

(2015) 04 CAL CK 0096
In the Calcutta High Court
Case No : Writ Petition 26916(W) of 2014

Mohan Lal Singhi

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Registration Act, 1908 — Section 23

Citation : (2015) 04 CAL CK 0096

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, N.C. Bihani and Papiya Banerjee (Bihani), for the Appellant; Sadananda Ganguly and Debjit Mukherjee, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ashoke Kumar Dasadhikari, J.

1. This writ petition was moved by the writ petitioner, Mohan Lal Singhi, being the transferee/purchaser of 2/3rd share in premises No. CD-203, Sector-I, Salt Lake City, Kolkata-700064 with a prayer for carrying out mutation in his favour. The writ petition was affirmed on 15th September, 2014. Prayer (a) of the writ petition reads as follows :-

"(a) A Rule NISI in the nature of Mandamus commanding the respondents and each one of them to mutate the name of the petitioner in respect of 2/3rd undivided share of premises No. CD-203, Sector-I, Salt Lake City, Kolkata-700064 forthwith."

2. Mr. Mukherjee, learned Senior Counsel appearing for the writ petitioner submitted that by two transfer lease deeds, one executed by Mohit Kr. Singhi power of attorney of original lessee Badal Basu Mullick and the other one executed by Smt. Kalyani Basu Mallick wife of Late Asok Kumar Basu Mallick on 21st January, 2013 and 14th June, 2013 respectively the property was

transferred in favour of the writ petitioner.

3. Mr. Mukherjee submitted two applications seeking permission for transfer, one dated 25th September, 2012 and the other dated 27th September, 2012 were submitted by both Mohit Kumar Singhi and Kalyani Basu Mullick constituted attorney of Badal Basu Mullick and Ashok Basu Mullick joint lessees of Plot No. CD - 203, Sector - I, Salt Lake, Kolkata - 700 064 for transferring their respective shares $\frac{1}{3rd} + \frac{1}{3rd} = \frac{2}{3rd}$ share in the property in terms of Government notification No. 2709-SL(AL)/4S-9/2004 (PT-1), dated 22nd June, 2012.

4. Mr. Mukherjee submitted that in response to the applications made by both Mohit Kumar Singhi and Kalyani Basu Mullick, the then Land Manager Bidhannagar and OSD and Ex-officio Deputy Secretary by his letter dated 6th December, 2012 asked Mohit Kumar Singhi and Kalyani Basu Mullick to deposit an amount of Rs. 7,37,933/- (Rupees seven lakh thirty seven thousand nine hundred thirty three) each with the State Bank of India, Bikas Bhaban, Salt Lake by Challan No. TR Form No. 7 under the head of account "0217-Urban Development-16-other Development Schemes-800-other receipts-001-collection form other item-16 other fees" on account of the permission fee for transfer of $\frac{1}{3rd}$ share each within 30 days from the date of receipt of the letter and to submit the original receipt and to submit the receipted challan in duplicated to the department for further action in the matter which should be signed on the reverse side with a declaration "submitted by me". The copy of the letter dated 6th December, 2012 asking deposit of the aforementioned amount was forwarded for information to the Principal Secretary, UD Department, Nagarayan, Salt Lake, Kolkata - 700 064 and the Joint Secretary (TKG, UD Department Nagarayan Salt Lake, Kolkata) and also Mohan Lal Singh (proposed transferee).

5. Mr. Mukherjee then submitted that by both the letters dated 20th December, 2012 Mohit Kumar Singhi and Kalyani Basu Mullick informed principal secretary Urban Development Department, DF-8, Sector-I, Nagarayan, Salt Lake, Kolkata -700 064 that they have deposited the amount of Rs. 7,37,933 (Rupees seven lakh thirty seven thousand nine hundred thirty three) each by demand draft as mentioned in their letter, as a requisite transfer charges according to their demand letter dated 6th December, 2012 in the head as disclosed in the letter of 6th December, 2012. Original TR Form No. 7 was enclosed and a request was also made by both of them to the concerned principal secretary to verify the bank and issue the letter for execution of transfer deed in favour of Mohan Lal Singh of BL - 106, Sector - II, Salt Lake, Kolkata - 700 091.

6. Mr. Mukherjee then submitted that the requisites as required under Government notification dated 22nd June, 2012 were duly submitted and accordingly the then Land Manager, Bidhannagar and OSD and Ex-officio Deputy Secretary, Urban Development Department, Government of West Bengal by his order dated 14th June, 2013 informed Mohit Kumar Singhi and Kalyani Basu Mullick and also Mohan Lal Singh (transferee) that, since the conditions

stipulated in the Government notification have been complied with and necessary fees deposited TR Challan 798 and 799 dated 19th December, 2012 deposited with SBI, Bikash Bhaban, Salt Lake Branch, the Governor has pleased to grant permission for transfer, thus, enabling Shri Mohit Kumar Singhi and Kalyani Basu Mullik for executing the deed of transfer in favour of Mohan Lal Singh the deed of transfer should be executed before the undersigned after having the deed of transfer/assignment and register in the office of Additional District Sub-registrar, Bidhannagar, Bikas Bhaban, Salt Lake, Kolkata- 91/District/Additional Register of Assurance, North 24 Pgs. as per enclosed proforma within sixty days from the date of issue of this order. It was also directed that after registration of the deed of certified copy of the same should be submitted to his office at the earliest for mutation/updation of Government records, etc.

7. Mr. Mukherjee then submitted in case of Badal Basu Mullick date of application is 25th September, 2012, date of deposited of the amount is requisite fee is 18th December, 2012, dated of execution of the deed is 21st January, 2013 and date of permission granted on 21st March, 2013, thereafter the deed was registered on 25th June, 2013. He submitted in respect of Ashok Basu Mullick date of application is 27th September, 2012, date of deposit 18th December, 2012, date of execution of the deed is 14th June, 2012 and date of permission 14th June, 2013, thereafter the deed was registered on 25th June, 2013.

8. Mr. Mukherjee also submitted that the deeds were registered by Mohit Kumar Singhi and Kalyani Basu Mullick as per permission granted by the Governor to them. The deed executed by Mohit Kumar Singhi was registered in the office of Additional Sub-Registrar, Bidhannagar, Salt Lake City. He also submitted that the then land manager Sital Chnadra Mondal was a signatory on the deed and one Sanjay Kumar Mitra (head assistance) of his office was a witness in the deed. Mr. Mukherjee further submitted that as it appears from the deed itself, the Governor of the State of West Bengal was confirming party being the "Third Party" in the deed. Mr. Mukherjee submitted that the deed executed by Kalyani Basu Mullick was registered on 25th June, 2013. In this case also the then land manager Sital Chandra Mondal was a signatory and there were two witness from his office, one Monaj Kumar Singha, Head Assistance and the other Susen Halder, UD Assistant of Urban Development Department. In the instant case also the Governor of the State of West Bengal was confirming party to the deed which is also evident from the deed itself.

9. Mr. Mukherjee submitted that after the deed were registered in favour of the writ petitioner the petitioner made an application upon deposit of processing the fees for mutation of 2/3rd share of the plot in question in his name in the Government records. Petitioner sent his letter to the land manager annexing all required documents for carrying out mutation, which was also received by the office. Mr. Mukherjee submitted that permission was granted during lifetime of Badal Basu Mullick and Ashok Basu Mullick. Subsequently Mohit Kumar Singhi who was granted permission executed the deed of transfer and Smt. Kalyani

Basu Mullick being the wife of Ashok Basu Mullick after her husband's death executed deed in favour of the petitioner in her personal capacity and these facts are in the knowledge of the then land manager including the principal secretary. Mr. Mukherjee submitted that the authorities are all aware of the facts and they have allowed such transfer upon acceptance of required fees as well as on compliance of all formalities and moreover the then land manager himself was a signatory along with his office staff. Mr. Mukherjee submitted that in spite of compliance of all formalities and making application for mutation the concerned authorities did not take any step for mutating the name of the petitioner in respect of 2/3rd undivided share of premises No. CD-203, Sector-I, Salt Lake, Kolkata-700 064. The writ petitioner affirmed the writ application on 15th September, 2014 and thereafter moved the same.

10. Mr. Mukherjee submitted that the petitioner not only complied with all formalities but also the required fees for such transfer were also deposited. Two demand drafts deposited with the approved branch of the Land Manager are annexed to the writ petition. In each case an amount of Rs. 7,37,933/- were deposited in view of permission granted by the Governor and the then Land Manager which was duly accepted by the respondent authorities.

11. Mr. Mukherjee submitted that in both the cases the permission was sought for by Sri Mohit Kr. Singhi, constituted attorney of Badal Basu Mallick and Smt. Kalyani Basu Mallick constituted attorney of Asok Kr. Basu Mallick during life time of Asok Kr. Basu Mallick. However, later on Asok Kr. Basu Mallick expired, Smt. Kalyani Basu Mallick executed the deed in her personal capacity and in terms of the Governor's permission and all these things are in the knowledge of the then Land Manager as well Principal Secretary and ors. and the then Land Manager himself was a signatory in the deed of transfer along with his office staff.

12. Mr. Mukherjee then submitted that both the deeds were registered before the Additional Sub-Registrar, Bidhannagar, Salt Lake City, and vetted the then Land Manager, Urban Development Department.

13. Mr. Mukherjee submitted thereafter on 14th August, 2014 the petitioner made a representation to the Land Manager to mutate the name of the petitioner. The respondent did not grant mutation in favour of the writ petitioner.

14. Mr. Mukherjee submitted that the respondents have filed an affidavit-in-opposition against this writ petition wherein it was specifically stated that the original file is missing. In spite of the fact that the original file is missing the statements made in the affidavit-in-opposition alleging forgery of signature etc. was affirmed by the present Land Manager and the statements made in paragraphs 5(b), (c), (d) and (e) and 7, 8, 9, 12, 13, 14 and 15 derived from the records of case which the deponent, the present Land Manager viz. Dinesh Chandra Mondal believed to be true.

15. Mr. Mukherjee submitted that even in spite of the fact that the original file is missing the statements are affirmed as true to the present Land Manager's

information derived from the records.

16. Mr. Mukherjee submitted that the allegations made in the affidavit-in-opposition are all incorrect. He submitted that applications were made long before and deposits were made thereafter. Upon approval execution took place and thereafter stamps were purchased and the registration was completed wherein the office clerks of the then Land Manager as well as the Land Manager himself was a signatory upon the deed itself.

17. Mr. Mukherjee submitted that the plea taken by the present deponent are all baseless and without any substance. He submitted that it is not unknown that before execution of the deed one is to seek permission and unless and until permission is granted and the deed is not approved there is no question of purchasing stamp and getting the deed prepared for registration. According to him, the allegations made by the present Land Manager that the stamp was purchased later on is of no substance in the facts and circumstances of this case. The stamp was purchased later on upon which the deeds were transcribed and thereafter registration took place.

18. Mr. Mukherjee submitted the allegation of fraud is baseless. He submitted that in similar such circumstances this Court directed the authorities to mutate the name since this transfer was made in view of Government Notification and that too upon acceptance of payment of huge monetary consideration, to be paid by the transferor to the Government.

19. Mr. Mukherjee then submitted that there is nothing wrong in the execution of deed of transfer, which was already accepted. He submitted that the Governor has already granted permission for transfer and on that basis Smt. Kalyani Basu Mallick and Mohit Kr. Singhi executed the lease deed of transfer in favour of the writ petitioner.

20. Mr. Mukherjee submitted when both the lessees were living on that occasions power of attorney was executed and applications were made seeking permission to execute the lease deed and accordingly permission was granted by the Governor and deeds were executed.

21. Mr. Mukherjee submitted that statements made in the affidavit-in-opposition are all incorrect and based on surmise and conjecture of the present Land Manager who has no knowledge and/or no information about the past procedure as well as about the records which are not available admittedly in the office of the Land Manager now.

22. Mr. Mukherjee submitted that the authorities be directed to grant mutation in favour of the writ petitioner. He submitted there is some allegations of issuing a forged mutation certificate and the forged mutation certificate was not disclosed by the deponent in his affidavit-in-opposition, the writ petitioner has disclosed in his affidavit-in-reply since a copy of the impugned document was handed over to Mr. Mukherjee's Advocate on record in course of hearing of the matter.

23. Mr. Mukherjee submitted that his client is not party to this and if somebody has done something wrong or there is any wrong committed by any person the person responsible for it should be penalised and the petitioner would have no say these. In this case the writ petitioner himself came up before this Court by filing this writ petition with a prayer for granting mutation in his name on the basis of two aforementioned deeds of transfer which were vetted, approved and registered in the office of registration authority, having signature of the then Land Manager and his office staff, therefore, it can safely be said that petitioner is not involved in it.

24. Mr. Mukherjee submitted that the petitioner has never claimed and contended that he has got his mutation and had this been so he would not have to come before this Hon''ble Court to fight a long battle with the respondents by making a prayer for granting mutation in his favour.

25. Mr. Mukherjee then submitted that the deed was registered with the approval and sanction by the then Land Manager upon obtaining sanction and/or permission from the Governor, till date there is no withdrawal of Governor''s permission, no F.I.R. was lodged nor any step was taken in this regard by the present Land Manager although his office is against commission of fraud etc.

26. Mr. Mukherjee submitted that the allegations are all baseless and the petitioner''s case should be considered by this Court. He submitted that the writ petition be allowed.

27. Mr. Ganguly, learned Counsel appearing for the State emphatically submitted that there is fraud in this case. He submitted that the deed was executed on 21st January, 2013 and 14th June, 2013 but it appears that the stamps were purchased on 14th June, 2013 in one case and in other case on 20th March, 2013. According to him, this is not possible and permissible.

28. Mr. Ganguly submitted that the previous permission was obtained by practising fraud. The signature of the then Land Manager was also forged.

29. Mr. Ganguly disputed execution of the deeds. According to him, the documents should be registered within four months from the date of registration as required under Section 23 of the Registration Act.

30. Mr. Ganguly submitted these two deeds cannot be taken into consideration nor on the basis of the two deeds mutation could be made. He submitted that the power of attorney granted by the persons who were not in the land of living cannot be acted upon nor on that basis the deed could be executed.

31. Mr. Ganguly submitted fairly that as yet the present Land Manager did not initiate any proceeding nor lodged any F.I.R. nor he has taken any steps whatsoever.

32. Mr. Ganguly submitted that under no circumstances direction for mutation could be granted. He submitted the present Land Manager has carefully and

cautiously made these statements and the statements made by him are all true and correct although original file is missing.

33. Considered the submissions made by the learned Counsel appearing for the parties. It appears from the records that the power of attorney was executed by both original allottees when they were living and on that basis permission was sought for by the power of attorney holders for transferring the respective share of the original lessees. On the basis of the application made at the relevant point of time by the two power of attorney holders, permission was granted to execute the transfer deed but at the time of execution of the deed by Smt. Kalyani Basu Mallick, her husband Asok Kr. Basu Mallick. Therefore, Smt. Kalyani Basu Mallick in her personal capacity on the basis of permission granted by the Governor executed the deed of lease in favour of the writ petitioner. The same was done in case of Mohit Kr. Singhi. Mohit Kr. Singhi was also executed deed of transfer in favour of the writ petitioner in view of permission granted by the Governor as recorded by the then Land Manager. It is not in dispute that the then Land Manager was confirming party by putting his signature over the deed itself on the date of registration. In one case one clerk of the Land Manager's office and in other case two clerks of Land Manager's office were also witnesses in the deed of transfer. Both the deeds were executed and registered. These transfer deeds were accepted by the then Land Manager. Petitioner made application for mutation. Petitioners complied with all formalities in terms of Government Notification dated 22nd June, 2012 which was recorded by the then Land Manager in his letter dated 21st March, 2013. It appears from the plain reading of those documents that both the power of attorney holders applied when the executors Asok Kr. Basu Mallick and Badal Basu Mallick were living and on that basis Government's permission was accorded. Since Governor's permission was accorded on the basis of applications, both Mohit Kr. Singhi as well as Smt. Kalyani Basu Mallick executed the deed of transfer which was accepted by the then Land Manager. Had there been any such objection by the then Land Manager or any other authority there would have no question for execution and/or registration of both the deeds. Therefore, when the deeds were executed at the instance and with the sanction and approval of the Governor and accepted by the then Land Manager, the present Land Manager has no right and authority to question the same by showing the date of purchase of the stamp by alleging that power of attorney holders moved this at the time of execution of the deed. The present Land Manager has no authority even when the Government has itself accepted the amount which is required to be deposited not one rupee or hundred but few lakhs. It is total about Rs. 15 lakh and these deposits were also accepted by the then Land Manager. Conduct of the State authorities including the then Land Manager shows that both the deeds were accepted and the petitioner did comply all requirements and he has paid the requisite fees for such transfer. Therefore, neither the Present Land Manager nor any one of the authorities can say that the deed is not valid and no mutation could be granted on that basis. It is interesting enough, even in spite of all such allegations as stated in the

affidavit-in-opposition, the present Land Manager did not lodge any F.I.R. nor even took any further or other step in this regard except affirmed the affidavit and that too could not be taken into consideration in view of his incorrect and untrue affirmation on oath. In the jurat portion in the body of the affidavit-in-opposition under paragraph (a) it was stated that main file is missing but he is affirmed this affidavit stating that the statements made under paragraphs 5(b), (c), (d) and (e) and 7, 8, 9, 12, 13, 14 and 15 are true to information derived from records. Nowhere it is stated that the records were prepared subsequent to the missing of the main file. No such statement was ever made in the affidavit-in-opposition.

34. In my view, the statement made in the affidavit-in-opposition and affirmation made by the present Land Manager are not reliable at all in view of his wrong statement. He has no knowledge about the previous procedure. He has not having original records. He has got some xerox copies which were produced on different occasions but those were not disclosed in the affidavit-in-opposition either. Therefore, the conduct of the present Land Manager is more suspicious and his statements are not at all reliable and statements of allegations made are all based on surmise and conjecture. Moreover, the present Land Manager did not even ask the previous Land Manager whether the letter issued by him earlier is a genuine or not rather he has made an incorrect statement to the effect that the previous letter of the then Land Manager is a forged document and the signature appearing on the letter is also forged signature. There is no basis of making such allegation. There is no foundation also. It is evident that the present Land Manager has deliberately made wrong statement before this Court. According to this Court, the statement made by him should not be considered. However, even if these statements are taken into consideration this Court is of the view that all past actions of the previous Land Manager, approval of the Governor, compliance of required formalities by the writ petitioner show that the writ petitioner has complied with all requirements and he is entitled to have his mutation.

35. In this regard, it is to be pointed out that Mr. Ganguly has taken a point that both the deeds were not presented within time specified i.e. four months as per Section 23 of the Registration Act. However, there are provisions in the Act itself for relaxation. In the instant case, the deeds were never questioned by the respondent authorities by filing appropriate proceedings, and this is also not a proper forum to raise any question about the registered document nor this Court has power and authority to decide whether the deeds executed by the transferors were valid or not. In my view, the deeds executed, registered and accepted by the authorities, could be allowed to come and contend that it is not acted upon and mutation should be refused. On this point this Court is of the view that there is no substance. As such the plea of presentation taken by Mr. Ganguly is rejected.

36. Considering the entire facts and circumstances of this case and also considering the fact that the petitioner has complied with all formalities and

considering the fact that the respondent authorities including the then Land Manager is a confirming party to the deed of transfer this Court is of the view that the petitioner is entitled to get mutation in his favour.

37. Accordingly, the respondent authorities are directed to mutate the petitioner's name in the Government's records by two weeks from the date of communication of this order.

38. The writ petition is, thus, allowed.

39. Mr. Ganguly prays for stay of operation of this order and the prayer is considered and rejected.

40. For making incorrect and wrong statements in the affidavit-in-opposition specially in the jurat portion by the present Land Manager, the present Land Manager is imposed cost of Rs. 1 lakh to be paid to the writ petitioner.

41. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on usual undertakings.