

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present :-

The Hon'ble Justice PARTHA SARATHI SEN

WPA 4308 of 2025

M/s. Ideal Science and Research Welfare Hub

-Vs-

The State of West Bengal and others

For the Petitioner:

Mr. Soumya Majumder, Sr. Adv.
Mr. Rabi Ghosh

For the State:

Mr. Soumitra Bandyopadhyay
Ms. Suchana Banerjee

For the respondent no.2:

Mr. Debabrata Banerjee

For the respondent nos.3 to 5:

Mr. Mahendra Prasad Gupta
Mr. Abhisekh Sikder
Ms. Moumita Dhar

Hearing concluded on: 22.05.2025.

Judgment on: 22.05.2025.

PARTHA SARATHI SEN, J. : –

1. By filing the instant writ petition the writ petitioner which is a trust has prayed for issuance of appropriate writ/writs against the respondents/authorities more specifically; against the respondent no. 3 for quashing and/or setting aside the order dated 24.01.2025 as forwarded under a memo dated 29.01.2025 whereby and whereunder the writ petitioner was directed to pay a sum of Rs. 4,36,90,000/- being the 25 percent of the prevailing lease premium

on the area of 349.52 katha at the rate of Rs. 5 lakh per katha within a stipulated period on account of violation of the terms and conditions of the registered deed of lease deed dated 25.08.2002.

2. In course of his submission Mr. Majumder, learned Senior Advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page nos. 103 to 127 of the instant writ petition being a copy of the aforementioned registered deed of lease dated 25.08.2002. It is submitted by Mr. Majumder that in internal page nos. 7 and 8 of the said deed, there is a stipulation that the lessee who is the writ petitioner before this Court has got no right to sub-lease and/or assign and/or transfer its right or interest in the demised portion or any part thereof to any third party except with the consent in writing of the lessor. It is submitted by Mr. Majumder that in the said stipulation it has been provided further that the present writ petitioner being the lessee may be allowed by the lessor at its discretion and on sufficient ground to sub-lease and/or assign and/or transfer its leasehold right for the unexpired period of lease on payment of such transfer fees or service charges as may be fixed time to time by the lessor.
3. At this juncture, Mr. Majumder took me to page nos. 84 to 98 of the instant writ petition being a copy of the 'facilities agreement' dated 01.07.2019 as has been executed by and between the writ petitioner and Tata Consultancy Services Limited (hereinafter referred to as 'TCS' in short). It is submitted by Mr. Majumder that on careful

perusal of the said 'facilities agreement', it would reveal that the writ petitioner/trust practically permitted the TCS to use the logistics of the writ petitioner for the purpose of holding different examination on the schedule days in an area of the leased out premises measuring about 15,000 sq. ft.

4. At this juncture, Mr. Majumder draws attention of this Court to page no. 128 of the instant writ petition being a show cause notice dated 03.04.2024 as has been issued by the respondent no. 4/authority whereby and whereunder an untrue allegation has been leveled against the writ petitioner/trust regarding sub-letting of the demised premises violating the terms and conditions of the aforementioned deed of lease. It is submitted that from page no. 130 being a copy letter of reply dated 15.04.2024 it would reveal that the Chairman of the writ petitioner/trust while replying to the said show cause notice, specifically stated that at no material time any sub-letting took place in any portion of the demises premises as wrongly alleged. It is further argued that in the said letter of reply it has been also clarified by the Chairman of the writ petitioner/trust that the aforementioned 'facility agreement' was executed with TCS only for a limited purpose that is for conducting different State and National level examination in the second floor of 'Ideal Institute of Engineering College' where the computer labs of the college have been set up.
5. At this juncture, Mr. Majumder requests this Court to look to the order dated 24.01.2025 which is the subject matter of challenge in

the instant writ petition. It is submitted by Mr. Majumder that on perusal of the said order under challenge, it would reveal that the respondent no. 3/authority most unilaterally came to a finding that the writ petitioner/trust had sub-let the demised premises to TCS in the garb of a 'facility agreement' in violation of the terms and conditions of the said deed of lease and thereafter most unilaterally and arbitrarily directed the writ petitioner to pay an exorbitant sum of Rs. 4,36,90,000/- toward 25 percent of the lease premium on the area of the land amounting to 349.52 katha.

6. It is submitted by Mr. Majumder that the decision of the respondent no. 3 as has been communicated under cover of memo dated 29.01.2025 clearly indicates absolute arbitrariness on the part of the said respondents/authorities in charging the huge quantum inasmuch as in the self-same order it has been noticed by the respondent no.3 that only a portion of the building as has constructed over the demised land has been permitted to be used by TCS by virtue of a 'facility agreement'. It is further submitted by Mr. Majumder that the respondent no. 3/authority while issuing a said order dated 24.01.2025 has failed to visualize the difference between a lease and a leave and license and thus come to a wrong finding without assigning any reason, therefor.
7. It is submitted further by Mr. Majumder that for the sake of argument, even if it is accepted, though not admitted that a portion of the building on the demised premises has been parted with to the

TCS, there cannot be any justification on the part of the respondent no. 3/authority to charge transfer fee at the rate of 25 percent of the prevailing lease premium for the entire area that is 349.52 katha. It is submitted by Mr. Majumder that the respondents/authorities being authorities under Article 12 of the Constitution of India is expected to act in a reasonable manner and on account of failure on the part to show reasonableness in the decision making process, this Court must exercise its prerogative jurisdiction for quashing of the said order in a judicial review.

8. Per contra, Mr. Banerjee, learned Advocate appearing on behalf of the respondent no. 2 also places his reliance upon the different clauses of the deed of lease dated 25.08.2022. It is submitted by Mr. Banerjee that from the different clauses of the said deed of lease, it would reveal that the present writ petitioner/trust being a lessee ought not to have sub-leased and/or assigned and/or transferred its leasehold interest to any third party except with consent in writing of the respondent no. 2. It is submitted by Mr. Banerjee that in the garb of the 'facility agreement' dated 01.07.2019 practically a sub-letting and/or assignment and/or parting with possession took effect in contravention of the clauses of the said deed of lease and, therefore, in terms of the stipulations of the said deed of lease, the respondent no. 3/authority rightly charged premium upon the writ petitioner considering the fact that in the garb of the facility

agreement the writ petitioner/trust had sub-let a portion of the demise premises to TCS basically for commercial exploitation.

9. While adopting the argument of Mr. Banerjee, Mr. Gupta, learned Advocate appearing on behalf of the respondents/State submits before this Court that the calculation of premium as made by the respondent no. 3/authority in the memo dated 24.01.2025 is perfectly justified inasmuch as the respondent no. 3/authority while passing the said order dated 24.01.2025 noticed gross violation of the terms and conditions of the lease at the instance of the writ petitioner/lessee and it has also been noticed on scrutiny of various papers as submitted by the writ petitioner/lessee that the writ petitioner/lessee had practically permitted the TCS to use a portion of the demised premises for the purpose for which it was not leased out and as per the policy decision of the lessor, such premium to the tune of Rs. 4,36,90,000/- have been charged. It is thus submitted by Mr. Gupta that by no stretch of imagination it can be said that the demand as made by the respondent no. 3 is unjust and/or excessive. In support of his contention Mr. Gupta has submitted a copy of the minutes of the 353rd meeting of the Board of Directors dated 03.06.2019 wherein it has been decided that Rs. 5 lakh per katha will be charged towards lease premium.
10. This court has meticulously gone through the entire materials as placed before this court. This court has also given its due consideration over the submissions of the learned advocates for the

contending parties. For effective adjudication of the instant writ petition, this court at the very outset proposes to look to the definition of lease as enshrined in Section 105 of the Transfer of Property Act, 1882.

11. Section 105 of the Transfer of Property Act, 1882 is quoted hereinbelow in verbatim:

“105. Lease defined – *A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, a consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.”*

12. At this juncture this court also proposes to look to the definition of license, which has been defined under Section 52 of the Easement Act. Section 52 of Easement Act is quoted hereinbelow in verbatim:

“ ‘License’ defined- *Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called license.”*

13. On perusal of the definition of the lease as quoted hereinabove, it appears to this court that the legislators in their own wisdom have defined the lease in the manner that it is a transfer of right to enjoy such property made for certain time on payment of consideration or promise to pay consideration, either in terms of money or otherwise to the transferor by the transferee subject to acceptance of transfer. Whereas a licence is altogether different, it grants another a right to do or continue to do in or upon the immovable property of grantor something which would in absence of such right, be unlawful.
14. In course of his submission, Mr. Majumder drew attention of this Court to the various clauses of the copy of the 'facilities agreement' as has been executed by the writ petitioner and the TCS. It has been strenuously argued by him that from the said 'facilities agreement', it would reveal that the writ petitioner practically permitted the TCS to use its logistics particulars of which has been mentioned in Annexure B of such 'facilities agreement' in order to enable the TCS to hold different competitive examinations.
15. This court has meticulously gone through the copy of the 'facilities agreement' dated 01.07.2019 as has been annexed to the instant writ petition. It appears to this court that the logistics belonging to the writ petitioner which have been permitted to be used by the TCS in the premises of the writ petitioner are installed in a space/floor of a building inside the demised property measuring about 15000 per square feet. This court also notices that the terms of the 'facilities

agreement' is for a period of five years from the date of execution of the said agreement.

16. On careful scrutiny of the said agreement dated 01.07.2019, this court has failed to notice any clause/clauses that the writ petitioner permitted the TCS to use the said 15000 sq.ft. space as well as the logistics on any particular day or two or in any weekend or for a limited period only.
17. On the contrary, it appears to this court that the said 'facilities agreement' dated 01.07.2019 clearly indicates that the term of the said agreement is for a continuous period of five years from the date of execution of the said agreement practically in respect of the 15000 sq.ft of a building in the demised property.
18. In view of such, this court has got no hesitation to hold that by executing the agreement dated 01.07.2019, the writ petitioner has practically parted with the portion of the leased out premise without obtaining any consent in writing from its lessor.
19. The next question which arises for consideration is as to whether the respondent no.3 authority is at all justified in charging Rs.4,36,90,000/- from the writ petitioner towards 25% of the prevailing lease premium on the basis of the following calculation:

$$25 \% \text{ of } (349.52 \text{ Cottah} \times \text{Rs.5 lakh per Cottah}) = \text{Rs. Rs.4,36,90,000/-}$$
20. On being asked by this court, Mr. Gupta learned advocate appearing for the respondent State and Mr. Banerjee, learned advocate

appearing on behalf of the respondent no.2 submit before this court that there is every justification on the part of the respondent no.2 authority to charge such premium in terms of the minutes of the meeting of the Board of Directors of the respondent no.2 authority wherein it has been unanimously resolved that is Rs.5 lakh per Cottah would be charged towards premium. It has been submitted on behalf of the respondent no.2 as well as for the respondent State that by no stretch of imagination it can be said that the amount claimed by the respondent no.2 is either excessive or unreasonable inasmuch as the respondent no.3 has claimed 25% of the prevailing lease premium only in stead of 100%.

21. In considered view of this court, such argument is not at all convincing and acceptable, inasmuch as the respondent no.2 being an authority under Article 12 of the Constitution of India is expected to act in a reasonable and transparent manner and he being a functionary of the State more specifically of a welfare State must not act in a manner which is against the constitutional policy.
22. In further considered view of this court, every action of a State must succeed the touchstone of reasonableness which is the fundamental policy of our Constitution.
23. Coming to the factual aspects of this case, it appears to this court that prior to issuing the order dated 24.01.2025 which is under challenge that the respondent authorities have carried out inspection at the demised premises. No materials could be placed before this

court that except 15000 sq.ft area in the demised premises, any other space/spaces therein is/are being used by the TCS for commercial purpose. While passing the order under challenge the respondent no.3 authority has assigned no reason as to how and as to why he has charged 25% of the prevailing lease premium that is at the rate of Rs.5 lakh per cotta.

24. In considered view of this court, the calculation of premium on account of parting with possession of portion of the demised premises(15,000 sq.ft is excessive and is absolutely arbitrary in nature since such calculation has been made by the respondent no.3 authority without any basis and without assigning any cogent reason.
25. In view of the discussion made hereinabove, this court while disposing of the instant writ petition, directs the respondent no.3 authority to make a fresh calculation of premium on account of violation of the terms and conditions of the lease that is for parting with a portion of the demised premises by the writ petitioner for an area of 15000 sq.ft. with effect from 1st day of July, 2019 till date and to forward the said calculation forthwith to the writ petitioner for their payment within a month together with prevailing nationalized bank interest on fixed deposit which is to be paid by the writ petitioner within 30 days from the date of receipt of such calculation.
26. It is further made clear that this judgment and/or order will not prevent the respondents from taking any other legal action against deed of lease.

27. The instant writ petition is thus allowed in part in the light of the observation made hereinabove.
28. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)