
(2018) 06 CAL CK 0129
In the Calcutta High Court
Case No : MAT 1949 of 2017, CAN 788 of 2018

Dr. (Mrs.) Minati Banik & Anr.	Vs	APPELLANT
State Of West Bengal & Ors.		RESPONDENT

Date of Decision : 12-06-2018

Acts Referred:

Citation : (2018) 06 CAL CK 0129

Hon'ble Judges : BISWANATH SOMADDER, J; ARINDAM MUKHERJEE, J

Bench : Division Bench

Advocate : Fazlur Rahman, Amitesh Banerjee, Tarak Karan

Final Decision : Dismissed

Judgement

Biswanath Somadder, J.Â Â

The instant appeal arises out of a judgment and order dated 17th May, 2017, passed by a learned Single Judge in W. P. 26182 (W) of 2016 (Dr.

(Mrs.) Minati Banik & Anr. vs. State of West Bengal & Ors.). By the impugned judgment and order, the writ petition filed by Dr. (Mrs.) Minati Banik

and Dr. Jati Ranjan Banik stood dismissed. The writ petitioners are now before us in an Intra-Court Mandamus Appeal.

The short facts of the case are that the appellants/writ petitioners claim that plot no.DD-10, Sector-I, Salt Lake, was allotted in their favour on 7th

April, 1978 for construction of a small hospital by them on the basis of terms and conditions incorporated in the letter of allotment. Subsequently, on

7th December, 1978, adhering to the request of the appellants/writ petitioners, one lease deed was executed between the State of West Bengal and a

company, registered under the Companies Act, 1956, for construction of a hospital in connection with the said plot of land. After a lapse of thirty-six

years, i.e., on 31st December, 2014, the appellants/writ petitioners submitted a representation before the Land Manager, Bidhannagar, for rectification

of the lease deed upon incorporation of their names as lessees in place of the company which was being represented by the appellants/writ petitioners

as its Directors.

It is evident from the records that the appellants/writ petitioners had moved the writ Court on an earlier occasion by filing a writ petition, being W. P.

6968 (W) of 2015, on the allegation that their representations had not been considered by the Land Manager, Bidhannagar. An order was passed in

that writ petition by a learned Single Judge on 11th May, 2016. By the said order, the learned Single Judge gave a direction to the Land Manager,

Bidhannagar, for consideration of the three representations submitted by the appellants/writ petitioners on 31st December, 2014, 27th January, 2015

and 9th February, 2015. Consequently, the Land Manager, Bidhannagar, passed a reasoned order on 27th June, 2016, in compliance with the direction

given by the learned Single Judge as contained in the order dated 11th May, 2016. This decision/reasoned order of the Land Manager, Bidhannagar,

became the subject matter of challenge in W. P. 26182 (W) of 2016, wherefrom the impugned judgment and order dated 17th May, 2017 emanates.

Even a bare perusal of the impugned order reveals that the learned Single Judge took note of the fact that the order passed by the Land Manager,

Bidhannagar, was a speaking order and the said order was passed in compliance with the direction given by the Court in its earlier order dated 11th

May, 2016. The learned Single Judge also took note of certain other relevant facts. The Court found that the lease deed was executed on 7th

December, 1978, in favour of the company at the instance of the appellants/writ petitioners. In fact, the appellants/writ petitioners had submitted a

letter dated 9th August, 1978, to the concerned authority stating, inter alia, that "It is our prayer that the land may be reallocated in the name of our

family institution whose Directors will be ourselves. This will keep the running cost low, the benefit which may be passed to the people of our

State". We hope that this may be sanctioned at your earliest so that we may proceed with construction immediately.

By another letter, the appellants/writ petitioners requested that the land may stand in our family institution J. R. and M. Banik Private Ltd. .

This will help us to keep the running cost low the benefit of which may be passed on to the people of the State Directly.â? Again, on 20th October,

1978, the appellants/writ petitioners submitted a copy of certificate of incorporation of their family institution namely J. R. and M. Banik Private Ltd.

and reiterated their prayer to allot the plot in the name of their family company instead of their personal name. The learned Single Judge also took note

of the fact that the appellants/writ petitioners never disclosed in that writ petition who are the shareholders of the company and who are the directors

of the said company and who had invested money for the purpose of obtaining lease deed of the land and construction of the structure, if any, situated

on the said land. The learned Single Judge in the impugned judgment and order also took note of the fact that the appellants/writ petitioners never

impleaded the directors of the company as respondents for giving them opportunity of hearing for the purpose of rectification of the lease deed-

inquestion.

The Court went on to observe that the appellants/writ petitioners woke up from a deep slumber after a lapse of thirty-six years and submitted a

representation before the Land Manager, Bidhannagar, for substitution of their names in place of the name of the company though the lease deed was

executed in favour of the of the company at the instance of the appellants/writ petitioners. Keeping all these aspects in mind, the learned Single Judge

did not find any justification for interfering with the order passed by the Land Manager, Bidhannagar, dated 27th June, 2016. While proceeded to

dismiss the writ petition, the learned Single Judge went on further to observe that the Court could not be persuaded to give direction to the respondents

for execution of the lease deed in the name of the writ petitioners in place and stead of the company after a lapse of thirty-six years.

It is well-settled by now that a representation may be considered by the competent authority if it is so provided under the statutory provisions and the

Court should not pass an order directing any authority to decide the representation for the reason that many a time, unwarranted or time-barred claims

are sought to be entertained before the authority. In this context, one may take notice of a judgment of the Supreme Court rendered in the case of

Union of India & Anr. Vs. Ashok Kumar Aggarwal, reported in (2013) 16 SCC 147.

Notwithstanding the aforesaid judgment of the Supreme Court being in force, the appellants/writ petitioners had been favoured with an order passed by a learned Single Judge on 11th May, 2016, in WP 6968 (W) of 2015. By this order, the Land Manager, Bidhannagar, had been directed to consider the three representations dated 31st December, 2014, 27th January, 2015 and 9th February, 2015, which were hopelessly time-barred. Even then, the Land Manager, Bidhannagar, did comply with the direction of the Court as contained in the judgment and order dated 11th May, 2016, by passing the order dated 27th June, 2016, which became the subject matter of challenge in W. P. 26182 (W) of 2016, wherefrom the impugned judgment and order dated 17th May, 2017, emanates. The two judgments reported in AIR 1976 SC 1455 (The Mumbai Kamgar Sabha, Bombay Vs. M/s. Abdulbhai Faizullabhai & Ors.) and AIR 1936 PC 253 (2) (Nazir Ahmed Vs. King-Emperor) cited by the learned advocate for the appellants/writ petitioners are wholly inapplicable in the facts of the present case. Ordinarily the writ petition ought to have been dismissed with exemplary costs by the learned Single Judge.

However, the learned Single Judge, as it appears, has proceeded to dismiss the writ petition without any order as to costs even while holding that the Court cannot give any direction upon the concerned respondent authority for execution of a lease deed in the names of the appellants/writ petitioners in stead and place of the company after a lapse of thirty-six years. That apart and in any event, the appellants/writ petitioners, over the years, have allowed the company as the lessee to take benefit of the lease and they themselves have also benefited out of the same, being directors thereof. After about thirty-six years the appellants/writ petitioners cannot be allowed to alter such position by seeking rectification of the lease when by a reasoned order the authority concerned has refused such prayer for rectification.

In an Intra-Court Mandamus Appeal, no interference is usually warranted unless palpable infirmities or perversities are noticed on a plain reading of the impugned judgment and order. We do not notice any such palpable infirmity or perversity upon a plain reading of the impugned judgment and order. Moreover, the impugned judgment and order is supported with cogent and justifiable reason. For such reasons as stated above, the appeal and the application for stay are liable to be dismissed and stand accordingly

dismissed. Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.