

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 16065 of 2011
CAN 1 of 2015 (Old No: CAN 2407 of 2015)
Kakoli Biswas
Versus
Kolkata Improvement Trust & Ors.

For the petitioner	:	Mr. Krishnendu Bhattacharya Mr. Priyankar GangulyAdvocates
For the KMDA	:	Mr. Satyajit TalukderAdvocate
For the respondent nos. 5, 6	:	Mr. Arabinda Chatterjee Ms. Kakali DuttaAdvocates

Heard lastly on : 13.01.2023

Judgment on : 17.04.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities, especially the respondent no.4, to cancel and withdraw the order dated 02.09.2011 and mutate the name of the petitioner in respect of the property being Flat

No.11, Block No.A, KIT Scheme No. BIS-1 at 7/1, Rajendra Mullick Street, Kolkata-700007.

2. Learned counsel for the petitioner submitted as follows. The Writ petitioner was the daughter of late Kamakhya Prosad Choudhury and late Yogamaya Choudhury. The parents of the petitioner were the tenants under Kolkata Improvement Trust [now, Kolkata Metropolitan Development Authority] in respect of one flat being no. A/11 lying and situated at Block – A, of KIT Scheme No. BIS-I, 7/1, Rajendra Mullick Street, Kolkata – 700007. The said tenancy continued in succession. The petitioner was a bonafide allottee in succession. The brothers and sisters of the writ petitioner were pleased to grant “no objection” in favour of the petitioner to apply for ownership of the said flat. By a notification dated 28.10.2004, the Kolkata Improvement Trust informed the occupant/tenants and the allottees that the respondents had decided to execute and register a deed of sale upon a payment of consideration as specified in the notification. The petitioner thereafter made an application addressed to the respondent no. 2 for registration on 29.10.2009 for the ownership of the flat in the name of the petitioner. Pursuant to the application, the respondent no. 2 issued a notice dated 16.03.2010 thereby directing the petitioner to appear before him on 22.03.2010 along with all documents and testimonials in support of her case. The said date of hearing was subsequently re-fixed. The matter was taken up for hearing by the respondent no. 4 on 12.08.2011 and again on 02.09.2011. Smt. Kakoli Biswas, Smt. Sucheta Chowdhury, Sri Kinjal Chowdhury, Smt. Tania Ghosh were served with notice. Smt. Kakoli Biswas,

Sri Tridib Ghosh, Smt. Anubha Ghosh appeared before the respondent no. 4 for hearing. The parties made their respective submissions and after hearing the concerned parties and after going through the materials on record, the respondent no. 4 rejected the prayer for mutation of the petitioner as well as the application filed by the private respondents. The private respondent Tridib Jyoti Ghosh filed a writ application on 24th day of June 1985 being writ petition no. C.O/W.P. 11297 (W) of 1985 challenging the purported threat to evict him from the said flat against the Kolkata Improvement Trust Authority including its Chairman, Trustees and Estate Manager. By an order dated 17th January 2002, this Court was pleased to dismiss the said writ petition with the observation that the writ petitioner had no right, title or interest in the said flat and issued a specific direction to vacate the said flat and to handover vacant possession of the said flat within a month. The private respondent Tridib Jyoti Ghosh preferred an intra Court Appeal, but till date failed to obtain any stay against the operation of order dated 17.01.2002. The private respondent was required to be treated as an unauthorized occupant who had been disregarding the solemn order dated 17.01.2002 of this Hon'ble Court.

3. Learned senior counsel representing the private respondent submitted as follows. By the impugned order, the Estate Manager rejected the application of the writ petitioner dated 29.04.2009, for allotting the flat, which was a rental flat governed by the W.B.G.P.(TR) Act, 1976 and not a private property under Transfer of Property Act. The Estate Manager while deciding the issue had recorded the entire statements of the writ petitioner and the

private respondents and had come to the conclusion that the writ petitioner being the daughter of the late allottees had not been residing in the flat and she had permanently left the flat in the year 1979 and stayed outside the said flat. Her prayer for mutations of the said flat in her name was not considered as she violated clause number 13, 18 and 21 of tenancy agreement of her mother. The private respondents in their Affidavit in Opposition had categorically denied the allegations made against them in the writ petition and also submitted that the mother of the petitioner, the late Yogomaya Choudhary left the flat prior to her death. Admittedly, the petitioner since her marriage in 1977 never resided in the said flat. It was also the case of the private respondents that the petitioner all along was permanently residing with her husband at Mumbai, not only prior to the death of her mother but also thereafter and the private respondents were residing there till date. In the affidavit in opposition it was also submitted that the petitioner never paid or tendered any amount of rent and thus, she could not claim herself to be a tenant in respect of the flat. It was also the case of the private respondent no. 5 that as per the notice dated 28.10.2004 an application has been made to the Officer on Special Duty, Kolkata Improvement Trust (now, Kolkata Metropolitan Development Authority) on 30.12.2004 in the prescribed form No. 4110 in connection with purchase of the said flat. He made the application under the capacity of an occupant other than tenant as per provision of the said notice, within the prescribed time limit as indicated therein and the said application was pending till date in view of the pendency of the present writ petition. The question of eviction

of the private respondent was not a matter of adjudication in the present writ petition. The tenancy did not create any heritable right in the petitioner's favour. On the other hand, it was the categorical statement of her late mother at the time of making the said agreement that in the event of her death, member of her family shall vacate the flat forthwith unless the Trust agreed to enter into a fresh contract with any surviving member of her family.

4. Learned counsel for the respondent nos. 1 to 4 being the Kolkata Metropolitan Development Authority submitted as follows. The instant writ petition was a totally misconceived and frivolous one. With effect from 31st March, 2017, the Kolkata Improvement Act, 1911 had been repealed and in consequence thereof, all the properties, funds and dues of the then Kolkata Improvement Trust had been merged with the Kolkata Metropolitan Development Authority in terms of Section 6 of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 2011. Pursuant to the policy taken by the Government of West Bengal, the Urban Development Department for disposal of the rental flats of the erstwhile Kolkata Improvement Trust (KIT) under the 'KIT Rental Housing Scheme' to its tenants/occupants, in order to ensure that the KIT was relieved from bearing the financial burden of maintenance of flats for indefinite period and the tenants should bear their own responsibility themselves, the erstwhile KIT had issued a notice bearing no. EM/302 dated 28.10.2004 offering sale of all the rental flats in each of the KIT Housing Schemes (excepting MMD at Maniktala, BSR Housing Scheme at Bow Street, Kolkata and SIH-II Housing

Scheme at Chaulpatty Road, Beliaghata) on certain terms and conditions. The flat in question being Flat No. A/11 in Block-A of KIT Scheme No. BIS-I at 7/1, Rajendra Mullick Street, Kolkata – 700007 was originally allotted by the erstwhile KIT authority to one Kamakhya Prasad Chowdhury (since deceased) on 26.02.1956 on rental basis. After the demise of the said recorded tenant, the said flat was mutated in the name of his wife, Smt. Jogamaya Chowdhury (since deceased) being the legal heir and successor of the said Kamakhya Prasad Chowdhury (since deceased) and a fresh tenancy agreement was executed on 31.03.1982 stipulating certain terms and conditions governing the tenancy. In the said tenancy agreement, the names of the private respondents herein including two others had been shown as dependant members of the said Smt. Jogamaya Chowdhury, who subsequently died on 25.01.1984. In pursuance of the said notice, one Tridib Jyoti Ghosh, the private respondent no. 5 herein, allegedly claiming to be the occupant of the flat in question applied on 30.12.2004 seeking to purchase of the said flat. The petitioner herein also, though belatedly, made an application on a plain paper (not in the prescribed form) on 29.10.2009 claiming to be the daughter of the recorded tenant, Late Jogomaya Chowdhury allegedly praying for registration of ownership of the said flat in her favour. Upon receiving the aforesaid applications in respect of the flat in question, a hearing was conducted by the authority on 20.04.2010 after affording opportunity of hearing to the petitioner as also to the said Tridib Jyoti Ghosh, but the issue could not be resolved. In the meantime, the petitioner herein had moved a writ petition being WP No. 9755(W) of 2011

before this Hon'ble Court seeking direction upon the erstwhile KIT authority to consider her application dated 29.04.2011 for allotment of the flat in question in her favour. The said writ petition was disposed of on 05.07.2011 with the direction, inter alia, upon the authority to dispose of the petitioner's application regarding registration of ownership of the flat in question by passing a reasoned order, within a period of eight weeks from the date of communication of the order. The erstwhile KIT authority proceeded to dispose of the petitioner's application after giving opportunity of hearing to the petitioner and also to the private respondents herein and after hearing the respective parties. The authority passed a reasoned order on 02.09.2011 by holding, inter alia, that after hearing and on perusal of the relevant records/documents, it appeared that the petitioner, Smt. Kakoli Biswas had not been residing in the flat in question. She left the said flat in the year 1979 since her marriage. Thus, the prayer for mutation of the said in her favour cannot be considered as she had violated Clause nos. 13, 18 and 21 of the Tenancy Agreement which was executed in favour of her mother. It was worthy of being mentioned here that the KMDA was under the administrative control of the Urban Development & Municipal Affairs Department, Government of West Bengal. In the meanwhile, the policy of the State Government in regard to allotment of land and other assets had been changed and the Government vide Memo No. 6686-LP/1A-18/2012 dated 26.12.2012 introduced a policy namely, 'Land Allotment Policy' where under the State Government or its parastatals would not be in a position to transfer any land or other assets to any individual by way of sale.

5. I heard learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

6. First, this writ petition is not about establishing any purported right of the private respondent. Earlier, this Court had dismissed a writ petition filed by the private respondent and issued directions upon him to vacate the said flat. However, the said issue is pending in appeal and quite significantly, no order of stay could be obtained by the said respondent.

7. So far as the rights of the present petitioner in the property in question is concerned, certain facts are quite apparent. After her marriage in 1977, the petitioner left Kolkata and started residing permanently with her husband in Mumbai. This was prior to the death of her mother and her stay outside continued even thereafter. Even in her tenancy agreement, the petitioner's mother did not mention her as a dependent.

8. Much after the scheme of the KIT was announced for putting up such flats for sale to the occupants and even after the private respondent had applied for the same, the petitioner made a belated application, which was supposedly not in form, for seeking such benefit. Upon receipt of such applications, hearing was conducted by the authorities. In the meantime, this Court directed the authorities to consider the petitioner's application dated 29 April 2011 for allotment. In compliance of the same, the authorities disposed of the application by a reasoned order and after giving opportunity of hearing to the petitioner and the private respondent.

9. The allotment of the flat under the concerned scheme is clearly not a heritable property. There are certain conditions under which one can claim

allotment and there are some specific terms on which an occupant can seek to purchase such property under the scheme. Unfortunately, the petitioner did not conform to the requirements.

10. As per evidence, the petitioner had moved out to another place (Mumbai) and had been staying there since long. It is also germane to mention that she was not even mentioned as a dependant in the agreement by her mother.

11. In the agreement of the petitioner's mother there was a clause regarding inspection of the premises. But, the same was allegedly infringed. Even persons other than family members were allowed to stay and allegedly kept in charge of the flat. In effect, as was rightly held in the impugned order, there were violations of clause Nos. 13, 18 and 21 of the tenancy agreement entered into with the mother.

12. Besides, the impugned order is a reasoned one and is based on evidence adduced during the hearing and other relevant materials on record. An adequate opportunity of hearing was also afforded to the petitioner. Therefore, there is no violation of principles of natural justice so far as the impugned order is concerned.

13. In view of the above discussions, the prayer of the petitioner that the property in question should be mutated in her name cannot be acceded to.

14. Therefore, I do not find any merit in this application. Accordingly, the same is dismissed and the connected application is, thus, disposed of.

15. However, there shall be no order as to costs.

16. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)