

Form J(2)

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

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

**IA No.:CAN/3/2023
in
WPA 16208 of 2011**

**Chanchal Kumar Das & Ors.
-Vs.-
State of West Bengal & Ors.
with
WPA 18322 of 2011**

**Smt. Snigdha Dutta
-Vs.-
State of West Bengal & Ors.**

**For the petitioners
in WPA 16208 of 2011**

**: Mr. Debasish Chattopadhyay,
Mr. Loknath Paul,
Mr. Tirthankar Basu**

**For the petitioner
in WPA 18322 of 2011**

&

**For the respondent no. 3
in WPA 16208 of 2011**

**: Mr. Mukunda Lal Sarkar,
Mr. Dipankar Mandal,
Mr. Abdul Aziz Mandal**

For the State respondents :

**Mr. Soumitra Bandyopadhyay,
Mr. Aniruddha Sen**

Heard on

: 08.08.2023, 09.08.2023

Judgment on : 09.08.2023

Bibek Chaudhuri, J.

On 9th March, 1963 an agreement for lease was executed in respect of Plot No. B-5/31(CA), Kalyani, Nadia by and between the State Government and Binapani Das, predecessor-in-interest of the present petitioners. Subsequently on 15th June, 1969 one Anil Kumar Das being the representative of Binapani Das took over possession of the said plot on 14th January, 1969. Binapani Das died on 3rd August, 2002. The petitioners are the legal heirs of the said Binapani Das. It is the allegation of the petitioners that during the lifetime of Binapani Das from the date of execution of the agreement for lease till the date of her death, the Government authority did not take any step to execute lease deed as per the agreement dated 9th March, 1963. That on 16th July, 2003, i.e., within one year from the date of death of the original allottee, her legal heirs and successors submitted an affidavit along with relationship certificate with the said Binapani Das to the Estate Manager and ex-officio Deputy Secretary to the Government of West Bengal, Urban Development Department, Kalyani, Nadia, respondent no. 2 herein for mutating their names in respect of the said plot in question. However, the State Government did not take any step.

The petitioner of WPA/18322/2011, on the other hand, submits that during the lifetime, Binapani Das executed an agreement and power of attorney in favour of the petitioner expressing her desire to transfer the said land after the deed of lease being executed.

It is pertinent to mention that the lease deed has not been executed and on 21st June, 2011 the Estate Manager, Kalyani wrote a letter to Chanchal Kumar Das and others, petitioners herein directing

termination of lease in respect of Plot No. B-5/31(CA) on the ground that Binapani Das failed to observe the terms and conditions contained in Clause 9(C) of the above-mentioned lease agreement and frustrated the object of the allottee, i.e., growth of the township. It is also stated that a show-cause notice was sent to the petitioners on 7th December, 2009 but they did not give any reply to such show-cause notice.

On the above-mentioned two grounds the lease agreement dated 9th March, 1963 was treated as terminated.

The said letter of termination dated 21st June, 2011 is under challenge in the instant writ petition.

The learned Advocate for the petitioner submits that the lease agreement dated 9th March, 1963 stipulates in Clause 6, "That I/we shall duly complete the lease of the said plot of land in duplicate within such period as may be fixed by the Government after demarcation of the plot of the site". Clause 9(C) covenants the lessee to construct the building, according to the Rules as may be prescribed and according to the plans elevations, designs and section as may be sanctioned by the Government or by any local or statutory authority in that behalf, within five years from the date of lease.

Learned Advocate on behalf of the State respondents frankly submits that the State Government has failed to produce any document to the effect that Binapani Das, the original allottee was ever directed to complete execution of the lease deed. Though agreement for lease was executed and the possession was delivered in favour of the predecessor-in-interest of the petitioners, they also as long-term lessee did not apply before the respondent no. 2 to execute the lease deed during the lifetime of Binapani Das.

Be that as it may, when respondent no. 2 on behalf of the State Government executed a lease agreement in the year 1963 and possession of the property was handed over to the representative of the petitioner in the year 1969 and also entire consideration money was taken and accepted by the State Government, it is the laches on the part of the State Government not to execute the lease deed in favour of the said Binapani Das. After the death of Binapani Das the petitioners have the right to approach the Government for execution of the lease deed within certain period of time. Such application was made by the petitioners in the year 2003 but the respondents did not take any action. On the other hand, the respondents terminated the agreement for lease by a letter dated 21st June, 2011 for violation of Clause 9(C) of the agreement for lease.

Question of violation of agreement for lease would only arise when the lease deed was executed and the petitioner or their legal heirs and representatives failed to construct residential building over the said plot within the time fixed in the agreement. In the absence of properly executed lease deed Clause (C) cannot be applied to terminate the agreement for sale.

Learned Advocate on behalf of the State Government submits before me that Clause 9(f) of the agreement for lease stipulates that the allottee would not transfer or assign the leasehold interest without previous consent in writing from the Government. It is submitted by Mr. Bandyopadhyay that the original allottee transferred her leasehold interest to one Snigdha Dutta, petitioner of WPA/18322/2011. Therefore, the instant agreement for lease liable to be terminated. I am not satisfied with the submission made by Mr. Bandopadhyay in this regard because of the fact that the original allottee or her legal

heirs did not execute any conveyance transferring or assigning her lease hold right over the land in question.

The petitioner of WPA 18322 of 2011 has filed the writ petition with the same prayer as made by the petitioners in WPA 16208 of 2011 with an additional story that Binapani Das during her lifetime executed one power of attorney in favour of the said petitioner. The writ Court cannot look into the question arising between the private parties i.e., the petitioners in WPA 16208 of 2011 and the petitioner of WPA 18322 of 2011. If any rights in personem are violated, the aggrieved party has the remedy in the civil Court.

For the reasons stated above, WPA 16208 of 2011 is **allowed** on contest, however, without any costs. The Estate Manager, Urban Development Department, Kalyani, Nadia, respondent No.2 herein is directed to fix a date for execution of lease deed and communicate the same to the petitioners within 30 days from the date of communication of this order.

The impugned order dated 21st June, 2011 issued by the respondent No.2 is set aside.

WPA 18322 of 2011 is **dismissed** on contest as there is no public law remedy available to the petitioner that may be granted by this Court in the instant proceeding.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item Nos. 40 & 41.