

Form No. J(2)

In the High Court at Calcutta

Civil Appellate Jurisdiction

Appellate Side

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

M.A.T 1933 of 2025
IA No: CAN 1 of 2025
CAN 2 of 2025

**The State of West Bengal and another
Vs.
Dinesh Kumar Goyal and another**

For the appellants	:	Mr. Soumitra Bandyopadhyay Mr. Priyabrata Batabyal
For the respondents	:	Mr. Pratyush Patwari
Heard on	:	27.01.2026
Judgment on	:	27.01.2026

Sabyasachi Bhattacharyya, J.:-

1. We find from the application for condonation of delay that in paragraph no. 6 thereof, it has been stated that although the impugned order was communicated to the office of the Land Manager, Bidhannagar on May 5, 2025, but “due to non-placement of papers and documents in time before the concerned higher authority” and for preparing the grounds of appeal, no effective steps could be taken in time for preferring the appeal before this court.
2. Learned counsel for the respondents opposes the prayer and submits that the ground stated in paragraph no. 6 is not a good ground for condonation of delay.
3. We find that some amount of departmental laxity was there, which should not be taken so strictly as to shut out the rights of the appellants to prefer the appeal.
4. However, it is clear from the averment made in paragraph no. 6 of the application that the Land Manager, Bidhannagar, the appellant/petitioner no.2 herein, was fully responsible for the delay occasioned in preferring the appeal.
5. Accordingly, CAN 1 of 2025 is allowed on condition that the appellant no. 2 shall pay costs of Rs.10,000/- to the respondents within a fortnight from date from his own pocket.

6. Subject to payment of such cost, the delay in preferring the appeal is condoned.
7. MAT 1933 of 2025 is taken up for admission hearing accordingly.
8. The short question which has fallen for consideration in this appeal is whether the demand of permission fees from the writ petitioners/present respondents by the appellant authorities for mutation of the writ petitioners' names on the strength of a bequest in their favour of the subject property, situated at Salt Lake (Bidhannagar), in the North Eastern fringes of the city of Kolkata, by the original allottee/lessee by dint of a Will, was valid in the eye of law.
9. When the writ petitioner/present respondents sought to have their names mutated by dint of a Will executed by the original allottee in favour of the writ petitioners, who are strangers to the family of the original allottee, permission charges were claimed by the appellant authorities. It is submitted by the appellants that such demand was made on the strength of a Notification dated August 3, 2022.
10. From the impugned judgment, we do not find any reflection of arguments on the 2022 Notification and/or anything to show

that such Notification was placed before the learned Single Judge.

- 11.** However, learned counsel for the appellant authorities submits that the said Notification was a part of the report placed before the learned Single Judge but was not considered.
- 12.** It is submitted that in terms of the said Notification dated August 3, 2022 issued by the Principal Secretary to the Government of West Bengal, the writ petitioner/respondents were duty-bound to pay additional permission fees, apart from the usual processing fees, being strangers to the family of the original allottee/lessee.
- 13.** Learned counsel appearing for the writ petitioner/respondents places reliance on a judgment of a learned Single Judge of this Court dated November 13, 2018 in the matter of *Rina Dasgupta vs. State of West Bengal and others*, in *W.P. No.2616(W) of 2018*.
- 14.** The learned Single Judge, in paragraph no. 16 thereof, while quashing two Notifications dated June 22, 2012 and September 2, 2013, which were similar to the 2022 Notification now sought to be relied on by the appellants, categorically held that His Lordship did not find that the State of West Bengal has any right, under the lease of deed by which it granted the lease to the original lessee, to restrict the right of bequest by a Will of

the leasehold to the extent of the unexpired period of lease to any person, whether by regulating the right on the basis of payment of permission fees or otherwise, whether to a stranger or to anyone who was not covered by the expression “closely related by blood”.

- 15.** Learned counsel for the respondents contends that despite the quashing of the said Notification dated June 22, 2012, in the demand letter dated April 23, 2024, which was the subject-matter of challenge before the writ court, the appellant-authorities placed specific reliance on such quashed Notification and sought the permission fees-in-question.
- 16.** Learned counsel appearing for the respondents further cites a coordinate Bench judgment of this court in the matter of the *State of West Bengal and others vs. Smt. Kusum Agarwal and another (MAT No. 1263 of 2017)*, where the coordinate Bench, while quoting excerpts from a judgment of the Hon’ble Supreme Court in the matter of *State of West Bengal and another vs. Kailash Chandra Kapur and others* reported at (1997) 2 SCC 387, by relying on the proposition of law that a Will was a posthumous disposition of the property and that the definition of the Will should be read in the context of the restrictive covenant in Clause 2(8) of the lease deed, proceeded to hold that the Apex

Court had elaborately dealt with such proposition of law which was precisely the submission of the learned Additional Solicitor General in that case before the Apex Court.

- 17.** On the premise of such observations, the coordinate Bench went on to hold that the lessees in respect of Salt Lake properties have an unrestricted right to bequeath the leasehold interest by way of a Will to any person and no fruitful purpose would be served by making any further enquiry into the motive behind such Wills.
- 18.** It is argued that in view of the aforesaid judgments, the appellant-authorities sought to make indirectly a monetary demand which they could not do directly.
- 19.** Lastly, learned counsel for the writ petitioner/respondents points out to the relevant portions of the Notification dated August 3, 2022, where it has been specifically stated that the Notification, *inter alia*, was in partial modification of a Notification dated June 22, 2012, which was specifically quashed by the learned Single Judge in the matter of *Rina Dasgupta (supra)*.
- 20.** Moreover, the very offending clause in the said Notification of 2012 which was quashed, was sought to be reintroduced by paraphrasing the language thereof in the 2022 Notification.

- 21.** Learned counsel for the appellant-authorities submits in reply that the Notification dated August 3, 2022 still stands and has not been challenged or quashed by any court of law.
- 22.** As such, irrespective of the previous position of law, by dint of the said Notification, the appellant-authorities were justified in seeking the permission fees-in-question for the purpose of mutating the names of the transferees/writ petitioners/present respondents in respect of the subject plot, since they were strangers to the family of the original allottee and did not come within the exception clause therein, relating to close relatives of the allottee.
- 23.** On a careful consideration of the materials before us, we find several grounds on which the impugned order of the learned Single Judge was justified, even if no reflection of the Notification dated August 3, 2022 finds place therein, for the obvious reason that the same was not stressed upon during the arguments by the appellant-authorities before the learned Single Judge.
- 24.** First, we find that the present demand of permission fees dated April 23, 2024, as per its own caption, was not premised on the Notification of 2022 but the 'Subject' heading of the demand letter clearly discloses that the permission fees were demanded

pursuant to Notification No.2709-SL(AL)/4S-9/2004(PT.I) dated June 22, 2012, which was specifically set aside in *Rina Dasgupta's* case.

- 25.** Thus, the demand itself was completely illegal, being based on an already-quashed Notification.
- 26.** Even otherwise, as held by the coordinate Bench in *Kusum Agarwal's* case, it is a settled proposition of law that lessees in respect of Salt Lake properties have an unrestricted right to bequeath the leasehold interest by way of a Will to any person and no fruitful purpose will be served by making any further enquiry into the motive behind such Wills.
- 27.** By the Notification dated August 3, 2022, the very basis of the said judgment and that of *Rina Dasgupta (supra)* has been sought to be shaken by claiming restrictive permission fees only on the premise that the bequest was made in favour of strangers to the family of the original allottee.
- 28.** We also note the fact that the Notification dated August 3, 2022, on which the appellants vehemently rely, was a mere eye-wash and in “partial modification” of the already-quashed Notification dated June 22, 2012 mentioned above.

- 29.** The Notification of 2022 itself states, in the same breath, that it was in cancellation of the earlier Notification of 2013 and in “modification of” the Notification dated June 22, 2012.
- 30.** We accept the contention of the writ petitioner/respondents as justified to the effect that an already-quashed Notification no longer has any existence in the eye of law and cannot be “modified” by a further Notification.
- 31.** If so done, the subsequent Notification, being an extension (by modification) of a quashed Notification, itself is a nullity in the eye of law.
- 32.** We further notice from the 2022 Notification that the same was a vain attempt to re-introduce the self-same words which found place in the quashed Notification of 2012, by merely paraphrasing the relevant expressions used in the 2012 Notification.
- 33.** For example, in the 2012 Notifications, it was stated that transfer fees will not be applicable to cases that are within the close blood relations, namely “father-mother, husband-wife, brother-sister, son-daughter, son’s daughter, son’s son, daughter’s son and daughter’s daughter” and in those cases only a nominal amount of processing fees as may be fixed by the Government from time to time will be realised, thereby putting

strangers to the allottee's family outside the purview of such exception clause.

- 34.** Notably, such words were substituted in the Notification of August 3, 2022 by merely paraphrasing the same and, instead of hyphens, using commas.
- 35.** For example, under the exempted relations in the 2022 Notification, "father, mother, husband, wife, son, daughter (married, unmarried, widowed or divorcee), son's wife, son's children, daughter's children, brother, sister, grandfather, grandmother" were included, which were substantially the same relationships which found place in the quashed 2012 Notification.
- 36.** Thus, we find that by the 2022 Notification, the exact same relations which were exempted from high permission fees by the 2012 Notification were sought to be reintroduced.
- 37.** Conspicuously, in the penultimate paragraph of the 2022 Notification, it has been boldly stated that all other terms and conditions as stated in the quashed Notification of 2012 shall remain unchanged.
- 38.** Thus, this court is of the clear opinion from the discussions above that Notification No.2309-SL(AL)/4S-9/2004 (Pt.I) dated

August 3, 2022 is old wine in a new bottle, being a virtual reproduction of the quashed Notification of the 2012.

- 39.** As such, in the teeth of the judgment dated November 13, 2018 passed in *Rina Dasgupta's case*, the Notification dated August 3, 2022 is a nullity in the eye of law and is intended to defeat the ratio laid down in *Rina Dasgupta's case*.
- 40.** On such ground alone, we exercise our suo motu powers under Article 226 of the Constitution of India and hereby hold that the Notification, bearing Notification No. 2309-SL(AL)/4S-9/2004 (Pt.I) dated August 3, 2022, is hereby held to be a nullity and accordingly set aside.
- 41.** In view of our above observations, since the demand has been made from the writ petitioner/respondents on the basis of an already-quashed Notification, we find no illegality whatsoever in the order of the learned Single Judge which has been impugned before us, whereby the writ petition of the respondents was allowed and the appellants-authorities' claim for additional permission fees from the respondents was set aside.
- 42.** Accordingly, MAT 1933 of 2025 is dismissed on contest, thereby affirming the Judgment dated April 29, 2025 passed in WPA 25106 of 2024.
- 43.** CAN 2 of 2025 stands disposed of accordingly.

- 44.** There will be no order as to costs.
- 45.** Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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