

**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 1186 of 2025

Shyamal Coomar Ghose

Vs.

The Kolkata Metropolitan Development Authority & Ors.

With

FMA 1341 of 2025

Shyamal Coomar Ghose

Vs.

The Kolkata Metropolitan Development Authority & Ors.

For the Appellant : Mr. Jayabrata Ghose, Adv.
Ms. Tina Biswas, Adv.

For the Respondents/
KMDA : Mr. Satyajit Talukdar, Adv.
Mr. Arindam Chatterjee, Adv.

For the State : Mr. Subhabrata Das, Adv.
Mr. Ayan Banerjee, Adv.

Heard on : 25.08.2025

Judgment on : 03.09.2025

Md. Shabbar Rashidi, J.:-

1. The appeal at the behest of the petitioner is directed against the common judgment and order dated June 10, 2025 passed in WPA 15503 of 2024 and WPA 24492 of 2024. By the impugned judgment and order, the learned Single Judge declined to exercise jurisdiction under Article 226 of the Constitution of India and dismissed the writ petitions.

2. The writ petitioner was allotted a land on lease for the purpose of construction of residential building thereon within a period of five years from the date of execution of the lease deed. The writ petitioner applied for extension of time for the construction of residential building which was refused by the Deputy Secretary Estate (M & M) Unit, Kolkata Metropolitan Development Authority (KMDA). Challenging such order passed by Deputy Secretary Estate (M & M) Unit, Kolkata Metropolitan Development Authority (KMDA) dated January 31, 2024, the writ petitioner filed WPA 15503 of 2024.

3. Later on, the writ petitioner was served with a show-cause notice dated June 7, 2024 asking him to show cause as to why the lease deed executed in favour of the writ petitioner will not be cancelled and the land shall not be resumed by the authority. Challenging the aforesaid show-cause notice dated June 7, 2024, the writ petitioner filed another writ application being WPA 24492 of 2024. Both the writ petitions were taken

up together for consideration by the learned Single Judge which has resulted in the impugned judgment and order.

4. Learned Advocate for the appellant submits that the show-cause notice issued against the writ petitioner dated June 7, 2024 is contrary to law and without appreciation of the factual aspects.

5. Learned Advocate for the appellant further submitted that the deed of lease was executed in his favour in 1989. It is the fact that the writ petitioner has not been able to construct the residential building as per the terms of the lease deed but at the same time the authorities also did not take steps in this regard for a long time. The action on the part of the State authorities in issuing a show-cause notice after a long time cannot be justified. It was contended that a non-statutory contract does not entitle the State authorities to ward off its scrutiny or inaction under the contract. Learned Advocate for the appellant submits that such an action on the part of the State authorities is arbitrary.

6. Learned Advocate for the appellant also submitted that in matters related to contractual obligation, leave can be sought against the State instrumentalities when such authority is found to have acted in violation of Article 14 of the Constitution of India. It is submitted that the issuance of show-cause notice dated June 7, 2024 against the writ petitioner by the Deputy Secretary Estate (M & M) Unit, Kolkata Metropolitan Development

Authority (KMDA) is wholly arbitrary action on the part of the authorities and, therefore, it is within the purview of judicial review.

7. Learned Advocate for the appellant further submits that the respondent authority being State within the meaning of Article 12 of the Constitution of India, the actions on the part of State authorities should be looked at from the touchstone of non-arbitrariness, indubitability and public interest. It is submitted that the show-cause notice was not issued in public interest rather it was abuse of power by the authorities and as such it cannot be sustained. According to learned Advocate for the appellant, the show-cause notice dated June 7, 2024 passed by the concerned authorities was arbitrary, unreasonable, unfair, mala fide, whimsical and biased based on extraneous considerations.

8. Learned Advocate for the appellant also submitted that the show-cause notice dated June 7, 2024 was issued belatedly. The authorities concerned ought to have exercised their parts within a reasonable time. The authorities have issued a show-cause notice after lapse of over 35 years which cannot be said to be reasonable. The right to re-enter the demised properties accrued to the KMDA over 30 years ago but the authorities did not choose to exercise such right within a reasonable time. Learned Advocate for the appellant also submitted that the show-cause

notice was issued by the authorities invoking the Clause 4 of the lease deed which was unfair and arbitrary.

9. In support of their contention, learned Advocate relied upon ***AIR 2017 Calcutta 142 (Smt. Jayanti Paul vs. Kolkata Metropolitan Development Authority), (2023) 8 Supreme Court Case 240 (Madras Aluminium Company Limited vs. Tamil Nadu Electricity Board And Another)*** and ***(2023) 2 Supreme Court Cases 703 (M.P. Power Management Company Limited, Jabalpur vs. Sky Power Southeast Solar Indian Private Limited And Others)***.

10. On the other hand, learned Advocate for the respondent submits that the show-cause notice was issued against the writ petitioner in terms of the covenants in the lease deed. The writ petitioners failed to comply with the terms and conditions of the deed of lease and as such the authorities are within their right to enter upon the demised properties. Learned Advocate for the respondents also submits that there has been no unreasonable delay in the issuance of show-cause notice dated June 7, 2024. It is further submitted on behalf of the respondent that the show-cause notice was issued against the writ petitioner on the basis of the rights flowing from the terms and conditions of the lease deed. The contract of lease was entered by and between the respondent authorities on the one hand and the writ petitioner on the other hand. The obligations between the parties flow from

the terms and conditions of the deed of lease. A proceeding under Article 226 of the Constitution of India is not maintainable in the facts and circumstances of the case.

11. As noted above, in pursuance of an advertisement issued by the CMDA (presently KMDA), the writ petitioner applied for purchasing a Higher Income Group (hereinafter referred to as, 'HIG') plot at Baishnabghata Patuli Township, a project implemented by KMDA with the assistance from International Development Association. Against such application, the writ petitioner was allotted with plot No. 11 in block 'R' category HIG, Baishnabghata Patuli Township on the basis of lottery. Besides the writ petitioner many other persons were allotted plots in HIG group of land in the said lottery. Accordingly, a lease deed with the terms and conditions mentioned therein was executed between the CMDA on one hand and the writ petitioner on the other on April 10, 1989. It was registered before the Additional District Sub Registrar, Alipore, South 24-Parganas. In pursuance of the registration of the lease deed, physical possession of the land allotted in favour of the petitioner was handed over to him on August 6, 1990. A possession certificate in this regard was issued by the respondent authorities in favour of the writ petitioner. Thereafter, a land allotted in favour of the writ petitioner was mutated in

his name on November 11, 1991 with the issuance of a mutation certificate by Kolkata Municipal Corporation.

12. It is further contended on behalf of the writ petitioner that the writ petitioner gave a letter to CMDA within five years and taking physical possession of the allotted plot stating the reasons for non-commencement of the construction over the said plot. The writ petitioner sought for extension of time to construct residential building over the said plot. The letter was received by CMDA. However it was communicated to the petitioner by CMDA that such type of letter was not necessary. For such reason, the petitioner did not feel necessity of preserving the copy of such letter. The writ petitioner also came up with a case that in the first five years of the execution of the lease deed there was lack of basic amenities in the Baishnabghata Patuli Township rendering the construction over the allotted plot unfeasible.

13. It was also contended that initially no permission for construction of residential building over the allotted plot was required but later on the writ petitioner came to know that a system of obtaining prior permission of KMDA for construction of residential building for five years of execution of lease deed was put in place. The writ petitioner has also put up several excuses which prevent him from constructing the required building over the plot in his favour which included that he started residing in Kolkata

after his superannuation from service in the State of Orissa on December 31, 1997. Thereafter, his son was married in 2005 and such marriage was later dissolved in 2015. Thereafter, the writ petitioner has stated that outbreak of COVID-19 in 2020 and cracks in the adjacent building where the writ petitioner resided due to construction work of the Metro Railway were also a factor which prevented him from constructing the residential building.

14. Ultimately, the writ petitioner made a representation dated July 18, 2022 before respondent No. 4 narrating the reasons for not taking up the construction work over the allotted plot. By such representation he applied for extension of time followed by reminders on May 3, 2023. In pursuance of his representations, the respondent No. 4 called upon the writ petitioner, by a communication, to attend a hearing before it on May 25, 2023. The meeting was attended by the writ petitioner and his son, however, the outcome of such meeting was never communicated to the writ petitioner. In such circumstances, the writ petitioner again filed a representation before respondent No. 4 on July 27, 2023 calling upon respondent No. 4 to intimate the result of the meeting dated May 25, 2023.

15. Having not received any response, the writ petitioner filed a representation being WPA 22652 of 2023 which was disposed of by an order dated October 4, 2023. Later on, the writ petitioner also filed a

contempt application being CPAN 69 of 2024 against the respondent authorities for non-compliance of the order dated October 4, 2023 passed in WPA 22652 of 2023. According to the writ petitioner, without complying the order passed on October 4, 2023, the respondent authorities issued hearing notices upon the petitioner by letters dated November 1, 2023, November 3, 2023, November 23, 2023, November 28, 2023 and December 1, 2023. The writ petitioner did not attend the hearing in absence of a direction by the High Court in WPA 22652 of 2023. An order dated January 31, 2024 was passed by the respondent which was communicated to the writ petitioner. Furthermore, in course of filing a writ petition challenging the order dated January 31, 2024, the writ petitioner received the impugned show-cause notice dated June 7, 2024.

16. From the purport of the facts narrated hereinbefore, it transpires that the writ petitioner was allotted with a land in HIG group under the Baishnabghata Patuli Township project on the basis of an application by the writ petitioner in pursuance of an advertisement and on the basis of a lottery. Accordingly, a lease deed was executed and the deed of lease was for the purpose of construction of a residential building. It would be pertinent to set out the relevant covenant in the lease deed:-

“2. *** **

(i) (a) *** **

(i) (b) *** **

(ii) *** **

(iii) *At the own cost of the LESSEE who has been allotted plot, within five years from the date hereof or within such further time as the Authority may at its option allow in writing on sufficient and reasonable grounds, to erect, construct and complete the house or building for being used for residential purposes with boundary walls, sewers and drains in accordance with plans, sections and specifications as may be approved by the appropriate body according to the rules and regulations framed for the purpose.*

4. (i) *If there be any breach of any covenant on the Lessee's part herein contained and to be performed or observed or any of the terms and conditions hereof, then in the said cases it shall be lawful for the Authority at any time thereafter to re-enter upon the demised premises or any part thereof in respect of any breach of the Lessee's covenants herein contained.*

(ii) *Any notice requiring to be served hereunder shall be sufficiently served on the Lessee if addressed to him on the demised premises or forwarded to him by registered post or left at his last known address in India and shall be sufficiently served on the Authority if delivered to the office of the Deputy Director (Marketing and Management) against proper receipt. A notice served by post shall be deemed to be given at the time when in due course of a registered post it would be delivered at the address to which it is sent.*

(iii) *Any relaxation or indulgence granted by the Authority to the Lessee or by the said Lessee to the Authority shall not in*

any way prejudice the rights of the parties under the Deed of Lease.”

17. Therefore, it is evident from the covenants in the lease deed that the land was allotted in favour of the writ petitioner on condition that to erect, construct and complete the house or building for being used for residential purposes with boundary walls, sewers and drains in accordance with plans, sanctions and specifications as may be approved by the appropriate authority at the cost of lessee. Such construction was to be made within five years from the date of execution of the deed of lease or within such time as the authority may at its option allow in writing on sufficient reasonable grounds.

18. Apparently, the writ petitioner was allotted the land in the year 1989 and the lease deed was executed on April 10, 1989. Admittedly, the writ petitioner did not raise any construction of the residential building over the plot allotted in his favour, on the basis of the lease deed dated April 10, 1989.

19. A number of excuses have been pleaded by the writ petitioner which prevented him from raising construction of the residential building as required by the deed of lease. However, nothing has been brought on record to substantiate such reasons for non-construction of the required building.

20. On the contrary, from the order passed by the Deputy Secretary Estate (M & M) Unit, Kolkata Metropolitan Development Authority (KMDA) on January 31, 2024 it transpires that the in compliance of the order passed by the High Court in WPA 22652 of 2023 dated October 4, 2023, respondent No. 4 served several notices upon the writ petitioner for hearing on November 1, 2023, November 3, 2023, November 23, 2023, November 28, 2023 and December 1, 2023. It is specifically noted in the said order of January 31, 2024 that in spite of such notices being issued, the writ petitioner did not attend the hearing on the aforesaid dates. Accordingly, in compliance with the order passed in the writ petition, the representation of the writ petitioner filed on January 27, 2023 was considered by respondent No. 4. By the said order, the respondent No. 4 considered the averments made in the representation of the writ petitioner and the status report submitted by the Estate and Asset Management Sector, KMDA. Respondent No. 4 also considered the representations filed by the writ petitioner on July 18, 2022, May 3, 2022 and July 27, 2023 upon assessment of the aforesaid materials and rejected the aforesaid representations, noting that the land allotted in favour of the writ petitioner was kept vacant for 35 years, even without raising a boundary wall at such property to protect it. Challenging such order, the writ petitioner filed a writ petition being WPA 15503 of 2024.

21. Subsequently, on June 7, 2024 respondent No. 4 issued a notice upon the writ petitioner asking him to show cause as to why the lease deed shall not be cancelled in terms of clause 2(iii) read with clause 4(i) of the Lease Deed and as to why the authority shall not re-enter into the plot of land allotted in favour of the writ petitioner and take possession thereof. Such show-cause notice dated June 7, 2024 was challenged by the petitioner in a separate writ petition being WPA 24492 of 2024. Both the writ petitions were disposed of by a common judgment and order which is impugned in the present appeal.

22. It is not in dispute that the writ petitioner did not raise construction of the residential building over the plot allotted in his favour within the stipulated period of time as per the terms and conditions of the lease deed. WE have noted hereinbefore that a number of excuses have been put up by the writ petitioner for not acting in accordance with the contract of lease in not raising the construction, however, no document whatsoever has been produced on behalf of the appellant in support of the excuses offered by him.

23. The writ petitioner/appellant has put up a plea that the lease deed was executed in the year 1989 and the authorities started to implement the terms and conditions of the lease deed in the year 2024 after a lapse of over 30 years. It was submitted that the respondent authorities did not take any

steps in accordance with the terms of the lease deed for long 30 years and as such the issuance of show-cause notice on June 7, 2024 is an arbitrary action on the part of the respondent authorities.

24. In ***Madras Aluminium Company Limited*** (supra), the Hon'ble Supreme Court noted that:-

“42. In Mansaram v. S.P. Pathak [Mansaram v. S.P. Pathak, (1984) 1 SCC 125] this Court has observed that when a power exists to effectuate a purpose it must be exercised within a reasonable time. It has been observed that this is all too well-settled principle to require buttressing precedent. Nonetheless, the Court refers to State of Gujarat v. Patil Raghav Natha [State of Gujarat v. Patil Raghav Natha, (1969) 2 SCC 187] wherein the period of one year was found to be too long for the Commissioner to exercise revisional jurisdiction under Section 211 of the Bombay Land Revenue Code. The principle of reasonable time as mentioned herein was followed recently by a two-Judge Bench in SEBI v. Sunil Krishna Khaitan [SEBI v. Sunil Krishna Khaitan, (2023) 2 SCC 643].”

25. The aforesaid decision was rendered in the context of considerable time taken in deciding an application for reduction of electricity load where a subsequent agreement was entered into between the electricity board and the writ petitioner. In the instance case, however, there was nothing to be decided by the respondent authorities. The terms and conditions of the lease of deed were determined at the time of execution of the lease deed.

There may be a delayed approach by the respondent authorities in the implementation of the terms of the lease deed but such action on the part of the respondent authorities cannot vitiate the right of the respondents in respect of the land in question.

26. In **Smt. Jayanti Paul** (supra), a co-ordinate Bench held as follows:-

7. Even when a public body deals with its tenants, it must act in public interest and an infraction of that duty is amenable to examination either in civil suit or in writ jurisdiction. The decision rendered by the KMDA - which was the subject matter of challenge before the writ Court - had to be a reasonable decision and taken only upon lawful and relevant grounds of public interest and not otherwise. Where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14. Every activity of a public authority must be informed by reason and guided by public interest. All exercise of discretion or power by public authorities even when dealing with lessees cannot be treated separately and distinctly. Even in contractual matters, if it fails to satisfy the test of reasonableness, such action in that event would be unconstitutional. In this context, we may take notice of the observations made by the Supreme Court in Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay reported in (1989) 3 SCC 293 : AIR 1989 SC 1642."

27. In the instant case, the writ petitioner was allotted with a land by a lottery in pursuance of an application made by him. The writ petitioner was

under obligation to raise construction of a residential building over the said plot in the HIG within a period of five years from the date of execution of the deed of lease. Admittedly, no such construction was made by the appellant within the stipulated period. The writ petitioner did not even care to raise a boundary wall in order to protect the property allotted in his favour. The public policy demands that the land in question ought to have been utilized for the purpose it was leased out to the writ petitioner which was not done. As we noticed, the property was allotted on lease to the writ petitioner for a specific purpose which was not utilized for the said purpose by the writ petitioner. The public policy demands that the land should have been utilized for the purpose it was allotted. It is in the interest of public that if an individual is not in a position to execute the terms and conditions of the lease with respect to utilization of a land allotted in his favour, the same should be allowed to be utilized by some more suitable person.

28. Similarly, in ***M.P. Power Management Company Limited, Jabalpur*** (supra), the Hon'ble Supreme Court held that the proposition to the effect that in case of a non-statutory contract the rights are only covered by the terms of the contract was not a good law. It was ardent that contractual obligations were between the party to the contract is an authority of the State within the meaning of Article 12 of the Constitution of India, the

actions on the part of such authority should be considered on the touchstone of arbitrariness.

29. In the facts and circumstances of the case, we are not in a position to return a finding that the actions of the respondent authorities in issuing the show-cause notice upon the writ petitioner for violation of the terms and conditions of the lease deed, can at no stretch be termed as an arbitrary action. The writ petitioner/appellant himself violated the terms of the lease deed and failed to act in accordance therewith. The respondents acted on the basis of the terms and conditions of the lease deed. The writ petitioner made out a case that within the stipulated period of time of five years, the writ petitioner approached the respondent authorities with an application seeking extension of the time. However, the appellant has not been able to place anything on record to establish that any such application was ever made by the appellant. To its contrary, the respondents provided several opportunities to the writ petitioner in pursuance of an order passed by the High Court but the writ petitioner chose not to avail such opportunities.

30. In the light of the discussions made hereinabove, we find no reason to interfere with the impugned judgment and order. The same is hereby affirmed.

31. Accordingly, **MAT 1186 of 2025** and **FMA 1341 of 2025** are disposed of. Connected application(s), if any, stands disposed of.

32. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

33. I agree.

[DEBANGSU BASAK, J.]