

(2000) 11 CAL CK 0014

In the Calcutta High Court

Case No : Writ Petition No. 19005 (W) and 19006 (W) of 2000

Nitin Das and Roma Das

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Registration Act, 1908 — Section 23, 28, 34, 35, 71

Citation : (2001) 2 CALLT 96

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Kishore Dutta, S.K. Sen and Ranjan Kali, for the Appellant; Somnath De for Respondent Nos. 1 to 6, for the Respondent

Judgement

Mahemmad Habeeb Shams Ansari, J.—As the matters raised identical question and similar relief has been prayed for, the two writ applications have been heard analogously and are being disposed of by this common judgment and order.

The petitioner, Nitin Das seeks a direction commanding the respondent No. 4 to register the Deed of Transfer in respect of plot No. B-10/157 at Kalyani township at Kalyani, Nadia.

W.P. No. 19006(W) of 2000.

The petitioner, Roma Das seeks a direction commanding the respondent No. 4 to register the Deed of Transfer in respect of plot No. B-9/268 at Kalyani township at Kalyani, Nadia.

2. The land in the plots referred to supra, is said to be held by the transferor and their predecessor-in-interest under a lease from the Government. In terms of the lease, transferor and transferee applied for consent and the period for consideration thereof having elapsed, there is no impediment for registration of the said transfer in favour of the petitioner, it is contended.

3. The common grievance of the respective writ petitioners" is that the

registering authority when approached for registration is not registering the document on the alleged ground that the petitioners have not received consent from Government for such transfer in terms of the lease agreement.

4. Learned counsel for the petitioner has relied upon certain judgments of learned single Judges of this Court and urged that similar directions need to be issued in the instant writ application as well. By the said orders, directions had been issued for registering the documents.

5. The relief prayed for is in the nature of a mandamus commanding the Registrar to register the Transfer Deed.

6. The question for consideration is whether a mandamus can be issued in terms as prayed for.

7. Indian Registration Act, 1908 provides a remedy in case of improper refusal on the part of the Sub Registrar, and it is to be found in Section 72 of the Act. That section provides for an appeal to the Registrar within 30 days from the date of the order and the Registrar has the power to reverse or alter such order.

8. Sections 71 and 76 of the Act are relevant for the purpose of enquiry on hand and read as under;

"71(1):- Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2 and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered.

76(1) Every Registrar refusing-

(a) to register a document except on the ground that the property to which it relates is not situate within his district or that the document ought to be registered in the office of a Sub-Registrar, or

(b) to direct the registration of a document u/s 72 or Section 75, shall make an order of refusal and record the reasons for such order of refusal and record the reasons for such order in his Book No. 2, on application made by any person executing or claiming under the document, shall, without unnecessary delay, give him a copy of the reasons so recorded.

(2) No appeal lies from any order by a registrar under this section or Section 72."

9. A bare perusal would show that the reasons for refusal to register a document have to be recorded and on application made by any person executing or

claiming under the document, a copy of the said reasons have to be furnished.

10. As already noticed supra, remedy has been provided under the Act against such order of refusal. Appeal u/s 72 of the Act to the Registrar from orders of Sub Registrar refusing registration on the ground other than the denial of execution. In case of refusal by Registrar, remedy of suit has been provided for u/s 77 of the Act.

11. Also, certain other relevant provisions of the Registration Act need to be noticed.

12. Section 23 of the Registration Act prescribes the time within which a document is to be presented from the date of its execution. Section 28 prescribes the place for registering documents relating to lands.

13. Sections 34 and 35 of the Registration Act provide what a registering officer has to see before registering a document. Briefly speaking, he has to see that the document is presented in the manner prescribed by the Registration Act and by a person authorized to present it and before an officer authorized to register it.

14. u/s 74(b) power has been conferred on the Registrar to see whether the provisions of the Registration Act or of the requirements of law for the time being in force have been complied with.

15. In the light of the above, the relief prayed for by the petitioner has to be considered.

16. As noticed supra, upon presentation of the document for registration, the registering authority is to consider the same in accordance with the relevant provisions under the Registration Act as also in the light of the provisions contained in any other law for the time being in force. In the event, the registering authority finds any infirmity in the document and refuses to register the same, the registering authority is required to record the reasons of such refusal in Book No. 2 and also supply a copy of such reasons for refusal to the claimants under the document. The remedy of the petitioner is by way of appeal u/s 72 of the Registration Act.

17. Adverting to the unreported judgments relied upon by the learned counsel for the petitioner, it will be seen from the order dated 24.11.97 in W.P. No. 22858 (W) of 1997, the directions have been issued in that case without referring to the provisions contained in the Registration Act.

18. In the order dated 18.6.97 in W.P. No. 10453 (W) of 1997, the application was disposed of in so far as registration of the document is concerned in the following terms;

"It goes without saying that in this application, I have not considered as to whether the petitioner satisfied other conditions required under the Indian Registration Act and the Rules framed there under"

19. In the order dated 8.12.98 in W.P. No. 22119 (W) of 1998, directions have been issued to register the document but no reference has been made to the provisions contained in the Registration Act.

20. In the instant case, it does not appear that the document was presented for registration. There is no order of refusal much less any endorsement made by the registering authority at any rate no such order of refusal has been placed before Court.

21. The averment in the writ application is to the effect that "the petitioners along with the constituted attorney of the lessee approached the registering authority for registration". In my view, therefore, there has been no presentation of the document for registration as contemplated under the Registration Act.

22. It is not the function of a writ Court to substitute itself for the statutory authorities to decide the matter. The writ Court can either direct the statutory authorities, where it is not exercising its discretion, by mandamus to exercise its discretion or when exercised to see whether it has been validly exercised. (See: State of West Bengal and Ors. v. Nuruddin Malick, reported in 1998 (8) SCC 152).

23. In the light of the above, It is .neither prudent nor appropriate to issue the direction or a writ in the nature of mandamus as prayed for.

24. However, in the light of the submission that the registering authority may not accept the document, the only direction that can and accordingly, shall issue to the registering authority is that upon presentation of the document for registration, the same shall be received and dealt with in accordance with the provisions contained in the Registration Act. However, if in the opinion of the registering authority, there is any flaw in the document and for that reason, the same cannot be registered, the registering authority shall record its reasons and to furnish the petitioner with a copy thereof expeditiously whereupon it shall be open to the petitioner to avail of such remedy as may be open in law.

The writ petition is accordingly disposed of in terms as above. There shall, however, no order as to costs.

Let urgent xerox certified copy of this Judgment and order be furnished to the parties. If applied for expeditiously.