

30.08.2024
Item No. 14
Crt.02
b.r./Sc.

WPA 27364 of 2023

Shiuli Pal
-vs-
The State of West Bengal & Ors.

Mr. Sandip Ray
..... for the petitioner.

Mr. Priyabrata Batabyal
.... For the State.

On the prayer of Mr. Priyabrata Batabyal, learned State Counsel, time to file report in the form of affidavit stands extended till today. The report in the form of affidavit affirmed on August 14, 2024 filed today in Court, is taken on record.

The exception thereto in the form of affidavit is also taken on record.

Mr. Sandip Ray, learned advocate, appears for the petitioner.

Mr. Priyabrata Batabyal, learned State counsel appears for respondents.

The plot in question is **plot no.A-10X by 39, Kalyani (for short, the plot)**. By virtue of a lease agreement executed by the authority on **February 29, 1968 annexure R-1 at page-5** to the report filed on behalf of the **respondent no.4** (for short, the report), the plot was agreed to be leased out in favour of one

Ramesh Chandra Deb, since deceased (for short, the allottee). By a communication dated **September 4, 1986, annexure R-2 at page-9** to the report, the authority requested the allottee to contact the Assistant Estate Manager with all relevant documents and records including the receipts of payments, as mentioned therein, for taking possession of the plot. The petitioner contends that, the necessary salami and rental for lease were paid by the allottee as would be evident from **annexure p-2 at pages 19 to 32** to the writ petition. By a letter dated **December 31, 1991 annexure p3 at page 33** to the writ petition, the allottee requested the Estate Manager to deliver up possession of the plot in his favour and the possession was requested to be handed over to the authorized representative of the allottee. The request was also made for registration of the indenture of lease. On **April 19, 2007 annexure R-3 at page-10** to the report, a show-cause notice was issued in the name of the original allottee as to why the allotment in his favour should not be terminated. The said show-cause notice recorded that till **2007** possession of the plot was not taken over by the allottee. On the identical ground further notices to show-cause by the Estate Manager on the allottee dated **November 8, 2011 at page-11** and **November 26, 2013 at page-12** to the report, were issued.

The original allottee in the meantime died on **March 21, 1992**. The petitioner claims that the deceased allottee left a Will in favour of the petitioner. The petitioner in **2017**, though the deceased allottee died in **1992**, applied for probate before this Court being **PLA No. 354 of 2017** and the probate was granted by this Court on **March 16, 2021**.

On the strength of the said grant of probate, the petitioner claims herself being the beneficiary under the Will, is entitled to receive possession and have the deed of lease registered in her favour in respect of the said plot after compliance of all the formalities and payment required to be made. The petitioner has also applied for mutation in respect of the said plot **annexure p-6 at page-46** to the writ petition.

The mutation was rejected by the Estate Manager by its communicated dated **July 20, 2021, annexure p-7 at page-48** to the writ petition on the sole plea that no lease deed was executed in respect of the said plot.

Through this writ petition, the petitioner claims issuance of mandamus upon the authority to compel them to register the deed of lease and consequently to handover possession of the plot in favour of the petitioner and to cause the necessary mutation in her favour in respect of the said plot.

Mr. Priyabrata Batabyal, learned State Counsel appearing for the respondents at the threshold has denied the factum, content, legality and existence of the letter dated **December 31, 1991 annexure p-3 at page-33** to the writ petition. He submits that there has been no endorsement for receipt of the document by the authority. Relying upon the report, he submits that though the necessary lease agreement was signed by and between the Estate Manager and the allottee dated **February 29, 1968** and though the necessary salami to obtain lease of the plot was paid by the allottee but the allottee failed and neglected to pay the lease rental according to the lease terms, as a result no registered lease deed was executed in favour of the allottee and the allottee knowing this very well had not taken possession of the plot from the estate officer. The plot is still lying in possession of the estate officer and lying vacant. With reference to the money receipts relied upon by the petitioner from **pages 19 to 32** of the writ petitioner, learned State counsel submits that, those are the receipts issued against the salami paid by the allottee from time to time and not on account of the lease rental. The lease rental was never paid by the allottee.

Learned State counsel further submits that to obtain a valid lease in respect of an immovable property a registered lease deed is mandatorily required to be

executed between the lessor and the lessee under the law as provided under **Sections 105 and 107** of the **Transfer of Property Act** read with **Section 17** of the **Indian Registration Act**. In support, he has relied upon a decision of this Court ***In the matter of : Soumyendu Chakraborty & Anr. -vs.- The State of West Bengal & Ors.*** dated **August 7, 2024** Rendered in **WPA 14092 of 2015**. Inasmuch as, he further submits several disputed questions are there and this writ petition shall not be entertained.

Per contra, learned counsel for the petitioner refers to a notification issued by the State authority dated **March 7, 2024** and submits that, the Department of Urban Development and Municipal Affairs have decided to regularize the transfer, where there are some deficiencies in performance of the lease terms in respect of the similarly situated plots.

After considering the rival contentions raised on behalf of the parties and upon perusal of the materials on record, it appears to this Court that, it is an admitted fact that since execution of the lease agreement in **1968 till 1992** the allottee was alive. Save and except the said letter allegedly written by the allottee dated **December 31, 1991** that too about **three or four months** immediately before the death of the allottee, no attempt was made by the allottee to have the lease deed

registered or to take possession of the land. The said communication is also disputed and denied on behalf of the respondents including the existence thereof. In the instant case, the proposed lease was for **999 years**. **Section 107** of the **Transfer of Property Act** provides that, a lease of immovable property from year to year or for any term exceeding **one year** of reserving an yearly rent can be made **only by a registered instrument**.

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 **compulsorily required to be registered** by way of a document.

The admitted fact in the instant case is that, no such registered indenture or lease was executed in favour of the allottee. Therefore, no lease was executed in favour of the allottee and, as such, no interest or right of whatsoever nature on the plot was created in favour of the allottee.

By obtaining probate of the alleged Will of the allottee, the petitioner might have obtained a right as a testamentary successor. Such right can only be exercised over a property on which the testator had or has a right. In the present case, the testator did not have any right on the plot, therefore, the alleged testamentary succession in favour of the petitioner on

the plot did not and/or could not and does not and/or cannot arise. The petitioner cannot claim or exercise any right on the said plot in any manner whatsoever.

Inasmuch as, the claim and rival claims as would be evident from the writ petition, the report and the exception to the report filed and exchanged by and between the parties, would demonstrate that, there are several disputed questions of fact which are required to be proved, if at all, then by way of adducing evidence and by holding a properly constituted trial. This is not the job of a Writ Court. A writ proceeding is always a summary proceeding. In exercise of its high prerogative writ jurisdiction, this Constitutional Court shall not proceed to adjudicate the case where the basic facts are disputed.

In view of the foregoing discussions and reasons, this Court is of the firm view that, this writ petition is totally devoid of any merit and is liable to be dismissed.

Resultantly, this writ petition, **WPA 27364 of 2023** stands **dismissed**, without any order as to costs.

However, in the event the appropriate State authority decides to put the said plot on lease by public auction or otherwise, the petitioner shall be at liberty to participate therein and the offer of the petitioner shall be evaluated along with other offers strictly in accordance with law. The dismissal of this writ petition

shall not stand in the way of the petitioner to participate in such process of leasing out the plot.

It is also made clear that, this order shall not create any right or equity in favour of the petitioner if the petitioner, participates in the process of leasing out of the plot in future.

(Aniruddha Roy, J.)