

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 32218 of 2013

Reserved on : 09.04.2024
Pronounced on: 26.06.2024

Sri Asesh Kinkar Mahapatra

...Petitioner

-Vs-

The State of West Bengal & Ors.

... Respondents

Present:-

Mr. Achyut Basu
Ms. Punam Basu
Mr. Rupchand Chakraborty
Mr. Sri Kumar Chakraborty

... for the Petitioner

Mr. Suman Ghosh

...for the State

Rajarshi Bharadwaj, J:

1. The writ petitioner in the instant writ application challenges the delay in recording the leasehold land in his own name in terms of a deed of transfer.
2. The facts of the case in brief are that a lease agreement was executed between the Government of West Bengal herein respondent No.1 and one Smt Reeba Das (hereinafter referred to as allottee/original lessee) for a term of 999 years in 1963 in respect of a plot of land. The plot of land in question is plot No. B-4/119 measuring an area of 8 cottahs, Nil chattaks and 32 square feet

at Kalyani, Nadia. The allottee obtained possession of the land on 26.08.1963. The plot of land was sought to be obtained by one Asesh Kinkar Mahapatra herein the writ petitioner.

3. The petitioner along with the allottee made an application to the Estate Manager, Kalyani, Nadia herein respondent No.2 on 10.02.1992 requesting permission to transfer the plot of land in his favour. During the pendency for grant of transfer, the leasehold interest in the plot of land was transferred to the petitioner in consideration of Rs 40,000/- by a deed of transfer 6431-P of 2000 dated 04.07.2001.

4. The petitioner on 21.02.2012 made an application to respondent No.2 to record his name as lessee in respect of the plot of land. The petitioner dissatisfied with the refusal of respondent No.2 to register the deed of transfer of the land preferred writ petition being W.P. No. 10453(W) of 1997 and W.P. No. 16568 (W) of 1999. The registration of transfer deed was allowed vide order dated 29.11.1999.

5. Thereafter, the petitioner submitted a certified copy of transfer deed dated 04.07.2001 in response to the letter of respondent No.2 dated 12.09.2012 under Memo No 1057/1/B-4/119 and also supplied certified copies of solemn order dated 29.11.1999 in pursuance of letter dated 22.08.2013 issued by respondent No.2 under Memo No. 1205/B-4/119. Aggrieved by the refusal to mutate the name of the petitioner in the Municipal Records by respondent No.2, the present writ petition is preferred.

6. The Learned Counsel for the writ petitioner submits that the prayer of the petitioner to record his name in the record of rights on the basis of a valid and registered deed of transfer has been rejected arbitrarily and unlawfully by respondent No.2. The lease agreement between respondent No.1 and the original lessee in 1963 did not impose any restriction upon the transfer of the plot of land. The registration and execution of transfer deed between the

original lessee and the petitioner was a result of solemn order dated 29.11.1999, arising out of writ petition being W.P.O No. 16568 (W) of 1999. At the time of registration, the petitioner has complied with all the formalities of law by paying an amount of Rs 16,89,333/- as stamp duty and registration fees. Mutation in favour of the petitioner in the appropriate records is the legal consequence of transfer of leasehold interest in the plot.

7. It is further submitted that no objection was raised by respondent No.2 at the time of service of notice by the petitioner and the allottee expressing an intention to transfer the residuary period of leasehold interest before transfer in terms of Clause 9(f) of the lease agreement and at the time of registration and execution of transfer deed. By accepting the registration fees and stamp duty dues from the petitioner, respondent No.2 has recognised his rights and interests over the plot of the land. Later on, the petitioner also provided sufficient documents to support his claim for registering the leasehold interest in his own name. Thus, at a belated stage, respondent No. 2 cannot be permitted to deny the transfer of the land.

8. The Learned Counsel for respondents No.1 and No.2 submits that the plot of land in question is not capable of being transferred by deed of transfer in favour of the petitioner because the allottee did not possess lawful title in respect of the plot of the land. Since possession of land was handed over to the allottee due to pendency of court cases and not in consequence of lease deed, a certificate of possession fails to create any right, title or interest in favour of the allottee.

9. It is further submitted that though a lease agreement was signed between the allottee and respondent No.1, the allottee neglected to execute the lease agreement as she did not comply with the formalities of payment of dues towards premium or salami, annual rent and did not register the lease deed within specified time. As a result, the lease agreement was terminated and the

plot was resumed by the government as per notice issued by respondent No.2 dated 28.01.1988 being Memo No. 938/B-4/119. In the absence of the original lease agreement, the petitioner cannot claim a right to transfer as purported in clause 9(f) of the lease agreement.

10. Having heard the Learned Counsel for the parties and on perusal of records, this Court finds that the writ petitioner does not possess lawful title over the plot of land in question.

11. The law undoubtedly is that a person cannot transfer or otherwise confer better title on another than he himself has. In the present case, as a result of termination of original lease deed by breach of contract by the allottee, the plot of land reverted back to respondent No.1 and the allottee did not have the authority to transfer the land.

12. The Honorable Supreme Court in the case of **Sita Ram Bhau Patil Vs. Ramchandra Nago Patil (dead) by LRs & Anr.** reported in **AIR 1977 SC 1712** has laid down the proposition that there is no abstract principle that whatever will appear in the record of rights will be presumed to be correct when it is shown by evidence that the entries are not correct.

In the instant case, the writ petitioner could not produce the original agreement of lease to support his title in respect of the leasehold interest. Thus, the name of the writ petitioner cannot be recorded as lessee in respect of the aforesaid plot of land.

13. In **Sawarni (Smt.) Vs. Inder Kaur** reported in **(1996) 6 SCC 223**, the Honorable Supreme Court categorically held that the mutation of a property in the revenue record does not create or extinguish title nor does it have any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in respect of the land.

14. In such view, the writ application being WPA No 32218 of 2013 lacks merit and the same is dismissed accordingly.

15. There will be no order as to costs.

16. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

26.06.2024

PA (BS)