

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

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 2021 of 2023

Star Abasan Private Limited
vs.
The State of West Bengal & Ors.

For the Appellant : Mr. Mainak Bose, Sr. Adv.,
Mr. Anuj Singh
Mr. V.V.V. Sastry
Mr. Anirudh Goyal

For the State : Mr. T.M. Siddiqui, Ld. A.G.P.,
Mr. Suddhadev Adak

Heard & Judgment on : **June 13, 2025**

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the writ petitioners and directed against a judgment and order dated September 19, 2023 passed in W.P.A. 2028 of 2018.
2. By the impugned judgment and order, learned Single Judge dismissed the writ petition.
3. Learned senior advocate appearing for the appellant submits that, the appellant entered into a development agreement dated September 9, 2013 which was modified on September 20, 2014, with the West Bengal Social Welfare Board. He submits, that West Bengal Social Welfare Board is a

department of the State of West Bengal. Both the State of West Bengal as also the West Bengal Social Welfare Board are the authorities within the meaning of Article 12 of the Constitution of India. According to him, State of West Bengal and West Bengal Social Welfare Board are alter ego of each other.

4. Learned senior advocate appearing for the appellant draws the attention of the Court to the impugned judgment and order where the learned Single Judge returned the finding that that State of West Bengal and the West Bengal Social Welfare Board are one and the same.
5. Learned senior advocate appearing for the appellant submits that, the development agreement entered into between the appellant and the West Bengal Social Welfare Board contains an arbitration clause. Pursuant to such arbitration agreement, a reference was made to arbitration and the disputes between the appellant and West Bengal Social Welfare Board culminated into an award dated August 31, 2017 of the Arbitral Tribunal. He submits that the award is now a decree of the Court. He submits that, to the knowledge of the appellant, West Bengal Social Welfare Board did not challenge such award.
6. Learned senior advocate appearing for the appellant draws the attention of the Court to a portion of the impugned judgment and order where according to him, learned Single Judge pronounced on the legality and validity of the award dated August 31, 2017. He submits that, such observations can affect the executability of the award. In any event, according to him, the Writ Court

cannot question the award dated August 31, 2017 which is deemed to be a decree of the Court.

7. Learned senior advocate appearing for the appellant submits that, the appellant executed the development subsequently modified and construction of a building as agreed upon. He submits that, the appellant found a signboard on the plot concerned erected by the State of West Bengal from which the appellant became aware of the alleged termination of the lease between the State of West Bengal and West Bengal Social Welfare Board. He submits that the alleged termination of the lease by the State of West Bengal is not in accordance with the Transfer of Property Act.
8. Learned senior advocate appearing for the appellant submits that since for all practical purposes, the State of West Bengal and the West Bengal Social Welfare Board are to be treated as one of the same unit, State of West Bengal is bound by the award dated August 31, 2017. He submits that, since no challenge was thrown to the award dated August 31, 2017, the State of West Bengal cannot be permitted to take steps so as to resile from the award which now partakes the character of a decree of a Court. He submits that the actions taken by the State are such that it seeks to render nugatory the award dated August 31, 2017 which are not permissible.
9. Learned senior advocate appearing for the State submits that a lease was granted by the State of West Bengal to the West Bengal Social Welfare Board. He draws the attention of the Court to the terms and conditions of the lease

deed dated August 20, 2013. In particular, he draws the attention of the Court to the Clause 8 and the last Clause thereof. He submits that under Clause 8 of the lease deed dated August 20, 2013, the West Bengal Social Welfare Board was required to obtain prior permission in writing from the State of West Bengal or other authorities prescribed in that behalf, for user of the plot of land for purposes other than for construction of hostel building for working women.

10. Learned senior advocate appearing for the State submits that the West Bengal Social Welfare Board acted upon Clause 8 of the lease deed. He submits that development agreement will show that the West Bengal Social Welfare Board allowed the appellant to use a portion of the property concerned without the prior permission in writing from the State of West Bengal. In fact, he submits that no prior permission in writing was obtained from the State of West Bengal for entering into the development agreement as sought to be done by the West Bengal Social Welfare Board.

11. Learned senior advocate appearing for the State draws the attention of the Court to the letters dated February 25, 2016 as well as the undated letter of the West Bengal Social Welfare Board. He submits that by such letters, West Bengal Social Welfare Board cancelled the agreement between the West Bengal Social Welfare Board and the appellant.

12. Learned senior advocate appearing for the State submits that lease deed between the State of West Bengal and the West Bengal Social Welfare Board

stood cancelled by a letter dated January 16, 2017 and that possession of the plot in question was taken over on July 14, 2017. He submits that there is no privity of Contract between the State of West Bengal and the appellant for any right of the appellant to be breached by any steps taken by the State of West Bengal.

13. Genesis of the disputes between the appellant and the respondents before us is a lease deed dated August 20, 2013. By such deed of lease, State of West Bengal demised the immovable property concerned in favour of West Bengal Social Welfare Board on the terms and conditions noted therein. Relevant conditions are as follows:-

“Clause 9. Not to use or allow to be used the land and/or the structure thereon or any part thereof for any purpose other than for construction of hostel building for working women without the prior permission in writing of the Government or other authority prescribed in that behalf.

.....

Provided always that if there be any breach of any of the terms and conditions and covenants herein on the part of the Lessee contained the Lessor shall have the right to reenter 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.”

14. Clause 9 of the deed of lease dated August 20, 2013 restricts user of the land and/or the structure that may be erected thereon or any part thereof for any purpose other than for construction of hospital building for working women without the prior permission in writing of the Government or any other authority prescribed in that behalf.

15. Materials on record establish that West Bengal Social Welfare Board by a writing dated August 20, 2013 requested permission from the Urban Development Department for the purpose of entering into a public private partnership. There is another letter dated February 14, 2014 issued to the Minister-in-Charge of the department of Municipal Affairs asking for admissible floor or ratio. No reply to any of these letters, of the the State is on record.
16. These two letters either individually or collectively cannot be construed to be grant of permission by the State of West Bengal for the user of the land or a part or portion of a structure to be erected for purposes other than for construction of hospital building for working women.
17. As the materials on record stand before us, there is no prior permission in writing of the State of West Bengal permitting the West Bengal Social Welfare Board to enter into the development agreement dated September 9, 2013 as modified on August 20, 2014 with the appellant or at all.
18. Significantly, the development agreement dated September 9, 2013 as modified on August 20, 2014 entered into the between the appellant and West Bengal Social Welfare Board permits the appellant to use defined portion of the structure to be erected at the plot concerned for purposes other than a hostel for working women.
19. At the material point of time, West Bengal State Welfare Board treated itself a separate legal entity other than the State of West Bengal, which it is.

Appellants before us also did not treat the two entities as one, as sought to be contended in the litigation, at the material point of time. Appellants were well aware of the role of the State of West Bengal vis-à-vis the privity.

20. In our view, Clause 9 of the lease deed dated August 20, 2013 stood breached by the West Bengal Social Welfare Board while entering the development agreement dated September 9, 2013 as modified on August 20, 2014. Consequently, the State of West Bengal in terms of the last two proviso of such lease deed dated August 20, 2013 was entitled to take steps for the breach of the terms and conditions of such lease deed.

21. In the facts and circumstances of the present case, State of West Bengal issued a letter of termination of the lease deed dated August 20, 2013 on January 16, 2017. State of West Bengal took possession of the plot concerned on July 14, 2017. These actions of the State of West Bengal were accepted by the West Bengal State Welfare Board.

22. We find no material irregularity in the State of West Bengal taking such steps.

In the realm of contract, Article 12 authorities are allowed to play within the joints. Article 12 authorities are allowed to take a decision which is plausible.

23. In the facts and circumstances, of the present case, decision taken by the State of West Bengal in cancelling the lease deed on the ground of the lessee acting in breach of the terms and conditions of the deed of the lease cannot be said to be arbitrary or vitiated by extraneous consideration or in colourable exercise of power. Decision taken by the State of West Bengal is plausible. A Writ Court

is not called upon to sit in appeal as an appellate authority, over a decision of an Article 12 authority, particularly when the same is plausible.

24. Significantly, appellant before us proceeded in arbitration as against the West Bengal Social Welfare Board which culminated into an award dated August 31, 2017. We enquired of the appellant as to what steps did the appellant take in terms of such award and in response to such query, it is submitted on behalf of the appellant that the appellant did not put such award into execution till date.

25. The challenge in the writ petition are to the signboard put up by the State of West Bengal on the plot concerned and the decision of the State to terminate the lease between the State of West Bengal and the West Bengal Social Welfare Board.

26. West Bengal Social Welfare Board did not assail the termination of the lease nor did it assail the decision of the State of West Bengal to take possession of the demised property. Appellant is claiming rights in respect of immovable property concerned through the West Bengal Social Welfare Board. Appellant, therefore, do not possess a better or higher right in respect of the property concerned than which is enjoyed by West Bengal Social Welfare Board. As noted above, West Bengal Social Welfare Board did not challenge the termination of the lease deed nor the possession of the immovable property being taken by the State of West Bengal. In fact, they accepted the same.

27. In view of the discussions above, we find no ground to interfere with the judgment and order impugned before us.

28. **M.A.T. 2021 of 2023** along with connected application, if any, is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

29. I agree

S.D.

(Md. Shabbar Rashidi, J.)