

16.01.2025
Item No.08
RP/AN
Ct. No.01

WPA(P) 465 of 2024

**Biru Lohar
Vs.
The State of West Bengal & Ors.**

Mr. Abhimanyu Banerjee Mr. Santanu Sett	For Petitioner
Mr. Samrat Sen, Sr. Adv. Mr. Jaharlal Dey Ms. Manali Ali	For State
Mr. Amales Roy, Sr. Adv. Mr. Shubro Kanti Roy Chowdhury Ms. Mousumi Bhowal Mr. Aman Gupta Mr. Ishan Bhattacharya	For Respondent No.8
Mr. Arnab Saha	For Respondent Nos.3,4,5

1. By virtue of this public interest litigation the petitioner states that the respondent nos.6 and 7 entered into a property by way of a license granted by Alipurduar Zilla Parishad dated 13^h June, 2022. The license condition prohibits the licensees, namely, the 6th and 7th respondents, from transferring the interest in the property in favour of a third party without prior sanction of the Zilla Parishad in writing. There are other conditions also stipulated in the license as to the purposes for which the license was granted to the licensees. The petitioner would state that based on the license granted, the sixth respondent obtained a sanction building plan for

construction of B+G+4 storied mercantile building and also entered into a development agreement with one Digital Micrographics Pvt. Ltd. on 23rd June, 2023 and on the said date the sixth respondent had no right to enter into a development agreement.

2. Learned advocate appearing for the sixth respondent submits that sixth respondent had applied to the Zilla Parishad for transfer of the land on long term lease upon payment of appropriate amount and the Zilla Parishad in exercise of the power conferred under Section 175 of the West Bengal Panchayat Act, 1973 has assessed the market value of the property at Rs.22,35,600/- and a deed of lease for commercial purpose was executed on 22nd December, 2023.
3. It is true that on the date when the development agreement was entered into the sixth respondent was only a licensee and could not have entered into a development agreement. However, the lease agreement has been executed in favour of the sixth respondent upon collection of commercial value of the property as mentioned above. Therefore, until and unless the said lease deed is set aside in the manner known to law, the question of granting relief sought for in the writ petition would not arise. Apart from that a registered lease cannot be cancelled in writ jurisdiction. We hasten to add that under Section 175 of the West Bengal Panchayat Act, 1973

when the Zilla Parishad can acquire, hold and dispose of the property and to enter into agreements this power can be exercised only after prior approval of the prescribed authority. The proviso to Section 175 states that in all cases of acquisition, disposal of immovable property the Zilla Parishad shall obtain prior approval of the prescribed authority. Section 2(19) defines the prescribed authority which means an authority appointed by the State Government by notification for one or more purposes and it is not clear as to whether any such approval was obtained by the Zilla Parishad from the prescribed authority before executing the lease deed which undoubtedly is a case of transfer of property.

4. Learned senior advocate appearing for the 8th respondent submitted that the lease cannot be construed to be a transfer of property as the lease is for specific period. We are not in agreement with the said submission because pursuant to the said lease deed a multi-storied construction has been constructed. Therefore, the matter is a very serious issue which should be looked into by the respondent authority. We need to point out that a lease is also one of the recognized mode of transfer of property. Therefore, we direct the petitioner to submit a representation to the Secretary, Department of Panchayat and Rural Development, State of West

Bengal enclosing all documents in support of his contention as well as a copy of this order. On receipt of the representation, Secretary, Department of Panchayat and Rural Development, State of West Bengal shall issue notice to the Zilla Parishad as well as the respondent nos.6,7 and 8 and call for a report from the Zilla Parishad and take an appropriate action in accordance with law. This direction shall be complied with by the first respondent within a period of twelve weeks from the date of receipt of the representation from the petitioner.

5. With the aforesaid direction, this writ petition is disposed of.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)