

12.12.2024

Item No. 02

Crt.No.02

b.r.

WPA 23077 of 2024

Sri Arup Majee

-vs-

The State of West Bengal & Ors.

Mr. Subir Sanyal, Sr. Adv.

Mr. Kaushik Chatterjee

Mr. Aman Agarwal

.... For the petitioner.

Mr. Wasim Ahmed

Mr. Sk. Md. Masud

... for the State.

Mr. Asish Kumar Mukherjee

Mr. Sourav Prasad

Mr. Abhishek Gupta

....for the Resp. nos. 6 to 8.

Mr. Anurag Sardar

... for the Resp. no.9.

Mr. Subir Sanyal, learned Senior advocate
appears for the writ petitioner.

Mr. Anurag Sardar, learned counsel appears for
the respondent no.9.

Mr. Washim Ahmed, learned State counsel
appears for the respondent nos. 2 and 3.

Mr. Ashih Kumar Mukherjee, learned counsel
appears for the respondent nos. 6 to 8.

The petitioner claims to be the proposed
assignee of the original lessee in respect of **Plot No.**
CB13, Sector-I, Salt Lake City, Kolkata (for short,

the property). By virtue of a registered lease deed executed in favour of the predecessors-in-interest of the respondent nos. 6 and 7, lease was granted in respect of the said property. After the demise of the said predecessors, the respondent nos. 6 and 7 are presently the lessee in respect of the property. The original lease contains a clause permitting assignment of lease hold right by the original lessee in favour of an assignee, subject to prior permission been granted by the lessor-State.

Mr. Subir Sanyal, learned Senior advocate appearing for the petitioner submits that on the promise of assignment to be made in favour of the petitioner, the petitioner has paid substantial consideration to the respondent nos. 6 and 7. The petitioner has also paid a part of consideration to respondent no.8 in whose favour the lease was sought to be assigned prior to the proposal of assignment in favour of the petitioner. The petitioner has filed a civil suit before the jurisdictional Civil Court against the respondent nos. 6, 7 and 8 for cancellation of the previous assignment in favour of the respondent no.8. The suit is pending for trial.

In the meantime, the respondent nos. 6 and 7 by a letter dated **July 13, 2018 at page-46** to this writ petition, applied before the respondent no.2 for

permission to allow the assignment in favour of the petitioner. Since that application is pending before the authority, the petitioner filed a previous writ petition, **WPA 15771 of 2024** seeking mandamus upon the relevant authority to consider and dispose of the said application dated **July 13, 2018** submitted by the respondent nos. 6 and 7. The said previous writ petition is still pending.

The petitioner submits that, meanwhile, the respondent no.8 has started the demolition process of the existing building at the property. Since the application for assignment dated July 13, 2018 is pending, it is contended on behalf of the petitioner that, there being no assignment in favour of respondent no.8 and the respondent no.8 having no right whatsoever on the property should not be allowed to proceed with the demolition work of the existing structure. Hence, the instant writ petition has been filed.

Mr. Asish Kumar Mukherjee, learned advocate appearing for respondent nos. 6, 7 and 8, submits that there has been no question of any demolition work being carried out at present. He further submits that the dispute raised through this writ petition is purely a civil dispute and a substantive civil suit is pending before the jurisdictional Civil Court. No

interim order has been passed by the Civil Court. An appeal was preferred from rejection of interim order and the same also was dismissed.

After considering the rival contentions of the parties and upon perusal of the materials on record, this Court first proceeds to examine whether the petitioner has any right accrued over and in respect of the property to maintain this writ petition. From the submissions made by the learned Senior advocate appearing for the petitioner, it appears to this Court that, on the basis of two incidents, the petitioner claims right over the property. **Firstly**, the petitioner has made substantial payment to respondent nos. 6 to 8 on the promise of the respondent nos. 6 and 7 that the assignment of lease shall be made in favour of the petitioner and accordingly the application dated July 13, 2018 has been filed before the authority by the respondent nos. 6 and 7. **Secondly**, since the application dated July 13, 2018 is still pending for consideration before the State authority, if the same is considered in affirmative then the petitioner would have a right over the property arising out of the assignment.

In so far as payment of consideration made by the petitioner as mentioned above on the basis of the alleged assignment, this Court is of the view that

since the alleged assignment is not with the permission of the lessor, the same is not a valid assignment in the eye of law. Even under the parent lease deed itself it is specifically mentioned that assignment is permitted subject to prior permission from the lessor, that is, the State. Therefore, unless a prior permission is accorded by the lessor, the question of assigning the lease hold right never arises. Admittedly, the application was submitted on **July 13, 2018 at page-46** to the writ petition, which has not been denied by any of the parties, is pending before the appropriate State authority, Unless the same is approved the question of causing any assignment by the respondent nos. 6 and 7 in favour of the petitioner or anybody else would not arise. Permission from the lessor is the condition precedent for any such assignment of lease. Inasmuch as, to accord or not to accord consent or permission for assignment is the discretion of the lessor State authority, which itself is a contingent act.

Therefore, this Court has no hesitation to hold that this document dated **July 13, 2018** which is pending before the State authority seeking permission for assignment has not created any right neither will create any right in favour of the petitioner, unless the

permission is accorded by the State authority and only thereafter the question of assignment shall arise.

In view of the foregoing discussions and reasons, this Court is of the firm and considered view that this writ petition is totally devoid of any merit and not maintainable as no right has been created in favour of the petitioner in relation to and *qua* the said property.

Accordingly, this writ petition, **WPA 23077 of 2024** stands **dismissed**, without any order as to costs.

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

(Aniruddha Roy, J.)