

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 21266 of 2018

Smt. Maya Roy & Another

Versus

The State of West Bengal and Others

For the Petitioners : Mr. Debasish Chattopadhyay, Adv.
Mr. Tirthankar Basu, Adv.
Ms. Suman Biswas, Adv.

Heard on : 25.06.2025

Judgment on : 16.07.2025

Ajay Kumar Gupta, J:

1. The Writ Petitioners approached this court praying for issuing a writ in the nature of mandamus directing the respondent

authority concerned especially the respondent no. 2 to pass and/or issue the formal transfer permission order in favour of the co-lessees or their constituted attorney so that the Plot being No. B-14/273, Kalyani, Nadia may be transferred in favour of the writ petitioners in accordance with law and, at the same time, the writ petitioners made a prayer to prohibit the State respondents from taking any adverse step or steps regarding grant of transfer permission and/or regarding execution and registration of the Deed of Transfer in favour of the petitioners on the basis of the deemed permission of transfer as specified in the Lease Deed along with consequential reliefs thereof.

2. It is the specific case of the Petitioners that Smt. Sikha Karmakar and Sri Subal Chandra Roy are lessees of Plot of Land being Plot No. B-14/273, Kalyani, Nadia under the State of West Bengal. The Lease Deed was executed in their favour by the Estate Manager and Ex-Officio, Assistant Secretary, UD Department, Kalyani, Nadia, West Bengal on 2nd December, 1988 on behalf of Governor, West Bengal. The said Lease Deed consists a restrictive clause on the transfer of Leasehold Interest of the lessees. The said restrictive clause runs as follows: -

“x) Not to assign this lease or part with possessions of the demised land or any buildings erected thereon without the previous consent in writing of the

Government and in accordance with the provisions hereinafter contained in respect thereof.

Provided that, should at any time hereafter, the Lessee be desirous of assigning this lease or transfer the leasehold interest in the demised premises and the buildings erected thereon, the Lessees, shall give notice of such intention to the Government and shall be entitled to effect such transfer with the approval of the Government, provided further that, should such approval be not refused within two months of the date of receipt of the applications, the consent of Government to such transfer shall be deemed to have been given for such transfer.”

3. The lessees wanted to assign their Leasehold Interest of the said land to the writ petitioners through their constituted attorney holder, namely, Mainak Kundu. Since there is a restrictive clause in the Lease Deed on the transfer, they submitted an application before the Competent Authority through their constituent Attorney, Mainak Kundu seeking permission for transfer of their Leasehold Interest by way of assignment in favour of the writ petitioners for the residuary period of lease on 11.10.2017 enclosing the payment challan and other documents.

4. The said application was submitted on 11.10.2017. The concerned authority did not take any steps to allow the said prayer for transfer. As per the clause 2(x) of the Lease Deed, two months' time has been expired. Accordingly, the lessees decided to register the Deed of Assignment in favour of the present petitioners. Therefore, a deed of assignment was executed between the lessees and the present petitioners and the same was tendered to the Registering Authority viz. The Additional District Sub-Registrar, Kalyani, Nadia.

5. The Registering Authority, however, refused to register the Deed of Assignment in absence of the permission of the concerned authority for transfer of Leasehold Interest in favour of the transferee though the concerned Authority has no right to refuse for registering the said deed for the reason of absence of permission from the concerned Authority.

6. Actually, the lessees got deemed permission, when the statutory period of two months, as indicated in the lease deed, had already been expired.

7. Learned counsel appearing on behalf of the writ petitioners submitted that in view of the deemed permission, the Hon'ble High

Court allowed many writ petitions directing the Registering Authority to register the deed if the requisite formalities under the Indian Registration Act and Indian Stamp Act are fulfilled by the petitioner without production or permission of such transfer from the Government. He placed reliance upon the following judgments: -

*i. Sunil Kr. Das & Ors. Vs. State of West Bengal & Ors.*¹;

*ii. Jitendra Chandra Barai Vs. State of West Bengal & Ors.*²;

iii. M.A.T. No. 3475 of 1999 with CAN No. 8100 of 1999.

8. None appears on behalf of the respondents despite service. Upon perusal of the record, it appears that the respondent nos. 1, 2 and 3 had filed an affidavit-in-opposition to the writ petition. However, despite several opportunities having been provided, no one had appeared on behalf of the respondents. In such circumstances, the fate of the Petitioners could not be left at the 'mercy' of the respondents and, thus, the Court proceeds to adjudicate the matter on merits, without the presence of the respondents.

¹ W.P. No. 21466 (W) of 1999 with W.P. No. 5529 (W) of 2000 with W.P. No. 19615 (W) of 1999 with W.P. No. 19616 (W) of 1999;

² W.P. No. 20046 (W) of 2012;

9. Heard the learned counsel representing the writ petitioners and on perusal of the record as well as judgments referred, this Court finds that a person named Sailendranath De, the original allottee in respect of Plot No. B-14/273, Kalyani, Nadia measuring about 12 Kathas, 1 Chittak and 17 Sq. Ft was allowed for long term lease for 999 years by virtue of an agreement for lease dated 16.03.1963.

10. Later, on the basis of an application for transfer and affidavit dated 04.09.1982, the leasehold interest of Sailendranath De was transferred by virtue of Permission of transfer and was recorded in the name of Smt. Sikha Karmakar and Sri Subal Chandra Roy. The physical possession of the plot in question was handed over on 28.06.1988 through their constituted Attorney and nominated person, namely, Sri Mainak Kundu. Subsequently, a Lease Deed was executed and registered in favour of Smt. Sikha Karmakar and Sri Subal Chandra Roy on 02.12.1988 by the Governor of State of West Bengal.

11. In terms of Clauses 2(iii)/2(iv) of the Lease Deed dated 02.12.1988, no construction was made in the plot according to plan, as may be sanctioned by the concerned authority within 2 (two) years

from the date of lease i.e. within 01.12.1990 and thereby violated the clause and undertaking given by an affidavit.

12. After inspection, the plot was found lying vacant thus Government of West Bengal terminated the lease agreement in the year 2010 (vide Memo No. 1598 dated 03.12.2010). So, construction of building as claimed by the lessees according to plan duly sanctioned on 26.11.2012 by Kalyani Municipality does not arise and is, therefore, illegal.

13. Sri Mainak Kundu was informed vide Memo No. 634 dated 04.04.1995 that if the lessees Smt. Sikha Karmakar and Sri Subal Ch. Ray of the Plot No. B-14/273 at Kalyani are not in position under special reasons or circumstances to execute and arrange registration of lease deed personally, they may execute special power of attorney for a specific purpose with prior permission of Government in writing in favour of their close relatives (preferably, father, mother, brother, sister, son, daughter, husband and wife, son-in-law or any other blood relations) for execution of lease deed in their favour. Further, it also be mentioned therewith that as per existing G.O. vide No. 35/5P-1/91(pt)/EM (Kly) dated 10.01.1995 at para-2 that the powers of attorney which are not in conformity with the earlier format and

which have not been otherwise already accepted by this office shall not be taken cognizance by the Government and the same is to be returned to person concern and the said power of attorney executed in favour of Mainak Kundu was already returned.

14. Despite the aforesaid facts, Sri Mainak Kundu is trying to transfer the plot by submitting a petition on 11.10.2017 in favour of the petitioners Smt. Maya Ray and Sri Subrata Ray as constituted attorney of Smt. Sikha Karmakar and Sri Subal Ch. Ray. Sri Mainak Kundu is not the original allottee, who does not have the right to transfer the plot as per existing norms and without requisite documents signed by transferors Smt. Sikha Karmakar and Sri Subal Ch. Ray. Furthermore, the respondent concerned has terminated the lease agreement and lease deed on 14th February, 2010, as it was revealed during enquiry that the plot was still lying vacant and unutilised for more than 46 years from the date of initial allotment of a residential plot for construction of residential accommodation has been frustrated. Now, the plot is lying vested as Government property after re-entering into possession.

15. The contention of the learned counsel for the petitioners is not convincing that the original lessees were unaware of the fact that

the lease deed has been terminated as no notice was served upon the original lessees. However, this Court finds that the Notice was duly served at a proper address and the envelopes and postal receipts clearly show the same.

16. In view of the facts as aforesaid and the writ petitioners themselves admitted the original lessees were unable to utilize the plot of land by raising construction within the stipulated period of time as specified in the lease deed. Moreover, the State Respondents have already terminated the lease deed in the year 2010. Thus, this Court does not find any cogent reason to allow the prayer of the writ petitioners.

17. Judgments relied upon by the Petitioners are not applicable in the present facts and circumstances of this case since the lease deed dated 02.12.1988 has been terminated and the possession has already been taken and the plot of land vested with the Government. In such situation, this Court cannot direct the Registering Authority to register the lease deed even if the requisite formalities under the Indian Registration Act and the Indian Stamp Act are complied with by the Petitioners and/or without insisting upon production of the permission for such transfer from the Government. Secondly, this

Court also cannot direct the respondent no. 2 to issue formal transfer permission and/or regarding execution and registration of the Deed of Transfer in favour of the petitioners on the basis of the deemed permissions as specified in the Lease Deed since, deemed permission as per Clause 2 (x) of the lease deed is not applicable, when the plot of land already vested with the Government in the year 2010.

18. In the light of above observation, **WPA 21266 of 2018** is **dismissed** without any order as to costs.

19. Interim order, if any, stands vacated.

20. All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.

21. Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.