

2.
13-03-2024
(Ct. no.06)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE**

MAT 1774 of 2017

+

IA NO:CAN/2/2017 (Old No:CAN/10005/2017)

Anima Basu (Manna)

Vs.

State of West Bengal & Ors.

Mr. Debasish Chattopadhyay,
Mr. Tirthankar Basu

... For the Appellant.

Mr. Chandi Charan De, learned A.G.P.,
Mrs. R. Chatterjee

... For the State.

A judgment and order dated August 30, 2017, whereby the appellant's writ petition being W.P. No.7463(W) of 2017, was dismissed by a learned Judge of this Court, is under challenge in this appeal, at the instance of the writ petitioner.

It appears from the material on record that on April 02, 1965, 8 cottahs of land at Plot No.B-1/24 in Kalyani Town was allotted by the Government in favour of one Bina Chatterjee. The appellant/writ petitioner submitted before the learned Single Judge as also before us that Bina deposited the amount of *salami* that was determined by the Government after demarcation of the land and after possession of the land was made over to her on December 31, 1998.

A deed of transfer was executed by the constituted attorney of Bina in favour of the present appellant on July 05, 2008, purporting to transfer the alleged leasehold interest of Bina in respect of the said

plot of land, in favour of the present appellant. The said document was registered on July 09, 2016.

Thereafter, on August 16, 2016, the present appellant applied to the concerned authority for mutation of the said property in her name. Such request was rejected by the Estate Manager, Kalyani & Ex-Officio Deputy Secretary to the Government of West Bengal, by a letter dated October 28, 2016.

A show-cause notice dated January 31, 2017 was issued by the Estate Manager, Kalyani, to the present appellant calling upon her to explain within 15 days from the date of the notice as to why the allotment of the plot should not be cancelled for violation of the terms of the lease agreement.

Challenging the refusal letter dated October 28, 2016 and the show-cause notice dated January 31, 2017, the appellant approached the learned Single Judge by way of the present writ petition.

It was submitted before the learned Judge that as per the allotment letter, the allottee was to execute the lease deed within such period as may be fixed by the Government. Further, Clause 10 of the allotment letter provided that the allottee shall, on being called upon by the Government, within a week, have the lease deed executed and registered upon payment of appropriate stamp duty. It was submitted that the Government never called upon the allottee to execute the lease nor fixed any time period within which such lease was required to be executed. Therefore, the allottee, i.e., Bina, was not at fault and was not responsible for non-execution of the lease deed.

The learned Judge rejected such submission made on behalf of the appellant/writ petitioner. The learned Judge observed that no reasonable and prudent person will accept the submission that the lease deed could not be executed for a period of eighteen years after taking over delivery of possession of the land by Bina only because the State did not communicate the time frame for execution of the lease deed. The learned Judge further observed that had the lease deed been executed between Bina and the State of West Bengal, it would have been the obligation on the part of Bina to make construction on the land in question within a specified period of time from the date of taking over delivery of possession of the land in question.

The learned Judge dismissed the writ petition with the following observations:

“ In view of my above findings, I would like to hold that the present petitioner has not acquired any leasehold interest in the land in question by virtue of the deed of conveyance executed by the allottee Bina Chatterjee in favour of the petitioner on July 5, 2008.

Since the petitioner has not acquired any leasehold interest in the land in question, the prayer of the petitioner for mutation of her name in the record of rights is rightly refused by the respondent no.3 by issuing letter dated October 28, 2016. I do not find any illegality in the impugned notice dated January 31, 2017 issued by the respondent no.3 calling upon the petitioner to cancel the allotment in favour of the allottee Bina Chatterjee. The respondent no.3 is at liberty to proceed in accordance with law on the basis of the notice issued on January 31, 2017 (Annexure P-12 to the writ petition). ”

Being aggrieved, the writ petitioner is before us by way of this appeal.

Learned advocate for the appellant says that the allotment letter was always treated as the lease deed. No formal lease deed was executed, but, Bina could not be blamed for that. Clauses 6 and 10 of the allotment letter provide thus:

“ 6. That I/we shall duly complete the lease of the said plot of land in duplicate within such period as may be fixed by the government after demarcation of the plot of the site.

10. On being called upon by the Government I/we shall within a week have the lease deed executed and registered upon payment of the appropriate stamp duty payable therefor. ”

It is submitted that the Government never called upon Bina to execute the lease deed nor fixed any time period within which such deed was to be executed.

In 2004, Bina and the present appellant applied to the Competent Authority for permission to transfer Bina's interest in the land to the appellant. It was the duty of the Authority to dispose of such application within thirty days. For four years, the Authority did nothing. In fact, the Authority never responded to such application. Therefore, in July 2008, a deed of conveyance was executed by the constituted attorney of Bina in favour of the present appellant. Such deed was duly registered in 2016. A one-storied building has been constructed on the plot of land in accordance with the plan sanctioned by Kalyani Municipality. Completion Certificate has also been granted by the Municipality. The learned Judge erred

in not granting the reliefs prayed for by the writ petitioner.

We have not called upon the State to make submission.

We are unable to accept the submission that Bina was not at fault at all for non-execution of the lease deed. The allotment of the plot of land was made in her favour in the year 1965. Possession was made over to her in the year 1998. For the next eighteen years or so, Bina did not take any step for having the lease deed executed. Even assuming that there was no action or initiative from the end of the State Government, in our view, as allottee of the plot in question, it was incumbent upon Bina to pursue the matter, make representation to the Government and generally, take steps to ensure that a deed of lease is executed in her favour by the Government. She did nothing. We cannot condone such indolence and complete inaction on her part. The learned Judge was right in rejecting the submission that Bina had no fault in the matter.

Further, the learned Judge was also right in holding that no leasehold interest was created in favour of Bina in the first place as no lease deed was ever executed. The allotment letter cannot be taken to be the deed of lease. That letter may have been referred to as the lease in the show-cause notice issued by the Competent Authority, but such reference is in a loose sense. Such reference will not transform the allotment letter into a deed of lease. Since no lease was ever created in favour of Bina, she could not have transferred any alleged leasehold interest in respect of the concerned land in favour of the present appellant. Therefore, the concerned

authority was right in rejecting the appellant's prayer for mutation. We also find no infirmity in the show-cause notice issued by the concerned authority on January 31, 2017. The appellant will be at liberty to respond to such show-cause notice, if she is so advised.

We do not find any infirmity in the order under appeal, which, accordingly, stands dismissed along with the connected application.

Learned advocate for the appellant says that the State Government has introduced a scheme for transfer of the right, title and interest in respect of plots of land like the concerned plot of land, upon payment of prescribed fees/charges. The present case should be considered by the Government. We merely clarify that dismissal of this appeal will not prevent the appellant from making necessary application/representation to the Competent Authority in the Government for the aforesaid purpose. If such an application/representation is made, the Competent Authority shall decide the same, in accordance with law, as expeditiously as possible, by passing a reasoned order, without being influenced by any observation in this order or in the order of the learned Single Judge impugned in this appeal.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Supratim Bhattacharya, J.) (Arijit Banerjee, J.)