

1. The original writ petitioner had died on July 3, 2020, during pendency of the present writ petition. The legal heirs of the original petitioner (since deceased) have been substituted in place of their deceased father, as the substituted writ petitioners in this case.
2. The writ petitioner has challenged the impugned order of the Special Secretary to the Government of West Bengal, Urban Development Department dated July 5, 2016. The said order is extracted as herein below:-

“With reference to your letter dated 29.06.2016 on the subject noted above, I am directed to say that the leasehold right of Plot No. EN-71, Sector-V, Salt Lake granted in favour of Sri Satya Ranjan Roy has been cancelled in terms of this Department’s Memo No. 852(2)-UD/O/M/SL(AL/NR)/9L-101/82(Pt.) dated 14.03.2016.

The possession of the plot is vested in the Urban Development Department.

Therefore, the question of reconsideration of the matter does not arise.”

3. The factual background of the case in brief, resulting into issuance of the said order by the authority dated July 5, 2016 and filing of the present writ petition may be stated as herein below:-
4. A lease agreement was entered into by one M/s. Roy & Company, with the Governor of the State of West Bengal, on September 4, 2009. The original writ petitioner (since deceased) was the proprietor of said M/s. Roy & Company. The lease was entered into to enable the writ petitioner (since deceased) as the proprietor of the said company, to hold the land, to erect a building thereon for use for manufacturing machinery parts.

Since after delivery of possession of the said land to the writ petitioner (since deceased), the land was demarcated with the boundary pillars, by the said original writ petitioner and thus since then he has been enjoying the possession and right over the said property, in terms of the lease deed as mentioned above.

The writ petitioner appointed constituted attorney vide a general power of attorney dated June 2, 2016, in order to arrange labour, engineers, supervisors, electricity personnel, waterline personnel and all other personnel for installations, fittings, amenities and obtain services from the appropriate authorities, as and when required. It is stated that on November 26, 2015, the original writ petitioner wrote to the Principal

Secretary, Urban Development Department that he could not construct the building within the stipulated period as specified in the lease deed, due to the reason of his ill health and infirm financial condition. By dint of the said letter the original writ petitioner had sought for extension of the period for starting construction over the said piece of land, for at least another five years, from the date of the said letter.

On the same date, i.e, November 26, 2015, a show cause notice was issued by the Special Secretary to the Government of West Bengal to the writ petitioner (since deceased). The crux of the letter as above would be that by not constructing the building within the stipulated time of three years, as envisaged under Clause 2(6)(a) of the said lease deed, the writ petitioner (since deceased) had breached the agreed terms and conditions of lease. As such, he would be covered under cancellation clause of the lease deed, due to breach of the mutually agreed terms and conditions for construction within a stipulated period of time. An explanation was sought for as to why the Government shall not seize the said plot of land, for violation of Clause 2(6)(a) of the lease deed.

On January 25, 2006, is the reply of the erstwhile writ petitioner (since deceased) to the show cause notice, issued to him, in which he had reiterated the ground of his indisposition and prayer for permission for extension of time for constructing the building.

The authority sent its reply vide letter dated March 14, 2016, thereby holding that the clarification given by the erstwhile writ petitioner (since deceased) was not satisfactory and acceptable to the department. On this ground it had declared the lease to be terminated as per provision under Clause 4 of the said indenture, for the reason of violation of the condition of the indenture, i.e, under Clause 2(6)(a). The

authority had expressed intention to re-enter into the possession of the demised land.

An appeal was made to the Special Secretary, Urban Development Department on April 28, 2016, as against the order of the authority dated March 14, 2016. The resultant order of the appellate authority is that dated July 5, 2016, which is under challenge in this writ petition.

5. Mr. Chatterjee, appearing for the writ petitioner has first held that there has been brazen violation of the conditions of the lease deed by the respondent authority while issuing the impugned orders dated March 14, 2016 as well as July 5, 2016. He says that the stipulations made in the lease deed as regards making construction over the relevant piece of land within a stipulated period, is only provisional and subject to extension, as per permission granted by the concerned authority. He says that the original writ petitioner (since deceased) has made application before the authority expressing the reasons being supported by adequate medical evidence, as to why the contract clause for construction within a stipulated period of time could not be complied with. He has further stated that the erstwhile writ petitioner has also duly made prayer for extension of time for compliance of the agreed terms and conditions. Mr. Chatterjee is aggrieved that the decision of the authority has been only unilaterally terminating the contract, which according to him, is in gross violation of the principles of natural justice as well as capricious, coercive and arbitrary. He has pointed out to the concerned lease deed to say that the incumbent duty of the respondent, in terms of the said deed was to issue notice to his clients, giving six months time to remedy the breach, if any. He says that no such time has been afforded to his client. Mr. Chatterjee has further pointed out that in the order dated March 14, 2016, the respondent authority has mentioned about sending notices dated January 31, 2013, October 30,

2015, November 26, 2015 and December 8, 2015 to the writ petitioner (since deceased). However, he claims that his clients have never received any of these notices and he has put the respondent authority to strict proof of this fact that the notices as above have been actually served upon the writ petitioners or their predecessor/the original writ petitioner. Mr. Chatterjee has urged that none of the orders dated March 14, 2016 and July 5, 2016, could have been passed by the respondent authority without affording an opportunity to his clients for hearing. He has termed both the said orders to be illegal being in contravention of the agreed terms of the parties in the lease deed and thus he has sought for a relief in this case that both the said orders passed by the respondent authority be set aside.

6. Mr. Karan has represented the respondent State in this case. On behalf of the State respondent Mr. Karan has brought forward strong objection as regards the contentions and prayer of the writ petitioner.
7. According to the respondents, the writ petitioners have all along been negligent and acted with ulterior motive to mis-utilise the State largesse, which would be evident from conduct of the writ petitioner (since deceased). Mr. Karan has taken this Court to the relevant averments made in the affidavit-in-opposition to show that the land was allotted to the writ petitioner (since deceased) being the proprietor of M/s. Roy & Company, in the year 1982. However, since after allotment of the land, the writ petitioners have never turned up for execution of the lease agreement within a reasonable period of time and unnecessarily by that way blocked the State largesse, to extract undue advantage from the same. He says that only in the year 2009 the writ petitioner (since deceased) had come up for execution of a lease deed, pursuant to the allotment made to him. It has been strongly suggesting that the *mala fide* motive of the writ petitioner (since deceased), in misusing the state

largesse would further be evident from the fact that even after execution of the lease deed in the year 2009, he has not bothered to comply with the terms of the lease deed for constructing building over the leased out piece of land, within the stipulated period of time. He has emphatically submitted that even the said allottee/lessee has not come up with a prayer for extension of the time, in terms of the lease deed, within the scheduled time frame. Thus, according to Mr. Karan, the respondent had authority and was empowered by dint of the terms of contract entered into between the parties, to terminate the contract.

8. He has further indicated to the fact that the writ petitioner's claim of not receiving the notices sent to him by the respondent authority is only untrue in view of the fact that the writ petitioner (since deceased) had replied to the said notices sent to him by the authority. Mr. Karan said that unless and until the notices was received by the writ petitioner (since deceased), an answer to the same could not have been submitted by the concerned person. Mr. Karan further says that distribution of state largesse is subject to due observation of the object and purposes thereof, that it should be for public purposes. The State in that case reserves absolute right to assess if the purpose for which the land was allotted to a person, has been duly served or not. That, in case of any breach, the respondent authority shall be empowered to conclude about non-fulfilment of any public purpose or misuse of the state largesse with ulterior motive by the allottee/lessee. Thus, it would further be entitled upon being satisfied regarding the ground as above, to terminate the lease deed. Mr. Karan says in the factual background of the present case and keeping in mind the provision of law as above, the steps taken by the respondent authorities, vide orders dated March 14, 2016 and July 5, 2016, would be appropriate and legal. He urges that there

would not be any cogent reason, for this Court to interfere in this matter.

9. The issue involved in this writ petition is with regard to distribution of state largesse for advancement of any public purposes. It is a social welfare benefit, extended by the State under the rubrics of its constitutional obligation (as per the Supreme Court in ***Indian Medicine Pharmaceuticals Corpn. Ltd. vs. Kerala Ayurvedic Co-operative Society Ltd.*** reported in **2023 SCC OnLine SC 5**). If a lease holder has breached a lease covenant, the terms of the lease will specify the available remedies. Even if it is not so, the breach itself may be sufficient to justify action such as forfeiture of the lease, etc. It is a powerful tool, in the hands of the lessor, in case of breach of terms of lease in the hands of the lessee.
10. It is fact as is evident from the records that since after execution of the lease deed in 2009 the lessee has not made any construction over the allotted land within a period of three years from the dated of lease, i.e, within 2012. Evidently the land was allotted for the purpose of construction of building for manufacturing machinery parts. Hence, the sole purpose for allotment of land was for construction of building. The first ever communication in this regard from the lessee made to the respondent authorities is dated November 26, 2015. Thus, it is also evident that the prayer of the writ petitioner for extension of time for such construction has been made much after expiry of the stipulated period of time for initiation of such construction.
11. The relevant terms of the lease agreement dated September 4, 2009 be extracted, as follows:-

“2. The Lessee to the intent that the obligations and covenants shall continue throughout the period of demise agrees and covenants with the Lessor as follows:-

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(3) To demarcate the land with boundary pillars and to maintain such boundary pillars in good and proper condition during the period of demise so that the same may be easily identified. Provided that the Lessor reserves the right to provide the boundary pillars at the cost of the Lessee.

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(6) (a) To construct the building in conformity with such building rules as may from time to time be framed by the Government or other authority prescribed in that behalf and according to plans, specifications, elevations, designs and sections sanctioned by the Government, or that authority within three years from the date of possession of the demised land or such extended time as may be allowed by the Government in writing.

(b) Not to construct more than one building on the said plot of land.

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(9) Not to use or allow to be used the land and/or the structure thereon or any part thereof for any purpose other than for manufacturing machinery parts without the prior permission in writing of the Government or other authority prescribed in that behalf.

(10) Subject to the provisions in clause 2(8) hereof the Lessee shall not have the right to mortgage or charge the leasehold interest in the land and/or the building to be erected thereon without the previous consent in writing of the Government.

Provided however that the Lessee shall have the right to mortgage or charge the leasehold interest in the land and/or building to be erected thereon in favour of L.I.C.I., or Nationalised Bank or Government and Statutory Body or Government Sponsored Financial Institutions, or registered Housing Co-operative Society or the Housing Development Finance Corporation Ltd. for the purpose of getting house building loans without the previous consent of the Government.

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4. *Provided always that if there be any breach of any of the terms and conditions and covenants herein on the part of the Lessee contained the*

Lessor shall have the right to re-enter into possession of the demised land or any part thereof in the name of the whole and thereupon this demise shall forthwith stand determined.

Provided nevertheless the Lessor shall not exercise the right without serving the Lessee a notice in writing giving six months' time to remedy the breach."

- 12.** The issue in dispute in this writ petition is that the writ petitioners have committed breach of the terms of the lease agreement for making construction within a stipulated period of time and also has failed to seek extension of such time for any cogent ground and within a reasonable period of time. Clause 2(6)(a) has provided that three years would be the stipulated time frame for initiation of construction of the building over the said piece of land, for which the land has been allotted and leased out to the petitioner. This may however been allowed within further extended period of time, subjected to consent by the respondent authority.
- 13.** What would happen if not the said terms under Clause 2(6)(a) are fulfilled ? The answer is provided in Clause (4) of the said lease agreement, that, has there been any breach of terms and conditions on part of the lessee, the lessor, i.e, the respondents here, shall have the right to re-enter into possession of the demised land after termination of the lease agreement.
- 14.** On behalf of the writ petitioners two points have been specifically argued on this. Firstly, that there has not been any outer limit within which the lessee had to pray for extension of time and beyond which the lessee may be restrained to pray for any further extension of time, for compliance with the agreement's terms. Therefore, according to them, the extension of time can be prayed for by the lessee at any date, if not made

immediately after expiry of the three years term as stipulated. Secondly, it has been stated that the second Proviso of Clause 4 of the lease agreement would show that the lessor has been bestowed with the mandatory duty not to terminate the lease, without serving the lessee a notice in writing, giving six months time to remedy the breach. The petitioners say that no such notice was given to either the original writ petitioner or the substituted writ petitioner. That, had not there been any outer limit for seeking extension of time for construction under Clause 2(6)(a), the prayer of the writ petitioner vide letter dated November 26, 2015, could not be rejected by the respondent authority. Under such situation termination of the agreement without giving opportunity of hearing to the writ petitioners have been arbitrary and illegal, on the part of the respondent authority.

- 15.** The said submission of the writ petitioners would not inspire confidence of this Court, in view of the fact that the notice has been duly sent by the respondent authorities to the original writ petitioner (since deceased) on January 31, 2013. This would duly comply with the terms of the agreement as enumerated in the second Proviso to Clause (4) thereof. Questions have been raised as regards due service of notice, if any, sent to the writ petitioners. Record would clearly reveal that the said notice sent by the respondent authority dated January 31, 2013, has been replied by the original writ petitioner (since deceased) vide letter dated March 1, 2013. This leaves scope for no doubt, as regards due service of notice, by the respondent, in terms of the second proviso to Clause (4) of the lease agreement.
- 16.** Regarding the reasons shown for not complying with the terms of the lease deed regarding construction over the allotted land by the lessee, this Court is of the opinion that the same would depend on the objective considerations and discretion of the respondent authorities. The state

largesse having been allotted and given away for advancement of public purpose. If it is found not to have been used to fortify such purpose, it would be within the consideration and discretion of the respondent authority to espouse the Clause of the lease deed which is applicable in case of breach of condition of the lease. Accordingly in this case after considering the grounds made out by the original writ petitioner regarding not having been able to comply with the terms of the lease deed and considering also his past conduct, the respondents as above have issued orders dated March 14, 2016, and July 5, 2016. The lessee has been given opportunity by sending written notice, to defend himself and thus the allegation that the stipulations in the agreement were not complied with regarding keeping the lessee on notice before termination of contract, is also not maintainable.

17. Instead this Court finds that the said orders as impugned in this writ petition have been passed by the respondent authority in due discharge of its power under the agreement of lease entered into between the parties on September 4, 2009 and is legible to be upheld. The writ petition should, therefore, fail.
18. The writ petition being W.P.A 20888 of 2016 is dismissed. The orders of the respondent authority dated March 14, 2016 and July 5, 2016 are upheld.
19. Urgent photostat certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

(Rai Chattopadhyay,J.)