
(2018) 06 CAL CK 0228
In the Calcutta High Court
Case No : Writ Petition2162(W) of 2018

Abha Srivastava

APPELLANT

Vs

Kmda & Ors.

RESPONDENT

Date of Decision : 26-06-2018

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2018) 06 CAL CK 0228

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Raghunath Chakraborty, Mehabub Ahmed, Partha Sarathi Basu, Satyajit Talukder

Final Decision : Disposed Of

Judgement

The writ petition is moved on service. I have heard Mr. Raghunath Chakraborty, learned advocate assisted by Mr. Mehabub Ahmed, learned

advocate appearing for the writ petitioner. I have heard Mr. Basu, learned advocate assisted by Mr. Talukder, learned advocate for the KMDA. Let

affidavit of service be kept on record. The writ petitioner has assailed Annexure P/11 at page 42 of the writ petition. This is a letter by which

the allotment of land to the writ petitioner has been cancelled by the first respondent. The ground of cancellation mentioned is in the following terms:-

Whereas according to condition at clause 2(iii) of the license deed executed on 11th April, 1996, the allottee were required to complete the

construction of a house or building within 5 (five) years from the date of execution of lease deed i.e. within April, 2001.

And

Whereas it has been further verified that the allottee has not completed

construction within stipulated period.

And

Whereas the allottee has failed to take step for construction on the plot, which was allotted in favour of her which is clearly in violation of the said condition of the license deed.

And

Whereas he could not complete the construction in due time. Therefore, for violation of clause 2(iii) of license agreement and as per the approval of

the Competent Authority in KMDA, the offer of allotment of plot no. 90 Block ED category EWS-IV under EKADP is hereby CANCELLED and

possession of land delivered is WITHDRAWN. License deed executed thus stands CANCELLED and the land is resumed in favour of KMDA. The

amount paid by the allottee as land cost will be refunded after deduction of 20% as service charge after resumption of the plot in favour of

KMDA.

I have gone through the records annexed to the writ petition. By Annexure P/1 in 1993 the respondent No. 1 an authority under Article 12 of the

Constitution of India allotted land provisionally to the writ petitioner promising her a lease on execution and registration of a lease deed for 99 years.

No condition was imposed in the provisional allotment letter for making any permanent or other construction within any time from the date of allotment

or receiving possession. Instead of executing deed of lease as promised by the State within the meaning of Article 12 of the Constitution of India an

unregistered document described paradoxically as an indenture of license was executed by the first respondent in favour of the writ petitioner. Clause

2(iii) thereof at page 31 reads as follows:-

(iii) At the own cost of the LICENSEE within five years from the date hereof 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 on the said land 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 body

according to the rules and regulations framed for the purpose.

This so-called license was for a period of 99 years and was executed only on

April, 1996. Therefore, by an unregistered document the respondent KMDA sought to create a license for 99 years which would have been invalid even if it had been a lease since it was in respect of a period expressed in years and not from month to month. In the event it is construed that this grant was made under the Government Grants Act, I do not think that the respondent No. 1 has jurisdiction under that Act. Therefore, to all extent and purposes such indenture as in Annexure P/3 dated April 11, 1996 cannot be enforced so far as any of the conditions mentioned therein are concerned except as and by way of part performance of real contract between the parties. This means that while the writ petitioner will be entitled prima facie to enjoy the land for 99 years on the basis of the conditions mentioned in Annexure P/1, no other condition can be imposed except that which the law of transfer of property enjoins but for a contract to the contrary. As demonstrated above prima facie there is no contract to the contrary.

Since the document as in Annexure P/1 contains no stipulation for completing or making any construction within any number of years as aforesaid, the writ petitioner's failure to make such construction gives no right either in contract or at law to the respondent No. 1 to terminate the allotment or resume possession especially when it is the case of the writ petitioner that no opportunity of being heard was given to her. Accordingly, I find a strong prima facie case in favour of the writ petitioner and the impugned order as in Annexure P/11 appears to be prima facie bad in law and in pursuance of terms of contract which neither the writ Court nor the civil Court would enforce because such unregistered and inadequately stamped annexure P/3 would not have been produced for any purpose before any Court of law, the preponderance of balance of convenience is in favour of the interim order I propose to pass.

The operation of Annexure P/11 shall remain stayed till the disposal of the writ petition or until further orders whichever is earlier. However, during this period though the writ petitioner has admittedly paid all the instalments he was supposed to, in view of my finding that no condition mentioned in the license agreement can be enforced, the writ petitioner shall pay a consolidated sum of Rs.20, 000/- per annum to the KMDA as an interim measure till the disposal of the writ petition as and by way of occupation charges, on and ad hoc basis.

Mr. Basu, learned advocate urges that this relates to terms and conditions of a document in the nature of contract and merely because his client is the

State within the meaning of Article 12 of the Constitution of India the interpretation, enforcement or avoidance of contract cannot become the

subject matter of an application under Article 226 of the Constitution of India. He submits in effect allowing the writ petition would mean passing a

decree in a property dispute and, therefore, the writ petitioner should be relegated to a civil remedy.

I record this point only to overrule it. It is my considered opinion on this preliminary question that where a document cannot be received in evidence

before a civil Court because of being unregistered and inadequately stamped, the provisions of both the Indian Stamp Act, 1899 and the Registration

act 1908 would apply to this Court under Article 226 of the Constitution of India so far as admissibility of the copies of the documents are concerned.

Since I have held that the respondent No. 1 KMDA had no jurisdiction to impose a condition alien to the letter of provisional allotment which is the

threshold of the contract and I have also held that admittedly no deed of lease was entered into and because ex facie the indenture of license which is

for a number of years and which has not been registered is invalid rendering Annexure P/11 is a nullity which is a consequence of the above findings

and, therefore, no disputed question of fact is required to be arrived at by me. Therefore, it cannot be said that a writ Court while acting as a Court of

equity cannot pass injunctions whether abroad or here. After the Rules of the Supreme Court were changed in the United Kingdom and the

White Book was replaced, even in the United Kingdom mandatory injunction and prohibitive injunction can be passed in public law without requiring

formal writs of mandamus or prohibition to be issued. In the instant case if after final hearing this Court decides to perpetually restrain the respondent

KMDA from giving effect to Annexure P/11 it may either be a writ in the nature of prohibition or by a mandamus commanding the respondents to

cancel and/or quash and/or rescind and/or revoke and/or withdraw Annexure P/11; the effect and the substance shall remain the same. This Court

has no allergy towards passing substantive relief and is yet to be afraid of the form or the name given to such relief. The respondent shall be at liberty

to file affidavit in opposition within eight weeks from date. Reply thereto, if any be filed within four weeks thereafter. The parties are at liberty to

mention the matter for hearing after the affidavits are ready.