

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMA 1502 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

Smt. Maya Roy and another
Vs.
The State of West Bengal and others

For the appellants : Mr. Debasish Chattopadhyay,
Mr. Tirthankar Basu,
Ms. S. Biswas, Advs.

For the State : Mr. Soumitra Bandyopadhyay, Snr. Govt. Adv.,
Mr. Jayanta Samanta, Jr. Govt. Adv.,
Mr. Srinath Singha Roy,
Mr. Satyam Mukherjee, Advs.

Heard on : 01.04.2026

Judgment on : 01.04.2026

Sabyasachi Bhattacharyya, J.:-

1. Affidavit-of-service filed today be kept on record.
2. Upon hearing learned counsel for the parties, we find sufficient explanation for the delay having been made out.
3. Accordingly, CAN 1 of 2025 is allowed, thereby condoning the delay in preferring FMA 1502 of 2025.
4. There will be no order as to costs.

5. In view of the short conspectus of the appeal, it is taken up for hearing along with CAN 2 of 2025.
6. The present challenge has been preferred against the judgment of a learned Single Judge passed in WPA No. 21266 of 2018, whereby the writ petition of the present appellants was dismissed.
7. The case of the appellants is that the lease in respect of the subject property was granted from time to time, lastly to the proposed predecessors-in-interest of the present appellants, namely, Sikha Karmakar and Subal Chandra Roy.
8. Learned counsel appearing for the appellants submits that in terms of the proviso to Clause 2(x) of the lease deed executed in favour of Sikha and Subal, if the lessees be desirous of assigning the lease or transfer the leasehold interest in the demised premises and the buildings erected thereon, the lessees shall give notice of such intention to the Government and shall be entitled to effect such transfer with the approval of the Government. The said proviso further stipulated that should such approval be not refused within two months of the date of receipt of the application for transfer, the consent of the Government shall be deemed to have been given for such transfer.
9. In the present case, despite an application having been made by the said joint lessees for the transfer of their leasehold rights in the subject plot in favour of the present appellants, the respondent-authorities sat tight over the matter, prompting the appellants to move the writ petition. Moreover, in view of two months having

elapsed from the date of such application, in terms of the proviso to Clause 2(x) of the lease deed, consent should be automatically deemed to have been given to such transfer by the Government.

10. In the writ court, the respondent-authorities submitted a report, from which it transpired that the lease of Sikha and Subal had already been terminated vide Memo No. 1598 dated December 03, 2010 due to alleged non-commencement of any construction on the subject plot according to the plan.
11. It is contended that no notice, as mandated under Clause 5(ii) of the lease deed, was served with regard to such termination on the said lessees and, as such, the purported termination is bad in law. It is submitted that thus, in terms of the proviso to Clause 2(x) of the lease deed, it should be deemed that the property stands transferred in favour of the appellants and a lease deed ought to have been executed in favour of the appellants.
12. Learned counsel appearing for the respondent-authorities relies on the report in the form of affidavit filed by the respondents before the writ court, annexing all relevant documents relating to such termination. Learned counsel draws the attention of this Court further to the photocopy of an envelope sent to Sikha Karmakar, one of the co-lessees, intimating about such termination, which envelope returned with the endorsement 'not known'/ 'refused', which tantamounts to good service in law.

13. Thus, it is submitted that in view of the lease in favour of Sikha and Subal having already been terminated, the same could not be revived by way of the purported transfer in favour of the present appellants.
14. Learned counsel for the appellants, in reply, submits that a power of attorney had been executed by the co-lessees, pursuant to which the notice ought to have been sent to the constituted attorneys, if service could not be effected directly on the lessees. The same having not been done in terms of Clause 5(ii) of the lease deed, the termination itself is bad in law. It is also submitted that an exception to the report filed by the respondents was taken out by the appellants before the writ court, thereby substantially challenging the termination of the lease deed.
15. Upon hearing learned counsel for the parties and perusing the records, the Court comes to the following conclusions:
16. Clause 5(ii) of the lease deed provides that any notices required to be served thereunder shall be sufficiently served on the lessee if left addressed to him on the demised premises or forwarded to him by registered post or left at his last known address in India and shall be sufficiently served on the lessor if delivered to the Secretary of the appropriate Department of the Government.
17. The said clause further provides that a notice served by post shall be deemed to be given at the time when in due course of registered post it would be delivered at the address to which it is sent.
18. In the present case, by addressing the notice to at least one of the co-lessees at the demised premises, there was sufficient compliance on

the part of the respondent-authorities in terms of Clause 5(ii) of the lease deed.

19. It is well-settled that what can be done by or against a constituted attorney can equally be done by or against the author of the power of attorney granting such power. Mere execution of a power of attorney in favour of an agent does not denude the principal of his authority in respect of the powers thereby given to the agent. Hence, since a notice was duly served in respect of the termination on the co-lessee herself in terms of Clause 5(ii) (which, for that matter, does not contemplate service on any constituted attorney but on the lessee himself), it cannot be now argued that there was no due service of such termination notice.
20. That apart, Clause 5(ii) deems the service to be sufficient if a notice is sent by post in due course of registered post at the last known address and/or the demised premises, which was done in the present case.
21. Thus, in view of there being substantial compliance of Clause 5(ii), the termination was valid in the eye of law and within the contemplation of the lease deed.
22. In fact, no challenge has been thrown to the termination of the lease deed at all, either by way of a writ petition or by amending the prayers of the present writ petition. The mere filing of an exception to the report filed in the writ court by the respondent-authorities cannot, by any stretch of imagination, be deemed to be a challenge to the termination.

23. Even otherwise, the appellants have not acquired any right in the subject property at all and hence, do not have any *locus standi* to challenge the said termination of the lease deed executed in favour of Sikha Karmakar and Subal Chandra Roy. It was for the said lessees to prefer a challenge, if any, to such termination. The lessees having not done so, the appellants are not clothed with the *locus standi* to prefer such a challenge.
24. Since the lease itself was terminated long back, much prior to making of the transfer application, the application was itself still-born and could not have the effect of reviving a dead lease. Thus, the proposed invocation of the proviso to Clause 2(x) of the since-terminated lease deed is misplaced and not tenable in the eye of law.
25. Accordingly, we do not find any lacuna or illegality in the impugned judgment of the learned Single Judge.
26. Hence, FMA 1502 of 2025 is dismissed on contest, thereby affirming the judgment dated July 16, 2025 passed in WPA No. 21266 of 2018.
27. CAN 2 of 2025 is disposed of accordingly.
28. There will be no order as to costs.
29. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)