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19.06.2023
Ct-10
P.A./A.P

WPA No. 28819 of 2022

Adv. Aniruddha Chatterjee,
Adv. Surya Prasad Chattopadhyay,
Adv. Ankit Chatterjee,
Adv. Ashit Chatterjee,
... for the petitioners.

Adv. Soumitra Bandyopadhyay,
Adv. Priyabrata Batabyal,
.... for the State.

Fact which is not in dispute is recorded
hereunder:-

Plot No. AE-360, Sector-I, Saltlake City, Kolkata – 700064 was originally possessed by one Haripada Paul Choudhury by virtue of an indenture of lease executed on 10th July, 1979 for a period of 999 years. After demise of the lessee, his legal heirs Anupam Paul Choudhury, Basabi Sengupta and Gautam Paul Choudhury stepped into his shoes and caused mutation of the property in their favour. These lessees subsequently transferred the property in favour of the petitioners by virtue of a deed of transfer/assignment executed on 19th May, 2014 and the petitioners' names were mutated accordingly. The first and second petitioners intend to transfer their two-third share in the property in favour of the third petitioner and preferred

an application before the concerned authority requesting permission of such transfer.

The respondents, by a letter issued on 10th November, 2022 requested the first and second petitioners to deposit an amount of Rs. 13,56,400/- towards permission fees for transfer of the property in favour of the third petitioner. The said notice is assailed in the writ petition.

It is submitted on behalf of the petitioners that since the petitioners are joint lessees in respect of the property in question and the intended transfer is by two of the joint lessees in favour of the third, the question of payment of transfer fees for the purpose does not arise. Learned counsel has taken this Court to clause 9 of the deed of lease which demonstrates that in case of a lease in favour of two or more individual lessees jointly, any one of such joint lessees will have the right to transfer his/her share to the other co-sharer/co-sharers.

Learned counsel submits that the notification issued by the Government of West Bengal, Urban Development Department on 25th June, 2012 relied upon by the respondents is not applicable to the petitioners for the reason that the transfer dealt with in the notification is in favour of strangers and not co-lessees.

Per contra, learned counsel for the respondents has placed reliance on the notification dated 25th June, 2012 and has submitted that since the third petitioner is not the family member or close blood relation of the first and second petitioners, he is a stranger to the other petitioners and therefore a demand notice has been issued for payment of transfer fees.

It is evident from the record that the respondents have no objection to transfer of the plot in question by the first and second petitioners in favour of the third petitioner. They only claim that transfer fees are payable by the petitioners for such transfer. The notification dated 25th June, 2012 deals with unauthorized transfers in favour of third party strangers without the permission of the Government.

Clause 4 of the notification may be relevant and is set out below:

“In the like manner and also in order to put an end to such unauthorized transfer as well as to increase revenue in Government Exchequer, the Governor has been pleased to order that the Govt. of West Bengal may allow the lessee of residential plots building thereon of Bidhannagar to transfer his lease-hold right to others for un-expired period of lease term inter alia by imposing transfer fees @ Rs.5 lakh (Rupees five lakh) per cottah for the time being and such other terms and conditions as

may be fixed from time to time. To seek the permission of the Government to transfer his lease-hold right to others, the lessee/mutated lessee shall have to apply to the Principal Secretary to the Govt. of West Bengal. U.D.Deptt.. "Nagarayan". DF-8, Sector-I, Bidhannagar, Kolkata – 700064 stating his intention for such transfer. The transfer fees, however, will not be applicable to the cases that are within close blood relation viz. father-mother, husband-wife, brother-sister, son-daughter. son's daughter, son's son, daughter's son and daughter's daughter and in those cases only a nominal amount of processing fees as may be fixed by the Govt. from time to time will be realized."

The notification has been amended subsequently to clarify the definition of 'close blood relation'.

It is not in dispute that the petitioners are co-lessees in respect of the plot in question and the intended transfer by the first and second petitioner in favour of the third petitioner is between the co-lessees interse. The third petitioner, therefore, cannot be termed as stranger/outsider to the lease. The definition of 'close blood relation' as stated in the notification and clarified in the subsequent amendment includes 'brother' besides other relations. In the report submitted by the respondents, the respondents have admitted the third petitioner to be a cousin of the first and second

petitioners. Since the notification does not confine the definition of a brother to a full blood brother or exclude a cousin therefrom, the petitioners may be allowed to reap the benefit of the said definition provided in the notification.

To sum up, since the intended transfer of the plot in question is between co-lessees as well as close blood relations, the petitioners are not liable to pay any transfer fee for such transfer. The notification dated 25th June, 2012 and the subsequent amendment thereto are not applicable in so far as the intended transfer is concerned.

In view of the above, the letter issued by the Land Manager, Bidhannagar in favour of the first and second petitioners on 10th November, 2022 is set aside/quashed.

The concerned authority, being the second respondent herein, is directed to accord permission for transfer of the plot in question by the first and second petitioners in favour of the third petitioner within one month from the date of communication of this order, upon the petitioners complying with all necessary formalities.

The writ petition being WPA 28819 of 2022 is accordingly disposed of. There shall however, be no order as to costs.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh, J.)