

S/L 3
19.12.2023
Court No.25
SD

WPA 9109 of 2010

Sri Subhendu Ghosh & Anr.
Vs.
State of West Bengal & Ors.

Mr. Achyut Basu
Ms. Punam Basu
Mr. Rupchand Chakraborty
Mr. Srikumar Chakraborty

...for the Petitioners.

Ms. Rupsha Chakraborty

...for the State.

Supplementary affidavit filed on behalf of the writ petitioners in terms of the order of this Court passed on December 13, 2023 is taken on record.

The present writ petition has been preferred primarily for the following relief:-

a) A writ of and/or writ in the nature of mandamus commanding the respondents and each of them their men, agents, and subordinates to act in accordance with law to record the name of the petitioners in respect of Plot No. A-11/406 at Kalyani, Dist. Nadia.

The necessitous facts required to adumbrated for the purpose of effective adjudication of the writ petition are that the plot no. A-11/406 at Kalyani Township was let out for a term of 999 years to the original lessee, one M/s. Overseas Business Consultant Pvt. Limited by the State of West Bengal by executing one deed of lease dated December 7, 1988.

Upon payment of salami and premium, as agreed upon by and between the lessor and lessee, to lessor, the

original lessee took possession of the plot of land and the lease deed was registered following the due process of law.

Subsequent thereto, by executing one indenture of transfer dated November 26, 2008, the original lessee being M/s. Overseas Business Consultant Pvt. Limited transferred the leasehold interest in favour of the petitioners. Petitioner contends that an application was made before the competent authority by the lessor seeking permission to transfer leasehold interest of the plot of land but that application was left unattended.

On April 6, 2009, the petitioners made an application before the competent authority with a prayer for recording the name of the petitioners as lessees in respect of the plot of land but despite receipt of such application, the concerned respondent did not take any decision on that application. Hence, the writ petitioners have been constrained to approach this Court by preferring this writ petition.

During course of hearing, Ms. Chakraborty, learned advocate for the State, was asked to submit a report. From the report submitted by Ms. Chakraborty it is explicit that the Estate Manager, Kalyani, UD&MA Department, Government of West Bengal stated that the petitioners' prayer for mutation can be considered if and only if the petitioners agree to pay the usual transfer fee with penalty in terms of 4102-UD/O/M/Kalyani (AL)-01/2011 dated 16.12.2011.

Mr. Basu, learned advocate for the petitioners submits that the lessor and the lessee and the subsequent

transferee of the leasehold interest of the plot of land are all bound by the terms and conditions of the lease agreement and nowhere in the lease agreement, the lessor was empowered to make demand of any further amount either in the form of transfer fee or penalty. According to Mr. Basu, such demand of transfer fee with penalty as made by the concerned respondent on behalf of the lessor is arbitrary, unreasonable and bad in law. He submits that before transfer of the leasehold interest, proper application was made and as per the proviso of Clause 2(x) of the lease, the said permission shall be deemed to have been granted and hence, lessor and/or respondent authority cannot be made any further demand.

Heard learned advocates for the parties, perused the materials on record including the deed of lease and the subsequent instrument of transfer of leasehold interest of the petitioners and the report submitted by Ms. Chakraborty on behalf of the State.

It is worthwhile to observe that when any person lets out any property in favour of another person and those two persons enter into an agreement or execute a lease of deed then both the lessor and lessee are bound by the terms and conditions incorporated in such lease deed . Neither the lessor nor the lessee can unilaterally change the terms and conditions of the lease agreement. The terms and conditions of the lease agreement can only be changed if both the parties to the agreement agree thereon. If the terms and conditions of the deed of lease do not empower, neither the

lessee nor the lessor can make a further demand of any amount from each other. In this context it would be profitable to reproduce the condition incorporated in clause 2(x) of the deed of lease which speaks as follows:-

“2(x) Not to assign this lease or part with possessions of the demised land or any buildings erected thereon without the previous consent in writing of the Government and in accordance with the provisions hereinafter contained in respect thereof.

Provided that, should at any time hereafter, the lessee be desirous of assigning this lease or transfer the leasehold interest in the demised premises and the buildings erected thereon, the lessee shall give notice of such intention to the Government and shall be entitled to effect such transfer with the approval of the Government, provided further that, should such approval be not refused within two months of the date of receipt of the applications, the consent of Government to such transfer shall be deemed to have been given for such transfer.”

Before transfer of leasehold interest in favour of the petitioners, the original lessee made application but his application had not been refused within the time stipulated in the proviso of Clause 2(x) of the deed of lease. Accordingly, the permission to transfer the leasehold interest of the plot of land shall be deemed to have been granted after expiry of the time stipulated in the proviso of Clause 2(x) of the lease deed.

Indisputably, mutation and/or recording the name of transferee in the record is nothing but a procedure to be followed after the transfer. Deed of lease does not contain any provision and/or condition whereby lessor can force the

lessor or the person in favour of whom lease hold interest of the plot of land has been transferred to pay any amount as pre-condition to such transfer.

Hence, I am of the considered view that the demand of payment of transfer fee with penalty as it reflects from the report, as produced on behalf of the respondents is totally bad in law. Rule of law mandates that the State in its executive capacity, even in the contractual field, is under obligation to act fairly and reasonably and compass of judicial review can be extended to interfere with the action of the State taken in contractual field also if such action is found to be unreasonable and arbitrary. Since terms and conditions incorporated in the deed of lease do not contain any provision empowering the lessor to make demand of transfer fee or penalty, such demand, as made by the concerned respondent, is not reasonable.

In view thereof, the writ petition is disposed of by directing the concerned respondent to record the name of the petitioners as lessee in respect of the subject plot of land without making demand of any transfer or penalty fee within a period of two months from the date of receipt of the copy of the order.

With these observations and directions, WPA 9109 of 2010 is disposed of.

There shall be no order as to costs.

All parties are to act on the website copy of this order.

(Partha Sarathi Chatterjee, J.)