
(2015) 04 CAL CK 0067
In the Calcutta High Court
Case No : Writ Petition No. 153 (W) of 2003

Maresh Kumar Goyal and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 20-04-2015

Acts Referred:

Government Grants Act, 1895 — Section 2, 3

Citation : (2015) 4 CHN 70

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Advocate : R.N. Dutt, S. Roy Choudhury and Nirmalya Dasgupta, for the Appellant

Final Decision : Allowed

Judgement

I.P. Mukerji, J.—Questions of law of great moment and importance have arisen during the course of hearing of this writ application. They are most interesting, as well. The question is: whether the Government of West Bengal can fetter the right of a lessee of its property in Salt Lake with regard to assignment of that lease? All land in the Salt Lake area belong to the government. It only grants leases of parcels of land. In this case on 6th February, 1975 the government demised to Charu Chandra Bose a plot of land in Salt Lake on lease for period of 999 years. On his death the plot, which had since been constructed upon into premises No. EC-149, Sector-1, Salt Lake City (Bidhannagar), devolved on his wife and off springs as his legal heirs. It was mutated in their names. Now, this property was reasonably large comprising of 4.3447 cottahs.

2. There is an ancient statute called the Government Grants Act, 1895. In areas where the Government Grants Act operates the Transfer of Property Act, 1882 has no application. Admittedly, this area falls within the operation of the Government Grants Act. According to Section 3 of this Act all provisions, restrictions, conditions etc. in a grant are to take effect irrespective of anything contrary contained in any statute.

3. Clause-8 of the lease agreement provided that any joint lessee could have the right to transfer his right in favour of the other joint lessee. Apart from this there was no restriction on the right of a lessee to assign the lease in favour of any third party.

4. What happened was this.

5. The heirs of Charu Chandra Bose were in Delhi on or about 8th April, 1988. On that date they executed a deed of sale of the said property in favour of the Mahesh Kumar Goyal and Dinesh Kumar Goyal, the writ petitioners and registered the conveyance there.

6. It is not very difficult to imagine that this sale was not made in a clean manner. On 22nd February, 1988 the Government of West Bengal had published a notification declaring that if any property in Salt Lake was sold without the permission of the government it would be opposed to public policy. This notification was issued in exercise of powers under sub-Section 1 of Section 22A of the Registration Act.

7. This notification was further amended on 21st May, 1988 but the essential part of it regarding the restriction of transfer of Salt Lake property remained unchanged. Section 22A of the Registration Act, 1908 and the aforesaid notification dated 21st May, 1988 are reproduced below:-

"(1) The State Government may, by notification in the Official Gazette, declare that the registration of any document or any class of documents specified in such notification shall be opposed to public policy.

(2) The registering officer shall examine whether a document prescribed for registration is one to which a notification under sub-section (1) is applicable and shall take such evidence as may be produced by the parties and may also require them to produce all documents in their possession or custody which the registering officer considers relevant.

(3) Notwithstanding anything to the contrary contained elsewhere in the Act, the registering officer shall refused to register any document or any class of documents to which a notification under sub-section (1) is applicable--Registration (W.B. Amendment) Act, 1981. Notification No. 452- Regn., dated 21st May, 1988--in exercise of power conferred by sub-section (1) of Section 22A of the Registration Act, 1908 (16 of 1908), as amended by the Registration (West Bengal Amendment) Act, 1981 (West Bengal Act XLIII of 1981), on its application to West Bengal, and in supersession of this department notification No. 195-Regn., dated the 22nd February 1988, the Governor is pleased hereby to declare that any document--

(a) Transferring any vacant land or land with building; or

(b) Delegating right of enjoyment and management of any land or building by executing a power of attorney (including irrevocable power of attorney), or

- (c) Creating tenancy on any land or building for twenty years and above; or
- (d) Creating mortgage or charge or incumbrances and transferring right of enjoyment of any land or building to the mortgage, at Salt Lake, Calcutta, to which the State Government is not a party and made without the prior permission of the Metropolitan Development Department, Government of West Bengal shall be opposed to public policy.

Published in the Calcutta Gazette, Extraordinary, Part-1, dated 22.8.1988."

8. When the transferees applied for mutation of their names in the records the respondent authorities refused to do the same by an order dated 10th April, 1990 because no permission of the State Government had been taken prior to affecting this transfer in favour of the transferees.

9. The transferees preferred a writ application in this High Court which passed the usual order on 9th July, 2002 upon the respondent authorities to consider the prayer of the petitioners for mutation.

10. It was a very difficult decision for the Joint Secretary of the Government of West Bengal. He made the best endeavour and pronounced a decision on 24th September, 2002. Too many intricate questions of law had to be decided by him. He was an administrator and not a professional adjudicator. It was too much for him. He rejected the prayer for mutation.

11. Challenging that order this writ has been preferred. I have no doubt in my mind that the Joint Secretary made a very honest effort to arrive at a decision. But at the end of the day I believe that this Court ought not to have relegated such difficult questions of law to a departmental officer and ought to have decided them itself.

12. The property was conveyed almost 30 years ago. Still the poor transferees are without a final decision. In spite of application of mind the decision of the Joint Secretary dated 24th September, 2002, to my mind is erroneous and has to be set aside.

13. Let us assume that the Government Grants Act, 1895 applies to Salt Lake. The demise of 6th February, 1975 by a deed of lease by the Government of West Bengal in favour of Charu Chandra Bose did not prohibit the assignment of the lease by the lessee in favour of an assignee. Undoubtedly, Clause-8 of the agreement provided that any joint lessee would have the right to transfer his right in favour of any other joint lessee. This clause did not make it explicit that any right of transfer was confined amongst joint lessees inter se and that the right of assignment of a lease enjoyed by any lessee under the common law was taken away by covenant. Therefore, there was nothing in the grant in favour of the original lessee imposing a condition, restriction etc. under Section 3 of the Government Grants Act, 1895. Such was declared by Mr. Justice Paritosh Kumar Mukherjee in C.R. No. 17357 (W) of 1984 Mrs. Bhakti Mondal Vs. State of West Bengal and Others where it was held that in the absence of any prohibition

regarding transfer mutation of a Salt Lake property could not be refused. Now, in another case *Tarachand Dalmia Vs. State of West Bengal and Ors.* reported in 1994 (1) CHN 15 Mr. Justice Tarun Chatterjee held that in the absence of any restrictions or limitations in the grant itself, Section 2 of the Government Grants Act, 1895 could not be applied to those grants. Both these decisions were single bench decisions of this Court. However, by a judgement and order dated 25th June, 2001 Mr. Justice Dilip Kumar Seth ruled that the Government Grants Act, 1895 not only applied in Salt Lake but the lease deed contain a restriction upon the lessee to transfer the lease. This was in view of the Court's interpretation of Clause-8 of the lease deed. According to the Court since this clause was about transfer between joint lessees it impliedly prohibited transfer to an outsider.

14. A judgement, subsequent to the said decision delivered by Mr. Justice Subhro Kamal Mukherjee of this Court in *Shrimati Nathi Devi Kulthin Vs. State of West Bengal and Others*, (2003) 2 CALLT 376 also held that the restrictions only applied if they were imposed by a grant made under The Government Grants Act, 1895. In paragraph 8 of this judgement the learned Judge opined that Clause-8 did not impose any bar on transfer.

15. When a later decision of a bench is at variance with an earlier decision of a coordinate bench a Judge bound by both is required under the rule of stare decisis, to request the Chief Justice to constitute a larger bench to decide the issue.

16. But if there are several decisions of Courts of the same level in variance with one decision of a bench of the same strength, a Judge bound by all, becomes free to rule according to the majority decision. It is so because that solitary decision does not follow the rule of precedents and is against the current in the stream of authority. It need not be followed as it has ceased to be good law. Therefore, in the face of the aforesaid decisions, the view of Mr. Justice Dilip Kumar Seth that the lease deed contained a prohibition on transfer is not tenable. I hold on the basis of the majority view that Clause-8 of the lease deed does not impose any restrictions. Hence, the impugned decision on the basis of this decision is erroneous.

17. For the sake of assumption let me assume that the lease deed imposes such a restriction. In that case Section 22A of the Registration Act, 1908 read with notification No. 452 - Regn. Dated 21st May, 1988 would be applicable.

18. By the said notification transfer of a Salt Lake property without permission of the Metropolitan Development Department, Government of West Bengal is opposed to public policy.

19. The Supreme Court in the case of *State of Rajasthan and Others Vs. Basant Nahata*, AIR 2005 SC 3401 : (2005) 4 CTC 606 : (2006) 1 CTLJ 19 : (2005) 8 JT 171 : (2005) 12 SCC 77 : (2005) 1 SCR 1 Supp : (2005) 2 UJ 1366 : (2005) AIRSCW 4456 : (2005) 6 Supreme 243 declared Section 22A of the Registration Act, 1908 inserted in the said Act by the Rajasthan legislature as ultra vires the

constitution. Mr. Justice S.B. Sinha delivering the judgement of the Court said that it was not possible to define public policy with precision at any point of time. The exact meaning and extent of public policy was the domain of the judiciary and could not be delegated to the executive by the legislature. Moreover, giving power to the executive to define and classify the documents was opposed to public policy. The legislature had abdicated its essential functions. In those circumstances Section 22A of the Act was struck down.

20. Therefore, following the aforesaid decision of the Supreme Court and considering the fact that the provision in Section 22A as inserted by the legislature of our state is identical to the one inserted by the Rajasthan legislature, I do not apply Section 22A of the Registration Act as inserted by the West Bengal legislature. I also disapply the notification No. 452- Regn. dated 21st May, 1988. I do not declare the provisions ultra vires as there was no prayer and/or argument to that effect.

21. For all those reasons, the impugned decision dated 24th September, 2002 of the Joint Secretary to the Government of West Bengal Urban Development Department is set aside. I direct the respondents to mutate the above property in the name of the petitioners, by recording the above transfer in their favour within four weeks of communications of this order.

22. This writ application is accordingly allowed.

23. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.