

HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
THE HON'BLE JUSTICE AMRITA SINHA

WPA 15503 of 2024

Shyamal Coomar Ghose
Vs.
The Kolkata Metropolitan Development Authority & Ors.

With
WPA 24492 of 2024

Shyamal Coomar Ghose
Vs.
The Kolkata Metropolitan Development Authority & Ors.

For the petitioners : Mr. Partha Sarathi Bhattacharyya, Sr. Adv.
Mr Jayabrata Ghosh,
Mr. Raju Bhattacharya.
Mr. Arunava Maiti.

For the State : Ms. Srilekha Bhattacharya.
(WPA 15503 of 2024)

Ms. Sipra Mazumdar.
Ms. Prativa Ghatak.
(WPA 24492 of 2024)

For the respondent nos. 1 to 4 : Mr. Satyajit Talukdar.
Mr. Arindam Chatterjee.

Heard on : 10.06.2025.

Judgment on : 10.06.2025.

AMRITA SINHA, J:

1. Affidavit-of-service filed on behalf of the petitioner is taken on record.
2. Supplementary affidavit filed by the petitioner in Court today is taken on record.
3. WPA 15503 of 2024 has been filed by the petitioner seeking cancellation of the impugned order dated 31st January, 2024 passed by Deputy Secretary Estate (M & M) Unit, Kolkata Metropolitan Development Authority (KMDA) rejecting petitioner's prayer seeking extension of time for raising construction.
4. WPA 24492 of 2024 has been filed by the petitioner challenging the notice dated 7th June, 2024 issued to the petitioner to show cause as to why the lease deed executed in his favour in the year 1989 will not be cancelled and the land not resumed by the authority.
5. Both the writ petitions are taken up together and is being disposed of by this common judgment.
6. The petitioner was allotted a plot of land by the Calcutta Metropolitan Development Authority presently known as KMDA under deed of lease executed on March 27, 1989.

7. The recital of the lease deed mentions that the lessee applied to the Authority for lease of the plot of land to enable the lessee to erect a house and building thereon for use of residential purpose and the Authority has agreed with the lessee to grant the lease for the period mentioned in the lease deed to erect house and building thereon for use of residential purpose on the terms and conditions as mentioned therein.
8. One of the clauses in the lease deed mentions that the deed was for a period of 999 years at a premium of Rs. 40,000/- only. At the cost of the lessee, within five years from the date of execution of the lease or within such further time as the Authority may at its option allow in writing on sufficient and reasonable grounds, to erect, construct and complete a house or building for being used for residential purposes with boundary walls, sewers and drains in accordance with plans, sections and specifications as may be approved by the appropriate Authority according to the rules and regulations framed for the purpose.
9. The lease deed also mentions that if there be any breach of any covenants on the lessee's part contained and to be performed or observed or any of the terms and conditions hereof, then in such cases it shall be lawful for the authority at any time thereafter to re-enter upon the demised premises or any part thereof in respect of any breach of the lessee's covenants contained in the deed.

10. The Schedule of the deed mentions that the plot of land was in respect of High Income Group Category of the Baishnabghata Patuli Area Development Project. Possession of the subject land was handed over to the petitioner on August 6, 1990. The petitioner mutated the subject land in his favour in the year 1991.
11. In July 2022, the petitioner made an application before the Authority seeking extension of time for construction of the residential building.
12. An opportunity of hearing was granted to the petitioner and on hearing the petitioner, order was passed by the Deputy Secretary, Estate (MNM) Unit Kolkata Metropolitan Development Authority on January 31, 2024 rejecting the petitioner's prayer for extension of time for raising the construction.
13. Thereafter, a show cause notice has been issued by the Kolkata Metropolitan Development Authority directing the petitioner to show cause as to why the lease deed will not be cancelled and why the Authority shall not re-enter into the said plot of land and take possession of the same. The petitioner has replied to the show cause.
14. Petitioner is aggrieved by the rejection of the petitioner's application seeking extension of time for raising construction and also seeks for a direction upon the Authority not to cancel the deed of lease.

15. Learned Senior Counsel representing the petitioner submits that even though the lease deed mentions about the right of the lessor to take steps against the lessee in case of breach of any of the covenants at any time but the said expression 'any time' cannot be extended to such extent so as to cause prejudice to the petitioner.
16. The petitioner is being put in a disadvantageous position as the Authority is taking steps to execute the terms and conditions of the deed of lease after such a long period of time.
17. It has also been submitted that the lapse on the part of the petitioner to act in accordance with the terms and conditions of the lease deed ought not to be held as fatal and the Authority ought to allow more time to the petitioner to raise construction in accordance with the deed of lease.
18. The prayer of the petitioner has been opposed by the learned advocate representing the Authority.
19. It has been submitted that the lease deed is a contract and the parties to the contract ought to abide by the terms and conditions mentioned therein.
20. Learned advocate for the Authority has relied upon the order dated April 2, 2025 passed by a Co-ordinate Bench of this Court in WPA 5343 of 2012 affirmed by the judgment passed by the Hon'ble Division Bench on May 20, 2025 in FMA 871 of 2025 with IA No: CAN 1 of 2025 in the matter of **Scorpion Co-operative Housing**

Society Ltd. & Anr. -vs- Kolkata Metropolitan Development Authority & Ors.

21. Reference has also been placed on the order passed by a Co-ordinate Bench of this Court on February 10, 2022 in WPA 3443 of 2019 affirmed by the judgment dated September 12, 2022 passed by the Hon'ble Division Bench in MAT 309 of 2022 with IA CAN 1 of 2022 in the matter of **Damodar Prasad Agarwal -vs- State of West Bengal & Ors.**
22. The order dated March 21, 2023 passed by the Hon'ble Supreme Court in the Special Leave Petition filed by Damodar Prasad Agarwal (deceased through L.Rs) in Special Leave Petition (Civil) Diary No. 40499 of 2022 affirming the judgment delivered by the Hon'ble Division Bench has also been placed before this Court.
23. Prayer has been made to dismiss the writ petition.
24. I have heard and considered the submissions made on behalf of both the parties and have perused the documents placed before this Court.
25. On a perusal of the deed of lease, it appears that the very purpose for allotment of the land to the petitioner was for using the same for residential purpose by erecting house and building thereon. The construction of the house was to be made within five years from the date of executing the lease. The petitioner was unable to raise the construction within the prescribed time period. In fact, in the year

2023, a physical inspection was conducted and it was found that the land is lying vacant. The petitioner was also not able to construct a boundary wall to protect the land in question.

26. The very first representation by the petitioner filed before the Authority seeking extension of time to raise construction was in July 2022. There is nothing on record to suggest that the petitioner made any representation before the Authority seeking extension of time for raising the construction within the time limit prescribed in the lease deed or any time soon thereafter.
27. The petitioner has averred in paragraph 31 of WPA 15503 of 2024 that the petitioner gave a letter to the Authority within five years of taking physical possession of the land stating the reasons for not commencing the construction and requested more time to raise construction. It has further been averred that the petitioner was told by the Authority that such letter was not necessary for which the petitioner did not carefully preserve the said letter.
28. The petitioner has also mentioned in the said paragraph that during the first five years of the execution of the lease deed, there was lack of basic amenities in the area making construction unfeasible. Hardly few buildings were constructed during that period or even after ten years of the said period either in the High Income Group Category or in other categories.

29. The petitioner has further averred that no permission was initially needed from the Authority to build residential building in the Township after five years of execution of the allotted plots and the system of obtaining permission for raising construction started only some time ago.
30. In paragraph 32 of the said writ petition the petitioner has averred that the said plot was allotted to the petitioner for welfare purpose. The petitioner legitimately expects that he can build a residential building in the said plot. The Kolkata Metropolitan Development Authority by its conduct has waived the necessity of building residential house in the said plot within five years from the date of execution of the lease deed.
31. It has also been mentioned in paragraph 32 of the said writ petition that it will be highly inequitable if the petitioner is not allowed to build the residential building after accepting the entire consideration amount and the ground rent at the rate of rupees one per cottah per annum for a period of 999 years.
32. It appears that the aforesaid averments have been made in support of the contention that it is open for the petitioner, the lessee in the lease deed, to raise construction at any time as per his will only because he had paid the premium and also the ground rent.
33. The petitioner has failed to appreciate that the land was allotted for utilisation of the same for construction of residential house and

building. The said land was not meant to be kept vacant for so many years.

34. The land belongs to the High Income Group Category and the submission of the petitioner that the construction could not be made due to paucity of fund, cannot be a ground to direct the Authority to extend the time period for raising construction over the subject plot of land.
35. The petitioner signed and executed the deed of lease completely being aware of the terms and conditions mentioned therein. According to the law of the contract, the contracting parties are bound by the terms and conditions of the contract. None of the terms and conditions of the contract have either been modified or varied in any manner whatsoever by the Authority. The petitioner would be bound by the conditions as mentioned in the deed of lease.
36. The submission of the petitioner that the Authority cannot take steps after such a long period of time also cannot be accepted by the Court. The Authority has exercised its jurisdiction after noticing that the petitioner failed to abide by the terms and conditions of the deed of lease and it is within the right of the Authority to take consequential steps in terms of the lease deed.
37. If the land was not required by the petitioner, he ought not to have applied for the same. In such case, the land could have been allotted

in favour of any other person who may have utilized the same for residential purpose by raising construction thereon.

38. Undoubtedly there has been breach on the part of the petitioner to raise the construction within the stipulated time period and the Authority has taken steps in terms of the conditions in the lease deed. Such action of the Authority cannot be faulted.
39. The judgment delivered by the Court in the matter of Scorpion Co-operative Housing Society Ltd. & Anr. (Supra) and in the matter of Damodar Prasad Agarwal (Supra) also upholds the right of the Authority to take steps in breach of the covenants of the lease deed.
40. In such backdrop the Court is not inclined to exercise jurisdiction in the matter.
41. The writ petitions fail and are hereby dismissed.
42. Urgent photostat certified copy of this judgment may be supplied to the parties expeditiously, if applied for.

(Amrita Sinha, J.)