

02.01.2025
Ct. No.39.
Sl No.08.
Mithun

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 21704 of 2019

**Jiwan Das Bajaj
-Vs-
The State of West Bengal & Ors.**

Mr. Debdut Mukherjee,
Mr. Saptarshi Kar

... for the petitioner

Mr. Naba Kumar Das,
Mr. Suman Singh

... for the State-respondents

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the action of the State-respondents in determining the lease and taking over possession of the plot being of premises No.CK 186, Sector-II, Salt Lake City, Kolkata-700064 allotted in favour of the petitioner.

The brief fact of the case is as follows. A Lease Deed was executed for residential purpose by and between the State of West Bengal and the writ petitioner on 28th March, 1984 in respect of premises No.CK 186, Sector-II, Salt Lake City, Kolkata-700064. The possession of the said premises was handed over to the petitioner on 24th May, 1985. As per the lease deed the petitioner was supposed to complete the work of construction within a period of 3 years from date of delivery of possession. By notice dated 10th September, 2007, the lease was determined, since the petitioner failed to make

construction within the stipulated period. A sign board was affixed on the premises on or about November, 2016 declaring that the premises is a “*Government Land*”. Being aggrieved by such action of the State- respondents, the writ petitioner has filed the present writ petition.

The State-respondents contested the writ petition by filing its affidavit-in-opposition denying, *inter alia*, the allegations made in the writ petition and contended as follows. As per Clause 2(6)(a) of the Lease Deed, the writ petitioner was required to complete the work of construction within a period of 3 years from date of taking over possession of the said plot, i.e. from 24th May, 1985 to 24th May, 1988. However, no work of construction was made for a period of almost 11 years since the plot was demised. On 11th June 1996, on the prayer of the writ petitioner, one year extension of time was allowed to petitioner to complete the work of construction of the residential building. However, in spite of such extension of time, the writ petitioner failed to construct the residential building. Accordingly, on 10th September, 2007 peremptory notice was issued invoking Clause 4 of the Lease Deed to remedy the breach caused by the writ petitioner violating Clause 2(6)(a) of the Lease Deed. Paper publication was also made for causing service of such notice upon the writ petitioner. Since the petitioner violated the terms and conditions of the Lease Deed and also did not remedy the breach caused, the lease was determined. Therefore, such action of the State-

respondents does not call for interference. In light of the above, the writ petition should be dismissed in *limine*.

Mr. Debdut Mukherjee, learned Advocate appearing for the writ petitioner submits that the State-respondents have re-entered into the demised plot, without affording any opportunity to the writ petitioner to remedy the breach. He also indicates that a sign board has been affixed in the said plot of land declaring the same to be “*Government land*”. As per Clause 4 of the Lease Deed prior to exercising the right to re-enter into possession of the demised land upon determination of the lease, the lessor is required to serve the lessee a notice in writing giving six months’ time to remedy the breach. In the present case, no such notice was ever served upon the writ petitioner prior to re-entry into possession of the demised land. Therefore, the action of the State-respondents of re-entering into possession of the plot-in-question is illegal and beyond the scope of the Lease Deed. To buttress his contention, he relied on the decision of Hon’ble Punjab and Haryana High Court passed in ***Sanjiv Bhagat & Anr. versus Union Territory, Chandigarh & Ors.*** in Civil Writ Petition No.25947 of 2012. He seeks for removal of the sign board affixed on the premises and also for extension of time to complete the work of construction.

On the contrary, Mr. Naba Kumar Das, learned Advocate appearing for the State-respondents submit that there has been a violation of the terms and conditions of

the Lease Deed by the writ petitioner in not making construction within a period of 3 years from the date of taking over possession of the demised land. On the prayer of the petitioner time period was extended in the year 1996. However, no such work of construction was undertaken. Accordingly, the State-respondents issued a peremptory final notice to remedy the breach. In spite of such notice, the breach was not remedied. Therefore, the lease was determined by a final notice duly served, and the State re-entered into possession of the demised land. There is no illegality in the action of the State in re-entering into possession since the petitioner has violated the terms and conditions of the Lease Deed. In support of his contention, he relied on the decision of this Court passed in ***Smt. Kabita Saha & Ors versus The State of West Bengal & Ors.*** in ***Writ Petition No.31206(W) of 2017***. He seeks that the writ petition be dismissed with exemplary cost.

Mr. Mukherjee, learned advocate for the petitioner, in reply, submits that the decision passed in *Smt. Kabita Saha (supra)* has been set aside by the Hon'ble Division Bench in FMA 1069 of 2019. He also indicates that no such postal receipt or paper publication has been placed before the Court to primarily suffice that the notice in terms of the Lease Deed was served upon the petitioner.

Having heard the learned Advocates for the respective parties, the only issue which has fallen for consideration is whether prior to exercising the right to

re-entry into possession of the demised land by the State-respondents, service of notice as required under Clause 4 of the Lease Deed is complied with or not.

In order to examine the aforesaid issue, it would be profitable to reproduce Clause 4 of the lease deed as hereunder:-

“4. Provided always that if there be any breach of any of the terms and conditions and covenants with herein on the part of the Lessee contained the Lessor shall have the right to re-enter into possession of the demised land or any part thereof in the name of the whole and thereupon this demise shall forthwith stand determined.

Provided nevertheless the Lessor shall not exercise the right without serving the Lessee a notice in writing giving six months' time to remedy the breach.”

Upon cursory reading of the aforesaid Clause, it manifest that the lessor shall not exercise the right to re-enter into possession of the demised land without serving the lessee a notice in writing giving six months' time to remedy the breach.

The State respondents though has contended in Paragraph 3(h) of affidavit-in-opposition that the notice was issued to the petitioner on 10th September, 2007 invoking Clause 4 of the lease deed, but there is no specific assertion that such notice was served upon the petitioner. On 10th April, 2024, liberty was granted to State-respondents to file supplementary affidavit in order to clarify the situation as to whether notice under Clause 4 of the lease deed was served upon him prior to re-entering into the possession of the demised plot. In compliance thereof, the State-respondents filed supplementary affidavit annexing the notice dated 10th

September, 2007 for determination of the lease and re-enter into possession. However, it is relevant to note that no such postal receipts showing issuance of such notice has been appended therein. Further there is no document, namely, track consignment report or acknowledgment due card of the postal department produced to show that the notice was duly served upon the petitioner.

It has been averred at Para 3(i) of the affidavit-in-opposition that the peremptory final notice was also sent to the Director of Information, West Bengal, I & CA Department for causing publication in daily newspaper. Mr. Mukherjee, learned Advocate for the petitioner has rightly pointed out that in the event the service of notice as per Clause 4 was complete, there was no occasion to cause service by way of paper publication. It is pertinent to note that no such paper publication has been annexed to the affidavit-in-opposition or the supplementary affidavit.

In light of the above, it construes that the requirement as per Clause 4 for the lessor to serve notice in writing to the lessee giving him time of six months to remedy the breach prior to exercise of right of re-enter into possession has not been duly complied with by the State-respondents.

This Court finds substance in submission of Mr. Mukherjee, learned Advocate for the petitioner relying on *Sanjiv Bhagat (supra)* that no order of cancellation of

lease shall be passed without giving the lessee a reasonable opportunity of being heard.

So far as the decision of *Smt. Kabita Saha (supra)* passed in Writ Petition No.31206(W) of 2017 is concerned, the same has been set aside in FMA 1069 of 2019.

In view of the above discussion, the notice No. 2418 SL (AL)/CK-186 dated 10th September, 2007 of Deputy Secretary, Urban Development Department, Government of West Bengal and order of resumption of lease pursuant thereto, if any, in respect of premises No. CK 186, Sector II, Salt Lake City, Kolkata-700064 is set aside.

The Land Manager, Bidhannagar, Urban Development and Municipal Affairs, Government of West Bengal, respondent no.4 is directed to remove the sign board affixed on the premises No. CK 186, Sector II, Salt Lake City, Kolkata-700064 demised to the petitioner forthwith upon communication of this order. Further the Land Manager, respondent no.4 is also directed to consider the representations made by the petitioner between November, 2016 and January, 2019 for extension of time period to complete work of construction in the said plot and dispose of the same within a period of four weeks from date of communication of this order by affording opportunity of hearing to the petitioner and pass a reasoned order in accordance with law.

Learned Advocate for the petitioner is directed to communicate this order to the Land Manager, respondent no.4.

With the aforesaid observation, the writ petition being **WPA No.21704 of 2019** stands **disposed of**.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(**Bivas Pattanayak, J.**)