

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
(Appellate Side)

FMA 1069 OF 2019

Smt. Kabita Saha & Ors.

Vs.

The State of West Bengal & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants : Mr. Saptansu Basu, Sr. Adv.,
Mr. Kumar Gupta, Adv.
Mr. Supratim Laha, Adv.
Mr. Binay Kumar Jain, Adv.
Mr. Piyush Jain, Adv.

For the State Mr. Amitesh Banerjee, Senior Standing
Counsel,
Ms. Ipsita Banerjee, Adv.

For B.M.C. Mr. Arka Kumar Nag, Adv.
Mr. Tirthankar Dey, Adv.
Mr. S. Banerjee, Adv.

CAV On : 29.11.2022

Judgment On : 03.02.2023

1. The matrix of the instant appeal which has arisen out of a judgment passed in the Writ Petition No. 31206 (W) of 2017 may be narrated as here under:

2. A deed of lease for a period of 999 years was executed by the Government of West Bengal in favour of the predecessor -in -interest of the petitioners in respect of plot number FC-47 in Sector III of Salt Lake, Kolkata with a condition to construct a residential building on the said premises within three years. Due to death of the original allottee and thereafter successive death of some of the legal heirs of the allottee, construction was not made on the said land. However, on the application for mutation submitted by the legal heirs, an order dated 23.05.2017 was passed by the Department of Urban Development, Government of West Bengal mutating the names of the petitioners as co-lessees in respect of plot number FC-47, Sector III Salt Lake, Kolkata with a condition that the building is to be constructed within 6 months. The writ petitioners submitted building plan before the Executive Engineer, Bidhannagar Municipal Corporation for its approval on 21st August, 2017. On 23rd August, 2017 the petitioners submitted a letter before the respondent No. 3 with a request for removing the board of the Department of Urban Development from the site of the scheduled land along with further information that they have submitted the building plan for sanction before the Municipal Authority. It was also the case of the petitioners that they

requested the respondents on 05.09.2017 to issue a narrower and wider plan of the plot. By a letter dated 23rd November 2017 the writ petitioners further requested the respondents for removal of the board from the site to enable them to construct their building and to extend the time for completion of construction of the building. The respondent no. 3 by order dated 30.11.2017 resumed the plot in question after terminating the lease, without considering the fact, inter alia, that the writ petitioner took all necessary steps for construction by submitting the proposed plan before the Municipal Authorities.

3. The respondent No.3 being the Land Manager, Urban Development Department by an affidavit-in-opposition has claimed that the deed of lease dated 14.11.1983 was executed by the Government of West Bengal in favour of one Sudhir Chandra Poddar in respect of relevant land for a period of 999 years, inter alia, with the express condition that a residential building would be constructed at the premises within a period of 3 years. Sudhir Chandra Poddar died on 11.10.1991 without constructing any residential building as stipulated in the Lease Deed. After the death of Sudhir Chandra Poddar, mutation certificate in respect of premises was issued in the name of his legal heirs viz., Samir Kumar Poddar, Kabita Saha, Mamata Roy and Sanjukta Chaudhary on 28.11.2002. A show cause notice in the name of the said co-lessees for failure to make any construction was issued on 26.12.2005. In spite of giving several opportunities of hearing, the said co-

lessees did not cooperate, and ultimately one co-lessee Samir Kumar Poddar appeared and prayed for issuance of wider and narrower side certificate in respect of the land in question and accordingly the concerned respondent duly issued no objection certificate by Memo No. 944 dated 13th April, 2007. As the two of the mutated lessees namely Samir Kumar Poddar and Mamata Roy passed away, an application for mutation of the premises in the name of the legal heirs of the deceased was filed on 28.12.2016 and a new mutation certificate in respect of the premises was accordingly issued in the names of the petitioners on 23rd May, 2017 upon the express condition that construction was to be completed within a period of 6 months. On 14th September, 2017, the petitioners applied for transfer of 100% share in respect of the premises in favour of one Gopal Banka and Sunita Banka. On 28th November, 2017, a Departmental Enquiry was made by the surveyor in respect of the premises when it transpired that even then the premises was lying vacant and no construction had been made despite the fact that 6 months had expired on 23rd November, 2017. In the circumstances, respondent authorities were constrained to issue a resumption order on 30th November, 2017 for cancellation of the allotment of the premises due to violation of clause 2(6)(a) of the said lease Deed dated 14th September, 1983. By a letter dated 19.12.2017 the application made by the petitioners seeking permission for transfer of their leasehold interest over the demised premises in favour of Gopal Banka and Sunita Banka was also rejected. The department has further submitted that the allotment of the premises was

made in 1983, but the original lessee as well as his legal heirs have failed, neglected and refused to make any construction on the premises for a period of more than 33 years despite having been given multiple opportunities to do so which is in violation of the terms of the lease deed and this shows that the petitioners do not require the premises for their residential purpose. It is also the case of the department that the fact that the petitioners had applied for transfer of the leasehold interest in the name of Gopal Banka and Sunita Banka clearly indicates that the petitioners intend to make financial gains out of the premises in question and as such the respondent authorities have been compelled to cancel the allotment after following due process.

4. The Learned Single Judge has dismissed the writ petition on the grounds, inter alia,

- a) that from 1983 till the date of the impugned notice, no construction of any building has been carried out in the premises,
- b) that the writ petitioners are attempting to transfer the said plot to one Banka family in violation of clause 2(6)(a) of the Lease Deed,
- c) that the petitioners are trying to create third party interest in the premises with dishonest intention and motive,

d) that the claim of the petitioner is frivolous, vexatious or prima facie unjust and they are not with clean hands in approaching the extraordinary jurisdiction of the High Court under Article 226 of the Constitution,

e) that admittedly the petitioners have done absolutely nothing since 1984 and are now attempting to benefit third party strangers to the original lease agreement,

f) that the petitioners are not entitled to enjoy a premium nor can any vested right be said to have accrued in their favour in the light of their admitted failure to honour their contractual obligations .

5. Learned Senior Counsel, Mr. Basu appearing for the appellants, has categorically submitted that it is true that there was a long delay in constructing any residential building on the premises in question, but the mutation certificate issued in favour of the present lessees on 23.05.2017 has shown that the Department of Urban Development and the Government have condoned the appellants' delay in constructing the residential premises since 1983 to the date of issuance of latest mutation certificate in the year 2017, and, therefore, neither the Government nor the Court can raise the issue once again that since 1983 the land in question was kept in an idle condition. The Court can only look into whether or not the petitioners acted judiciously, sincerely as per terms of the mutation certificate issued on 23.05.2017. After getting the mutation certificate in the month of May 2017,

a building plan for sanction was submitted on 21st August, 2017. Admittedly, for preparation of building plan some time was required and therefore, submission of building plan within three months from the issuance of certificate on 23rd May, 2017 cannot be treated to be a delayed submission of building plan. Moreover, the authorities were duly intimated that the petitioners had submitted building plan for sanction before the competent authorities and it is further submitted that the respondent authorities did not consider their prayer for extension of time, which they could do in terms of the Lease Deed. Before passing any order of resumption the respondent authorities should have given an opportunity of hearing to the petitioners but unfortunately the same was not done as a result of which the petitioners' fundamental rights have been seriously jeopardized.

6. In support of his contention, the learned Counsel has relied on the decisions reported in AIR 1985 Calcutta 37, (2010) 9 SCC 157 and (2004) 2 SCC 130.

7. In AIR 1985 Calcutta 37 (In Re: Ganesh Trading Co. Pvt. Ltd.) a learned Judge of this court observed that in principle, even a lessee who suffered a decree of eviction has his right to rent from his sub-lessees until he is actually evicted from the premises.

8. In (2010) 9 SSC 157, (Greater Mohali Area Development Authority And Others Vs. Manju Jain And Others) the Hon'ble Supreme Court, after referring to the decision reported in (2004) 2 SCC 130, held that the allotment should not be cancelled unless the intention or motive on the part of the allottee in not making due payment is evident. The drastic power of resumption should be exercised in exceptional cases but that does not mean that the statutory powers conferring the right on the authority should never be resorted to.

9. In (2004) 2 SCC 130 (Teri Oat Estates Pvt. Ltd. Vs. U.T. Chandigarh And Others.) Hon'ble Supreme Court has been pleased to hold that there cannot be any doubt whatsoever that if the intention of the allottee is dishonest and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, necessary action under the relevant provision can be taken.

10. The learned Counsel of the State-respondents Mr. Banerjee, has contradicted the arguments of the appellants by claiming that the sole objective of the petitioners was to make financial gain out of the premises in question and for which they killed time without making any construction for more than 33 years, and ultimately attempted to transfer the premises to the Banka family for huge consideration. They or their predecessors were given ample opportunities for construction but in vain. The order of

resumption was in accordance with law and that has been rightly upheld by the Learned Single Judge.

11. Mr. Arka Nag, learned Counsel for the Bidhannagar Municipal Corporation, has categorically stated that the conduct of the appellants is not proper. The appellants filed the writ petition on 21.12.2017, whereas the building plan was sanctioned on 21.03.2018. Thereafter a series of adjournments was taken by the appellants during hearing of writ application and ultimately, hearing of the writ petition took place on 14.09.2018. According to him, the appellants have unnecessarily taken adjournments to suit their purpose.

Court's view

12. After considering the submission and counter submission of the learned Counsel of the parties and also taking into consideration the impugned judgment passed by the learned Single Judge, the sole point for consideration is whether the impugned judgment is sustainable in law or not.

13. If we scrutinize the impugned judgment we shall find that the Learned Single Judge has come to the findings that writ petitioners did not approach the writ Court with clean hands since they dishonestly and motivatedly tried to transfer the premises in question for huge consideration,

in violation of the provisions of the original lease deed. Since 1983 the appellants did not take any steps for construction and subsequently attempted to transfer the land in question for valuable consideration.

14. If we further scrutinize the materials on record, we shall find that the latest mutation certificate dated 23/5/2017 directed the mutated lessees to complete the construction within 6 months from the date of issuance of the said certificate. It is true that prior to issuance of the mutation certificate on 23.5.2017, there were serious allegations that neither the original lessee nor the subsequent lessees took any positive steps to construct any residential building on the demised premises, and for such failure the lessees were directed to submit show cause/explanation etc. But ultimately the concerned Department of Urban Development mutated the names of the legal heirs of the original lessees and subsequent lessees, since deceased, on condition that they should construct the residential building within 6 months from 23.5.2017. This goes to show that the Urban Development Department has condoned or waived the delay already caused by the lessees or their predecessors in constructing the residential building on the demised premises.

15. The laches if any on the part of the original lessee or subsequent lessees for constructing any residential building on the demised land have been erased out as soon as the concerned department gave the mutated lessee an opportunity to remedy or make up their failure or default, as the

case may be, in constructing the residential building by issuing the mutation certificate dated May 23rd, 2017. Had they been able to construct the residential building on the demised premises within the stipulated period of six months from May 23rd, 2017, there would not have been further question raised from the side of the department. Therefore, the issue of failure for making construction on the demised land can be considered in the light of the condition enumerated in the said mutation certificate dated 23.05.2017. For the purpose of proper understanding, the said notice/mutation certificate dated 23.05.2017 is reproduced herein below:-

*“Government of West Bengal
Department of Urban Development & Municipal Affairs
Nagarayan, DF-8, Sector-1, Salt Lake, Kolkata-700 064*

MUTATION ORDER

Memo No. 1211-SL(AL)-SC-4/79(FC-47)

Date: 23 May, 2017

Following the death of Samir Kumar Poddar and Mamata Roy, the mutated co-lessees of Plot No.47, Block. FC- Sector-III, Salt Lake, Kolkata-700106, died on 6/10/2016 and 23/04/2010 his/her legal heirs submitted application dated 28/12/2016, alongwith supporting documents for causing mutation of the Plot in favour of 1) Smt. Kabita Saha, 2) Smt Sanjukta Chaudhury, 3) Smt. Rikta Poddar, 4) Smt. Sayani Poddar, 5) Smt Shreya Poddar, 6) Smt. Debamita Basak (Roy).

After careful consideration of the application and its enclosures mutation is hereby accorded in favour of the applicants for their respective undivided shares as mentioned at the schedule below subject to strict compliance of the term and conditions of the lease deed executed on 14/09/1983. All the relevant records of the Department are updated accordingly and it is pointed out that this order shall stand cancelled in case of any misrepresentation of the fact is ever reported and proved. In such an

eventuality the applicants shall be responsible for making compensation of the loss caused to the State Government, the persons concerned and others, if any.

SCHEDULE

Details of No. 47, Block –FC, Sector-III, Salt Lake, Kolkata – 700106

	Name	Relation with Existing Lessee(s)	Shares
<i>Existing Lessee(s)</i>	1) Sri Samir Kumar Poddar (since deceased)	Self	1/4 th
	2) Smt. Mamata Roy (since deceased)	Self	1/4 th
	3) Smt. Kabita Saha	Self	1/4 th
	4) Smt. Sanjukta Chaudhury	Self	1/4 th
	5)		
<i>Details of the lessees as determined following this mutation</i>	1) Smt. Kabita Saha	Self	1/4 th
	2) Smt. Sanjukta Chaudhury	Self	1/4 th
	3) Smt. Rikta Poddar	Wife	1/12 th
	4) Smt. Sayani Poddar	Daughter	1/12 th
	5) Smt. Shreya Poddar	Daughter	1/12 th
	6) Smt. Debamita Basak (Roy)	Daughter	1/4 th

Condition: To complete construction of Residential Building within six (6) months from the date of issue of Mutation Order. All concerned including Bidhannagar Municipal Corporation are requested to take note of the above and act accordingly. This order will take immediate effect.

(DINESH CHANDRA MANDAL)
Land Manager, Bidhannagar
Department of Urban Development & Municipal Affairs”

16. From the contents of the said notice, it transpires that failure of the original lessee or the subsequent lessees in making the construction on the demised land has not been given importance in the said mutation order and

names of the present lessees in relation to the demised premises have been mutated on the condition that they should complete the construction of the residential building within six months from the date of issuance of mutation order.

17. From the records it transpires that for the purpose of construction of the residential building, proposed building plan was submitted before the Bidhannagar Municipal Corporation on or about 21.8.2017 and the matter was brought to the notice of the concerned department by issuing a letter dated 23.08.2017 which was received by the office of the respondent No. 3 on 24.08.2017. By a letter dated 23.11.2017 the appellant no. 1 informed the respondent No. 3 that she had submitted the building plan for sanction to Bidhannagar Municipal Corporation on 20.09.2017 which was not approved till that date, and as such she could not start the construction. It was also informed that she had already constructed a boundary wall on the demised premises. She further requested inter alia to extend the period for completion of the construction on the plot. But without giving any opportunity of hearing to the appellants resumption order was passed by the respondent No. 3 resuming the plot of land and thereby cancelling the allotment order dated 22.04.1980 and the lease deed dated 14.07.1983 under clause 4 of the said deed of lease.

18. For the purpose of proper understanding of the case the resumption order dated 30.11.2017 is reproduced herein below:-

*“Government of West Bengal
Department of Urban Development & Municipal Affairs
Nagarayan, DF-8, Sector-1-
Salt Lake, Kolkata-700 064*

RESUMPTION ORDER

Memo No. 2785-SUAL-SC-4/79(FC-47)

Date: 30th November, 2017

*From: The Land Manager, Bidhannagar,
Department of Urban Development & Municipal Affairs
Government of West Bengal*

To

1. *Smt. Kabita Saha, Plot No.FE-320, Sec-III, Salt Lake, Kol-106*
2. *Smt. Sanjukta Chaudhury, Chameli Kuthi, T-24, Khirkee Extn, New Delhi – 110017.*
3. *Smt. Rikta Poddar, Plot No. AA- 5, Sector-I, Salt Lake, Kolkata – 700 064.*
4. *Smt. Sayani Poddar, Plot No. AA- 5, Sector-I, Salt Lake, Kolkata – 700 064.*
5. *Smt. Shreya Poddar, Plot No. AA- 5, Sector-I, Salt Lake, Kolkata – 700 064.*
6. *Smt. Debamita Basak (Roy), Meena Residency, Block-E, Flat No. B-5, VIP Road. Teghoria, Dhalipara, Hatiara, Kolkata – 700 057.*

Sub: Cancellation of Allotment for violation of Clause 2(6)(a) of the Lease Deed In respect of Plot No.47, Block-FC, Sector-III of Bidhannagar, leased out to Sudhir Chandra Poddar.

WHEREAS by a deed of Indenture executed between the Governor of the State of West Bengal and the original lessees on 14/09/1983 a plot of land being No.47 in Block-FC, Sector-III, of Bidhannagar had been leased out to Sudhir Chandra Poddar on the terms and conditions as set forth in the said lease deed to erect a house and building thereon within three years of delivery of possession of the said plot.

AND WHEREAS the delivery of possession of the aforesaid plot was taken over by the said lessee on 05/07/1984 vide No.1033 dated 06/07/1984.

AND WHEREAS in terms of Clause 2(6)(a) of the aforesaid indenture construction should have been made within three years from the date of possession of the demised land, i.e. within 05/07/1987.

AND WHEREAS the Governor of the State of West Bengal was pleased to serve upon you/ mutated Lessees a notice under Clause 4 of the aforesaid Indenture to remedy the breach caused by violation of Clause 2(6) of the lease deed within six months from the date of issue of the notice vide this Deptt. Memo No.2695-SL(AL)-FC-47 dated 26/12/2005 as the plot was still found lying vacant.

AND WHEREAS you submitted an application for mutation on 28/12/2016 following the death of Samir Kumar and Mamta Roy, two of the co-lessees.

AND WHEREAS a Mutation order was issued by this Deptt. on 23/05/2017 vide Memo No.1211- Sunt-SC-4/79/FC-47) with a condition to complete construction within six months from the date of Issue of this order in favour of the legal heirs of deceased lessee.

AND WHEREAS it reveals from enquiry report on 28/11/2017 that the plot is still lying vacant in violation of clause 2(6) of the Lease Deed dated 14.09.1983.

NOW THEREFORE, I on behalf of the Governor of the State of West Bengal am directed to say that the Governor of the State of West Bengal has been pleased to resume the demised Plot No. FC-47 in Sector –III, Bidhannagar, (Salt Lake City) by cancellation of offer of Allotment order No. 817-SL(AL)-SC-4/79 dated 22/04/1980 and the lease deed dated 14/07/1983 under clause 4 of the Lease Deed.

You are requested to handover peaceful physical possession of the plot of land alongwith the plot related documents in original to the Executive Engineer (Design) S.L.R.D.C. Nirman Bhavan, Kolkata – 700091, within fifteen (15) days from the date of issue of this letter falling which Govt. will re-enter into possession without further reference.

*(DINESH CHANDRA MANDAL)
Land Manager, Bidhannagar
Department of Urban Development & Municipal Affairs”*

19. From the above, it transpires that the lease deed was cancelled on the grounds that even after a prolonged delay, the mutated lessees were given opportunity by an order dated 23.05.2017 to complete the construction within six months from the date of issue of the order dated May 23rd, 2017 but as the mutated lessees have failed to construct the said proposed residential building within six months the allotment order, as well as the relevant lease deed dated 14.07.1983 under clause 4 to the lease deed were cancelled.

20. It appears from the said resumption order that the department did not cancel the lease deed or the allotment order on the ground that the appellants were attempting to transfer the said premises in favour of third party dishonestly or motivatedly. There is no whisper in the said resumption order that the petitioners/appellants had submitted a prayer for transfer of their 100% share in the demised land in favour of third parties. Now the question is when the resumption order is silent about the alleged attempt of transfer to third parties in lieu of huge sum of money, whether the Learned Single Judge should have taken up the issue on the basis of affidavit-in-opposition filed by the respondent No. 3 who was the officer who, on behalf of the Governor of West Bengal issued the resumption order dated 30.11.2017. The resumption order as aforesaid was issued, as per the contents of the said order, on the ground of failure of the mutated lessees to complete the construction of the residential building on the demised land

within six months from 23.05.2017. Therefore all the observations made by the Learned Single Judge regarding attempt to transfer have rightly been described by the appellants as making out of a third case particularly when the relevant issue was whether the mutated lessees complied with the condition as depicted in the mutation order dated 23.05.2017 or not. Hence, all the observations regarding the dishonest motive of the mutated lessees for transferring the demised premises to third parties are beyond the resumption order and the said observations cannot be given much weight. Even for arguments sake, if it is found that mutated lessees were trying to transfer their leasehold interest in the demised premises in favour of third parties, the question may arise whether they were entitled to do so as per terms of the lease agreement or not. If we scrutinize the provisions of the lease agreement we shall find that the mutated lessee could do so subject to permission of the concerned government. The mutated lessees, accordingly, had applied for permission to transfer their leasehold interest to third parties on valuable consideration as per terms of the lease agreement. If the mutated lessees can do so as per the terms of the lease deed, can it be described as dishonest act on the part of the appellants? Neither the appellants by seeking permission nor the respondent no. 3 by denying such permission may have committed any wrong in the eye of law. In any event, such rejection order is not under challenge in the present proceedings. However, as the resumption order dated 30.11.2017 does not whisper about

the attempt to transfer on the part of the appellants, there is no need for further discussion on the above issue.

21. Now the question is whether the appellants are entitled to an opportunity of being heard particularly when the materials on record are suggestive of the fact that the appellants submitted the proposed building plan for sanction before the Bidhannagar Municipal Corporation and the same was pending for sanction at the relevant point of time. It is also found that the matter was intimated to the respondent No. 3 and a prayer was made for extension of time for completion of the residential building. But unfortunately the appellants were not given an opportunity of being heard over their such prayer and resumption order was passed from the side of the concerned department.

22. Needless to mention that construction of a residential building requires preparation of a building plan with the aid of engineers, experts and other personnel and thereafter it also requires sanction from the municipal authorities and obviously it will take some time. It may not have been possible to complete the construction of a residential building within six months as proposed by the respondent No. 3 in the mutation order dated 23.05.2017. A reasonable and prudent man would know that it is extremely difficult to complete the construction within six months since the same goes through several stages, such as, the process of preparation of building plan,

obtaining sanction from the municipality and thereafter engagement of masons, labours and other experts to complete the construction as proposed. Even the Learned Single Judge has been pleased to observe in the impugned judgment as hereunder :-

“Moreover, it is true that, to an extent, because of the possible delay in furnishing of mutation certificate and the sanction plan by different arms of the state the petitioners were for a brief period unable to make any construction.....” (para 16, page 12)

23. Therefore, it appears that the mutated lessees tried to get building plan sanctioned but were unable to do so within the time period that may have enabled them to complete the construction within 6 months from the date of mutation, due to the time consumed in preparation and getting sanction from the Authority and as such there is no doubt that the petitioners got a very short period for completion/construction of the residential building and had they been given some little more time they might have been able to complete the construction. However the difficulties of the petitioners could have been brought to the notice of the Department of Urban Development had they been given an opportunity of being heard on their prayer dated 23.11.2017. This is a serious lacuna on the part of the respondent No. 3 and as such I am compelled to hold that the respondent No. 3 committed a serious mistake by not affording an opportunity of

hearing to the appellants and thereby prejudicing the appellants in exercise of their fundamental rights.

24. Accordingly the impugned judgment and order as also the relevant resumption order dated 30.11.2017 in connection with Plot No. FC-47, Sector-III, Salt Lake City, Kolkata along with cancellation order of Allotment order No. 817-SL(AL)-SC-4/79 dated 22.04.1980 and the lease dated 14.07.1983 issued by the Land Manager, Department of Urban Development and Municipal Affairs, Government of West Bengal, Nagarayan, Salt Lake, Kolkata-700 064 are hereby set aside.

25. The respondent no. 3, the Land Manager, Department of Urban Development and Municipal Affairs, Government of West Bengal, Nagarayan, Salt Lake, Kolkata-700 064 is directed to afford an opportunity of hearing to the appellants in connection with their letter dated 23.11.2017 for extension of time period as noted above within four weeks from the date of receipt of communication of this order and to pass a reasoned order in accordance with law within two weeks thereafter, after complying with all the legal formalities thereto. I also make it clear that the respondent no. 3 should not be influenced by any of the observations of this court in dealing with the relevant hearing and passing of the order. I also make it clear that any construction, if made in the intervening period, shall not create any equity either in favour of the appellants or any other person. The respondent no. 3

is at liberty to pass any appropriate order which he may deem fit and proper in accordance with law.

Arijit Banerjee, J.:

1. I have had the benefit of reading the detailed judgment of my learned Brother. I entirely agree with the conclusion reached by him. However, I take the liberty to add a few words.

2. The lease deed in question was executed in favour of the predecessor-in-interest of the appellants in November, 1983. One of the clauses of the deed required the lessee to construct a residential building on the concerned plot of land within 3 years from the date of execution of the lease deed. Admittedly, no such construction was made by the original lessee or his successors-in-interest including the appellants herein, either within the prescribed period of 3 years or within any reasonable period thereafter.

3. In course of time, several of the successor-in-interests of the original lessee died. On a number of occasions, show-cause notices were issued to the successor-in-interest of the original lessee for cancellation of the lease. However, the lease was not cancelled. Mutation of the lease hold land was granted in favour of the appellants herein on May 23, 2017, with a condition attached that a building had to be constructed on the land in question within six months. The appellants submitted a building plan for sanction by

the Bidhannagar Municipal Corporation on August 21, 2017. On September 14, 2017, the appellants applied to the competent authority for transfer of their lease-hold interest in favour of one Gopal Banka and Sunita Banka. By a letter dated November 23, 2017, the appellants requested the respondent authorities, inter alia, to extend the time for completion of construction of the building on the land in question. On November 30, 2017, the respondent authorities cancelled the lease and resumed the land in question. By a letter dated December 19, 2017, the application of the appellants seeking permission for transfer of their lease-hold interest, was rejected.

4. The appellants approached the learned Single Judge for quashing of the order cancelling the lease and for a direction on the Bidhannagar Municipal Corporation to forthwith sanction the building plan that had been submitted by the appellants. The writ petition was dismissed on the grounds noted by my learned Brother.

5. As on the date of cancellation of the lease, i.e., November 30, 2017, the appellants' request for extension of time for completing construction of the proposed building, was pending before the competent authority. In my view, the competent authority ought to have dealt with that application first, before it issued the order cancelling the lease. The authority should have taken a decision on the request of the appellants for extension of time, upon affording an opportunity of hearing to the appellants.

6. The contention of the State that for a period of 34 years starting from 1983, the original lessee or his successors in the interest including the appellants herein, took no steps for constructing a building on the land in question as required by the terms and conditions of the lease, does not hold good. Once mutation of the land in question was granted in favour of the appellants on May 23, 2017, the delay on the part of the appellants or their predecessors-in-interest in complying with the condition of putting up a building on the concerned plot of land, stood condoned. Time started running afresh for the appellants.

7. By the order granting mutation, the authorities required the appellants to construct the building within six months. This time period, in my view was unreasonably short. The time period that was originally stipulated for putting up the building was three years from the date of execution of the lease. Be that as it may, when the building plan submitted by the appellants was pending consideration before the Bidhannagar Municipal Corporation and the appellants requested for extension of time for construction of the proposed building, it was not proper for the authorities to cancel the lease without addressing the request of the appellants. The principles of natural justice warranted that the appellants were given an opportunity of hearing by the authorities on their application for extension of time, and only then take a decision regarding cancellation of the lease. Had such an opportunity of hearing been given, it is possible that the appellants

may have been able to persuade the authorities that there was sufficient cause for the appellants not being able to construct the building within 6 months from the date of mutation.

8. I therefore completely agree with my learned Brother that the order cancelling the lease is liable to be quashed. The competent authority shall give an opportunity of hearing to the appellants on their request for extension of time to put up the proposed building on the concerned plot. Only after taking a decision regarding such request, by way of a reasoned order, in accordance with law, the competent authority shall take a fresh decision regarding cancellation of the lease in question. We do not bind the hands of the competent authority to take a decision one way or the other. The authority will be completely free to take an informed decision in accordance with law after observing the principles of natural justice.

9. The appeal is disposed of without however any order as to costs.

10. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)