

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 5005 of 2021

Debabrata Bhattacharjee
Vs.
State of West Bengal & ors

For the Petitioners : **Mr. Debjani Ghosh Adv.,**
Ms. Nafisa Yasmin, Adv.,
Ms. Deblina Banerjee, Adv.,

For the respondent
Nos. 1 to 9. : **Mr. Biswanath Chatterjee, Adv.,**
Mr. Sobhan Kumar Pathak, Adv.

Reserved on : **23.04.2025**

Judgment on : **10.07.2025**

Subhendu Samanta, J.

1. Plot No.1 in Block-AC, in Sector-I, of the Northern Salt Lake City, Extension Area under P.S-Salt Lake admeasuring an area of 5.3193 Cottahs was leased out to one Sri Nani Gopal Bhattacharya by executing a registered Indenture by the Governor of the State of West Bengal vide deed of lease dated 29th November, 1980 The possession was handed over to the said lessee on 6th of November, 1981; a certificate being no. 4656 dated 06.11.1981 was issued to that effect.

2. It was stipulated under Clause 2(6) (a) of the lease deed that the lessee shall construct a house building on the said plot within three years from the date of taking over possession. The said Nani Gopal Bhattacharya could not construct house building over the plot, accordingly, the concerned department had issued a show-cause notice to said Nani Gopal Bhattacharya on 12th of September, 1991 wherein he was directed to explain within 90 days why the aforesaid plot of land will not be resumed by the Government. In response to the said show-cause notice, Nani Gopal Bhattacharya issued a letter on 23rd December, 1991 to the Assistant Secretary, Department of Urban Development requesting them to give some more time for construction of dwelling house over the said allotted plot. In response to his letter the authority concerned has intimated said Nani Gopal Bhattacharya Vide Memo dated 21.03.1992 requesting him to let the department know his specific plans and programmes for raising a dwelling house over the lease-hold plot. Thereby, the authority concerned has also intimated that if he required extension of time he may apply to the Government for this purpose.

3. After receiving such letter Nani Gopal Bhattacharya applied before the Bidhannagar notified area authority for sanctioning building plan over the said plot land on 28th September, 1992.

4. Nani Gopal Bhattacharya expired on 11th September, 1994. Before his expiry he executed his last Will and Testament on 2nd September, 1993, thereby appointed the petitioner as executor of his said Will and gave devised and bequeathed his undivided lease-hold right, title and interest in the said property in favour of the petitioner.

5. The said Will placed before this Court for getting probate by PLA no. 309 of 1996 subsequently renumbered as Testamentary Suit No. 6 of 2007. By an order dated 12.06.2019 a Co-ordinate Bench of this Court has decreed the said suit in favour of the petitioner.

6. After obtaining grant of probate the petitioner approached the concerned authority for mutation of his name in respect of the said plot of land vide an application dated 21st of September, 2020. The same application was turned down by the department Vide impugned Memo dated 23rd November, 2020 on ground that the Government resumed the plot after due process of law and possession has been re-entered into by the department on 19th of July, 2017. In the said Memo concerned Land Manager, Bidhannagar informed the petitioner that Government has resumed the land on 27th October, 2005 through a notice vide 2202-SL (AL)-AC – 1 dated 27.10.2005.

7. It is the contention of the learned Counsel for the petitioner that final resolution notice dated 27.10.2005 is illegal, arbitrary. No such notice has been served upon either Nani Gopal Bhattacharya or any heir of Nani Gopal Bhattacharya. It is the contention of the learned Counsel for the petitioner that Nani Gopal Bhattacharya had already expired on 11th September, 1994 that is the much prior to the issuance of final resolution notice. Hence, proceeding against dead person (deceased Nani Gopal Bhattacharya) is itself nullity. The Government authority without following the provisions of service of notice upon the allottee had initiated the proceeding ex parte. Hence, instant writ.

8. The respondent authority specifically pleaded that on request by the lessee (Nani Gopal Bhattacharya) the department issued a letter dated 21st March, 1992 and requested to let this department to know specific plans and programmes of raising dwelling house of the aforesaid lease-hold plot. On such request the lessee did not turn up or no reply has been made.

9. Further, final resolution notice dated 27.10.2005 was issued to the lessee under Clause 4 of the aforesaid indenture to remedy the breach caused by violation of Clause 2(6)(a) of the lease deed within six months from the date of issue of that notice and with specific information that if he fails/neglects to remedy the breach by getting his building plan sanctioned by the competent authority and by starting the construction on the said land/plot within stipulated period, the aforesaid lease shall stand determined and Government will re-entered in to possess of the said plot after expiry of the aforesaid period of six months. Learned Counsel for the State/respondent further submits, in the said notice it was made clear that the notice shall treated to be final, peremptory and no further notice or reference shall be made for taking necessary action for re-entering into the possession of the said plot of land. It is further submitted by the State authority that a letter was received from S.I. of Police C.I.D. West Bengal containing inter alia that said lessee Nani Gopal Bhattacharya in connection under Rajarhat P.S. Case No. 49 dated 10.02.2006 under Section 420/406/468/471 of IPC. From the said letter it appears to the department that the lessee executed a transfer agreement of Plot No. AC-I with one Smt. Salini Biswas against consideration of Rs.25 lakhs without taking permission from the Government.

10. It is further contention of the learned Counsel for the respondent that the Plot No. AC-I has been leased out in the year 1980 and possession was handed over to the said lessee on 06.11.1981. As per Clause 2(6)(a) of the lease deed the lessee/legal heirs were under obligation to complete the construction of the building within three months from the date of handing over possession but the plot has remained vacant and unutilized for more than 35 years, several show-cause notices were served but they are not complied with, as such, Government resumed the plot after due process of law.

11. Having heard the learned Counsel for the parties also considering the pleadings and documents herein it appears that during the pendency of the instant writ petition, respondent no. 5 filed a report in the form of affidavit affirmed on 16th day of January, 2025. The said report contained the impugned notice on 27.10.2005. It has been submitted on behalf of the State authority that the plot was resumed by the State after exhausting the procedure of final notice dated 27.10.2005. It is the sole contention of the State authority that they have followed the Clause 4 of the said deed of Indenture and the Government has re-entered into possession of the plot in question.

12. To understand the issue appropriately let me set out Clause 2(6)(a) of the said indenture which prescribed the lessee to construct a dwelling house over the leased out plot of land within three years from the date of possession:

2(6)(a):-*“To construct the building in conformity with such building rules as may from time to time be framed by the Government or other authority*

prescribed in that behalf and according to plans, specification, elevations, designs and sections sanctioned by the Government, or that authority within three years from the date of possession of the demised land or such extended time as may be allowed by the Government in writing.

The Lessee shall not sub-divide or sub-let the demised land or the building to be constructed without the consent in writing of the Government first had and obtained and the Government shall have the right and be entitled to refuse its consent at its absolute discretion. ”.

It further appears that the final resolution notice dated 27.10.2005 was issued in terms of Clause 4 of the said indenture. Clause 4 is hereby set out as follows:

“Provided always that if there be any breach of any of the terms and conditions and covenants herein on the part of the Lessee contained the Lessor shall have the right to re-enter into possession of the demised land or any part thereof in the name of the whole and thereupon this demise shall forthwith stand determined.

Provided nevertheless the Lessor shall not exercise the right without serving the Lessee a notice in writing giving six months’ time to remedy the breach.”

13. From the plain reading of Clause 4, it appears that the said Clause empowers lessor to re-enter into possession of the demised land or any part thereof if there be any breach of any terms and conditions of the said indenture. The said power of lessor is not unfettered. There is a provision in the said Clause which directed that the lessor shall not exercise the right (to entry) without serving the lessee a notice in writing giving six months’ time to remedy to breach. So, it is a specific guideline of the said clause that final resumption notice dated 27th October, 2005 and proceedings

thereof can only be completed by serving a notice upon the lessee (Nani Gopal Bhattacharya).

14. Fact suggests that Nani Gopal Bhattacharya expired on 11th September, 1994, that is, prior to issuance of notice dated 27.10.2005 . During the entire course of argument or by affidavit-in-opposition the State respondent could not produce any document regarding receipt of notice of final resumption dated 27.10.2005 either by Nani Gopal Bhattacharya or by any of his heirs, agents etc.

15. When a provision has been stipulated in the indenture, the Government authority must follow the provision in its true letter and spirit. Any deviation thereof itself questions the act and action of the Government authority. It appears on record that lessee has expired prior to initiation of final resolution notice dated 27th October, 2005 that tantamount the notice could not be served upon the lessee. The notice has to be served upon any of the heirs, assignee or any agent of the said lessee. The Government has failed to demonstrate scrap of paper to show that notice dated 27.10.2005 had ever served upon any of the heirs of the said lessee. Considering the same the notice and proceeding thereof against a dead person, itself nullity.

16. Under the above observation, the grievances ventilated by the petitioner in this writ petition appears to me meritorious. The final resolution notice Vide No. 2202-SL (AL)/AC-I dated 27.10.2005 being nullity is hereby set aside. The act and action of the respondent authority regarding resumption of plot of land appears to be illegal and the same is hereby also quashed.

17. The respondent authority is directed to mutate the name of the petitioner in respect of the Plot No. 1, in Block-AC in Sector-1 of Northern Salt Lake City, Extension Area, P.S Salt Lake City within six weeks from the date of receiving of the copy of this order, if the petitioner found otherwise eligible according to law.

18. Under the above observation the writ petition is disposed of.

19. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)