

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

***MAT 620 of 2024
With
IA NO: CAN/2/2024***

***THE STATE OF WEST BENGAL AND ORS.
VS
MUGHERIA GANGADHAR TRUST ESTATE***

For the Appellants :Mr. Susovan Sengupta, Advocate
Mr. Subir Pal, Advocate
Mr. Jayanta Samanta, Advocate
Mr. Manas Kumar Sadhu, Advocate

For the Respondent :Mr. Partha Pratim Roy, Advocate
Mr. Sarbananda Sanyal, Advocate

Heard and judgment on: June 17, 2025

DEBANGSU BASAK, J.

1. Appeal is taken up for final hearing by consent of the parties.
2. Appeal is at the behest of the State and its functionaries and directed against a judgment and order dated August 25, 2023 passed in WPA 12109 of 2022.
3. By the impugned judgment and order, learned Single Judge allowed the writ petition and directed release and making over possession of the property in question in favour of the writ petitioner in terms of the

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agreement, upon execution of a formal document to that effect, within four weeks from the date of the order.

4. Learned advocate appearing for the appellants submits that, a registered agreement was entered into between the State of West Bengal and a Trust. He refers to the various relevant Clauses of the agreement. He submits that, there is no failure on the part of the State in taking steps in terms of the agreement. In any event, he submits that, there are reciprocal obligations to be performed and that, the appellants cannot be said to be guilty of not performing their obligation under the agreement.
5. Learned advocate appearing for the appellants submits that, the agreement does not contemplate release of the property in question as contended on behalf of the writ petitioner. He submits that, the so-called letter of a Minister-in-Charge cannot be construed to be a release within the meaning of the terms and conditions of the agreement. He questions the validity of such letter issued by the Minister. Moreover, according to him, the so-called letter of release is not in terms with the agreement.
6. Relying upon **FMA 861 of 2019 [Dhaspara SKUS Ltd. & Anr. Vs. The State of West Bengal & Ors.] dated March 23, 2022; MAT 1412 of 2023 [The Ghani Khan Choudhury Institute of Engineering and Technology & Ors. vs. M/s. Malda Construction Company & Ors.} dated May 2, 2024 and FMA 999 of 2021 [West Bengal State Fishermen's Co-Operative Federation Limited (Benfish)]dated July 12, 2024**, learned advocate appearing for the appellants submits that, a writ is not maintainable in a contractual field particularly when, the contract is not a statutory one.
7. Learned advocate appearing for the appellants submits that there are disputed questions of facts involved. He contends that, there was a civil

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suit filed by the trustees of the Trust against the State of West Bengal in a civil Court at Puri relating to the property concerned and that, in view of the same, the present writ petition is not maintainable.

8. Learned advocate appearing for the writ petitioner submits that, no civil suit was filed by the trustees as claimed. He refers to the affidavit filed in pursuance of the direction of the Co-ordinate Bench. He submits that, the appellants did not act in terms of the registered agreement. The Minister-in-Charge agreed for relinquishment. He submits that the impugned judgment and order should not be interfered with.
9. Genesis of the appeal is a registered agreement dated August 12, 1993 entered into between a Trust and the State of West Bengal.
10. Relevant portions of the registered agreement dated August 12, 1993 are as follows :-

"(1) That the property described in the Schedule below known as "Gangadhar Nilay Panthasala" Puri is transferred and placed under the management and control of the second party with effect from this day permanently until the second Party surrenders and relinquishes it to the First Party.

(2) The Youth Hostel to be constructed and used by the Sport's & Youth Services Department, Govt. of West Bengal shall be styled and named as "Gangadhar Nilay Panthasala".

(3) The Second Party is at liberty and has full authority to use the property mentioned in the Schedule below by repairing reconstruction and extension of the present house and building at the cost of Second Party and according to law The First Party shall not be liable for

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any such expenditure. The Second party shall look after the case in connection with the record of rights and take necessary steps for this purpose. The First Party shall authorise the Second Party through power of Attorney for doing the needful with expenditure. After the settlement of case as stated the First Party shall be bound to pay the arrear rent and municipal tax prior to the transfer of the property to the Second Party.

- (7) The Second Party will be at liberty to use the property mentioned in the Schedule below for any lawful purpose including letting out to monthly tenants' portion of the said premises and receiving and appropriating rents therefrom.*
- (8) In case the Second Party is found to keep this property without proper protection and maintenance and the Panthasala house may collapse and be destroyed the First Party the Managing Committee of the Mugbaria Gangadhar Trust Estate will in the first place approach the appropriate authority of the Govt. of West Bengal for appropriate action and the Government failing to take action the First Party and Managing Committee of the Mugbaria Gangadhar Trust Estate will be entitled to adopt a Resolution for taking back the property from the Second Party without any compensation for any development and improvement of the property mentioned in the Scheduled below and the Second Party will have no objection and the second Party will*

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be liable for delivering possession of this property in the Schedule below to the First Party.”

11. In terms of the agreement, the Trust made over the management of the immovable property concerned for the purpose of setting up of youth hostel for the benefit of the youths and the public in general, to the State.
12. There are two specific clauses in the registered agreement dealing with termination of the same. One is Clause (1) and the other Clause (8).
13. In terms of Clause (1) of the registered agreement, the agreement may come to an end on the State surrendering or relinquishing the same.
14. Clause 8 of the agreement permits the Trust to obtain the property from the State without any compensation payable by the Trust to the State in the event of failure of the State to maintain and protect the property.
15. Property concerned is lying and situated at Puri. The corporation of Puri by a writing dated September 19, 2022 stated that the property in question is in an unsafe condition and called upon the Trust to show cause.
16. The fact that the property is not maintained by the appellants is admitted. The fact that the property in question is in a dilapidated condition also admitted. The fact that, no construction was made either for the purpose of new building or protecting the existing construction, for the purpose of use of a youth hostel at such property concerned is also admitted.

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17. Failure of the State and the State acting in breach of the terms of the agreement stands established. No reciprocal obligation of the Trust is established to be breached by the appellants.
18. There is nothing on record to establish that, either the Trust itself or any trustee of the Trust filed any civil suit with regard to registered agreement before a Court in Puri. This contention of the appellant was taken note of by the co-ordinate Bench which required an affidavit from the Trust, which was filed. Such affidavit is categorical in stating that no civil suit was filed.
19. There is a letter dated October 25, 2010 issued by the Minister stating that, in the event, a proposal for relinquishment is made by an appropriate resolution of the Trust then, the same will be considered. Trust acted in terms of the letter of the Minister-in-Charge and adopted a resolution which was forwarded to the State.
20. There is nothing to suggest that the Minister acted beyond his powers in issuing the letter dated October 25, 2010. It is for the appellants to establish that such Minister acted beyond his authority which the appellants failed in the facts of the present case.
21. The registered agreement dated August 12, 2023 is not a statutory contract. However, it was entered into between a Trust and the State of West Bengal.
22. The coordinate Bench in ***West Bengal State Fishermen's Co-operative Federation Limited (Benfish)*** (*supra*) noted ***Dhaspara SKUS Ltd. and Anr.*** (*supra*) .
23. ***Dhaspara SKUS Ltd. and Anr.*** (*supra*) noted that, disputed questions of fact were involved in the facts and circumstances of that case, and, therefore, did not interfere with the decision of the learned Single Judge in not entertaining the writ petition.

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24. ***The Ghani Khan Choudhury Institute of Engineering and Technology and Ors.*** (supra) noted a decision of the Hon'ble Supreme Court reported at ***(2023) 2 SCC 703 (M.P. Power Management Company Limited, Jabalpur vs. Sky Power South-East Solar India Private Limited and Ors.)***. ***The Ghani Khan Choudhury Institute of Engineering and Technology and Ors.*** (supra) quoted paragraph 82 of ***M.P. Power Management Company Limited, Jabalpur*** (supra).
25. Paragraph 82 of ***M.P. Power Management Company Limited, Jabalpur*** (supra) noted *inter alia* that, the mere fact that relief was sought under a contract which is not statutory, will not entitle the State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, *per se*, arbitrary.
26. In facts and circumstances of the present case, although the contract between the appellants and the private respondents is non-statutory, nonetheless, on the basis of the ratio of ***M.P. Power Management Company Limited, Jabalpur*** (supra), it cannot be said that, the writ petition is not maintainable, *per se*. A Writ Court is required to consider whether or not, the action/inaction of the State is arbitrary as complained of or not.
27. In the facts and circumstances of the present case, failure State to act in terms of the agreement entered into stands established. It did not take any steps for the purpose of either management, protection, preservation of the building to run a youth hostel for the members of the public, as agreed. It did not take any steps for the purpose of construction of the building to run a youth hostel

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therein. This inaction contains till date from the date of the agreement being August 12, 1993. Such inaction renders inference of arbitrariness plausible.

28. As noted above, at the level of a Minister of the State, dialogue was entered into between the State and the private respondents herein with regard to the relinquishment of the agreement. The concerned trust took a resolution for taking back the property concerned. Learned Single Judge directed the State to make over the property to the private respondents taking note of the facts established.
29. In view of the discussions above, we find no ground to interfere with the impugned judgment and order.
30. MAT 620 of 2024 and IA No.: CAN 2 of 2024 are dismissed without any order as to costs.

(Debangsu Basak, J.)

31. I agree.

(Md. Shabbar Rashidi, J.)