

Form No. J (2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

M.A.T. 1742 of 2024

IA NO: CAN/1/2024

Soumyendu Chakraborty & Anr.

vs.

The State of West Bengal & Anr.

For the Appellants : Mr. Debasish Chattopadhyay, Advocate
Mr. Tirthankar Basu, Advocate
Ms. Suman Biswas, Advocate

For the State respondents : Mr. Ashim Kumar Ganguly, Ld. A.G.P.
Mr. Bellal Sheikh, Advocate
Mr. Protim Chakraborty, Advocate
Ms. Raima Ganguly, Advocate

Heard on : 01.07.2025

Judgment on : 01.07.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioners and directed against the judgment and order dated August 7, 2024 passed in W.P.A. 14092 of 2015.

2. By the impugned judgment and order, learned Single Judge dismissed the writ petition. Learned Single Judge did not accede to the prayer of the writ petitioners to direct the State authorities to execute a lease deed in respect of a plot of land lying and situate at Kalyani, West Bengal, on the ground that, the transfer of allotment by the allottee in favour of the writ petitioners was without any prior permission of the State.
3. Learned advocate appearing for the appellants submits that, the allotment of a plot of land at Kalyani was made by a writing dated August 1, 1990. He refers to such document in this regard including various clauses therein. He submits that, the lease deed was required to be executed which ultimately was not done. He also refers to the clause which prohibits transfer without the written permission of the State Government.
4. Learned advocate appearing for the appellants, submits that, possession of the land in question was given to the original allottee as will appear from a writing dated March 16, 1994. Thereafter, the original allottee prayed for execution of a lease deed by a writing dated June 6, 2011 which was not acted upon.
5. Learned advocate appearing for the writ petitioners submits that, the original allottee applied for allotment which was not responded to by the State. Thereafter, the original allottee executed an indenture of transfer in favour of the appellants on October 22, 2001.

6. Learned advocate appearing for the appellants submits that, the appellants applied for transfer mutation in respect of the plot concerned which was rejected by a writing dated June 6, 2011 by the authorities.
7. Learned advocate appearing for the appellants relies upon two notifications dated July 12, 2005 and March 7, 2024 on the subject, issued by the State Government. He submits that, by reason of the notification dated July 12, 2005, State Government withdrew restrictions in terms of compulsory minimum period of holding of intending purchaser. He draws the attention of the Court to the guiding principle relating regularization of allotment of land as enanciated by a notification dated March 7, 2024. He submits that, State Government conceived of situations where, there is a transfer of the allotment the same can be regularized subject, however, to fulfillment of the conditions laid down therein.
8. Learned advocate appearing for the appellants relies upon an unreported decision of the coordinate Bench dated January 16, 2014 passed in FMA 3766 of 2013 (State of West Bengal & Anr. Versus Sandhya Rani Das & Anr.) as well as the order dated March 25, 2022 passed in MAT 967 of 2018 (Smt. Mira Sarkar versus The State of West Bengal & Anr.) in support of the contention that, transfer of allotment can be regularized and in fact was directed to be regularized.

9. Learned advocate appearing for the State draws the attention of the Court to the fact that, allotment in favour of the original allottee did not mature into a deed of lease. No deed of lease was executed between the State Government and the original allottee. Moreover, the original allottee did not obtain prior written permission for transfer of the allotment in favour of the present writ petitioners.
10. Learned advocate appearing for the State draws the attention of the Court to the policy of the State Government as enunciated in the notification dated March 7, 2024. He submits that, the appellants before us do not fulfil any of the conditions laid down in such notification permitting the State Government to regularize the allotment of the plots in favour of the appellants.
11. Original allottee was allotted plot no.A-11/321 at Kalyani by virtue of an application made by the original allottee, on August 1, 1990.
12. One of the conditions of the application for allotment is that, the original allottee will not transfer or assign the leasehold interest without previous consent in writing from the State.
13. Letter of allotment dated August 1, 1990 contemplated execution of a lease deed between the original allottee and the State Government. Admittedly, lease deed was not executed under State Government and the original allottee.

14. Original allottee was put in possession of the plot concerned on March 16, 1994. Original allottee applied for execution and registration of the lease deed by writing dated June 6, 2011. However, no lease deed was executed.
15. Original allottee applied for permission for transfer of the plot in favour of the appellants. State Government did not respond thereto.
16. Original allottee, thereafter, proceeded to execute an indenture of transfer on October 22, 2001 in favour of the appellants in respect of the plot concerned. Prior written permission of the State was not obtained by the original allottee or by the appellants to enter into such transaction.
17. Apparently, the appellants applied for transfer mutation in respect of the plot with the authorities which was rejected by a writing dated June 6, 2011.
18. Appellants approached the Writ Court seeking relief with regard to the transfer mutation which was disallowed by the impugned judgment and order.
19. Restrictions on transfer, received consideration by the State on different dates. First in point of time is a notification dated July 12, 2005 which considered the question of withdrawal of restrictions of transfer of plot of land at Kalyani leased out by the Department. It made provisions for realization of transfer fee for permission for transfer of such plots.

20. Our attention is drawn to a notification dated March 7, 2024 issued by the Department of Urban Development and Municipal Affairs which enunciates the guiding principle relating to regularization of allotment of land. It contemplates situations where, possession is with the allottee as also cases where, possession of the land is with the department or otherwise.

21. Relevant portion of the notification dated March 7, 2024 which deals with cases where possession is with the allottee is as follows:-

“In case the allottee has expired before execution of lease deed then lease deed may be executed with (a) concerned legal heirs and/or (b) person(s) or entity having right by virtue of probated will/acceptable legal instrument for the unexpired period. In case the allottee transferred the interest/right of the allottee to person(s)/entity with permission (prior or post facto and mutation has accordingly be done from this department/Estate Officer, Kalyani/concerned authority/WBHIDCO, ULB), execution of lease deed may be done with such person(s)/entity in the manner to be notified by the administrative department.”

22. Issue of transfer of allotment received consideration by the coordinate Benches. Both the coordinate Benches however, were without the benefit of the notification dated March 7, 2024. Sandhya Rani Das

(Supra) was rendered in January 16, 2014 while Smt. Mira Sarkar (Supra) was rendered in March 25, 2022, both being prior to the notification dated March 7, 2024. The policy of the State undergoing a change than those obtaining as on the delivery of the judgments of Sandhya Rani Das (Supra) and Smt. Mira Sarkar (Supra) the provisions of the notification dated March 7, 2024 need to be evaluated.

23. Relevant portion of notification dated March 7, 2024 which we quoted above, allows a allottee who was put in possession of the land in question, as, in the present case, and such allottee expiring before execution of the lease deed then the lease deed may be executed in favour of the persons noted therein. Such is not the factual scenario in this case. Such relevant provisions also provides that, in case, the original allottee transfers the interest/right of the allottee to persons/entity with permission (prior or post facto) and mutation already done by the department, then execution of lease deed may be done with such persons/entity in the manner to be notified by the administrative department.
24. In the facts and circumstances of the present case, the original allottee although sought permission for transfer, the same was not granted. Post facto permission was also not granted. Prayer for mutation was also rejected by the authorities. Therefore, the appellants do not come within

the scope and ambit of the discussed provisions enshrined in the notification dated March 7, 2024.

25. Appellants before us cannot claim a higher or a better title than the original allottee. Original allottee was vested with the right to obtain a lease deed executed in his favour which the original allottee failed to obtain. The plot in question was with covenants running with the land with regard to restrictions on transfer. The restriction is that prior permission need to be obtained from State Government and that too in writing. Original allottee did not possess a right of transfer independent of the restriction imposed for it to transfer a valid right to the appellants. In such circumstances, we find no merit in the present appeal.
26. **MAT 1742 of 2024** alongwith connected application being **IA NO:CAN/1/2024** are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

28. I agree.

(Prasenjit Biswas, J.)