

20.11.2024

Ct. no.39

Sl. No.3

samarpita

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 6498 of 2015

Nilima Dutta

Vs.

State of West Bengal & Ors.

Mr. Partha Sarathi Bhattacharyya..Sr.Adv.

Mr. Raju Bhattacharyya

.. for the petitioner

Mr. Soumitra Bandopadhyay

Mr. Priyabrata Batabyal

..for the State

This writ petition has been filed challenging the order dated 24th December, 2014 passed by the respondent no.5, Estate Manager, Kalyani, Urban Development Department, Government of West Bengal.

The petitioner's case in a nutshell is that the land comprised within plot no.418, Sub-Block-II of Block-A of Kalyani Township was demised in favour of one Aum Prokash Dutta, on a lease for 999 years on certain terms and conditions. The possession of the said plot was delivered to the lessee on 8th February, 2001. As per the lease deed, the lessee was supposed to make construction within three years from the date of execution of the lease deed. On 20th September, 2011 a show-cause notice was issued to the lessee in terms of Clause 5(i) of the lease deed read with Clause 2(iii) and 2(iv) of the said indenture calling upon the lessee to explain as to why the aforesaid plot of land will not be resumed by the Government. The lessee, Aum Prokash Dutta, on 21st October, 2011

informed the Estate Manager, Kalyani, Urban Development Department, Government of West Bengal that as he was suffering from carcinoma of prostate (malignant) since 2005, he was unable to make construction and sought for three years time to make construction of the dwelling unit. In the meantime, on 19th September, 2012, the lessee expired leaving behind the petitioners as his legal heirs. The petitioners on 19th April, 2013 made an application for change of name of lease holder and informing the Estate Manager that they will start the work for construction shortly. Pursuant thereto, the petitioners were called upon to produce certain documents. Thereafter, on 24th December, 2014, the lease agreement and the lease deed dated 8th June, 2000 was resumed and cancelled by the Estate authorities. Being aggrieved of such action of the State authorities, the petitioner has preferred the present writ petition.

Mr. Partha Sarathi Bhattacharyya, learned Senior advocate appearing on behalf of the petitioners referring to Clause 5(i) of the lease agreement submits that before exercising the right to terminate the lease, the lessor is to serve notice upon the lessee giving six months time to the remedy the breach. In the case at hand, no such notice has been served in writing in consonance with the aforesaid clause of the lease agreement. The original lessee was prevented by sufficient cause from starting construction within the stipulated period since he was

suffering from prostate cancer. He draws the attention of the Court that lessee Aum Prokash Dutta during his life time has got his name mutated before the Kalyani Municipality in respect of the plot in question and the building plan was also sanctioned by the concerned authority. He further submits that since the original lessee was prevented by sufficient and reasonable cause in not making construction within stipulated period, as per Clause 2(iv) of the lease deed, it was within the power of the lessor to extend the period of time to complete the work of construction. In light of his aforesaid submissions, he prays for cancellation of the impugned order dated 24th December, 2014 by providing reasonable time to the petitioners for making construction within the stipulated period.

On the contrary, Mr. Soumitra Bandopadhyay, learned advocate appearing for the State-respondents submits that the lessee got enough time to comply the condition stipulated in the lease indenture by making construction over demised premises but has failed. The possession of the plot of land was handed over in the year 2001. The lessee Aum Prokash Dutta expired on 19th September, 2012, thereby the original lessee got almost 11 years, prior to his death to make construction. There has been utter violation of the lease agreement, since no construction was initiated at the instance of the lessee within the period of three years. Therefore, the impugned order passed for cancellation and resumption of the lease

agreement/lease deed dated 8th June, 2000 does not call for interference. He seeks for dismissal of the writ petition.

It is not in dispute that the construction of the building over the demised plot in terms of the lease deed was not made within the stipulated period of three years from the date of lease agreement. The lessee upon receipt of the show-cause notice dated 20th September, 2011 made a prayer before the Estate Manager on 21st October, 2011 for extension of time period of at least 3 years to complete the work of construction. It is relevant to note that pursuant to such letter the Joint Secretary to the Government of West Bengal, Urban Development Department vide its letter dated 3rd July, 2012 (Annexure P-11 at page 61 of the writ petition) requested the lessee to submit documents with regard to his financial capability along with proposed estimate in support of such prayer. However, incidentally on 19th September, 2012 the lessee expired. The petitioners have not placed any documents showing submission of the aforesaid documents before the authority concerned. Be that as it may, nothing has been placed on record by State-respondents regarding any final decision taken by the Joint Secretary on the prayer of the lessee for extension of time to make construction. Therefore, it manifest from the aforesaid material that the prayer for extension of time by the lessee to make construction was assumedly pending before the Joint Secretary for further consideration

during the lifetime of the lessee. After the demise of the lessee, the petitioners on 19th April, 2013, made a prayer before the Estate Manager for change of name of the lease holder and assured for starting the work of construction within three months. Since no response was received, again on 27th January, 2014 the petitioners renewed their prayer for change name of the lease holder and submitted documents. By letter dated 13th March, 2014, the petitioners were requested to attend hearing on 1st April, 2014 along with original documents. Again on 11th April, 2014, the Estate Manager, for further action in respect of the aforesaid prayer of the petitioners for change of the name of lease holder, requested the petitioners to furnish certain documents. Pursuant thereto, the petitioner no.1 by her letter dated 10th July, 2014 submitted the required documents. The State-respondents has not produced any documents showing orders passed by the Estate Manager upon submission of documents by the petitioners in compliance to its letters/requirements. The impugned order dated 24th December, 2014 also does not record of consideration of documents furnished by the petitioners in compliance. As per the lease deed at clause 2(iv), it is within the power of the lessor to extend the period of time on reasonable ground. Admittedly, the original lessee was suffering from prostate cancer since 2005 and he sought for further time to make construction on such ground, prior to his death.

Considering the aforesaid, the order dated 24th December, 2014 passed by Estate Manager, Kalyani, Urban Development Department, Government of West Bengal, respondent no.5 is hereby set aside.

The petitioners are granted liberty to make comprehensive representation within three weeks from date of this order before the Estate Manager, the respondent no.5 herein, seeking for change in the name of the lease holder and extension of time period for making construction over the demised plot annexing all relevant documents. Upon submission of such representation, the Estate Manager, Kalyani, respondent no.5 shall consider and dispose of the same within three months from the date of submission of such representation by passing a reasoned order after hearing the petitioners.

The petitioners are directed to communicate this order to the Estate Manager, Kalyani, respondent no.5 herein.

In light of the above discussion and observations made hereinabove, the writ petition stands disposed of.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)