

W.P.A. 21956 of 2006

IA No. CAN 1/2007 (Old No. CAN 1244/2007)

Pawan Kumar Rateria & Anr.

Vs.

The State of West Bengal & Ors.

Ms. Sutapa Roy Choudhury

Ms. Aratrika Roy

...for the petitioners

Mr. Anand Farmania

Mr. Anis Datta Sarma

...for the State

In the writ petition order dated 25th August, 2006 passed by the Secretary, Government of West Bengal, Urban Development Department is questioned. By the said order dated 25th August, 2006 decision was taken to resume plot no. HA-268 in Sector-III, Bidhannagar (Salt Lake City) with immediate effect and it was further decided to take steps for filing civil suit in the competent court of law for resumption of the said plot by cancellation of lease deed and also for recovery of possession of the said plot with building thereon.

The learned advocate representing the petitioners submits that though on alleged violation of Clause 2(8) of the lease deed the impugned decision was taken but circular dated 4th September, 1985 was applicable at the relevant point of time which was issued by the Deputy Secretary, Government of West Bengal, Metropolitan Development Department wherein it was provided that prior permission of the Government shall not be

necessary to let out for residential purpose, a building or a portion thereof constructed on residential plot in Bidhannagar, on monthly rental basis, provided, however, that such permission as noted above shall be required, before any subsequent letting out takes place in the event of earlier tenancy in the said building or portion thereof is terminated either at the instance of the landlord or at the instance of the tenant, before expiry of 7 years from the date of commencement of the previous tenancy. According to the petitioners considering the facts of this case this circular dated 4th September, 1985 is applicable in pursuit of finding whether the condition of obtaining permission from the State Government is necessary or not.

Learned advocate representing the State-respondents has opposed the prayer of the petitioners and has made submission in order to defend the decision as contained in the order dated 25th August, 2006.

In consideration of the rival submissions made on behalf of the parties it appears that the circular dated 4th September, 1985 issued on behalf of the Metropolitan Development Department, Government of West Bengal was not considered by the authority while passing impugned order dated 25th August, 2006. This Court at this stage is not expressing any view whether this circular is applicable or not but in the event it is found that the authority while taking decision does find that the said circular is inapplicable the reasons are required

to be assigned as to why this circular dated 4th September, 1985 is not applicable in the present case.

Accordingly, the impugned order dated 25th August, 2006 stands set aside thereby directing the Land Manager, Urban Development Department, Government of West Bengal to revisit the issue and pass a reasoned order within a period of 8 (eight) weeks from date after granting opportunity of hearing to the petitioners or their representative and any other interested party.

The decision to be taken by the Land Manager is to be communicated to the parties within 1 (one) week thereafter. While taking decision the Land Manager shall also take note of the present situation as it has been submitted on behalf of the petitioners that the original lessee has died and his wife predeceased and the son has also died.

Land Manager shall be at liberty to consider these facts relating to original lessee upon appropriate documents to be filed in support of the same before him.

With the aforesaid directions and observations, the writ petition stands disposed of.

Leave is granted to the learned advocate representing the petitioners to amend the cause title and add Land Manager, Urban Development Department, Government of West Bengal as additional respondent in course of this day. Service of notice upon the additional respondent stands dispensed with since the State-respondents are represented by learned advocate.

Application, if pending, also stands disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)