

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

**The Hon'ble Justice Debangsu Basak
And**

The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 1456 of 2023

**Smt. Chhabi Chowdhury
VS.**

The State of West Bengal & Ors.

For the Appellant : Mr. Debasish Chattopadhyay
Mr. Loknath Paul
Mr. Tirthankar Basu

For the State : Mr. S. Bandopadhyay
Mr. Arka Kumar Nag

Heard on : December 12, 2023

Judgment on : December 12, 2023

DEBANGSU BASAK, J.:-

1. The appeal is directed against an order dated April 12, 2023 passed by the learned Single Judge in W.P.A. 8152 of 2016. By the impugned order, the learned Single Judge dismissed the writ petition.
2. Appellant before us is the writ petitioner. Appellant claims right, title and interest in respect of an immovable property which is a subject matter of a Lease obtained from the State Government, by

virtue of a probate granted in respect of the Will of the original allottee.

3. Learned advocate appearing for the appellant submits that an immovable property was allotted in favour of the original allottee and that an agreement for Lease was entered into by and between the State and original allottee on July 12, 1953. He refers to Clause 9(h) of the agreement and submits that such Clause permits transfer of the Lease by way of a Will. The original allottee executed a Will dated December 26, 2003 in respect of which, an application for grant of Probate was made. Probate was granted on April 28, 2014. Subsequent thereto, the appellant applied for mutation. The authorities did not allow the application for mutation. Consequently, the appellant filed the writ petition in which the impugned order was passed.
4. Relying upon (1997) 2 SCC 387 (**State of West Bengal & Anr. Vs. Kailash Chandra Kapur & Ors.**), he submits that the Lease Deed does not prohibit a transfer of the lease-hold property by a Will.
5. Learned advocate appearing for the appellant submits that similar Clauses as that of subject lease were considered by the Supreme Court in **Kailash Chandra Kapur & Ors.** (supra) and it was held that there was no impediment in the original allottee transferring land allotted by way of a Will.

6. Learned Advocate appearing for the State submits that he is not in a position to dispute the proposition of law as laid down in **Kailash Chandra Kapur & Ors.**
7. State of West Bengal issued a Notification inviting the public to apply for allotment of plots at Kalyani, Nadia on lease for 999 years, subject to payment of premium. Gouri Dutta, original allottee applied for the same in 1963. Being satisfied, State agreed to allot the original allottee the plot bearing Plot No. B-4/28 at Kalayani, Nadia.
8. The original allottee paid the amount required in terms of the allotment. An agreement for Lease for a period of 999 years was entered into between the original allottee and State of West Bengal on July 12, 1963.
9. Clause 9(h) of such Lease Deed is as follows:-

“9.....(h) Should the Lessee/Lessees die after having made a bequest of the leasehold premises and the building to be erected thereon in favour of more than one person or die intestate having more then in such case the persons to whom leasehold premises with the buildings thereon be so bequeathed or the heirs of the deceased Lessee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same by metes and bounds or they shall nominate one person amongst their member in whom the same shall vest.”
10. The original allottee left behind then a Will dated December 26, 2003. The appellant before us applied for grant of Probate of such

Will and Probate in respect thereof was granted by the High Court on April 28, 2014 in PLA No. 291 of 2001. Thereafter, the appellant applied before the authorities for mutation. Such application was submitted on May 15, 2014 followed by a reminder on August 22, 2014. The respondent authorities, however, did not process the application for mutation. Being aggrieved by the silence of the respondent authorities, the appellant filed a writ petition being W.P.A. 11567 (W) of 2015 which was disposed of by the High Court on June 15, 2015 directing the Estate Manager to consider and decide the request for mutation of the appellant, in accordance with law, within a period of four weeks from the date of communication of the order.

11. Pursuant to such direction, the Estate Manager passed an order dated August 21, 2015 where he rejected the request for mutation. Being aggrieved, appellant filed the writ petition in which the impugned order was passed.
12. Similar Clause as that of 9(h) appearing in the Deed of Lease came up for consideration before the Supreme Court in **Kailash Chandra Kapur & Ors.** (supra). There, the Supreme Court held as follows:-

“12. In view of the above-settled legal position, the question is whether the Governor is bound to recognise him. It is seen that clauses (7), (8) and (12) are independent and each deals with separate situation. Clause (7) prohibits sub-lease of the

demised land or the building erected thereon without prior consent in writing of the Government. Similarly, clause (8) deals with transfer of the demised premises or the building erected thereon without prior permission in writing of the Government. Thereunder, the restricted covenants have been incorporated by granting or refusing to grant permission with right of pre-emption. Similarly, clause (12) deals with the case of lessee dying after executing a Will. Thereunder, there is no such restrictive covenant contained for bequeath in favour of a stranger. The word "person" has not been expressly specified whether it relates to the heirs of the lessee. On the other hand, it postulates that if the bequest is in favour of more than one person, then such persons to whom the leasehold right has been bequeathed or the heirs of the deceased lessee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same and one among them should alone be answerable to and the Government would recognise only one such person. In the light of the language used therein, it is difficult to accept the contention of Shri V.R. Reddy, that the word "person" should be construed with reference to the heirs or bequest should be considered to be a transfer. Transfer connotes, normally, between two living persons during life. Will takes effect after demise of the testator and transfer in that perspective becomes incongruous. Though, as indicated earlier, the assignment may be prohibited and the Government intended to be so, a bequest in favour of a stranger by way of testamentary disposition does not appear to be intended, in view of the permissive language used in clause (12) of the covenants. We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes appropriate

restrictive covenants prohibiting the bequest in favour of the strangers or by enacting appropriate law, there would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers. It is seen that the object of assignment of the government land in favour of the lessee is to provide him right to residence. If any such transfer is made contrary to the policy, obviously, it would be defeating the public purpose. But it would be open to the Government to regulate by appropriate covenants in the lease deed or appropriate statutory orders as per law or to make a law in this behalf. But so long as that is not done and in the light of the permissive language used is clause (12) of the lease deed, it cannot be said that the bequest in favour of strangers inducting a stranger into the demised premises or the building erected thereon is not governed by the provisions of the regulation or that prior permission should be required in that behalf. However, the stranger legatee should be bound by all the covenants or any new covenants or statutory base so as to bind all the existing lessees”.

13. Subject Deed of Lease is for a period of 999 years. It vests the original allottee with various rights. The period of lease is such that it would obviously outlast the natural lifetime, by today's standards of the original allottee. Clause 9(h) of the Lease Deed for the situation of devolvment of interest in the lease upon the death of the original allottee. Since rights to property can be transferred, on death, either by a Will or by the law of succession which governs the allottee. Clause 9(h) deals with both of such

situations. It acknowledges that devolution of interest is possible both by succession or by testament.

14. Clause 9(h) of the Deed of Lease under consideration also does not prohibit the making of Will by the original allottee and the original allottee directing the course of succession of the leasehold rights under the Lease Deed by a Will. Once the Lease Deed is found not to impede succession being governed by a Will, the Estate Manager was obliged to recognise the succession so prescribed by the Will, particularly after grant of Probate in respect thereof.
15. In view of the authoritative pronouncement of the Supreme Court rendered in **Kailash Chandra Kapur & Ors.** (supra), we find that the Estate Manager acted arbitrarily in rejecting the application for mutation. The order of the Estate Manager dated August 21, 2015 is quashed. The impugned order dated July 12, 2023 passed in the writ petition is set aside.
16. M.A.T. 1456 of 2023 is disposed of without any order as to costs.

(Debangsu Basak,J.)

- 17 I Agree.

(Md. Shabbar Rashidi, J.)

(SD)

