

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 12792 of 2023

**Indrajit Patra
Vs.
The State of West Bengal & Ors.**

**For the petitioner : Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Payel Shome,
Ms. Sampriti Saha**

**For the State : Mr. T.M.Siddiqui,
Mr. Amritlal Chatterjee**

Judgement on : 20.07.2023.

Bibek Chaudhuri, J.

The petitioner is one of the applicants for grant of licence of FPS dealership of Village Monidaha under Gram Panchayat Monidaha, police station Kotwali in the district of Paschim Midnapore. Pursuant to a vacancy notification, the petitioner, respondent No.7 and another person filed online application for the licence. As per WBPDS (Maintenance and Control) Order, 2013, enquiry was done by the departmental officers and the administrative department found

respondent No.7 most suitable for getting the licence. Accordingly, licence of FPS dealership was granted to the respondent No.7.

Challenging the said grant, the petitioner has filed the instant writ petition. It is submitted by Mr. Samim, learned Advocate for the petitioner that Raghunath Chattopadhyay, respondent No.7 herein constructed a godown on a leasehold land and the said lease was executed by virtue of a registered deed on 29th November, 2022 by one Tarun Kumar Kapri being the lessor. It is further pointed out by the learned Advocate for the petitioner that the lease deed was executed in respect of plot No.763 of Mouza Momindaha in the district of Paschim Midnapore upon which the said Tarun Kumar Kapri, the lessor got his right, title and interest by virtue of settlement.

Learned Advocate for the petitioner next draws my attention to Section 49(1A) which states that no person in favour of whom land has been settled under sub-section 1 of Section 49 shall be entitled to transfer such land except by way of simple mortgage or a mortgage by deposit of title deed in favour of a schedule bank or a cooperative society or Corporation owned or controlled by the Central or State Government or both and for the purpose of obtaining loan for the development of land or for the improvement of agricultural production or for the construction of the dwelling house. Thus, it is submitted by the learned Advocate for the petitioner that a property which has

been settled in favour of a riot by the State Government cannot be leased out in favour of any person. Therefore, the godown that was taken on lease by the respondent No.7 is a void document. The lessor had no power or authority to transfer the said property by virtue of lease and, accordingly, the respondent No.7 is not entitled to the licence which was granted in favour of him.

Learned Advocate for the petitioner also submits that in the report submitted by the State respondents, it is stated that the respondent No.7 was more suitable than other applicants to get licence of fair price shop. The specific averment made by the State respondents does not mean that the petitioner was not suitable for the licence. The ground for which respondent No.7 was treated as more suitable being void *ab initio*. The impugned order of granting licence in favour of him is liable to be quashed.

Learned Advocate on behalf of the respondent No.7 has made a comparative study of two enquiry reports, one in respect of the petitioner and the other in respect of the respondent No.7 and submits before this Court that the respondent No.7 is more suitable and, accordingly, licence was granted to him by the licensing authority. The learned Advocate for the State respondents has also relied upon the enquiry report conducted by the departmental enquiry officer upon submission of online application by the petitioner and the

respondent No.7. I have considered the enquiry reports of both the above-named candidates. It appears from the report of Indrajit Patra in Column No.15 that he carries on business of selling paddy and his name was enlisted in West Bengal Paddy Trade Association vide registration No.S/IL/353. Educational qualification of the petitioner is Class VIII pass . On the other hand, the respondent No.7 is a Graduate and unemployed. The petitioner does not have any knowledge of computer, on the other hand, the respondent No.7 has preliminary knowledge in computer operation.

It is pointed out by the learned Advocate for the State respondents that the petitioner has a joint account holder in HDFC Bank with one Helu Patra, total balance lying in the bank on 8th December, 2022 was Rs.85,277.69/-. The petitioner did not file the No Objection Certificate of the joint account holder which is a mandatory provision as per Column No.27 of the enquiry report. Another important aspect should not be lost sight of.

It is reported in Serial No.63 that the Enquiry Officer found that the petitioner was made accused several times by the local paddy farmers for his self occupation. On the other hand, no such adverse report is appended with the respondent No.7. Thus, in all other aspects it is ascertained that the respondent No.7 is more suitable candidate than the petitioner.

Now comes the basic question as to whether a Patta holder riot has the power to lease out the vastu property in favour of another person. It is needless to say that under the Transfer of Property Act, lease is described as a temporary transfer of property in favour of another against premium or rent. The person temporarily transferring the property is called lessor and the person in favour of whom the property is transferred is called lessee. Lease is essentially devolution of tenancy right in respect of the lease hold property on a temporary basis.

It is needless to say that in case of lease, property is temporarily transferred subject to payment of premium or rent either periodically or monthly. In the instant case, as per the provision of Section 105, the lease is not an agricultural lease. It is a lease of vastu property. Therefore, the lessee is under obligation to pay monthly rent and the subject lease is liable to be determined by 15 days' notice.

In view of such circumstances, though the Transfer of Property Act qualitatively describes lease as one of the transfers of property, it is not classically transfer of property in comparison to simple mortgage, mortgage by deposit of title deed. Practically transfer of a vastu land by simple mortgage or mortgage by deposit of title deed binds the mortgager in more precarious situation because of the fact

that the schedule bank or cooperative society has the statutory authority to attach and sell the property under mortgage on the failure of payment of mortgage money.

Thus, considering the entire object and purpose of Section 49 and the purpose for which the lease for grant of FPS licence was taken, this Court is not in a position to hold the deed of lease executed by one Tarun Kumar Kapri in favour of the respondent No.7 is void and ab initio.

In view of the above discussion, I do not find any merit in the instant writ petition and, accordingly, the same is dismissed.

(Bibek Chaudhuri, J.)

***Mithun De.
A.R. (Ct).
SI No.02.***