

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

**IN THE MATTER OF
WPA 22202 of 2022**

**Geeta Ghosh
Vs.
VISVA BHARATI & Ors.**

**For the Petitioner : Mr. Abhrajit Mitra, Sr. Adv.,
Mr. Arindam Guha, Adv.
Mr. Shuvasish Sengupta, Adv.
Ms. Shalini Dey Adv.**

**For the Respondent/
VISVA BHARATI : Ms. Sucharita Visvas, Adv.
Mr. D. Gupta Adv.,**

Reserved on : 17.06.2025

Judgment on : 09.09.2025

Subhendu Samanta, J.

1. One Gyan Chandra Ghosh predecessor in interest of petitioner granted lease of immovable properties by VISVA BHARATI through a registered lease deed dated 24th September, 1951 in connection with plot no. 110 in CS Plot no. 1282/1582 of khotian no. 293/1 in mouza- Taltore, Police Station-Bolpur, District-

Birbhum, measuring more or less 0.66 acres at an annual rent of Rs. 10/- only with consideration of salami of amount of Rs. 500/- for a period of 99 years commencing from the date of execution of the deed. After demise of Gyan Chandra Ghosh his heirs nominated one of the sons of Gyan Chandra Ghosh, namely Priyobrata Ghosh, to be a nominated person and gave no objection, if the said plot in question be mutated in the name of Priyobrata Ghosh. The application/no objection of the heirs of Gyan Chandra Ghosh was placed before the Registrar VISVA BHARATI, on 30th March 1988; on such prayer, Registrar VISVA BHARATI vide a communication dated 1st January, 1995 mutated the said plot in question in the name of Priyobrata Gosh Accordingly, Priyabrata possessed the plot in question by paying annul rent.

2. Priyobrata Ghosh expired on 22/11/2005 and left his will dated 5th April, 2006 in favour of present petitioner being the wife of Priyobrata Ghoshand thereby bequeathed the property in question in favour of

petitioner. This court has granted probate of the said will on 19th April 2006, in PLA No. 95 of 2006.

3. Petitioner submitted an application before Registrar VISVA BHARATI for mutating her name in place of Priyobrata Ghosh. The application for mutation was not considered, accordingly petitioner approached this court in writ petition being 2528/2001. The said writ petition was disposed of by a Co-ordinate Bench on 9th March, 2021 directing the Registrar, VISVA BHARATI to dispose of the application of the petitioner for mutation in accordance with law. The Registrar in pursuance to such order, heard the petitioner and passed the impugned order. Hence this writ.
4. The operative portion of the impugned order is set out as follows:

Now on examination of all the documents submitted by Smt Geeta Ghosh and also the records available in the university's files, my findings are as follows:-

a) The original lessee late Jnan Chandra Ghosh passed away on 21-01-1959 leaving behind 6 (six) legal heirs / heiresses.

b) On 30-03-1988 all the legal heirs and heiresses gave no objection to recording of the name of Priyabrata Ghosh as the lessee for the unexpired period of the lease.

c) On 01-01-1995, the Registrar, Visva Bharati informed Priyabrata Ghosh s/o late Jnan Chandra Ghosh, that the leasehold interest had been mutated in his favour on the strength of the "No-objection" submitted by other heirs / heiresses of the original lessee, late Jnan Chandra Ghosh.

d) On 24-12-1993, four legal heirs of late Jnan Chandra Ghosh executed a power of attorney in favour of late Priyabrata Ghosh, for sale / assignment/gift of the leased property.

e) Priya Brata Ghosh s/o late Jnan Chandra Ghosh, passed away

f) Smt Geeta Ghosh w/o late Priyabrata Ghosh submitted an application on 25-09-2006 (signed on 20-09-2006) on the strength of a Will (Probated on 19-04-2006 in PLA no 95 of 2006) before the also on the strength of a registered Deed of Release dated 14-07-2006.

g) There is no doubt that the University recognized and recorded the name of late Priyabrata Ghosh as the lessee as a nominee of the heirs for the "unexpired period of the term of the lease".

h) However, the legal heirs of the late Jnan Chandra Ghosh did not give any authority (on 30-03-1988 or any other date) to late Priyabrata Ghosh to transfer or assign the leasehold right to any other person nor did they indicate that the heirs of late Priyabrata Ghosh would be entitled to inherit the lease, in exclusion of other legal heirs of late Jnan Chandra Ghosh, the original lessee.

i) Moreover, late Priyabrata Ghosh did not take "consent in writing of the University before assigning the benefit of the lease to Smt Geeta Ghosh, his wife which was required as per original lease deed. Therefore, the will dated 05-02-2005 and the Probate dated 19-04-2006 violate conditions of the original lease deed dated 24-09-1951 and Visva Bharati is not in a position to recognize Smt Geeta Ghosh as the lessee for the unexpired period of the term of the lease.

5. Learned counsel for the petitioner submits that the impugned order passed by the respondent authority (VISVA BHARATI) is illegal and cannot be accepted.
6. It is the further contention of the petitioner that petitioner is the wife of Priyobrata Ghosh, she is near relative of Priyobrata Ghosh (Since deceased), thus VISVA BHARATI cannot raise any doubt regarding the mutation of the petitioner.
7. Learned Counsel for the petitioner further submits that in terms of the decision the Hon'ble Apex Court and in terms of the several decision of this court is in respect of mutation of Government properties can be very well transferred in the name of the near relative through will. Petitioner further submits that will is not a transferred defined under the transferred of property Act, because it is no transfer inter vivos. He submits that the petitioner cannot be denied for mutation of her name in respect of the property in question for the un-expired period for the term of the lease. So, he prayed for quashing the order passed by the VISVA BHARATI.

8. Learned Counsel appearing on behalf of the VISVA BHARATI raised on objection, and submits that the lease deed in question stipulates some strict rules. It has been enumerated therein that without permission of the authority no transfer can be made in favour of any person. It is the further contention of the Learned Counsel for VISVA BHARATI that mutation cannot be made in the name of the petitioner following the strict condition in the rule. He further submits the present petitioner is not the life member of VISVA BHARATI, thus, any transfer in her favour without permission of the VISVA BHARATI is barred under the Clause 10 of the lease deed.

9. Heard the Learned Counsel perused the Lease deed. Paragraph 10/11 of the lease deed dated 28.09.1951 read as follows :-

10. That the Lessee will not without the consent in writing of the Lessor first had, and obtained assign, transfer, let or mortgage the benefit of the Lease hereby granted to any person provided that such consent will not be withheld in case of a transfer assignment or mort-gage in favour of persons who are Life-Members of the Visva-Bharati.

11. In case the rent payable in respect of the demised premises be in arrears at any time the Lessee shall pay interest thereon at the rate of six per cent, per annum

from date of default until payment PROVIDED HOWEVER that such payment of interest will not in any way curtail or interfere with the right of the Lessor hereinafter provided for to determine the term created hereby.

AND IT IS HEREBY EXPRESSLY DECLARED AND AGREED by and between the parties hereto as follows:

(a) This present demise is made subject to the terms contained in the said Indenture dated the 4th... day of February, 1942 and subject also to the right of re-entry on the part of the Governor of the Province of Bengal, as in the said Indenture declared and in the event of such re-entry the Lessee shall immediately vacate the demised premises and shall have no claim for compensation or otherwise against the Governor of the Province of Bengal.

The Visva-Bharati however in the event of such re-entry by the Governor of the Province of Bengal in the demised premises agrees to pay to the Lessee the same amount of compensation for the Building or Buildings only as it receives from the Government for those structures under the terms contained in the said Indenture dated the 4th day of... February, 1942.

(b) In any of the following cases or events the term hereby created shall forthwith determine and it shall be lawful for the Lessor at any time thereafter, into and upon the demised premises or any part thereof in the name of the whole, to re-enter and to re-possess the same thenceforth as if these presents had not been made, and without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants on the part of the Lessee herein contained, this right of re-entry being in addition to and not in substitution of other rights and remedies of the Lessor under the law for the time being in force.

(i) If the Lessee is adjudicated an Insolvent whether such adjudication is subsequently cancelled or not,

(ii) If the Lessee enters into composition with his/her creditors for any sum less than sixteen annas in the rupee,.....

.....

.....

(vi) If the Lessee breaks or violates any of the covenants herein contained.

(c) In the event of the sooner determination of the lease by reason of the Lessee ceasing to be a Life Member of the Visva-Bharati, or the death of the Lessee who dies without having made a transfer or bequest, valid according to these presents, and whose heir or the nominee of whose heirs, does not become a Life Member of the Visva-Bharati, the Lessee or the heir or heirs of the deceased Lessee, as the case may be, will be entitled to three months' notice to vacate the demised premises, and will also be entitled to compensation in respect of any structure that the Lessee may have erected thereon, but will not be entitled to remove the same. The amount of compensation in such cases will be fixed by the Settlement Board having regard to the probable costs incurred in the connection of the structures in question, less reasonable allowance for depreciation, and the unexpired period of the lease.

10. It appears from the conditions laid down in the clauses of the impugned leased deed that lessee without consent of the lessor (VISVA BHARATI) shall not assign, transferred or mortgage the benefit of lease hereby granted to any person.
11. Clause 11 (b) has also enumerated VISVA BHARATI is right to re-enter and re-possess the demised premised without prejudiced any right or action are remitted of

the lesser in respect of the any breach of covenant on the part of the lessee.

12. Clause 11 (vi) (c) enumerated heirs of the lessee if lessee died without having made a transfer or bequest, according to the lease and where heirs or nominee of heirs does not become life member of the VISVA BHARATI, the lessee or the heirs of the deceased lessee as the case may be entitled to three months notice to vacate the demised premises and will also be entitled to compensation in respect of the structure.
13. So from the plain perusal of the entire clause of the lease deed it appears that there are no provision for mutation in the name of one of the heirs of deceased lessee but stipulated condition how the demised property can be transferred, with the permission of the VISVA BHARATI to any heirs of the lessee.
14. VISVA BHARATI on the earlier occasion allowed mutation in the name of Priyobrata Ghosh in respect of demised premises on the submission of “no objection” of other legal heirs of deceased lessee Gyan Chandra Ghosh. So the conduct of the VISVA BHARATI mutating in the name of Priyobrata Ghosh is

also beyond the clauses mentioned in the lease deed itself.

15. In considering the nature of the present prayer of the petitioner it appears that the petitioner is the wife of Priyobrata Ghosh (deceased) who applied for mutation. The Registrar, VISVA BHARATI has held that heirs of original lessee did not give any authority to late Priyobrata Ghosh to transfer, assign lease hold rights to any other person nor did they indicate that the heirs of Late Priyobrata Ghosh would be entitled to inherit the lease, in exclusion of other heirs of Late Gyan Chandra Ghosh (original lessee). So it is the new observation if VISVA BHARATI that the before transferring or assign lease hold right to any person consent of original lessee or his heirs is required to be considered. There is no such provision in the lease deed itself. More over, at the time of mutation the name of Priyobrata Ghosh the VISVA BHARATI has not adopted such procedure. It further appears that the issues has time and again brought before this court as well as before the Hon'ble Supreme Court. In **State of West Bengal and ors. Vs. Kailash Chandra Kapur**

and ors. reported in **(1997) 2 SCC 287.** the Hon'ble Supreme Court has held that :-

6. Shri D.P. Gupta, learned Senior Counsel for the respondents, on the other hand, contends that we are concerned in this case with the covenants engrafted in the lease deed. The relevant covenants are 7, 8 and 12. Each one deals, in its own parameters, with restricted covenants thereunder with different situations. Clause (12) is relevant in this behalf. It does not contemplate any restriction to will away the leasehold interest to a stranger. The word "person" used in clause (12) would include the stranger also. The second clause in para 2 of clause (12) would include heirs also. Thus, these covenants contained in clause (12) do indicate that the lessee is empowered to bequeath his leasehold interest in favour of a stranger. The only restrictive covenant contained therein was that in the event of the bequest in favour of more than one person, one among them alone should be recognised as a person answerable to the Governor for

compliance of the covenants contained in the lease deed. The succession may be either testamentary or intestate succession. In this case, it is testamentary succession. In support thereof, he placed reliance on the judgment of the Constitution Bench in *Gian Devi Anand v. Jeevan Kumar*². He, therefore, contends that there is no prohibition for testamentary succession by the first respondent in respect of the leasehold interest given to Mullick. Shri V.R. Reddy sought to distinguish the judgment in *Gian Devi* case by relying upon *Bhavarlal Labhchand Shah v. Kanaiyalal Nathalal Intawala* wherein this Court had held that it would not apply to testamentary succession and the landlord should not be trusted with a stranger as lessee.

11. It was, therefore, held that in the absence of any definition the legal heirs of the tenants who succeeded by intestate succession became the tenants under the Rent Act for the purpose of continuance of tenancy rights as had by the tenant even if it is after the determination of

the contractual tenancy. The statutory tenancy steps in and gives protection to the legal heirs of the deceased tenant. It is true that in that case no distinction was made by this Court between testamentary succession or intestate succession. As far as testamentary succession is concerned, this Court had considered that question in Bhavarlal case. In that case, Section 5(11) of the Bombay Rent b Act defines the tenant and clause (c) defines the "restricted tenancy rights" in favour of the family members of the tenant. In that context, the question arose in that case whether a tenant can bequeath a Will in favour of a stranger? Considering the ratio in Gian Devi case and the object of the Act, this Court had held that the tenant cannot by a Will bequeath leasehold right in favour of strangers and induct the stranger as tenant of the demised c premises against the Will of the landlord and the landlord is not bound by such a bequest to recognise the legatee as a tenant. It is, thus, settled law that though leasehold interest may be

bequeathed by a testamentary disposition, the landlord is not bound by it nor a stranger be trusted as tenant against the unwilling landlord.

16. The right of lease hold property has been properly determined by a Co-ordinate Bench of this court in

Pawan Kr. Agarwal Vs. State of West Bengal
reported in **2014 (1) CHN 387**

19. If these two clauses are analyzed properly then this Court finds that though some restrictions were imposed in case of transfer of leasehold interest by the lessee by way of assignment and/or transfer in clause 2 (8) of the said lease deed, no such restriction was imposed for bequeathing the leasehold interest of the lessee by way of bequest in the form of a will in favour of the legatees and/or beneficiary under the will. Though Clause 2 (8) of the said lease deed provides that such assignment and transfer of leasehold interest by the lessee without prior permission from the State Authority in writing, is not a valid transfer and in case such transaction is made

without prior permission of the State authority, the State authority will retain its jurisdiction to pre-empt such legal transaction subject to the right of pre-emption of the LIC or the Nationalized Bank or the Government or semi-Government organization or the Registered Housing Co-operative Society or the Statutory Body with whom the demised property was mortgaged by the lessee for securing repayment of loan taken for house building purpose. On the contrary Clause 2 (12) of the said lease deed, neither imposes any condition upon the lessee for seeking prior permission from the State authority for bequeathing his leasehold interest by will nor it deals with consequences of vesting of the lessee's interest in the demised property by virtue of such will. The said clause simply prohibits sub-division of the plot and/or partition, in case bequest is made in favour of more than one stranger. As a matter of fact, in an identical situation the effect of bequest of leasehold interest by the lessee by will in favour of a stranger to the family was considered by the Hon'ble

Supreme Court in the case of State of West Bengal & Anr. vs. Kailash Chadra Kapur & Ors. (supra) wherein the Hon'ble Supreme Court after considering the effect of the provision contained in clause 2 (7), (8) and (12) of the said lease deed ultimately held in clear terms that though restriction was imposed on transfer of the demised premises or building erected thereon by the lessee without prior permission in writing of the Government in Clause 2 (8) of the said lease deed but clause 2 (12) of the lease deed which deals with the case of a lessee dying after executing a will, does not impose any restriction on bequest in favour of a stranger. The Hon'ble Supreme Court also held therein that though assignment without permission of State authority was prohibited under Clause 2 (8) of the said lease deed but bequest in favour of a stranger by way of testamentary disposition was not intended to be prohibited by the Government in view of the permissive language used in Clause 2 (12) of the said lessee. The relevant part of

the discussion of the Hon'ble Supreme Court with regard to the interpretation of Clause 2 (8) and Clause 2 (12) of the said lease deed is set out hereunder:-

Para 12: "In view of the above-settled legal position, the question is whether the bequest made by Mullick in favour of the respondent is valid in law and whether the Governor is bound to recognize him. It is seen that clauses (7), (8) and (12) are independent and each deals with separate situation. Clause (7) prohibits sub-lease of the demised land or the building erected thereon without prior consent in writing of the Government. Similarly, clause (8) deals with transfer of the demised premises or the building erected thereon without prior permission in writing of the Government. Thereunder, the restricted covenants have been incorporated by granting or refusing to grant permission with right of pre-emption. Similarly, clause (12) deals with the case of lessee dying after executing a will. Thereunder, there is no such restrictive

covenant contained, for bequeath in favour of a stranger. The word "person" has not been expressly specified whether it relates to the heirs of the lessee. On the other hand, it postulates that if the bequest is in favour of more than one person then such persons to whom the leasehold right has been bequeathed or the heirs of the deceased lessee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same and one among them should alone be answerable to and the Government would recognize only one such person. In the light of the language used therein, it is difficult to accept the contention of Shri V.R. Reddy, that the word "person" should be construed with reference to the heirs or bequest should be considered to be a transfer. Transfer connotes, notes, normally, between two living persons during life; Will takes effect after demise of the testator and transfer in that perspective becomes incongruous. Though, as indicated earlier, the assignment may be prohibited and the

Government the intended to be so, a bequest in favour of a stranger by way of testamentary disposition does not appear to be intended, in view of the permissive language used in clause (12) of the covenants. We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes appropriate restrictive covenants prohibiting the bequest in favour of the strangers or by enacting appropriate law, there would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers. It is seen that the object of assignment of the Government land in favour of the lessee is to provide him a right to residence. If any such transfer is made contrary to that policy, obviously, it would be defeating the public purpose. But it would be open to the Government to regulate by appropriate covenants in the lease deed or appropriate statutory orders as per law or to make a law in this behalf But so long as that is not done and in the light of the permissive

language used in clause (12) of the lease deed, it cannot be said that the bequest in favour of strangers, inducting a stranger into the demised premises or the building erected thereon is not governed by the provisions of the regulation or that prior permission should be required in that behalf. However, the stranger legatee should be bound by all the covenants or any new covenants or statutory base so as to bind all the existing lesses.

17. Division bench of this court has dealt with the same issue relating mutation of the name of writ petitioner in respect of the Government Property under lease in **State of West Bengal Vs. Kusum Agarwal** reported in (2018) SCC Online CAL 6916

We take assistance from the decisions in **Rajput Ruda Meha (supra)** and **Baldev Singh (supra)** for the proposition that a judgement was an authority on what it had decided and not everything said therein would constitute a binding precedent. We find from the decision in **Kailash Chandra Kapur (supra)** that the Apex Court upon

interpreting Clause 2 (12) of the lease deed had held that bequests by a Will was not prohibited in case of leasehold properties of Salt Lake and the same is a binding precedent for us. We cannot accept the submission of the Learned Advocate General that the Apex Court in Kallash Chandra Kapur (supra) had not taken into consideration, the proposition of law that a Will was a posthumous disposition of the property and that the definition of a Will should be read in the context of the restrictive covenant in Clause 2 (8) of the lease deed. We find that the Apex Court had elaborately dealt with such proposition of law which was precisely the submission of the learned Additional Solicitor General in that case before the Apex Court. We hold that the lessees in respect of Salt Lake properties have an unrestricted right to bequeath the leasehold interest by way of a Will to any person and no fruitful purpose will be served by making any further enquiry into the motive behind such Wills.

18. Considering the entire scenario and law decided by this court in a several writ petitions of similar nature.

Where the mutation was refused by the authority concern upon a lease hold property. It appears that the Division Bench in **Pawan Kr. Agarwal** (supra) as well as **Smt. Kusum Agarwal (supra)** has settled the issue and is observed that mutating name of a person itself means the person be responsible for collection of revenue/rent. Mutation in the name of a person itself does not mean transfer of entire lease hold right in favour of the person whose name the mutation has been made. Mutation in itself is not act of transfer. The lease in favour of Gyan Chandra Ghosh itself has not restricted the mutation in the name of heirs of Gyan Chandra Ghosh. It further appears the petitioner, being wife is close relative of Priyobrata Ghosh, so there is no scope of doubt that the mutation be made in lieu of money.

19. Under the above observation I find no justification in impugned order passed by the Registrar (acting) VISVA BHARATI on 22nd July, 2022. On that score I find merit in the instant writ petition and the same is hereby allowed.

20. The impugned order dated July 22, 2022 passed by the responded no. 2 is hereby quashed.
21. The respondent authority is directed to mutate the name of the petitioner in terms of her prayer in respect of the property in question within a period from 08 weeks from the date.
22. Connected applications if pending, are also disposed of.
23. Under the above observation, the writ petition is disposed of.
24. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)