

S/L 1
19.05.2025
Court. No. 19
Sourav

WPA 20635 of 2023

**Sushanta Kumar Roy & Anr.
Vs.
The State of West Bengal & Anr.**

*Mr. Debasish Chattopadhyay
Mr. Loknath Paul
Mr. Tirthankar Basu*

...for the petitioners.

*Mr. Chandi Charan De, Ld. AGP
Mr. Soumit Dey*

...for the State.

1. The supplementary affidavit as filed on behalf of the writ petitioners is taken on record.
2. By filing the instant writ petition, the writ petitioners have prayed for issuance of appropriate writ/writs against the respondent no. 2/authority for cancellation and/or quashing the order dated 13.07.2023 whereby and whereunder the respondent no. 2 declined to effect mutation in respect of Plot No. B-1/221 (A) at Kalyani as per prayer of the writ petitioners.
3. In course of hearing, Mr. Chattopadhyay, learned advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to Page Nos. 23 to 31 of the instant writ petition being a copy of the registered deed of lease dated 22.06.1988 as has been executed by and between the State of West Bengal (lessor) and one Smt. Sunanda Goswami (lessee) in respect of Plot No. 221 sub-Block no. 1 of Block B in the town of Kalyani, Nadia.

4. Drawing attention to Page Nos. 95 to 99 of the instant writ petition being the copy of the order which is under challenge before this Court, it is submitted by Mr. Chattopadhyay that from the said order under challenge, it would reveal that as per request made by the original lessee, Smt. Sunanda Goswami, the competent authority granted the said original lessee to transfer one portion of the said Plot No. B-1/221 in favour of one Santi Ranjan Bagchi and on receipt of such permission, the original lessee transferred the said portion of B-1/221 at Kalyani in favour of Santi Ranjan Bagchi.
5. It is further submitted by Mr. Chattopadhyay that from the said order under challenge, it would reveal that the remaining portion of the lease hold land was renumbered as Plot No. B-1/221(A). It is further submitted on behalf of the writ petitioners that though in the said order under challenge, it has been recorded by the respondent no. 2 that the Plot No. B-1/221 (A) has been vested by the U.L.C. Department in terms of the provisions of U.L.(C&R) Act, 1976 vide memo no. 543/B-1/221 dated 12.04.2005 but the respondent no. 2 had either knowingly or unknowingly overlooked the judgment and order dated 23.06.2009 as passed in WP 10487 (W) of 2005 by a co-ordinate Bench of this Court wherein the communication regarding such vesting was found to be unwarranted and without jurisdiction and

the said co-ordinate Bench thus set aside the said letter communicating the order of vesting.

6. In his next fold of submission, Mr. Chattopadhyay again draws attention of this Court to Page Nos. 84 to 89 of the instant writ petition being a judgment and order dated 26.04.2022 as passed by a Hon'ble Division Bench of this Court in MAT 352 of 2016 wherein the said Hon'ble Division Bench found that the respondent no. 2 did not adhere to the aforementioned judgment and order dated 23.06.2009 which is why, the said Division Bench while allowing the said appeal directed the respondent no. 2 to consider the application for mutation as filed by the present writ petitioners before him afresh and in accordance with law.
7. It is submitted by Mr. Chattopadhyay that despite passing of the order and judgment dated 23.06.2009 in WP 10487 (W) of 2005 and the order and judgment dated 26.04.2022 in MAT 352 of 2016 by a Division Bench of this Court, the respondent no. 2/authority in complete disregard to the said two orders again rejected the application for mutation of the writ petitioners without taking into account of quashing of the said vesting order as has been mentioned in the foregoing paragraphs.
8. At this juncture, Mr. Chattopadhyay again took me to Page Nos. 29 and 32 of the instant writ petition. It is submitted by Mr. Chattopadhyay that from page no. 29 of the instant writ petition, it would reveal that in the

original deed of lease as has been executed in favour of the original lessee, Smt. Sunanda Goswamiu, there was a restriction clause upon the lessee not to assign the lease or part with possession of the demised land or any building to any third party without the previous consent in writing of the government, however, the said clause is subject to a proviso to the effect that in the event, the original lessee is desirous to assign or transfer her leasehold interest in the demised premises she may apply for permission of the same with the respondents/authorities and in the event, such approval as sought for is not refused within two months, it would be deemed that the government has got no objection to the proposed transfer.

9. It is submitted further that from Page No. 32 of the instant writ petition, being a copy of the letter dated 20.01.2012, it would reveal that the transferor (the original lessee) of the present two writ petitioners have applied for such permission and within the stipulated period, no order of refusal was received by the original lessee which is why the original lessee had executed a registered deed of transfer dated 30.01.2012 in favour of the writ petitioners in respect of the Plot No. B-1/221 (A) at Kalyani. It is thus submitted by Mr. Chattopadhyay that the order dated 13.07.2023 is absolutely unreasoned and the same is perverse.
10. It is also submitted by Mr. Chattopadhyay that the instant writ petition may be allowed granting reliefs to

the writ petitioner in terms of the prayers made in the instant writ petition.

11. Per contra, Mr. De, learned AGP appearing on behalf of the respondent/State and its functionaries also draws attention of this Court to Page No. 29 of the instant writ petition. It is submitted by Mr. De that from Page No. 29 of the instant writ petition, it would reveal that in the original deed of lease dated 22.06.1988, there is a specific clause that lessee shall not sub-divide the said plot of land or part with possession of any part thereof. It is submitted by Mr. De that the respondent no. 2/authority ought to have quote the said clause in his order under challenge. It is, however, submitted by Mr. De that because of the bar as mentioned in the said lease, the transferor of the writ petitioners cannot part with the possession of Plot No. B-1/221(A), Kalyani to the writ petitioners and, therefore, by no stretch of imagination it can be said that the action of the respondent no. 2/authority is either arbitrary or unjust or unreasoned.
12. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, this Court has got no hesitation to hold that the respondent no. 2 while passing the order under challenge dated 13.07.2023 has basically rejected the writ petitioners' application for mutation on the ground that portion of the original Plot No. B-1/221 i.e., B-1/221 (A), Kalyani has already been

vested with the government in terms of the U.L. (C & R) Act, 1976 (vide memo no. 543/B-1/221 dated 12.04.2005. As rightly argued by Mr. Chattopadhyay that the respondent no. 2/authority either intentionally or unintentionally overlooked the judgment and order dated 23.06.2009 as passed by a co-ordinate Bench in WP 10487 (W) of 2005 vis-à-vis judgment and order dated 24.06.2022 as passed by a Division Bench of this Court in MAT 352 of 2016 wherein it has been specifically recorded that the communication regarding such vesting is unwarranted, without jurisdiction and was set aside.

13. In course of his submission, Mr. De, however, could not explain as to how and as to why the respondent no. 2/authority had not considered the said judgment and order dated 23.06.2009 especially when in the judgment and order dated 24.06.2022, the Hon'ble Division Bench remanded the matter for consideration and afresh purely for non-consideration of the said judgment. In course of his submission, Mr. De, learned AGP though placed his strong reliance upon Clause VII of the deed of lease as available at Page No. 29 of the original deed of lease as has been executed in favour of the original lessee on 22.06.1988 but in considered view of this Court the respondent no. 2 cannot get any advantage of the said Clause in view of the fact that by a written communication, the respondent no. 2 granted permission to the original lessee to part with a portion

of original leasehold Plot No. B-1/221 (A) at Kalyani in favour of one Santi Ranjan Bagchi vide transfer permission memo dated 13.12.1998.

14. As rightly argued by Mr. Chattopadhyay that from Page No. 29, it reveals further to this Court that Clause X of the said deed of lease expressly prohibited the original lessee to part with the possession of the demised land or any building erected therein without the previous consent of the lessor, however, the proviso to the said Clause permits the original lessee to seek permission by giving a notice in writing and it has also been expressly provided in the said proviso clause that in the event, no refusal communication is received by the lessee within two months from the date of seeking permission, it would be presumed that the lessor (Government) has got no objection to such transfer.
15. Materials have been placed before this Court that on 20.01.2012, the original lessee, Smt. Sunanda Goswami sought for permission with the respondent no. 2/authority to transfer the remaining portion of the leased out plot being B-1/221 (A) at Kalyani in favour of the present writ petitioners. No refusal communication was communicated to her. The original lessee, thereafter, executed a registered deed of transfer in favour of the present writ petitioners by executing a registered deed on 30.01.2012 and soon thereafter, the writ petitioners approached the respondent no. 2/authority for mutation.

16. In the factual background of the instant case, this Court finds no justification on the part of the respondent no. 2/authority in passing the order dated 13.07.2023 rejecting the writ petitioners' application for mutation ignoring the judgment and order dated 23.06.2009 as passed by a co-ordinate Bench and judgment and order dated as passed by a Division Bench on 26.04.2022 in MAT 352 of 2016. Considering such, this Court is of considered view that the order under challenge dated 13.07.2023 is absolutely perverse and not at all reasoned.
17. Accordingly, the order dated 13.07.2023 as passed by the respondent no. 2/authority is hereby set aside. The respondent no. 2 is hereby directed to effect mutation in respect of Plot No. B-1/221 (A) at Kalyani in the name of the writ petitioners positively within 30 working days from the date of communication of the server copy of this order subject to compliance of other formalities, if therebe any on the part of the present writ petitioners.
18. The time limit as fixed by this Court is mandatory and preemptory.
19. Liberty is given to the learned advocate on record of the writ petitioners to communicate the server copy of this order to the respondent no. 2/authority.
20. The respondent no. 2/authority is directed to act on the server copy of this order.

21. With the aforementioned observations, the instant writ petition being **WPA 20635 of 2023** is disposed of.
22. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)