
(1997) 04 CAL CK 0015
In the Calcutta High Court

Case No : Civil Revisional Jurisdiction W.P. No's. 5291 and 5292 (W) of 1997

Ananga Mohan Banerjee

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-04-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226
Government Grants Act, 1895 — Section 2, 3

Citation : (1999) 3 CALLT 397

Hon'ble Judges : Satyabrata Sinha, J

Bench : Single Bench

Advocate : Mr. R. Mahapatra, Mr. Chinmoy Kumar Maiti and Mr. Manabendra Thakur, for the Appellant; Mr. Arabinda Roy and Ms. Ashima Das (Sil), for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—Both these writ application involving same questions of law were taken up for hearing together and are being disposed of by this common judgment.

2. A plot of land in Salt Lake was leased out to the predecessor-in-interest of the petitioners for a period of 999 years. The petitioner in W.P. No. 5291 (W) of 1997 has purchased the said lease by reason of a deed of assignment. The petitioner filed application for mutating his name. As he has not heard for a long time from the concerned authority, a writ petition was filed in this court, and N.K. Mitra, J, directed that the said application of the petitioner be considered. By reason of the impugned order as contained in Annexure "H" to the writ application. Assistant Secretary to the Government of West Bengal, rejected the said application on the ground that in terms of clause 2(7) of the original lease deed as also the restrictive clauses contained in clauses 2(8) and 2(12) of the lease deed in respect of the lands in Salt Lake which was earlier withdrawn, but was reimposed with effect from 21.2.86, the predecessor-in-interest of the petitioner

had no right to transfer/assign the property in question in favour of the petitioner. It has been held : "Thus it is crystal clear that by execution of the said deed of transfer/ assignment on 27.7.87 the lessee not only violated clause 2(7) of the original lease deed, but also violated clause 2(8) which was deemed reimposed in the lease deed on 21.2.86 in the instant case. The concerned respondent also referred to the Government policy and held that such transfers are not permitted.

3. Mr. Mahapatra, learned counsel appearing on behalf of the petitioner has raised a short question in support of this application. Learned counsel submits that grant of lease by the State in the Northern Salt Lake City Extension Area for a period of 999 years, will not be a grant within the meaning of Government Grants Act. and in any event, as there does not exist any restrictive covenant, the respondents are bound to mutate the petitioner's name. Reference in "this connection has been made to Mrs. Bhakti Mandal v. State of West Bengal & Ors., reported in (1) 1988 CLT HC 422 and a decision of Chatterjee. J, in Tarachand Dalmia v. State of W.B. & Ors., reported in 1994 (1) CHN 15.

4. It appears from Annexure "A" to the Writ Petition No.5291 (W) of 1997, that a lease was granted by the Governor, State of West Bengal in favour of one Haripada Ghosh by an indenture dated 26.4.71, In W.P. No, 5292 (W) of 1997 also, a similar lease was granted by an indenture dated 27.11.94. It is, therefore, evident that at the relevant point of time when the said indentures were executed by the Governor, State of West Bengal, the purported re-imposition of clauses 2(8), 2(11) and 2(12) did not find place therein. Clause 2(7) of the deed reads thus :

The Lessee shall not sub-divide or sub-let the demised land or the building to be constructed without the consent in writing of the Government first had and obtained and the Government shall have the right and be entitled to refuse its consent at its absolute discretion."

5. Admittedly, clauses 2(8), 2(11) and 2 (12) of the lease deed executed in favour of the predecessor-in-interest of the petitioner does not contain any restrictive clause. Such purported restrictive clauses, as it appears from the impugned order were imposed with effect from 21.2.86. A restrictive covenant purported to have been imposed in an indenture by circular letter or by a clarificatory order cannot have any retrospective effect and thereby any right which has already been vested in the lessee cannot be taken away. Furthermore, keeping in view the fact that the indenture in question is governed by the Government Grants Act, parties are bound by the conditions imposed therein and not by any subsequent general order which might have been issued by the State, in as much as, such a general order would not be binding upon the lessee in whose favour deed of settlement had been given prior thereto. The deed of lease is for a period of 999 years. Except clause 7 aforementioned, which only provides for a prohibition upon the lessee from sub-deviding or sub-letting the demised premises or the building to be constructed without the consent in writing of the

Governor, cannot and does not mean that the lessee is prohibited from assigning/ transferring the said leasehold interest. A restrictive covenant in an indenture must be specifically stated, in absence whereof the lessee should derive right, title and interest by reason of such indenture and would be entitled to assign his right, title and interest therein. A restrictive covenant, as is well known, must be strictly construed. In Mrs. Bhakti Mondal's case (supra), Mukherjee, J, upon taking into various consideration various decisions and treatises came to the conclusion that an assignment is a transfer and held:

"I have heard Mr. Ranjit Kumar Banerjee, learned Advocate for the petitioner and Mr. Mukul Prakash Banerjee, learned Advocate for the State respondent Nos. 1 to 6 as well as Mr. Mihir Roy, learned Advocate for respondent No.7 and I have gone through Clause (7) of the lease agreement and the impugned letter, dated August 2, 1983 issued by the Assistant Secretary. Metropolitan Development Department, Salt lake Branch, and in my view, in the facts of the present case, there cannot be any impediment for mutuating the name of the writ petitioner, as in the original deed, as well as, in the transfer deed, dated April 22. 1972 and December 4. 1970 there is no clause debarring the respondent No. 7 from making the transfer of the disputed plot in favour of the writ petitioner."

6. In Tarachand Dalmia's case (supra), Chatterjee, J, inter alia, held that the Government Grants Act, 1895, has no application in relation to such deed of lease. However, it is not possible to agree with the opinion of the learned Judge to the aforementioned extent in view of the recent decision of the Supreme Court of India in Hajee S.V.M. Mohamed Jamaludeen Bros. and Co. Vs. Govt. of T.N., , wherein it has been held that a licence coupled with interest as also a lease would come within the purview of sections 2 and 3 of the Government Grants Act, and thus, the parties would be bound by the covenants therein. The learned Judge, however, held :

" From a bare reading of clause 7 of the lease deeds, it appears to me that only a restriction has been imposed on the lessee to sub-let or sub-divide the demised land or the building to be constructed on such land. It only says that the said deeds of lease bar sub-division or sub-letting of the demised premises and/or building that would be constructed on the said land, without taking consent in writing from the Government. Therefore, from this, one can only say that the object of entering into a lease with the lessee is only to prevent further sub-division or fragmentation of the lease-hold land. In my view, from this it cannot be said that there is any bar for assignment or transfer of interest of the lessee in respect of his lease-hold land as a whole."

7. I respectfully agree with the aforementioned observation. I may take note of the fact that in the case of Smt. Ajanta Basu Vs. State of West Bengal and others, a similar view was taken Batabyal J following the judgement of Chatterjee, J. In that view of the matter, I also respectfully agree with that portion of the said Judgment in terms whereof it has been held that there is no provision restricting transfer/assignment of the lessee's interest. This aspect of

the matter has recently been considered in State of W.B.& Anr. v. Kailash Chandra Kapur & Ors., reported in Supreme Today 324. This Court has also followed the aforementioned Supreme Court decision in C.O. No. 13448 (W) of 1996 disposed of on 23.4. 97.

8. For the reasons aforementioned, these applications are allowed. The impugned orders as contained in Annexure "H" in W.P.No. 5291 (W) 1997 and Annexure "E" in W.P. No. 5292 (W) of 1997 are set aside and the respondents are directed to mutate the names of the petitioners at an early date and preferably within a period of 4 weeks from the date of communication of the order.

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9. Application allowed