accept interest on the said, balance of premium or salami at the rate of 5 per cent. per annum in lieu of 6 per cent. per annum:

Provided further that nothing hereinbefore stated shall be deemed to preclude me/us from paying any instalment or instalments before due date, but the manner and time of such payments of instalment or instalments before due date shall be specified and approved by you.”

8. Clause 10 of the said agreement states:-

“10. On being called upon by the Government I/we shall within a week have this application properly stamped as an Agreement for lease under the Indian Stamp Act upon payment of the appropriate stamp duty payable therefor.”

9. Clause 11 of the said agreement states:-

“11. Should I/we fail to observe any of the terms and conditions herein contained then and in that event you shall have the right and be entitled to forfeit the said sum of Rs.

460 being deposited herewith as 10 per cent. of the premium or salami.”

10. It is needless to say that the original allottee did not take any step during his life time to execute the lease deed. The property was allotted in the year 1963 and it is lying vacant for about 60 years without assigning any reason by the allottee. Therefore, the State Government cancelled the agreement for lease by an order dated 26th May, 2015.

11. The impugned order passed by the Estate Manager, Kalyani Urban Development Department, Government of West Bengal dated 24th August, 2015 clearly states that the original allottee during her life time did not take possession over the leasehold property. Lease deed has not yet been executed. Thus, till date the property belongs to the Government of West Bengal. As the original allottee did not take any step to execute the lease deed, during her life time, the agreement for lease automatically terminated on the death of the original allottee.

12. No right over the said property is transferred upon the petitioner on the strength of the will executed by the original allottee Smt. Gouri Dutta, since deceased even after grant of probate by this Court.

13. In view of what has been stated above, I do not find any merit in the instant writ petition and accordingly the writ petition is dismissed.

(Bibek Chaudhuri, J.)