

**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

**FMA/871/2025
With
IA NO: CAN/1/2025**

**SCORPION CO-OPERATIVE HOUSING
SOCIETY LTD. AND ANR.
VS.
KOLKATA METROPOLITAN DEVELOPMENT
AUTHORITY AND ORS.**

For the Appellants: Mr. Nilkamal Ghosh, Advocate

For the KMDA : Mr. Satyajit Talukdar, Advocate
Mr. Arindam Chatterjee, Advocate

Heard and judgment on : May 20, 2025

DEBANGSU BASAK, J.

1. Appeal is directed against an order dated April 2, 2025 passed in WPA 5343 of 2012.
2. Learned advocate appearing for the appellants submits that, learned Single Judge erred in dismissing the writ petition. He submits that, the appellants were granted a lease on June 13, 2002 in respect of a plot of land. He refers to Clause 2(III) thereof and submits that, appellants were entitled to time more than three years prescribed therein. He submits that, there were no facilities available at the locale. He refers

to Clause 3(II) thereof in respect of his contention that, the respondents were obliged to provide the amenities. Referring to Clause 4(III), learned advocate appearing for the appellants submits that, authority to grant relaxation was vested with the respondents.

3. Learned advocate appearing for the appellants submits that, the appellants allotted a number of plots to different entities. Only the appellants were singled out for cancellation of the allotment for the non-performance of the terms and conditions of the lease deed.
4. Learned advocate appearing for the appellants submits that, appellants were not given a hearing by the authorities. He submits that, pursuant to the show cause notice issued by the authorities, appellants responded by a writing. At the hearing, the appellants were represented. At such hearing, it was stated by the authorities that, the lease will stand cancelled and the appellants may obtain relief from the Court.
5. Learned advocate for the respondent no. 1 draws the attention of the Court to Clause 4(I) of the lease deed and submits that there is a typographical error in the typed copy supplied. He submits that the word "of" between the words 'date' and 'there' should be read as "or". He submits that the respondent no. 1 was empowered by such clause to cancel the lease for breach of covenants, which it did, after hearing the appellants.
6. A lease dated June 13, 2002 was entered into between the appellants and the respondents in respect of a plot of land. Relevant provisions of such lease are as follows :-

"2(III) *The LESSEE shall, within three years from the date of formal allotment or within such further time as the Authority may at its option allow in writing on sufficient*

and reasonable grounds and at its own cost erect, construct and complete house, building or other structures upon the demised land as may be necessary for the said land to be used for the purpose as settled along with boundary walls, sewers and drains in accordance with plans, sections, specification as may be approved by the appropriate Authority according to the rules and regulations of the Calcutta Municipal Corporation or according to the requirements of any statute or of the Authority.

3(II) *The LESSEE shall be provided with all the facilities in respect of sewerage connection, water supply, electric connection, road and other amenities as may be available to the lessees of other plot of land of East Calcutta Area Development Project of the Authority provided that such facilities shall be made available on the peripheral road abutting the demised land and that the LESSEE at his own cost shall have to take connection there from.*

4(I) *Whenever any part of the rent hereby reserved shall be in arrears for a consecutive period of three years after due date of (sic. or) there shall be a breach of any covenants by the LESSEE herein contained or the LESSEE shall enter into liquidation whether compulsory or voluntary, the Authority shall have the right to re-enter on the demised premises and to determine the lease.*

4(III). *That any relaxation and indulgence granted by the Authority to the LESSEE or by the LESSEE to the Authority shall not in any way prejudice the rights to the parties under the Deed."*

7. It is trite law that, Courts are not to re-write the terms and conditions of a contract. It is also trite law, whether or not, time for performance of a contract will be the essence of the contract will depend upon the facts and circumstances of each case. It is also trite law that, a writ petitioner cannot claim negative equality.

8. On the anvil of the principles of law as noted in the preceding paragraph, we proceed to adjudicate upon the facts emanating out of the records placed before us.
9. As noted above, there was a lease deed dated June 13, 2002 containing the relevant Clauses. Parties before us are governed by the lease deed dated June 13, 2002.
10. Clause 2(III) requires the appellants to construct and complete a house or building or structure on the demised land within a period of three years or within such further time as the authority may allow.
11. Lease dated June 13, 2002 can be construed to be the formal allotment. Therefore, time to complete construction, in terms of Clause 3 expired on June 12, 2005 for the appellants. No construction admittedly was made within such period of time. There is no material placed on record to suggest that the appellants applied before the authorities for the purpose of extension of time to make the construction.
12. In view of the appellants not approaching the authorities for extension of time either within the period of three years from the date of formal allotment or even subsequently, the appellants are guilty of breach of clause 2(III) of the lease deed dated June 13, 2002.
13. Justification of the appellants in not making any construction within the prescribed period of three years is that facilities in respect of sewerage connection, water supply, electric connection roads and other amenities were not made available. With respect, we are unable to accept such contention, since, there is no material on record to suggest that such facilities were not made available to the appellants despite requests for

the same. Appellant did not complain contemporaneously as to the alleged non-existence of the sewerage and drainage facilities.

14. Respondent no. 1 had issued a show cause notice dated May 7, 2009 stating that the allotment would be cancelled in terms of Clause 4(I) since the building was still vacant without any construction. In response thereto, by a letter dated May 19, 2009, the appellant did not state that the requisite amenities were not available preventing them from making the construction. Rather, justification for non-construction was advanced on the death of one member and the husband of another member.
15. Respondent no. 1 thereafter issued a hearing notice on May 31, 2010, which the appellant no. 1 by a letter dated June 11, 2010 responded. Even then, construction did not commence. Further notice of hearing was given on September 6, 2010 and on and from September 17, 2010, hearing took place before the authorities.
16. Clause 4(I) prescribes three situations where the lessor shall have the right to re-enter the demised premises and to determine the lease. It may be on the lessee not paying rent for consecutive three years or the lessee going into liquidation or the lessee acting in breach of covenants.
17. In the facts of the present case, the appellants are not in default for payment of rent for a consecutive three years period. The appellants are not in liquidation also. Therefore, two of the conditions on which the lessor can reenter the demised premises and determine the lease are not available to the lessor in terms of Clause 4(I). However, one of the conditions for determination of the lease and re-entry stands made

out, that is breach of the covenant of the lease deed dated June 13, 2002.

18. So far as the Clause 4(III) is concerned, it recognizes that any relaxation or indulgence granted by the lessor to the lessee or by the lessee to the lessor shall not, in any way, prejudice the rights to the parties under the deed of lease.
19. In our view, under this Clause the fact that respondent no. 1 did not issue notice to re-enter immediately on expiry of period of three years does not dilute the right of the respondent no. 1 available to it under the lease deed.
20. A show cause notice dated May 17, 2009 was issued by the authorities to which, the appellants replied on May 19, 2009. Thereafter, the appellants were heard by the authorities. The authorities, thereafter, issued an order of cancellation dated November 17, 2011, which was assailed by way of the writ petition resulting in the impugned order.
21. So far as the contention of the appellants that, they were not given proper hearing by the authorities, is concerned, we are not in a position to accept such bald allegation bereft of any material particulars. Contemporaneously, there is no complaint as to the quality of hearing given by the authorities. Such allegations are afterthought, made subsequent to a decision going against the appellants and no reliance can be placed on the same.
22. The contention that other plot holders were not proceeded against, will not assist the appellants since, the appellants cannot claim negative equality. Moreover, there is no material before us to arrive at a finding that there are other plot holders similarly situated and circumstanced as that of the appellants. It is for the appellants to establish such fact.

23. Learned Single Judge noted that, the appellants acted in violation of Clause 2(III) of the lease deed.
24. There is no material on record to suggest that such finding of the learned single Judge is perverse.
25. Actions of the respondent no. 1 as contained in its decisions dated November 17, 2011 and January 31, 2012 impugned in the writ petition cannot be faulted due to breach of principles of natural justice. View taken by the respondent no. 1 is plausible. Courts are not required to reassess the evidence and arrive at a different finding, acting as a Court of Appeal, against a decision taken by an authority in the realm of contract.
26. In such circumstances, we find no ground to interfere with the order impugned.
27. FMA/871/2025 along with the connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

28. I agree.

(Md. Shabbar Rashidi, J.)