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09.02.2024
Ct. No.10
b.das

WPA 15167 of 2023

Ram Agya Rai
Vs.
The State of W.B. & Ors.

Mr. Debasish Chattopadhyay ...for the petitioner.

Mr. Chandi Charan De
Mr. Sadhan Halder ...for the State.

Heard learned counsels for the parties.

The order passed by the Estate Manager, Kalyani, U. D. & M.A. Department, Government of West Bengal on 12th April, 2022 turning down the prayer of the petitioner for mutation of the plot in his favour is assailed in the writ petition.

The predecessor-in-interest of the petitioner, Anil Chandra Rudra, since deceased, was granted lease in respect of a residential plot of land at Kalyani being No.B-2/324 for a period of 999 years vide deed of lease executed on 6th September, 1990. The lessee expired on 25th September, 2009. The lessee executed a Will in favour of the petitioner during his lifetime and by virtue of a probate granted in respect of the said Will on 10th February, 2016, the petitioner stepped into the shoes of the original lessee.

The petitioner informed about the death of the lessee as well as the change of address of the heirs of the original lessee including the petitioner before the authority by a

letter issued on 11th September, 2012 which was received by the authority on the same date. Sometime in 2016, the petitioner applied for mutation in respect of the plot in question in his favour before the authority pursuant to which the Estate Manager, Kalyani by a letter issued on 29th September, 2016, requested the petitioner to submit relevant documents in support of his claim. The documents were submitted by the petitioner on 3rd October, 2016. Strangely, though the authority initiated resumption proceedings in 2014, the petitioner's application for mutation was entertained in 2016, directing him to produce relevant documents.

The concerned authority turned down the prayer for mutation submitted by the petitioner, against which the petitioner approached this Court in a writ petition being WPA 6269 of 2019. The writ petition was dismissed by an order passed on 19th July, 2021. The said order was carried in appeal by the petitioner and an Hon'ble Division Bench of this Court, by an order passed on 27th January, 2022 in MAT 1141 of 2021, disposed of the appeal directing the concerned officer to take a decision with regard to the petitioner's prayer for mutation upon affording an opportunity of hearing to him or his authorised representative.

It is submitted on behalf of the petitioner that the notices of resumption proceeding were sent to the earlier address of the original lessee despite the authority being

informed about the change of address by a letter issued on 11th September, 2012. The resumption proceeding is still pending.

Pursuant to the order passed by the Hon'ble Division Bench, the matter was taken up for consideration by the authority who rejected the prayer of the petitioner for mutation by the order impugned passed on 12th April, 2022, primarily on the ground of violation of clause 2 (iii) of the deed of lease by the original lessee. Clause 2 (iii) of the deed is set out:

“(iii) At the own cost of the Lessee within 30th October, 1990 or within such further time as the Lessor may at his option allow in writing on sufficient and reasonable grounds, to erect, construct and complete a house or building for being used for residential purposes with boundary walls, sewers and drains in accordance with the plans, sections and specifications as shall be approved by the Government or any officer authorised in that behalf by the Government and according to the rules and regulations of any local or statutory body framed for the purpose.”

Learned counsel for the petitioner submits that since sanctioned plan was obtained by the original lessee only in the year 2008, construction could not be commenced by the lessee before that.

Upon consideration of the submission made on behalf of the parties, this Court is inclined to hold that since notice of resumption proceeding was sent to the earlier address of the original lessee it cannot be said that it was duly served upon the lessee, more so, since the original lessee had expired prior to issuance of the notices.

The order impugned was passed without granting an opportunity of hearing to the petitioner. The petitioner was unable to explain the situation which prevented him from compliance of the relevant clause of the lease deed.

In view of the above, the order impugned dated 12th April, 2022 is required to be set aside.

The writ petition being WPA 15167 of 2023 is accordingly allowed.

The order impugned dated 12th April, 2022 passed by the Estate Manager, Kalyani is set aside.

The Estate Manager, Kalyani, being the 2nd respondent herein, is directed to revisit the issue upon service of notice upon the petitioner and granting him reasonable opportunity of hearing and pass a reasoned order within two months from the date of communication of this order, in accordance with law.

The decision taken by the authority shall be communicated to the petitioner within a week thereof.

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.)