

S/L 9
13.06.2025
Court. No. 19
*Suwayan/
Sourav*

WPA 22956 of 2023

**Rajeswar Prasad & Anr.
Vs.
The State of West Bengal & Ors.**

*Mr. Debasish Chattopadhyay
Mr. Tirthankar Basu
Mrs. Suman Biswas*

...for the petitioners.

*Mr. Asish Kumar Guha
Mr. Benazir Ahmed*

...for the State.

1. Both the writ petitioners and the respondents/State are represented.
2. The affidavit-in-reply as filed on behalf of the writ petitioners is taken on record.
3. By filing the instant writ petition the writ petitioners have prayed for issuance of appropriate writ/writs against the respondents more specifically against the respondent no. 2 for cancellation and/or setting aside the memo dated 18.02.2021 whereby and whereunder the said respondent no. 2 did not consider the writ petitioners' application for mutation in respect of plot no. B-14/474 (hereinafter referred to as the 'said plot' in short) at Kalyani Township.
4. Mr. Chattopadhyay, learned advocate appearing on behalf of the writ petitioners at the very outset draws attention of this Court to Annexure-P3 of the instant writ petition at page nos. 28 to 37 being a copy of the registered deed of lease dated 03.06.1999 as has been executed in favour of one Sunil Chandra Sengupta, since deceased (lessee) in respect of the said plot.

Attention of this Court is also drawn to Annexure-P5 at page nos. 41 to 58 of the instant writ petition being a copy of the registered deed of transfer dated 04.09.2003 as has been executed by an between Sri Udatta Sengupta and Smt. Madhuchhanda Kar being the legal heirs of the original lessee Sunil Chandra Sengupta and the writ petitioners whereby and whereunder the said plot of land was transferred to the writ petitioners.

5. It is submitted by Mr. Chattopadhyay that from page nos. 61 and 62 of the instant writ petition it would reveal that after execution and registration of the said deed of transfer dated 04.09.2003 the writ petitioners approached the respondent no. 2/authority for effecting mutation in respect of the said plot, however, by issuing the memo dated 18.02.2021 such application for mutation has been rejected.
6. At this juncture, Mr. Chattopadhyay again took me to page no. 27 of the instant writ petition being a copy of the memo dated 21.09.1982 as issued by the Land and Land Reforms department ULC Branch. It is submitted by Mr. Chattopadhyay that from the said memo dated 21.09.1982 it would reveal that the original lessee was permitted to retain excess vacant land beyond the ceiling area considering that acquisition of excess vacant land would cause undue hardship to the original lessee.
7. At this juncture, Mr. Chattopadhyay draws attention of this Court to page no. 13 of the supplementary affidavit

as filed on behalf of the writ petitioners and as affirmed on 27.11.2024. It is submitted by Mr. Chattopadhyay that from page no. 13 of the said supplementary affidavit it would reveal that by virtue of a notification dated 16.12.2011 the State has taken a decision to allow post-facto permission for regularization of transfer of leasehold land in respect of plots in Kalyani Township if otherwise permissible as per existing policy and on deposit of usual transfer fee and in addition a penalty equivalent to 100 percent of usual transfer fees $\frac{1}{4}$ of the land value in all cases totaling $\frac{1}{2}$ of the land value. It is submitted by Mr. Chattopadhyay that in view of such notification there cannot be any justification on the part of the respondent no. 2 to issue the memo dated 18.02.2021.

8. In course of his submission Mr. Chattopadhyay also draws attention of this Court to the report as submitted on behalf of the respondents/authorities. It is submitted that in such report a contrary stand has been taken on behalf of the respondents/State ignoring the beneficial notification dated 16.12.2011.
9. *Per contra*, Mr Ahmed, learned Advocate appearing on behalf of the respondents/State and its functionaries places much reliance upon the report dated 30.11.2023 as submitted by the respondent no. 2/authority. It is submitted by Mr. Ahmed that from the said report it would reveal that since the lessee had violated various terms and conditions of lease as also the prohibition of the memo dated 21.09.1982 there is very justification

on the part of the respondent no. 2 to issue the memo dated 18.02.2021.

10. This Court has meticulously perused the entire materials as placed before this Court. This Court has also given its due consideration over the submissions of the learned advocates for the contending parties.
11. On careful perusal of the various clauses of the deed of lease dated 03.06.1999 as has been executed in favour of the original lessee, Sunil Chandra Sengupta, since deceased it appears to this Court that the said lease deed clearly mandates prohibition regarding assignment and/or transfer and/or part with possession of the leasehold property to any third party without the previous permission of the Government who is the lessor in the said deed.
12. In course of hearing Mr. Chattopadhyay, learned Advocate for the writ petitioners could not show any document that prior to the execution of the deed of transfer dated 04.09.2003 the original lessee's legal heirs viz.; Sri Udatta Sengupta and Smt. Madhuchhanda Kar obtained permission from the original lessor (the State) for such transfer.
13. Admittedly, the respondent/State published a notification dated 16.12.2011 regarding allowing post facto permission for regularization of transfer of leasehold right in respect of Kalyani Township. Mr. Chattopadhyay, learned advocate for the writ petitioner contended that by virtue of the said notification dated 16.12.2011, the respondent no. 2/authority ought not to

issue the memo dated 18.02.2021 which is contrary to the contents of the previous notification dated 16.12.2011.

14. At this juncture, I propose to look to the page no. 3 of the report dated 30.11.2023 wherein the respondent no. 2 had specifically mentioned the grounds for rejection of the prayer for mutation which are summarized hereinbelow in verbatim:-

- a) after demise of the original lessee, his legal heirs prior to effect transfer ought to have taken permission from the Urban Land Ceiling Branch.
- b) though in the original lease deed, it has been specifically mentioned that the leased out land is to be used for residential purpose, however, it has been noticed by the respondent no. 2 that in violation of the Clauses of the lease deed, five shop-rooms have been constructed on the residential plot.
- c) the said deed of transfer dated 04.09.2003 was executed and registered without obtaining any permission from the State.
- d) from the said registered deed of transfer, it would reveal that the said plot in its entirety has been transferred to the present writ petitioners ignoring the prohibition of the ULC Branch of UDMA as mentioned in the memo dated 21.09.1982 as has been annexed at Page No. 27 of the instant writ petition.

15. At this juncture, if I again look to the memo dated 21.09.1982 as issued by the Urban Land Ceiling Branch of UDMA, a copy of which has been forwarded to the original lessee, it reveals that by the said memo dated 21.09.1982, the original lessee was permitted to retain excess vacant land only on the consideration that acquisition of the said excess land would involve undue hardship to the applicant i.e., the lessee in the original deed. The said memo, however, prohibits the original lessee not to transfer the excess vacant land by way of sell, gift or mortgage.
16. It appears to this Court that only after obtaining permission from the Urban Land Ceiling Branch, the registered deed of lease was executed in favour of the original lessee, Sunil Chandra Sengupta on 03.06.1999 and the said lease deed contains various stipulations including the stipulations that the lessee would not transfer, assign and/or part with the possession of the demised land except with the previous permission of the government.
17. Admittedly, the legal heirs of the original lessee took no permission either from the State or from the ULC Branch to effect transfer of the leasehold property in favour of the writ petitioners though in the memo dated 21.09.1982, Urban Land Ceiling Branch permitted the original lessee to retain excess vacant land on consideration of his undue hardship in case of acquisition with a prohibition that the said lessee shall

not transfer the said excess vacant land to any third party.

18. Admittedly, such condition as imposed by the ULC Branch has been violated by the legal heirs and successors-in-interest of the original lessee and, therefore, in considered view of this Court, the subsequent notification dated 16.12.2011 as published by the respondent/State authority regarding post facto permission for regularization of transfer of leasehold land in Kalyani will be of no help to the present writ petitioners.

19. It has also been noticed by this Court that from the report as submitted by the respondent no. 2 that in the said property which is a residential plot, five shop rooms have been constructed violating the conditions of the lease without obtaining any prior permission of the respondent/State who is the lessor in the said deed of lease.

20. In view of such, this Court finds no irregularity and/or illegality on the part of the respondent no. 2 in issuing the memo dated 18.02.2021 rejecting the application for mutation of the present writ petitioners.

21. The instant writ petition being **WPA 22956 of 2023** is thus devoid of any merit and thus dismissed.

22. There shall be, however, no order as to costs.

23. 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.)