
(2019) 07 CAL CK 0027

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 31206 (W) Of 2017

Kabita Saha & Ors

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 07 CAL CK 0027

Hon'ble Judges : Ravi Krishan Kapur, J

Bench : Single Bench

Advocate : Saptangsu Basu, Sumita Shaw, Parag Chaturvedi, Amitesh Banerjee, Ipsita Banerjee

Final Decision : Dismissed

Judgement

Ravi Krishan Kapur, J

1. The short question which arises for consideration in this writ petition pertains to the exercise of the power of resumption by the Land Manager,

Bidhannagar, Government of West Bengal (â??the respondent no.3â?) of a plot of land being premises no.47 in Block-FC, Sector-III, of the

Bidhannagar Municipality (â??the premisesâ?).

2. Shorn of details, the brief facts culminating in the filing of this writ petition are as follows:

a) By a deed of lease dated 14 September, 1983, executed by the Government of West Bengal in favour of one Sudhir Chandra Poddar (since

deceased) the premises was leased for a period of 999 years to the original lessee with an express condition that a residential building would be

constructed within a period of 3 years from the date of possession of the demise land or within such extended time as may be allowed by the State

Government in writing.

b) On 11 October, 1991, Sudhir Chandra Poddar died. Significantly, no residential house had been constructed on the premises as on the date of his

death. Subsequent to the death of Sudhir Chandra Poddar, a mutation certificate dated 28 October, 2002 pertaining to the premises was issued in the

name of his legal heirs i.e. Samir Kumar Poddar, Kabita Saha, Mamata Roy and Sanjukta Choudhury.

c) On 26 December, 2005, a show cause was issued under Clause 2(6)(a) of the lease deed in the name of the co-lessees pertaining to their failure to

make any construction on the premises. Pursuant to the aforesaid show cause, various opportunities and hearings were held on 12 January, 2007, 27

February, 2007 and 20 March, 2007 respectively by the respondent authorities.

d) In the meantime, two of the mutated co-lessees namely Samir Kumar Poddar and Mamata Roy also expired and an application for mutation of the

premises in the name of the legal heirs was filed on 28 December, 2016.

e) On 23 May, 2017, a mutation certificate in respect of the premises was issued in the name of the petitioners.

f) On 14 September, 2007, the petitioners applied for transfer of 100% shares in the premises in favour of one Gopal Banka and Sunita Banka.

g) On 28 November, 2017, a departmental enquiry was made by the Surveyor in respect of the premises, wherein it transpired that the premises was

lying vacant and no construction had yet been made.

h) In the aforesaid background, the respondent authorities and primarily the respondent no.3 issued a resumption order vide no.2785 dated 30

November, 2017 (the impugned notice) for cancellation of the allotment of the premises primarily due to violation of clause 2(6)(a) of the lease

deed dated 14 September, 1983.

i) By a letter dated 19 December, 2017 the application made by the petitioners for transfer in favour of Gopal Banka and Sunita Banka was also

rejected.

j) On 20 March, 2018 a sanction plan in respect of the premises was granted by the Bidhannagar Municipal Corporation.

k) It is alleged by the petitioners that, in February 2019 construction was ultimately completed at the premises and an application was made to the

Bidhannagar Municipal Corporation for obtaining an occupancy certificate.

3. It is in this background, that the present writ petition has been filed primarily challenging the impugned notice whereby the respondent no.3 had

cancelled the offer of allotment in favour of the petitioners and requested the petitioners to hand over physical possession of the premises to the respondents.

4. Mr. Saptangsu Basu appearing on behalf of the writ petitioners, has strenuously contended that, under Clause 2(6)(a) of the lease deed dated 14

September, 1983 the respondent authorities had a discretion to extend the time for constructing the residential plot. As such, according to him, time

was not of essence of the lease and the period of 3 years as stipulated under Clause 2(6)(a) was extendable. He submitted that admittedly as on date,

construction has taken place on the premises and a building has been constructed thereon. He further submitted that the delay in making the

construction was beyond the control of the petitioners and was for unavoidable reasons. He submitted that the order of resumption is a drastic

exercise of power by the respondent authorities and is contrary to the doctrine of proportionality. In support of his contention, he relied on the decision

reported in Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh and Others (2004) 2 SCC 13.0 He further submitted that, in the facts and circumstances,

there is complete arbitrariness on the part of the respondent authorities in issuing the impugned notice.

5. Mr. Amitesh Banerjee Senior Advocate, appearing on behalf of the respondent authorities submitted that the petitioners have approached this Court

with unclean hands and the entire case of the petitioners is based on suppression and distortion of the true and correct facts of the instant case. He

submitted that any construction which has taken place on the premises has happened subsequent to the impugned notice. He submitted that the

petitioners have entered into a fraudulent transaction with one Banka family and were clandestinely trying to transfer the premises to the Bankas. He

submitted that the intention of the petitioners in filing the present petition is dishonest and ill-motivated and the petition is liable to be dismissed with

costs.

6. The main contention of the petitioners is that the impugned notice has been issued without considering the explanation given by the petitioners to

justify the delay in completing the construction within the stipulated time period under the lease agreement. By letters dated 23rd August, 2017, 5 th

September, 2017 and 23rd November, 2017 respectively, the petitioners had sought to explain the reasons for the delay in completing the construction

and had also sought an extension of time from the respondent authorities to complete the construction. Mr. Basu also submitted that the sanction plan

in this case was only made available on 20 September, 2017. Prior thereto the petitioners had not obtained any mutation in their favour. Hence, the

delay was due to unforeseen circumstances and no fault can be attributed to the petitioners. In this background, the petitioners primarily contended

that the respondent authorities acted arbitrarily and whimsically in issuing impugned notice.

7. I am of the view that the relationship of the parties is primarily governed by the lease agreement dated 4th September, 1983 and their rights have

been crystallised in the said lease agreement. Clause 2(6)(a) of the lease agreement specifically provides as follows:-

“To construct the building in conformity with such building rules as may from time to time be framed by the Government or other authority

prescribed in that behalf and according to plans, specifications, elevations, designs and sections sanctioned by the Government, or that authority within

three years from the date of possession of the demised land or such extended time as may be allowed by the Government in writing.”

8. It is also pertinent to mention that in Clause 2(8) of the said lease deed it is, inter alia, provides that the lessee shall not assign or transfer the

demised land or any part of the demised land and/or the structure erected thereon without the previous permission of the Government in writing.

Additionally, Clause 4 of the lease deed expressly provides for the right of re-entry of the respondent and for determination of the lease.

9. I am of the view that the impugned notice contains sufficient and justifiable reasons and has been issued after full and proper consideration of the

facts and circumstances of the case. It is an admitted position that from 1983 till the date of issuance of the impugned notice, no construction of any

building had been carried out in the premises. The delivery of possession of the premises was taken as far as back in 1984. On a plain and proper

reading of Clause 2 (6)(a) of the lease agreement, construction of a building should have been completed within three years of the lease agreement or

within a reasonable period.

10. By a communication dated 26th December 2005, an opportunity was also given to the petitioners to remedy the breach and complete construction

within six months from the date of issuance of the notice dated 22nd December, 2005. The petitioners had applied for mutation of the premises

following the death of the co-lessees. In an inspection carried out on 23rd August, 2017, it has been categorically recorded that the premises was still

lying vacant. It was in this background that the respondent no. 3 had issued the impugned notice after recording the facts and after giving adequate

and sufficient reasons. In these circumstances, I find no reason to interfere with the impugned notice.

11. I also find that from the affidavit filed on behalf of the State respondents, that it is evident that the petitioners are attempting to transfer the said

plot to one Banka family. It is an admitted position that prices of properties in the Bidhannagar Municipality and the premises in particular have

drastically increased since the lease had been granted way back in 1983. I am therefore of the view that there is a clear and categorical violation of

Clause 2, (6) (a) of the lease agreement and there is no infirmity in the impugned notice.

12. It is well known that transfer of land in the Bidhannagar Municipality has always been a complicated issue. There are a number of plots in this

area which are still lying unutilized though the lessee had taken delivery of possession of plots from the State Government a long time ago. In some

cases, the lessees have become unable or are unwilling to develop their respective plots. In other cases, the lessees because of financial constraints

are unwilling to construct and have entered into ways and means of transferring their plots to third parties for valuable consideration. Admittedly, these

plots had been leased out two or three decades ago and the property prices have increased drastically. Now, third parties for valuable consideration

attempt to transfer the plots in their names. Diverse means for circumvention such as executing a general power of attorney, entering into an

agreement for lease/tenancy and creation of a will in favour of strangers have been devised of to get around the restriction on transfer of the leases

which had been granted decades ago. In recent times, I am informed that the State Government has taken steps in order to streamline the entire

process and ensure that unutilised plots both of industrial and commercial lands are put to effective use.

13. I am also of the view that, the fact that a building or some construction has been carried out and completed only in February 2019 after the issuance of the impugned notice cannot create any equity whatsoever in favour of the petitioners. Admittedly, the petitioners have procrastinated and delayed in making construction as contemplated under the lease agreement. There is absolutely no lawful justification or explanation for the petitioners failing to carry out construction for more than 35 years.

14. It is evident that the intention of the petitioners in challenging the impugned notice is dishonest and with ill-motive. It is evident that the petitioners are interested in inducting third parties and/or creating third party interests in respect of the premises. I am of the view that to exercise any discretion in favour of the petitioners in the facts of the instant case is to reward a party who is not only in breach of its contractual obligations but has also been indolent and lackadaisical. This is in clear violation of the letter and spirit of the lease agreement.

15. It is fundamental to writ jurisdiction that if a claim made by the petitioner is frivolous, vexatious or prima facie unjust, the Court would decline to invoke its extra-ordinary power. The Courts have also repeatedly emphasised that a writ petitioner must come to Court with clean hands and it is impermissible to approach the Court for an oblique or ulterior motive. It is also well settled that the discretion vested in Courts under Article 226 of the Constitution is a judicial discretion to be exercised according to judicial principles. Accordingly, in the light of the admitted failure on the part of the petitioners in complying with their contractual obligations for more than nearly three decades, I am of the view that the writ jurisdiction cannot be invoked to support an unjust claim made by the petitioners. I am also of the view that the writ jurisdiction cannot be invoked and was never intended to encourage and facilitate avoidance of obligations voluntarily incurred by a party.

16. The decision reported in *Teri Oat Estates (P) Ltd.* (supra) cited by the petitioners is distinguishable and inapplicable to the facts and circumstances of the instant case. In fact, in the said decision at paragraph 20 it has been categorically observed that where the intention of the allottee is dishonest or with an ill-motive the power of resumption can be invoked by the concerned

authorities. In any event, the facts of the instant case are clearly distinguishable from that of the aforesaid decision. As stated hereinbefore, it is an admitted position that the petitioners have done absolutely nothing since 1984 and are now attempting to benefit third party strangers to the original lease agreement. I am fully aware of the fact that the respondents have also delayed in invoking the right of resumption and have kept the matter pending for way too long. Moreover it is true that, to an extent, because of the possible delay in furnishing of the mutation certificate and the sanction plan by different arms of the State the petitioners were for a brief period unable to make any construction. However, I am of the view, that in the particular facts and circumstances of the instant case the petitioners are not entitled to enjoy a premium nor can any vested right be said to have accrued in their favour in the light of their admitted failure (timely or within a reasonable time) to honour their contractual obligations.

17. For the aforesaid reasons, I find no merit in the writ petition. There are no grounds whatsoever warranting any interference with the impugned notice of resumption. WP No.31206 (W) of 2017 is dismissed. However, there shall be no order as to costs.