

Form No. J(2)

In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

M.A.T 405 of 2022
IA No: CAN 1 of 2022

Smt. Gayatri Devi Gupta and another
Vs.
State of West Bengal and another

For the appellants	:	Ms. Sutapa Roy Choudhury Ms. Aratrica Roy
Heard on	:	09.12.2025
Judgment on	:	09.12.2025

Sabyasachi Bhattacharyya, J.:-

1. Despite service, none appears on behalf of the respondents.
2. The receipt of service of notice, filed in court today, be kept on record. It transpires therefrom that the office of the Legal Remembrancer has been duly served. We deem the same to be

adequate notice on the State respondents and accordingly take up the matter for hearing.

3. The genesis of the instant *lis* is a resumption order dated September 9, 2008, whereby the disputed plot of land was resumed by the respondent authorities on the ground that the lessee, to whom the plot was granted by the respondents, failed to start construction thereupon in terms of Clause 6(a) of the original indenture of lease.
4. The brief facts of the case, in a nutshell, are as follows:
5. A lease was granted in respect of the plot-in-question, situated in Bidhannagar, on the north-eastern fringe of proper Kolkata, by the respondent authorities in favour of one Anil Kumar Banerjee, the original lessee, on June 25, 1972. It is relevant to mention here that the possession of the property was handed over on May 13, 1975 to the original lessee even according to the respondent authorities.
6. Subsequently, the original lessee assigned the property, on similar terms as the original lease, to one Sushil Kumar Chattopadhyay in the month of December, 1976.
7. By a Will executed on July 6, 2005, the said Sushil Kumar Chattopadhyay bequeathed the property to the present appellant.
8. The said Will was subsequently probated on February 7, 2006.

- 9.** In the interregnum, the testator Sushil expired on September 3, 2005.
- 10.** Thereafter, when the present appellant sought to have the property mutated/recorded in their name with the intention of making construction, the respondent authorities refused to do so, prompting the appellants to move a writ petition before this court upon which, by an order passed in W.P. No. 602(W) of 2008, a learned Single Judge of this court directed the respondent authorities to consider the representation of the appellants in that regard.
- 11.** Following the same, a hearing was given to the appellants.
- 12.** The appellants clarified that the said Sushil Kumar Chattopadhyay/testator had already met his demise on September 3, 2005 and no notice had been given before resumption in pursuance of the relevant clause of the lease deed.
- 13.** However, despite such objection, the impugned resumption order was passed by the Principal Secretary, Urban Development Department of the State, on September 9, 2008.
- 14.** Challenging the same, the appellants moved a writ petition, giving rise to W.P. No. 26060 (W) of 2008, which was dismissed by a learned Single Judge of this court vide order dated March 7,

2022, which is the subject-matter of challenge in the present appeal.

- 15.** Learned senior counsel appearing for the appellants argues that although the respondents had given out before the writ court that a notice was given to the lessee to remedy the breach in not making the construction in the year 1991, despite specific direction of the writ court to file affidavit-in-opposition to the writ petition, no affidavit was filed, nor was any such notice produced before the writ court at any point of time to indicate that a prior notice of resumption was given in terms of the lease deed.
- 16.** It is contended that although a second notice was purportedly given on September 19, 2005 to Sushil Kumar Chattopadhyay, the then lessee, the said Sushil had already expired on September 3, 2005 and as such, the notice was sent to a dead person and, thus, was a nullity *ab initio*.
- 17.** Similarly, the further notice (of hearing) issued on October 12, 2006 in the name of the said deceased, was also vitiated for similar reason.
- 18.** It is pointed out that the learned Single Judge proceeded on the premise that the appellants had raised a question as to the notice having not been served on them, by overlooking the fact

that the notices in question were issued in the name of a dead person, that is, Sushil.

- 19.** Learned counsel also draws the attention of this court to the finding of the learned Single Judge in the impugned order to the effect that Sushil Kumar Chattopadhyay had died on September 3, 2005. Thus, the learned Single Judge was fully conscious of the factum of the death of Sushil prior to issuance of the purported notices on him.
- 20.** Thus, it is contended that the appropriate clause of the lease deed, mandating a prior notice before resumption, giving an opportunity to the lessee to remedy the breach, if any, was not served, thereby vitiating the entire resumption order.
- 21.** Upon hearing learned senior counsel for the appellants and perusing the records, we agree with the contention of the appellants in substance as well as in spirit.
- 22.** Two relevant clauses of the original lease deed are required to be taken note of in this context.
- 23.** Clause 2(6)(a) of the lease deed is set out hereinbelow:

“(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, specifications, 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.”

24. On the other hand, Clause 4 of the lease deed is as follows:

“4. Provided always that if there be any breach 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.”

25. It is evident from Clause 2(6)(a) of the original lease deed that the lessee was to start construction within three years from the date of possession of the demise land.

26. Admittedly, the possession was handed over on May 13, 1975.

27. However, the said provision was circumscribed by the subsequent Clause 4, in the proviso to which it is clearly mandated that “nevertheless”, the lessor shall not exercise the right without serving the lessee a notice in writing giving six months' time to remedy the breach.

28. In the present case, no document comes forth before us or was produced before the writ court to show that any such notice was given at any point of time.

29. It is only in the impugned resumption order that it is vaguely mentioned that a notice had previously been given in the year 1991.

- 30.** However, the stand is not borne out by the records before either the writ court or before us. Despite getting opportunity, the respondent-authorities never filed any affidavit-in-opposition controverting the allegations made in the writ petition or bringing on record any copy of the purported notice of 1991 or the subsequent notices.
- 31.** More importantly, the resumption order further mentions a subsequent notice to remedy the breach dated September 19, 2005 and a further notice of hearing dated October 12, 2006.
- 32.** Thus, by admission, there were two subsequent notices, one to remedy the breach and another for hearing, dated September 19, 2005 and October 12, 2006 respectively, both of which were issued much subsequent to the initial purported notice dated 1991.
- 33.** Hence, by necessary implication, the very act of issuance of the subsequent notices by the respondent-authorities *ipso facto* operated as waiver on the part of the authorities of the first notice of 1991, even if issued, more so since the purported notice of 1991 was never acted upon by resumption of the property.
- 34.** As such, even proceeding on the premise of the facts recorded in the impugned resumption order, the subsequent notices waived the previous notice.

- 35.** Speaking about the subsequent notices, the first of those was admittedly sent on September 19, 2005 whereas the noticee, namely Sushil Kumar Chattopadhyay, had already met his demise on September 3, 2005, before issuance of such notice.
- 36.** Hence, as on the date of the issuance of the said subsequent notice, Sushil had already expired and the notice, being issued in the name of a dead person, was a nullity *ab initio* and could not have possibly been served validly on the addressee. Moreover, with the demise of Sushil, the property-in-dispute vested in the executor/legatees, which was given a seal of finality by grant of probate subsequently. Thus, any notice, if given after Sushil's demise, ought to have been to the appellants/legatees.
- 37.** The same logic applies to the subsequent notice of hearing dated October 12, 2006.
- 38.** As discussed above, in terms on Clause 4 of the original lease deed, a notice in writing of six months prior to resumption, in order to give an opportunity to the lessee to remedy the breach, was a mandatory precondition of the lessor invoking the provision of Clause 2(6)(a).
- 39.** The two key words in the proviso to Clause 4 are to be noted.

40. First, the expression “nevertheless”, used therein, is in the nature of a non-obstante clause, thereby lending primacy to the proviso to Clause 4 over all other clauses in the lease deed.
41. Secondly, the expression “*shall not* exercise the right” is mandatory in nature which, in no uncertain terms, clarifies that unless six months prior notice was issued, to give the lessee the opportunity to remedy the breach, the invocation of Clause 2(6)(a) could not have been exercised by the lessor.
42. Thus, the resumption order is clearly vitiated in view of the absence of any notice in terms of the proviso to Clause 4 to original lease deed and, as such, even if subsequent notices were issued, those being null in the eye of law, since those were in the name of a dead person, cannot be construed to be sufficient compliance of the proviso to Clause 4 of the lease deed.
43. In view of the above, with utmost respect, the learned Single Judge overlooked the single-most important factor in the factual gamut, being that the notices purportedly issued under the proviso to Clause 4 of the lease deed were void *ab initio*, being issued in the name of a dead person, and cannot be construed to be sufficient compliance of the proviso to Clause 4
44. Thus, we are unable to agree with the findings arrived at by, as well as the conclusion, of the learned Single Judge.

45. Also, for the reasons given above, the impugned resumption order dated September 9, 2008 cannot stand the scrutiny of law in the light of the contractual terms agreed between the lessor and the lessee themselves.
46. Accordingly, MAT 405 of 2022 is allowed *ex parte* against the respondents, thereby setting aside the impugned judgment dated March 7, 2022 passed in WPA 26060 of 2008 and allowing WPA 26060 of 2008, thereby setting aside the impugned resumption order issued by the Principal Secretary, Urban Development Department, dated September 9, 2008.
47. All parties shall take steps accordingly by reversing any action, if taken in terms of the impugned resumption order dated September 9, 2008, by acting on the server copy of this order for the purpose of compliance, without insisting upon prior production of a certified copy.
48. CAN 1 of 2022 stands disposed of consequentially in the light of the above observations.
49. Needless to say, in view of the resumption order having been set aside, the respondent authorities are directed to immediately mutate the name of the appellant no.1 in respect of the disputed plot as per her application, subject to due compliance of other formalities by the said appellant no.1, in accordance with the procedure prescribed in law.

- 50.** Such exercise, it is expected, shall be concluded within two months from the date of communication of this order to the respondent authorities.
- 51.** There will be no order as to costs.
- 52.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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