

25
20.01.2025
Ct. No. 11
Jayanta

FMA 130 of 2022

**The State of West Bengal & Ors.
vs.
Shyamal Kumar Sinha & Anr.**

Mr. Naba Kumar Das
Ms. Sumna Singha
....For the Appellants.

Mr. Siddhartha Lahiri
Mr. Subhashis Saha
Mr. Mainak Chatterjee
Mr. S. Sen
Mr. Debraj Dutta
....For the respondents.

The present appeal has been preferred by the State of West Bengal and its functionaries challenging an order dated 28th January, 2021, passed by the learned Single Judge in the writ petition being WPA 5434 of 2019 which was preferred by the writ petitioners/respondents herein challenging, *inter alia* the memoranda dated 20th January, 2017 and 2nd November, 2018 issued by the appellant no. 4. The memo dated 20th January, 2017 was issued stating *inter alia* that the original lessee had failed to construct the house on the concerned plot of land in terms of the provisions of the lease deed dated 3rd May, 1983 and requesting the writ petitioners to explain within 30 days as to why the concerned plot of land shall not be resumed by the Government. The

memo dated 2nd November, 2018 was issued requesting the writ petitioners to hand over peaceful possession of the land in question within 15 days. By the order impugned the learned single judge upon arriving at a finding that the impugned resumption order was not preceded by a six months' notice to remedy the breach of the lease deed, quashed the said memoranda dated 20th January, 2017 and 2nd November, 2018.

Mr. Das, learned advocate appearing for the appellants submits that after issuance of the memo dated 20th January, 2018, the writ petitioners submitted a representation dated 8th February, 2017 with a request to remove the board implanted on the said plot of land by the appellants. In reply thereto, the appellant no. 4 by a memo dated 19th April, 2018 refused to grant permission for removal of the notice observing *inter alia* that the plot had remained vacant for more than 35 years and that the resumption process had already started. In the said conspectus, it cannot be construed that the writ petitioners were not aware that the resumption process had already started as they had failed to comply with clause 2(6)(a) of the lease deed. Without considering argument, as advanced, the learned Single Judge allowed the writ petition mechanically on the point of non-service of formal

notice within a specified time. Such infirmity warrants interference of this Court.

Mr. Lahiri, learned advocate appearing for the writ petitioners/respondents, however, submits that clause 4 of the lease deed categorically provides that the lessor shall not exercise any right without serving the lessee a notice in writing giving six months' time to remedy the breach. It would be explicit from the impugned memo dated 20th January, 2018 that the writ petitioners were given only 30 days' time. In view thereof, the learned Single Judge rightly exercised discretion in favour of the writ petitioners.

He argues that the appellants debarred the respondents from raising any construction over the concerned plot inasmuch as they did not take appropriate steps within the prescribed period to even sanction to the building plan. The terms of the lease deed cannot be re-written. The lesser and the lessee are bound to comply with each and every term and condition of the lease deed.

In reply, Mr. Das submits that the writ petition was dismissed on the limited ground of non-issuance of appropriate notice in terms of the lease deed and the impugned order was passed on the basis of a concession granted by the learned advocate representing the State respondents.

We have heard the learned advocates appearing for the respective parties and considered the materials on record.

Clause 4 of the lease deed runs 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.’

By the memo dated 20th January, 2017 the respondents were granted a notice of 30 days and as a follow up action the subsequent notice dated 2nd November, 2018 was issued. In the said conspectus, for non-fulfillment of the condition towards six months’ notice, the impugned memoranda cannot survive.

The learned Single Judge, upon dealing with all the factual issues arrived at specific findings and we do not find any error in the order impugned, warranting interference of this Court.

In view thereof, the appeal being FMA 130 of 2022 is dismissed.

It is, however, made clear that the dismissal of the present appeal shall not prevent the appellants from taking appropriate steps, in accordance with law.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty,J.)