

S/L 37
17.08.2023
Court. No. 29
Suwayan

**WPA 21231 of 2019
With
CAN 2 of 2023**

**Angel Education Society & Ors.
Vs.
West Bengal Industrial Infrastructure
Development Corporation & Ors.**

*Ms. Sutapa Sanyal
Mr. Deepak Kumar singh
Mr. Debrup Bhattacharjee
Ms. Saptamita Pramanick*

...for the petitioners.

*Mr. Amit Kr. Nag
Mr. Partha Banerjee*

...for the respondents.

1. Learned Advocate for the writ petitioners and learned Advocate for the respondents are represented by their respective learned Advocates.
2. The present writ petition is now taken up for hearing.
3. I have heard the learned Advocate for the writ petitioners and learned Advocate for the respondents at length.
4. The instant writ petition is now taken up for passing appropriate order.
5. By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioner has impugned the letter of cancellation bearing No. Infra/Gen/IL-Kly-2/2004 dated 29.08.2019 as issued by the respondent No. 1/authority in favour of the present writ petitioners whereby and whereunder the deed of lease as executed by and between the writ petitioners and

the respondent No. 1/authority dated 19.08.2011 was cancelled/terminated with a direction to the writ petitioners to hand over the physical possession of the vacant land to the respondent No. 1/authority within a stipulated time.

6. The writ petitioners felt aggrieved and, thus, approached this Court with a prayer for issuance of writ of mandamus for rescinding and/or revoking and/or withdrawing the said letter of cancellation dated 29.08.2019.

7. In support of the instant writ petition, Ms. Sanyal, learned Advocate for the writ petitioners at the very outset draws attention of this Court to the Annexure – P1 at Page 32 of the instant writ petition. It is contended that by issuing a letter dated 30.12.2003 an offer was given to the present writ petitioners by the respondent No. 1/authority for allotment of land amounting to 2 acres at Kalyani, Phase – III, Industrial Growth Centre for setting up a Law College. Drawing attention to Annexure – P2 it is contended by learned Advocate for the petitioners that thereafter by issuing a letter dated 26.10.2004 the writ petitioners have approached the respondent No. 1/authority for setting up an educational institute in the lease hold land instead of a Law College. It is further contended on behalf of the writ petitioners from Annexure – P3 it would reveal that though offer letter was issued to the writ petitioners by the respondent No. 1/authority on 30.12.2003 but practically lease hold

land amounting to 2.5392 acres was actually delivered to the writ petitioners on 08.03.2007.

8. It is further contended on behalf of the writ petitioners that from the very inception it has been noticed by the writ petitioners that the respondent No. 1/authority and its officials are very slow in discharging their duties which is why the registered deed of lease was executed on 19.08.2011 and, thus, with effect from 19.08.2011 the present writ petitioners actually became the lessee of the said lease hold land though possession of the said land was delivered to them on 08.03.2007. It is further contended on behalf of the writ petitioners that on account of such delay and for not obtaining the lease hold right in respect of the lease hold property the present writ petitioners could not take any steps for setting up the proposed 'Angel Institute of Management Studies' and after obtaining the registered deed of lease dated 19.08.2011 the writ petitioners became proactive in establishing the said management studies institute and to that extent the writ petitioners have applied with the different authorities for construction of the proposed building and to make ready the necessary infrastructure for setting up the said institute of management studies.

9. It is further argued on behalf of the writ petitioners that much time has been lost for obtaining water connection at the lease hold property on account of the delay on the part of the respondent No. 1 which would be evident from Page No. 243 of the instant writ petition. Drawing attention to Page No. 402 of the instant writ

petition being Annexure – P14 it is contended on behalf of the writ petitioners that the present petitioners' *bona fide* could be established from the letter dated 26.11.2018 as issued by the writ petitioners in favour of the respondent No. 1/authority whereby and whereunder the writ petitioners have subsequently expressed their intention to set up a school in the lease hold property.

10. It is, thus, contended on behalf of the writ petitioners that under no stretch of imagination it could be said that after execution of the registered deed of lease dated 19.08.2011 the writ petitioners was sitting idle over the lease hold property and did nothing for development of the said lease hold land in terms of the registered deed of lease dated 19.08.2011 as wrongly alleged by the writ petitioners in their show-cause notice dated 17.05.2019 as issued under Section 14 (g) (ii) of the West Bengal Industrial Infrastructure Development Corporation Act, 1974. It is also contended by Ms. Sanyal, learned Advocate for the writ petitioners that the notice to show-cause under Section 14 (g) (ii) of the said Act does not contemplate for cancellation of a deed of lease even if, the reply to the show-cause under the said section is unsatisfactory.

11. Drawing attention to the Annexure – R1 of the affidavit-in-opposition it is contended that the previous unregistered agreement of lease dated 08.03.2007 as executed by and between the writ petitioners and the respondent No. 1/authority has got no legal force at all in view of subsequent execution of the registered lease dated

19.08.2011 and, thus, while canceling the allotment as well as canceling the deed of lease the, respondent No. 1/authority by its impugned letter dated 29.08.2019 cannot bank upon such unregistered agreement of lease. It is, thus, contended that in view of the aforesaid unilateral Act of the respondent No. 1/authority, the respondent No. 1/authority has not only flouted the provisions of the Transfer Property Act as well as the Registration Act but also violated the settled principle of natural justice for which the instant writ petition may be allowed.

12. *Per contra*, Mr. Partha Banerjee, learned Advocate for the respondents in course of his argument also places his reliance upon Annexure – P6 of the writ petition, that is, the photocopy of the registered deed dated 19.08.2011 *vis a vis* the unregistered agreement dated 08.03.2007 as executed by and between the present writ petitioners and the respondent No. 1/authority. Mr. Banerjee in course of his submission draws attention of this Court to Page 3 of the registered deed of lease dated 19.08.2011 of which Clause II (3) is set out hereunder in verbatim:

“(3) To abide also by the terms and conditions as laid down in the Agreement to lease dated – 08.03.2007;”

13. In course of his argument, Mr. Banerjee, learned Advocate for the respondents submits that in view of the execution of the registered deed of lease dated 19.08.2011, the same has got an overriding effect upon the agreement dated 08.03.2011 but from the aforementioned clause of

the aforementioned registered deed of lease it would reveal that while executing the deed of lease dated 19.08.2011, the parties to the said registered deed of lease, that is the writ petitioners and the respondent No. 1 have mutually agreed that they would abide by the terms and conditions of the agreement dated 08.03.2007. It is, thus, contended by Mr. Banerjee that in view of such agreement, which is not contrary to the law of the land, both the parties are bound to abide by the terms and conditions of the unregistered agreement dated 08.03.2002 in view of incorporation of Sub-clause (3) of Clause II of the said registered deed of lease.

14. It is further contended by Mr. Banerjee that from internal Page No. 4 of the said agreement dated 08.03.2002 it would also reveal that the lessee being the writ petitioners herein had also bound themselves to complete the plan for raising and finishing of the proposed building in a complete manner within a period of one year from the date of commencement of the agreement that is with effect from 08.03.2002 or in the alternative with effect from 19.08.2011.

15. For better appreciation of the contention of the respondent No. 1/authority and for effective adjudication of the instant lis this Court considers that the relevant clause of the said agreement is required to be reproduced and the same is quoted herein below in verbatim:

“j) That the licensee shall within a period of one year from the date hereof commence, and within a period of three years from the said date at its own

expense and in a substantial and workman like manner and with new and sound materials and in compliance with all local authority rules, bye-laws and regulations applicable thereto and in accordance with the plans, elevations, details and specifications and conformably to the building lines worked on the plan, build and completely finish fit for occupation a building to be used as an educational institute with all requisite drains and other project or conveniences thereto.”

16. Mr. Banerjee, in course of his submission also draws attention of this Court to the reply of the writ petitioners as given by the writ petitioners pursuant to the show-cause notice as issued by the respondent No. 1/authority. It is contended by Mr. Banerjee, learned Advocate for the respondents from the reply dated 24.05.2019 as given by the writ petitioners, the writ petitioners could not advance any plausible explanation for violation of the terms of the registered deed of lease dated 19.08.2011 *vis a vis* the other clauses of the unregistered agreement dated 08.03.2002. It is, thus, contended on behalf of the writ petitioners that in view of such evasive reply on behalf of the writ petitioners, the respondent No. 1 is absolutely justified in issuing the letter of cancellation which has been impugned in this writ petition.

17. This Court has meticulously gone through the entire materials as placed before this Court by the learned Advocates for the contending parties. This Court has

given its due consideration over the submissions of the learned Advocate for the writ petitioners and the learned Advocate for the respondent No. 1/authority.

18. On perusal of the entire materials it reveals to this Court that pursuant to an application dated 06.11.2003 the respondent No. 1/authority by issuing a letter dated 30.12.2003 has offered allotment of two acres of land at Kalyani, Phase – III, Industrial Growth Centre for setting up a law college there by the writ petitioners and ultimately on 08.03.2007 the possession of the said land was handed over to the representative of the writ petitioners and on the self-same day both the writ petitioners and the respondent No. 1/authority entered into an agreement in the nomenclature of ‘an agreement for lease’ whereby and whereunder both the parties to the said agreement have agreed upon with regard to the mode of user of the said land and the time limit for completing the infrastructure for which the possession of the said land was given to the writ petitioners.

19. Admittedly, much thereafter, that is, on 19.08.2011 a registered deed of lease was executed by and between the present writ petitioners and the respondent No. 1 whereby both the parties have bound themselves by various clauses of such agreement of lease wherein it has been specifically agreed by and between the lessor and the lessee that they would abide by the terms and conditions as laid down in the agreement dated 08.03.2007.

20. As rightly pointed out by Ms. Sanyal, learned Advocate for the writ petitioners that in view of Section 17

of the Registration Act, 1908, an unregistered agreement of lease has got no binding force since it is a compulsory registered document, however, when an agreement of lease in respect of the aforementioned lease hold land was executed by and between the parties to the instant lease on 19.08.2011 the same has definitely got an overriding effect over the said unregistered agreement dated 08.03.2002. To make it more clear, if there exists a contrary clause in the unregistered agreement dated 08.03.2002 then the terms and conditions as incorporated in the registered deed of lease dated 19.08.2011 would definitely prevail.

21. However, the position herein is little bit different. Since, while executing the registered deed of lease dated 19.08.2011 the parties to the said lease have mutually agreed that they would abide by the terms and conditions of the previous agreement dated 08.03.2007. In view of such incorporation of the aforementioned terms and conditions, under no stretch of imagination it can be said that the previous unregistered agreement dated 08.03.2002 has got no binding effect either upon the writ petitioners or upon the respondent No. 1/authority.

22. There is no dispute that in the unregistered agreement the present writ petitioners undertook to complete the infrastructure up to its finish level within a period of three years from the aforesaid date. Such being the position with the execution of the subsequent registered agreement of lease dated 19.08.2011 such completion of infrastructure, etc., has to be done by the

writ petitioners within three years from the execution and registration of the deed of lease dated 9.08.2011.

23. At this juncture, if this Court looks to the show-cause notice as issued by the respondent No. 1 it appears that in the said notice to show-cause dated 17.05.2019 the present respondent No. 1 has categorically mentioned that the writ petitioners have failed and neglected to implement the project under the said lease within the stipulated period. Though Ms. Sanyal, learned Advocate for the writ petitioners in course of her argument was very vocal for non-supply of requisite consent, formalities, etc. which according to her causes hindrance to the proposed upcoming project due to the laches of the officers of the respondent No. 1/authority but in the reply to the show-cause given by the writ petitioners, this Court finds no such averments at all and on the contrary in their reply the writ petitioners has taken several other points, namely; economic sluggishness in the market in establishing a management institute, saturation in I.T. industries from 2012 onwards fluctuation of G.D.P. since 2011, economic meltdown affecting the planning of the present writ petitioners and so on. It is also pertinent to mention herein that in the reply to the show-cause the writ petitioners has suddenly woke up from their eternal slumber and came up with a proposal of setting up of a school for which the lease hold land was not taken which in considered view of this Court is completely contrary to the clauses of the registered deed of lease dated 19.08.2011.

24. Since the reply of the present writ petitioners to the show-cause notice is absolutely evasive and from such reply no negligence can be attributed on the part of the respondent No. 1 in establishing the proposed infrastructure by the writ petitioners in the lease hold land, this Court considers that the present respondent No. 1/authority is absolutely justified in coming to a finding that the present writ petitioners have got no intention to set up either any management institute or any other like institute for which the lease hold land was given to them and, therefore, they have violated the terms and conditions of the said registered deed of lease dated 19.08.2011 and, thus, in further considered view of this Court there is no illegality and/or irregularity on the part of the instant writ petitioners in issuing the letter of cancellation dated 29.08.2019.

25. Before parting with the instant file, this Court also finds that no occasion ever arose on the part of the respondent No. 1 to deny the principles of natural justice as claimed to have been violated by the writ petitioners by filing in the instant writ petition.

26. This Court, thus, finds no merit in the instant writ petition and, thus, the instant writ petition being WPA 21231 of 2019 and CAN 2 of 2023 are dismissed.

27. In view of the dismissal of the instant writ petition the interim order as passed earlier stands hereby vacated.

28. Parties to act on the server copies of this order.

29. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)

After passing of the aforesaid order:

1. Ms. Sanyal, learned Advocate for the writ petitioners has prayed for stay of the operation of the aforementioned order as passed today in open Court.
2. Prayer for stay is considered and refused.

(Partha Sarathi Sen, J.)