

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 14092 of 2015

Soumyendu Chakraborty & Anr.
Vs.
The State of West Bengal & Ors.

For the petitioners : Mr. Debasish Chattopadhyay
Mr. Tirthankar Basu

For the State : Mr. Ashim Kumar Ganguly
Mr. Bellal Shaikh
Mr. Sambuddha Dutta

Heard on : August 07, 2024

Judgment on : August 07, 2024

Aniruddha Roy,J. :

Facts :

1.The writ petitioners have impugned the order dated **December 30, 2014** passed by the respondent no. 2, **Annexure P-12 at page 82** to the writ petition under which the claim of the father of the writ petitioners to record the assignment of lease in respect of **plot No. A-11/321** at **Kalyani** (said plot) and for mutation was rejected. The original writ petitioner was the father of the petitioners.

2. During pendency of this writ petition, the father of the petitioners died and these petitioners being the sons of the deceased original petitioner were substituted and carried out the proceeding.

3. One Bimalananda Roy, the added respondent no. 3 (for short 'Bimalananda') on August 1, 1990 applied before the State authority for obtaining lease in respect of the said plot at **page 39** to the writ petition. After receiving necessary selami from Bimalananda, the respondent no. 2 forwarded a document, **Annexure P-1 at page 37** to the writ petition, to Bimalananda with a lease agreement. By virtue of the possession certificate, **Annexure P-3 at page 44** to the writ petition, Bimalananda was put into possession after the necessary site inspection of the plot.

4. Thereafter, Bimalananda executed a document for transfer/assignment of lease dated **October 22, 2001, Annexure P-6 at page 51** to the writ petition, in favour of Ardhendu Kumar Chakraborty, since deceased, being the father of the petitioners. The deceased father of the petitioners then was put into possession of the plot. The deceased father claimed to have constructed his dwelling house, where the present petitioners are dwelling.

5. The deceased father of the petitioners and thereafter the present petitioners applied for mutation of their names in respect of the said plot, mutation was refused by the respondent no. 2 through its communication dated **June 6, 2011, Annexure P-9 at page 68** to the writ petition. The

mutation was principally rejected on the ground that there was no lease in favour of the original allottee, namely, Bimalananda. Such rejection was challenged by the deceased father of the petitioners by way of a previous writ petition being **WP No. 11300 (W) of 2011**. Said writ petition was disposed of by a Co-ordinate Bench by its order dated **August 28, 2014, Annexure P-11 at page 72** to the writ petition, directing the respondent no. 2 to consider the petitioners' application for mutation and to dispose of the same with a reasoned order as directed therein.

6. Pursuant to the said order and in terms of the said direction of the Co-ordinate Bench dated August 28, 2014, the said issue was considered and the claim of the petitioners were rejected by the said impugned order dated December 30, 2014, *inter alia*, holding that the transferor, i.e. Bimalananda did not have any right on the plot in absence of lease deed and there were violation of conditions of allotment.

7. Challenging the said impugned decision this writ petition has been filed.

Submissions :

8. Mr. Debasish Chattopadhyay, learned counsel appearing for the petitioners referring to the applications, **Annexure-P5 at pages 47 to 49** to the writ petition submits that, prior to the assignment of lease by Bimalananda in favour of the deceased father of the petitioners, the original allottee applied before the State authorities seeking permission for

such assignment in favour of the deceased father of the petitioners. Till date such applications had not been considered nor any permission was granted for assignment of the lease by Bimalananda in favour of the deceased father of the petitioners. Learned counsel for the petitioners submits that, since the State authorities sat idle on such applications for prior approval for assignment of lease, it was deemed by friction of law that, the State authority did not have any objection to such assignment and, accordingly, the lease was assigned by Bimalananda in favour of the deceased father of the petitioners.

9. On the strength of such deemed approval and on the strength of the valid assignment of lease by Bimalananda, the deceased father of the petitioners constructed the dwelling house after paying a substantial consideration to Bimalananda. Referring to the said notification dated **July 12, 2005, Annexure -10, at page 69** to the writ petition, learned counsel for the petitioners submits that, on the strength of the said notification which is a policy decision of the State, the State authority was duty bound and obliged to record the assignment of lease in favour of the deceased father of the petitioners and, thereafter, in favour of the petitioners as his legal heirs. By not doing so, the State authority has failed to discharge its obligation in an arbitrary and wrongful manner.

10. Learned counsel for the petitioners, in course of the hearing, today has placed another notification bearing **No.4102-UD/O/M/Kalyani (AL)-01/2011** dated **December 16, 2011** and submits that, on the strength of

the said notification also the State authority was bound to record the assignment of the lease and to execute the necessary lease deed in favour of the deceased father of the petitioners and presently in favour of the petitioners, as his legal heirs. The State authority failed to discharge their obligation in an arbitrary and wrongful manner by not executing the lease deed in favour of the petitioners.

11. Learned counsel for the petitioners further refers to the document at **page 39** to the writ petition and submits this is the lease document executed by the State in favour of Bimalananda and in the impugned order also the State authority proceeded accepting the same as the lease document.

12. In support of his contention that, the State authority is bound to execute the lease document in the identical fact situation, learned counsel has relied upon a decision of the Hon'ble Division Bench dated **March 25, 2022 In the matter of : Smt. Mira Sarkar -Versus- The State of West Bengal & Anr.** rendered in **MAT 967 of 2018**.

13. Lastly, Mr. Chattopadhyay places reliance upon a notification, in course of the hearing of this writ petition, bearing **No.434-UDMA-22012(11)/8/2020-ESTT-TCP SEC-Dept. of UDMA**, dated **March 7, 2024** and submits that, it is the policy decision of the State authority to acknowledge the assignment of lease and to execute a fresh lease agreement in favour of the petitioners on the terms and conditions

mentioned therein. Therefore, it is the bounden duty of the State to execute the lease deed in favour of the petitioners.

14. Mr. Ashim Kumar Ganguly, learned Additional Government Pleader appearing for the respondent nos. 1 and 2 submits that, the record of the proceeding does not disclose anywhere that any indenture of lease/lease deed had ever been executed in accordance with law in favour of Bimalananda in respect of the said plot. The respondent no.2 in its impugned order has rightly rejected the claim of the petitioners on the plea that, in absence of any lease granted in favour of Bimalananda, the prayer for mutation, claimed by the petitioners, cannot be granted. So long the lease deed is not executed in accordance with law in respect of the immovable property, no right flows in favour of anybody claiming to be as lessee of the original allottee as in the instant case, viz. Bimalananda. Therefore, all further transactions, if any touching the same plot of land, are void *ab initio* in the eye of law and the mutation was correctly rejected as claimed by the petitioners or by their deceased father.

15. Learned Additional Government Pleader further submits that, the original allottee i.e. Bimalananda had violated several conditions of the lease application and, therefore, question of executing any lease deed in his favour did not and cannot arise. He further submits referring to the documents at **page 39** to the writ petition that, the same was the formatted application for obtaining lease submitted by Bimalananda and no lease deed was executed in favour of Bimalananda at any point of time

as would be evident from **page 48** to the writ petition. He further submits that, no draft lease was also prepared and submitted at the instance of Bimalananda before the State authority.

16. In the light of the above submissions, learned Additional Government Pleader submits that, the impugned order shall not be interfered with and he prays for dismissal of the writ petition.

Decision :

17. After considering the rival contentions of the parties and upon perusal of the materials on record, the elementary question that has cropped up before this Court is to examine at the threshold that, whether any valid leased was executed by the State in favour of Bimalananda.

18. **Chapter V** of the **Transfer of Property Act, 1882** (for short the T. P. Act) deals with lease. **Section 105** of the T. P. Act defines lease – *a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration, inter alia, of a price paid or promised, or of money, to the transferor by the transferee, who accepts transfer of such terms. Such price is called premium.*

19. In the instant case the petitioners claim that, the original lease was granted by the State in favour of Bimalendu for the period of **999 years**. **Section 107** of the T. P. Act provides that, a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly

rent, can be made **only by a registered instrument**. In the instant case, it is not the case of either of the parties that, the State by notification has adopted any other mode of execution of unregistered instrument.

20. **Section 17** of the **Indian Registration Act** specifies that, a lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent is **compulsory required to be registered** by way of a document. The admitted position in the facts of this case is, no such registered lease instrument was ever executed by and between the State and Bimalananda, the original allottee. So long such a registered document does not come into existence, it can safely be construed that, no lease whatsoever was executed or granted in favour of Bimalananda by the State in respect of the said plot.

21. Since there was no lease granted in favour of Bimalananda, he did not have any right over the said plot in any manner and as such, he did not have any right to assign his lease in favour of the deceased father of the petitioners, as claimed. Since the elementary and fundamental right on the plot of land is not established in favour of Bimalananda, in absence of execution of any registered lease in his favour, all subsequent steps, if any, stood vitiated and are void *ab initio* in the eye of law.

22. Since no lease was executed or granted in favour of Bimalananda, all those notifications issued by the State, as referred to above, shall have no application and relevance in the facts of this writ petition.

23. **In the matter of : Smt. Mira Sarkar (supra)** a lease agreement was there which was terminated by a written document dated March 12, 1974. In such situation, the State authority agreed to consider the case of the petitioner therein in the light of its policy. In the instant case, there was no lease executed at all in the eye of law, as there was no registered lease agreement. Thus, the said decision rendered **In the matter of : Smt. Mira Sarkar (supra)** is not applicable in the facts of this case.

24. In view of the foregoing discussions and reasons, the writ petition **WPA 14092 of 2015** being devoid of any merit, stands **dismissed**, without any order as to costs.

25. The State authority shall be free to take steps to resume the plot and deal with the same without any fetter, but strictly in accordance with law.

26. Photostat certified copy of this order, if applied for, be furnished expeditiously.

(Aniruddha Roy, J.)