

01
03.09.2024
mb

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 9587 of 2008
+
C.A.N. 2 of 2018
(Old No. C.A.N. 1141 of 2018)
+
C.A.N. 3 of 2023
+
C.A.N. 4 of 2023
+
C.A.N. 5 of 2023
+
C.A.N. 6 of 2023
+
C.A.N. 7 of 2023

Shri Dinabandhu Lahiri & Anr.
Vs.
The State of West Bengal & Ors.

Mr. Debasish Chattopadhyay,
Mr. Tirthankar Basu
...for the petitioners

Mr. S. Bandyopadhyay,
Mr. Arka Kumar Nag
...for the State

The petitioner no. 1 *inter-alia* seeks permission to transfer a plot of land namely, Plot No. B-4/324, Kalyani, Nadia (the premises), without payment of any transfer fees in terms of Notification No. 4247, dated December 18, 2007.

This writ petition has been pending since 2008 and has appeared as an 'Old Matter'. During the pendency of the writ petition, numerous interlocutory applications have also been filed from time to time.

The writ petition has also been dismissed for default as far back as on December 04, 2017 and subsequently restored.

Briefly, the petitioner no. 1 had pursuant to an advertisement published in the year 1963 applied for a plot of land within the township of Kalyani. Pursuant to such application, the petitioner no. 1 was allotted the premises which measures about 7 cottahs 14 chittacks 34 sq. ft. Subsequently, the petitioner no. 1 applied for execution and registration of the deed of lease and was put in physical possession of the premises.

It is alleged that after obtaining the lease, the petitioner no. 1 had sought for exemption of excess vacant land under the Urban Land Ceiling Act and by an order dated May 14, 2007 the Urban Land Ceiling Authorities permitted the petitioner no. 1 to continue to enjoy the premises. Thereafter, the petitioner no. 1 decided to transfer the said leasehold property in favour of the petitioner no. 2 and with that intent entered into an agreement.

The grievance of the petitioners in the present writ petition pertains to an application for transfer of the leasehold interest in the subject premises. The petitioners rely on the lease deed which inter alia provides as follows.

“Provided that, should at any time hereafter, the Lessee be desirous of assigning this lease or transfer the leasehold interest in the

demised premises and the buildings erected thereon, the Lessee shall give notice of such intention to the Government and shall be entitled to effect such transfer with the approval of the Government, provided further that, should such approval be not refused within two months of the date of receipt of the applications, the consent of Government to such transfer shall be deemed to have been given for such transfer.”

On the basis of the above clause it is alleged that the application for transfer is deemed to have been allowed due to the silence and inaction of the State Authorities. It is also alleged that though the petitioner no. 1 was unwilling to pay the revised transfer fees, the petitioners are only willing to pay the transfer fees in terms of the Notification dated 12 July, 2005 and contended that the said transfer fees ought not to have been revised in the case of the petitioner. In this background, the petitioner no. 1 seeks relief to regularize the possession of the petitioner no. 2 and consequentially the State Authorities be directed to execute all necessary documents.

By an order dated September 23, 2008 a Co-ordinate Bench of this Court had categorically recorded that there was no scope for passing any interim order and the parties were directed to exchange affidavits.

On behalf of the respondent authorities it is submitted that there are diverse issues involved in the process of transfer of the subject premises in

favour of any proposed transferee. The petitioner no. 1 had not paid the then prevalent transfer fees and is now statutorily obliged to follow all prescribed formalities including payment of the revised transfer fees in order to obtain any transfer or assignment.

It is also alleged on behalf of the respondent authorities that in view of the fact that the petitioners had not obtained any clearance from the Urban Land Ceiling Authorities there was no lawful application for transfer in the eye of law.. In any event, in view of the extant Notifications and the prevalent law, the petitioners have to follow all applicable statutory compliances before obtaining any proposed transfer or assignment.

On a consideration of the rival contentions, there is no legal enforceable right, which the petitioners can demonstrate to maintain this writ petition. The questions involved in this writ petition are purely contractual in nature. There is no public element in the grievance raised by the petitioners. Admittedly, the petitioners are in possession of a valuable property. The petitioner no. 2, who now alleges to be in physical possession is obviously attempting to regularize his possession and entry into the premises. The statutory fees and the compliances

have not been paid nor complied with and this is mandatory.

There is also no reason provided as to why the State Authorities have failed to act expeditiously and use all means to resume the premises in accordance with law, if so advised. Regrettably, the State Authorities have failed to take timely action against such occupants on the misconceived pretext of pendency of the writ petition. There are no grounds to exercise any discretion or concession in favour of the petitioners. All statutory compliances and payments have to be strictly followed in accordance with the applicable and existing laws. There is simply no merit in the writ petition and the same is liable to be dismissed as an abuse of process. Accordingly, W.P.A. No. 9587 of 2008 stands dismissed.

In view of dismissal of the main writ petition, the connected applications, being C.A.N. 2 of 2018, C.A.N. 3 of 2023, C.A.N. 4 of 2023, C.A.N. 5 of 2023, C.A.N. 6 of 2023 and C.A.N. 7 of 2023 also stand dismissed as infructuous.

Liberty is granted to both parties to take any step as they may be advised in accordance with law.

There shall be no order as to costs.

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

(Ravi Krishan Kapur, J.)