

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

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

**IA No.:CAN/1/2018 (Old No.:CAN/8556/2018), CAN/2/2020,
CAN/3/2021, CAN/4/2021, CAN/5/2022
in
WPA 17656 of 2016**

**M/s. Savin World Resorts Pvt. Ltd. & Anr.
-Vs.-
State of West Bengal & Ors.**

**For the petitioners : Mr. Ratnanko Banerji, Sr. Adv.,
Mr. D. N. Sharma,
Mr. Arindam Guha,
Ms. Arpita Dey**

**For the SJDA : Mr. Anirban Ray,
Mr. Raja Saha,
Mr. Sanjoy Mukherjee**

**Heard on : 16.06.2023, 27.06.2023,
05.07.2023**

Judgment on : 05.07.2023

Bibek Chaudhuri, J.

A long-standing dispute is going on between the petitioners and the respondents specially respondent no. 2, Siliguri and Jalpaiguri Development Authority.

The petitioner no. 1 is a private limited company incorporated under the Companies Act, 1956. Proforma respondent no. 4 is practically the predecessor Company of the petitioner no. 1.

On the basis of a notice floated by SJDA on 16th June, 2005 for granting lease for 21 years of a piece of land measuring about 14 acres for construction of an amusement park in Siliguri, the petitioner no. 1 became the successful bidder. However, lease deed was executed and registered in respect of 9.2 acres of land on 26th September, 2006 for initial 10 years with a clause that it will be automatically renewed for another 11 years. Schedule 'B' of the said lease deed being the payment schedule refers to 84 installments meaning thereby the said lease was contemplated to be executed even initially for 21 years. On the same day, another agreement was executed for providing 2.5 acres of land in favour of petitioner no. 1 by the respondent no. 2.

Since the respondent no. 2 could not deliver possession of remaining 4.8 acres of land and also no lease deed was executed in respect of 2.5 acres of land, on 29th October, 2010 SJDA proposed to grant commercial lease for a period of 99 years in respect of 0.62 acres of land. Petitioners agreed to such proposal and paid entire consideration money. However, till date no lease deed has been executed by SJDA in favour of the petitioners. Subsequently, there was a dispute between the petitioners and SJDA on payment of lease rent for some period of time the petitioners stopped payment of lease rent and claimed adjustment. Since adjustment was not granted the writ petition is filed in the year 2016. During the pendency of the writ petition, however, the parties were engaged in conversation between each other so that some amicable settlement could be arrived at. In the meantime, entire world affected with the dreaded pandemic in the name of covid. The city of Siliguri was also no exception. It continued from 2020 till March, 2022. All establishments including

amusement park, multiplex even the Government and private offices and other establishments were closed during the period. As there was no business in respect of the said amusement park and the multiplex the petitioners prayed for concession for covid period from SJDA. However, it was turned down.

At the end of the day the petitioners found that they require to run the amusement park and multiplex. Therefore, they deposited entire amount due towards payment of lease rent by issuing several cheques with interest without prejudice.

Under this backdrop, the petitioners made the following prayers:-

- a) A writ of or in the nature of Mandamus do issue directing the respondents to act in accordance with law;
- b) A writ of or in the nature of Mandamus do issue declaring that the purported demand raised by the State respondents for claiming the license fees for development, operation and management of amusement park at Dagapur, Siliguri including the demand dated October 11, 2012, May 14, 2014 and April 8, 2016 are illegal, arbitrary, perverse and void;
- c) A writ of or in the nature of Mandamus do issue directing the State respondents either by themselves or by their men, agents and assigns to quash, rescind, cancel and/or set aside the purported demand raised by the State respondents for deposition of license rent/license fees for development, operation and management of the amusement park at Dagapur, Siliguri including the

demand notice dated October 11, 2012, May 14, 2014 and April 8, 2016;

- d) A writ of or in the nature of Mandamus do issue declaring that the State respondents and/or their men, agents, assigns and/or representatives are not entitled to make any demand for additional lease rent in respect of the Cineplex portion covering 0.62 acres of land situated at Dagapur, Siliguri;`
- e) A writ of or in the nature of Mandamus do issue commanding the State respondents to forthwith make over 2.5 acres of land for the amusement and Cineplex project at Dagapur, Siliguri on the basis of the terms and conditions in the expression of interest/tender;
- f) A writ of or in the nature of Mandamus do issue commanding the State respondents and/or their men, agents, assigns and/or representatives to forthwith execute and register the lease deed for 0.62 acres of land for 99 years situated at Dagapur, Siliguri for commercial purposes;
- g) A writ of or in the nature of prohibition do issue prohibiting the State respondents from demanding and/or realising additional lease rent in respect of the Cineplex portion covering 0.62 acres of land situated at Dagapur, Siliguri;
- h) A writ of or in the nature of prohibition do issue prohibiting the State respondents from claiming or demanding the license fees for development, operation and management of amusement park at Dagapur,

Siliguri, either by the demand notices dated October 11, 2012, May 14, 2014 and April 8, 2016 or any other notice of like nature;

- i) Rules NISI in terms of prayers above;
- j) Rule be made absolute if no cause or insufficient cause is shown;
- k) An order of mandatory injunction be passed directing the State respondents either by themselves or by their men, agents and assigns to quash, rescind, cancel and/or set aside the purported demand raised by the State respondents for deposition of license rent/license fees for development, operation and management of the amusement park at Dagapur, Siliguri including the demand notice dated October 11, 2012, May 14, 2014 and April 8, 2016;
- l) An order of mandatory injunction be passed directing the State respondents and/or their men, agents, assigns and/or representatives not make any demand for additional lease rent in respect of the Cineplex portion covering 0.62 acres of land situated at Dagapur, Siliguri;
- m) An order of mandatory injunction be passed directing the State respondents to forthwith make over 2.5 acres of land for the amusement and Cineplex project at Dagapur, Siliguri on the basis of the terms and conditions in the expression of interest/tender;
- n) An order of mandatory injunction be passed directing the State respondents and/or their men, agents, assigns and/or representatives to forthwith execute and register

the lease deed for 0.62 acres of land for 99 years situated at Dagapur, Siliguri for commercial purposes;

- o) An order of injunction be passed restraining the State respondents from demanding and/or realising additional lease rent in respect of the Cineplex portion covering 0.62 acres of land situated at Dagapur, Siliguri;
- p) An order of injunction be passed restraining the State respondents from claiming or demanding the license fees for development, operation and management of amusement park at Dagapur, Siliguri, either by the demand notices dated October 11, 2012, May 14, 2014 and April 8, 2016 or any other notice of like nature;
- q) An order of injunction be passed restraining the respondent authorities concerned and/or their men, agents, servants and/or assigns from offering/issuing any other notice inviting expression of interest concerning the subject-matter of the instant writ in any manner whatsoever;
- r) Ad-interim orders in terms of prayers above;
- s) Costs of any/or incidental thereto to be borne by the respondents;
- t) Such further or other order or orders, direction or directions as Your Lordships may deem fit and proper.

Mr. Banerjee, learned Senior Counsel on behalf of the petitioners submitted the case at length.

I have also heard Mr. Saha, learned Advocate on behalf of the respondent nos. 2 and 3. It is submitted by the respondent no. 2 that the lease in question has expired on the expiry of 26th September,

2016. At that point of time the instant writ is pending. Subsequently, in the year 2022 on payment of entire lease rent with interest the petitioners prayed for issuance of a writ of mandamus commanding the respondent nos. 2 and 3 to renew the lease for the rest period. It is also submitted by Mr. Saha that after receiving the cheques for payment of lease rent with interest the Chief Executive Officer, SJDA wrote a letter to its controlling department in the Government of West Bengal, namely, Urban Development and Municipal Affairs Department requiring its view as to whether the lease period can be renewed. The Additional Secretary to the Government of West Bengal sent a letter on 16th November, 2022 communicating the following observation of the Department :-

"The lease period has already been expired in the year 2016 and the lease has not been renewed though there is such provision in the lease deed and the then lessee was entirely responsible for that for not making payment of lawful dues of SJDA.

As the lease deed has already been expired, the issue of cancellation of lease deed does not exist".

Another letter was issued to the Chief Executive Officer, SJDA on 30th January, 2023 directing the SJDA to take following steps:-

"1. SJDA will first of all give a notice to lessee for vacating the said property and hand over the peaceful possession of the said property to SJDA as the term of lease deed has already expired and clear the dues of SJDA including the dues for enjoying possession of the land beyond the lease period.

2. If the lessee does not comply as per the proposed notice, a suit for eviction may be filed and dues may be claimed as per

provisions of Bengal Public Demands Recovery Act, 1913 (Section 3(6) of the said Act read with Entry (8) and Entry (14) of Schedule I]"

It had lost sight of the respondents specially the respondent no. 1, State of West Bengal that on 25th January, 2011, i.e., long before the expiry of the initial period of lease the petitioners had exercised lessees' option for renewal of lease.

It also lost sight of the State Government in the Department of Urban Development and Municipal Affairs, Government of West Bengal that in the initial lease deed payment schedule was made for 84 installments, meaning thereby payment of lease rent for entire 21 years and the petitioners paid stamp duty on the entire sum.

When the petitioners being the lessees executed its option, deposited entire arrear of rent with interest and paid Court fees on the basis of the lease rent for 21 years. Non-consideration of the above-mentioned matters reduces the letters dated 16th November, 2022 and 30th January, 2023 illegal and arbitrary, if not mala fide.

The said letters cannot be acted upon and accordingly quashed.

In view of such circumstances, respondent nos. 2 and 3 is directed to execute a formal letter in favour of the petitioners for renewal of the lease. It is made clear that no lease deed is required to be executed because in the said deed it is specifically mentioned that it is the lessees' option to renew the lease and the lessee executed such option on 25th January, 2011. Moreover, the lessees paid entire stamp duty on lease rent for 21 years. The respondent nos. 2 and 3 are also directed to execute the commercial lease deed for 99 years in respect of 0.62 acres of land, entire premium of which has been accepted.

Since the dispute between the parties is resolved by passing the above order, the respondent nos. 2 and 3 is directed to consider if any concession can be given to the petitioners regarding payment of lease rent during covid period. This is, however, entirely upon the respondent nos. 2 and 3 and I am not going to pass any direction on this point.

Whereas the respondent Nos.2 and 3 executed an additional agreement with the petitioners for lease of 2.5 acres of additional land across the river, the respondents shall consider if such land can be transferred by a lease for expansion of amusement park or similar other project by the petitioners. It is made clear that this direction is also not mandatory and it depends upon the availability of vacant land under the possession of SJDA on which SJDA has not taken any other policy decision for development for public purpose.

The petitioners are directed to replace the cheques deposited with the SJDA with fresh cheques to be sent to the Chief Executive Officer, SJDA within seven days from the date of communication of the order.

The instant writ petition along with the connected applications are disposed of with the above directions.

The parties shall act on the direction made hereinabove.

There shall, however, be no order as to costs.

Parties are at liberty to act on the server copy of the order.

[Bibek Chaudhuri, J.]