

D/L
Item No. 05
27.02.2024
KOLE

**FMA 214 of 2024
With
IA CAN 1 of 2023**

**Sri Ashoke Kumar Bhattacharya
-Vs.-
The State of West Bengal & Ors.**

*Mr. Debasish Chattopadhyay,
Mr. Loknath Paul,
Mr. Tirthankar Basu,
Mr. Saswata Mukherjee,*

...for the appellant.

*Mr. Lalit Mohan mahata, AGP,
Mr. Rudranil De,*

...for the State.

By consent of the parties, the appeal and the connected application are taken up for hearing together.

The subject matter of challenge in this appeal is a judgment and order dated October 4, 2023, passed by a learned Judge of this Court in the appellant's writ petition being WPA 24999 of 2012. By the said order the appellant's writ petition was dismissed.

The matter relates to a plot of land in Kalyani. A lease deed was executed in respect of the said plot of land by the State Government in favour of the predecessor-in-interest of the appellant. Subsequently, the lease deed stood transferred in the name of the appellant in 1987. A deed of lease was executed in favour of the appellant on June 26, 1987.

The lease deed contained a clause requiring the appellant to construct a residential building on the concerned plot of land within two years from the date of

execution of the lease deed. The appellant failed to do so. The appellant now says that he applied for sanction of a building plan to Kalyani Municipality in the year 1988. The plan was sanctioned only in the year 1998. Therefore, the question of the appellant complying with the requirement of constructing a house within two years from the date of execution of the lease could not arise.

It appears that a show cause notice was issued to the appellant by the concerned department of the Government as regards why the lease in his favour should not be terminated in view of his failure to adhere to the clauses of the lease deed including the requirement of building a house within two years. This was in the year 2011. In 2012, a notice of termination of the lease deed was issued by the concerned department. Challenging the aforesaid notices, the appellant approached the learned Single Judge by filing the present writ petition.

The learned Judge noted the facts of the case. The learned Judge noted that according to the writ petitioner the building plan was sanctioned by the Municipality only in the year 1998 and therefore, the writ petitioner could not have built the residential building within two years from the date of execution of the lease deed. However, the learned Judge observed that no explanation is forthcoming as to why the house was not built within two years from the date of sanction of the building plan.

It was further argued by the writ petitioner before the learned Judge that both the show cause notice and the

termination notice were sent to an address from which the writ petitioner had moved long time back and had intimated the new address to the concerned department. Therefore, the writ petitioner never received the show cause notice or the termination notice and could not respond to the same. To a query raised by the court as to whether the writ petitioner was in a position to produce any proof of intimation of the change of address, the writ petitioner could not provide any satisfactory answer. The learned Judge accepted the contention of the Government that it was sufficient that the show cause notice and the termination notice were sent to the appellant to his last recorded address. The learned Judge referred to Section 27 of the General Clauses Act and concluded that there was sufficient service of the said notices on the writ petitioner in the facts of the case. The learned Judge dismissed the writ petition. Hence this appeal.

We have heard learned Advocate for the appellant as well as learned Advocate for the State.

The appellant draws our attention to a letter dated June 5, 1987, written by him to the Estate Manager and Estate Officer, Metropolitan Development Department (now known as Urban Development Department), requesting for early execution of the lease deed. At the bottom of the letter the address of the appellant is mentioned as “B-1/298, Kalyani, Nadia, Pin 741235”. The appellant says that the department knew of this address and should have sent the show cause notice and the termination notice to that

address. Instead, the department sent such notices to B-2/395, Kalyani, Nadia, where the appellant was not residing at the material point of time.

Learned Advocate for the State drew our attention to the first page of the relevant lease deed dated June 26, 1987, wherein the address of the appellant is mentioned as B-2/395, Kalyani, Nadia. Learned Advocate stated that this was the last recorded address of the appellant with the department and hence, all communications were sent to this address.

We are not impressed with the argument advanced on behalf of the appellant. Apart from the fact that there is no acceptable explanation as to why the residential building was not constructed even within two years from the date of sanction of the building plan by the Municipality in the year 1998, as regards service of show cause notice and termination notice also, we find no force in the appellant's argument. The lease deed was executed on June 26, 1987. The letter that the appellant relies on is dated June 5, 1987. This means that subsequent to the appellant writing that letter, he provided his address as B-2/395, Kalyani, Nadia to the Government and the lease deed accordingly incorporated such address. We find no deficiency on behalf of the Government in sending the show cause notice and the termination notice to the aforesaid address of the appellant as reflected in the lease deed. It would have been an entirely different matter had the appellant intimated any different address to the department subsequent to the execution of the

lease deed. But that is not the case. Hence, we do not find any merit in the submission made on behalf of the appellant that the letter of termination of the lease has been issued in breach of the principles of natural justice. We find that the show cause notice was duly served on the appellant.

In the facts and circumstances aforesaid, we find no infirmity in the judgment and order impugned in this appeal.

The appeal and the connected application, accordingly, fail and are dismissed. There will be no order as to costs.

At this juncture, learned Advocate for the appellant says that he should be permitted to make a fresh representation to the concerned department to consider his case favourably. We do not think that any such permission is necessary. He is always at liberty to do so. If he does so, the concerned department may consider the same in accordance with law.

Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Arijit Banerjee, J.)

(Gaurang Kanth, J.)