

(2024) 05 CAL CK 0018
In the Calcutta High Court
Case No : WPA No. 8260 Of 2018

Roopkatha Bhattacharya

APPELLANT

Vs

K.M.D.A. & Ors.

RESPONDENT

Date of Decision : 14-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 12
Transfer of Property Act, 1882 — Section 54, 105

Citation : (2024) 05 CAL CK 0018

Hon'ble Judges : Rai Chattopadhyay, J

Bench : Single Bench

Advocate : Debabrata Ray, Gazi Hossain, Priyanka Mondal, Soumik Mondal, Satyajit Talukdar

Final Decision : Disposed Of

Judgement

Rai Chattopadhyay, J

1. The matter relates to the alleged inaction on part of the respondent/Kolkata Metropolitan Development Authority, to execute a sale deed in favour of the writ petitioner, for the property purchased (by her predecessor in interest), in response to an advertisement published by the said respondent and in lieu of due consideration money.

2. The respondent Authority published a brochure declaring its intention to dispose the particular landed property amongst the intending purchasers, by dint of execution of a deed of sale to each one of them, in lieu of stipulated consideration money. The mother of the writ petitioner (since deceased) had responded to such advertisement of the said Authority and obtained the property in her possession in 2003. Before that, in 2001, she had remitted the entire consideration money for the same as was stipulated.

3. On July 27, 2005, the petitioner's mother had executed her last will and testament. The said immovable property was bequeathed in favour of the

present writ petitioner. The mother of the petitioner died thereafter, on August 15, 2005.

4. Now it was the petitioner's turn to toil hard. The writ petitioner moved her first case before this Court, to seek redress. In her case that is, W.P.No. 25324 (w) of 2006, the Court passed an order dated December 20, 2006, directing the writ petitioner to submit before the respondent Authority the succession certificate and also directing the respondent Authority to register the deed of conveyance, upon the writ petitioner submitting the succession certificate, within a stipulated period of time.

5. The writ petitioner obtained probate of the last will and testament of a deceased mother, that is, dated June 26, 2008. The same was presented before the respondent Authority on August 1, 2008.

6. A draft deed of sale, sent thereafter by the respondent Authority to the writ petitioner, could not have been settled till the year 2013, in spite of several communications made between the parties in the meantime, as allegedly the same did not contain necessary arrangements and proportionate share of the writ petitioner as regards the common space, etc., as a owner thereof and also was violative of the provisions of the applicable statutory provisions. The writ petitioner has contended that the said respondent Authority made endeavour to slap upon the petitioner, unauthorised "transfer fee" and also restrictions as regards alienation of the said property. She has contended that such draft deed of sale suffered from vague description of property, vague description as regards the area which butted and bounded the property and absence of necessary specifications as regards the common space, etc.

7. Allegedly, even after submission of the probate certificate, the respondent Authority had sought for succession certificate, which, the writ petitioner says that, would not be applicable in case of the immovable property of the petitioner.

8. Ultimately, the writ petitioner had received a letter dated, of February 19, 2018 by dint of which the respondent Authority informed the writ petitioner regarding execution of a lease deed in her favour, with respect to the concerned property, she being the only nominee of the recipient/purchaser of the property, that is her mother. The writ petitioner is aggrieved by the said, insofar as, inspite of transferring the possession of the property to her deceased mother in lieu of due consideration money and with an agreed condition to execute a deed of sale in her favour, the respondent Authority had ultimately flouted the terms of a concluded contract entered between her deceased mother and the said Authority, for executing a sale deed in favour of the purchaser thereof. Thus the present writ petition has been filed.

9. Mr. Ray, who has represented the writ petitioner, has strongly relied on the information which was disclosed in the brochure released by the respondent. It has been submitted that the respondent Authority had intended to attract purchasers with the offer of the property for sale in lieu of consideration money.

That, pursuant to the same, the petitioner's mother responded and the entire consideration money has been paid. He says that the said facts would not have been denied even by the respondent, insofar as the respondent Authority had thereafter handed over possession of the property to the said purchaser, in the year 2003. He further has stated that even at the initial point of time the respondent had no intention to avoid execution of the sale deed, which may be evident from the fact that the said respondent had, at one point of time, sent a draft sale deed, for approval of the writ petitioner. Be whatever may the reason, the property could not have been registered by dint of a duly executed sale deed, till 2018.

10. In 2018, the said respondent took a different stance, insofar as, vide letter dated February 19, 2018, the writ petitioner was informed about intention of the said respondent of execution of a lease deed as regards the said property, instead of a deed of sale, as was promised in the information brochure. The writ petitioner is aggrieved as to the same. She has alleged about the breach of condition by the respondent, as enumerated in the said information brochure, to execute a deed of sale as regards the property which transferred hands in response to the said information brochure and in lieu of due, adequate and stipulated consideration money. Mr. Ray further says execution of a lease deed instead of a sale deed, would substantially and adversely affect the vital rights of the writ petitioner in so far as she would be deprived of the freehold title of the property, to which she has been entitled, pursuant to the terms and conditions of purchase. He says that the same would not be maintainable in the eye of law.

11. Mr. Ray has referred to a judgment of the Hon'ble Co-ordinate Bench of this Court dated October 12, 2018 in WP No. 21905(W) of 2017 (Usha Biswas & Anr. vs. State of West Bengal & Ors.). He points out that the fact situation in the same was akin to that in the present case. He says that the Hon'ble Court has been pleased to hold misrepresentation and mala fide action on the part of the respondent Authority and directed for execution of a sale deed in favour of the petitioner thereby the said Authority. Mr. Ray submits that the ratio thereof would squarely apply in this case.

12. Mr. Ray insists that necessary order be passed allowing the present writ petition to grant adequate relief to the petitioner.

13. Mr. Talukdar has represented the respondent Authority. Without controverting any other fact as discussed above, Mr. Talukdar has centred his argument as to the legal incapacity of his client to execute any sale deed in favour of the writ petitioner. He would submit that the respondent Authority would not have the right, title and interest over the concerned property, which it might have divested to any other. For this, Mr. Talukdar has relied on a deed executed on June 14, 1999, between the Governor of the State and the respondent Authority, by dint of which the said respondent was granted leasehold rights over the concerned property, which has been actually owned by the government itself. Therefore, Mr. Talukdar has candidly submitted that, the respondent could not divest ownership

right of any property of which, it had no ownership. So far as the offer made in the information brochure is concerned, the said respondent has stated in its affidavit in opposition, the same to be a "mistake", on its part.

14. Mr. Talukdar has suggested that the prayer of the writ petitioner cannot be granted in this case. However, alternatively he has relied on an order of the Hon'ble Apex Court dated April 5, 2023. He submits that a similar issue came up for consideration before the Hon'ble Apex Court, and the Court directed for immediate execution of the lease deed. Further direction was made that the said leasehold property, may thereafter be converted into a freehold property in exercise of the provisions under the notification dated January 17, 2023, issued by the Urban Development and Municipal Affairs Department, Government of West Bengal. He has sought for an appropriate order to be passed in this case.

15. The writ petitioner has alleged about commission of gross inaction by the respondent Authority to execute a sale deed in her favour, as promised. On the other hand, the case of the respondent is that the respondent itself did not have the authority or free hold title of the property competent to be transferred in favour of any other person. For this we may first look at the deed executed between the Governor of West Bengal and the respondent authority, that is dated June 14, 1999. The property originally belonged to the State Government, which was given in lease, to the respondent Authority, by dint of the same. Subsequently, by publishing the information brochure the said lessee, that is the present respondent Authority, expressed intention for divesting the same by way of sale, in favour of the purchasers, against the consideration money. The predecessor of the writ petitioner has been one of such purchasers, who has admittedly remitted the consideration money in full and been handed over possession of the concerned property. That was back in the year 2003. Even thereafter, the said respondent had maintained the terms and conditions of the purchase brochure by sending the draft sale deed for settling, by the present petitioner. The petitioner's grievance is two-fold. That the said respondent firstly has maintained dilatory tactics in execution of the sale deed since the inception, that is handing over the property to her predecessor and also that in the year 2018, vide the letter dated February 19, 2018, it had changed intention to execute a sale deed and desired to execute lease deed instead. According to the writ petitioner, on one hand it is in violation of the terms and conditions of the information brochure, pursuant to which the entire consideration money has been paid long back. Thus, the respondent Authority has violated terms of a concluded contract. Also that the same has adversely affected the rights and contentions of the writ petitioner, in so far as the petitioner has been deprived of the absolute right, title and interest over the said property.

16. The position of law is well settled and have to be understood. Sale and lease are both forms of transfer of a property. By both the property changes hands, including its rights, interests and possession and in lieu of consideration. To understand the same better, one may refer to the following observation by the

Hon'ble Supreme Court, in the case of Residents Welfare Assn. v. State of U.P. reported in (2009) 14 SCC 716 :

"29. From a plain reading of Section 54 and Section 105 of the Transfer of Property Act, there cannot be any doubt in our mind that in case of a lease, there is a partial transfer and the right of reversion remains with the lessor. Whereas in case of a sale, there must be an absolute transfer of ownership and not some rights only as in the case of a lease. Therefore, it is to be considered whether the document in question which was presented for registration was a partial transfer and accordingly, was it a lease, or whether it involved any outright sale therein."

17. Therefore, partial transfer of rights and interests and the rights of reversion are the features of a lease in contrast with that of a sale, where outright transfer of a property happens, to bequeath all rights thereto upon the vendee, including the sale of the same. The transfer deed dated June 14, 1999, conferred upon the respondent Authority not an absolute right as regards the property but a partial and reversible right thereof. After the stipulated period of time the rights and interest of the property has to be reversed to the original owner that is the State of West Bengal. The period is long, that is of 99 years, but cannot be said to be in perpetuity. The deed also did not disclose intention of the parties thereto that the right of the property should be vested on the recipient for perpetuity. Thus, this Court finds force and substance in the submissions made on behalf of the respondent Authority, that the same had not obtained an absolute right, title and interest in the property in question, upon execution of the deed dated June 14, 1999.

18. So far as the judgment relied on by Mr. Ray on behalf of the petitioner as mentioned above, is concerned, this Court finds the ratio thereof not to be applicable in this case. The reason being that the decision of the Court in the same was based on its finding about misrepresentation and mala fide action of the respondent Authority, which is, however, not a case here in this writ petition. As discussed above, the writ petitioner has made out a case of gross inaction by the respondent Authority and there is no scope for this Court to read any malpractice in the same.

19. The writ petitioner's case is solely based on the declarations made in the information brochure. Admittedly the respondent Authority had declared therein regarding outright sale of the concerned property to the intending purchaser in lieu of consideration money. However, as it is seen in this case that the respondent had no absolute right, title and interest in the property vested in it from the original owner that is the State government but only the leasehold right thereof, it could not have transferred anything beyond the same, to any transferee. The right not possessed, could not have been transferred, by any transferor, in this case the respondent Authority. A declaration made by the respondent Authority not in tune with this legal proposition, would not be tenable in the eye of law and would not be executable in any way. The law has bestowed upon the purchaser, the duty to become aware about the rights of the transferor

as regards the property and the doctrine of 'caveat emptor', would step in here, to mark such a responsibility of the purchaser.

20. The other thing worth consideration here is that the present respondent Authority is no ordinary transferor of the property like any private person, but an instrumentality of the State, within the meaning of Article 12 of the Constitution of India. So much so that its action would be considered by operation of the law to be flawless and bona fide and done in due discharge of its duties. In that event, even an ordinary citizen would not be expected to undertake the entire exercises like that as if he was dealing with any private person as a transferor. It is most likely for an ordinary purchaser like the mother of the petitioner, to rely on the terms and conditions offered by the said respondent, which is a State, without any doubt. In such a condition the concerned respondent merely expressing a 'mistake' having been done by it (as mentioned in the affidavit in opposition), particularly when the terms and conditions have already been acted upon, by payment of consideration money in full, may be a reason for gross prejudice to the said purchaser. The Court finds it proper that the writ petitioner should not be exposed to any such

21. Miscellaneous Application No. 312/2023 in SLP prejudice to be caused, her having complied with all the necessary conditions in due time and manner.

21. In view of the rights transferred and conferred upon the respondent Authority, by dint of the deed of conveyance dated June 14, 1999, that is the lease hold right as to the property, this Court finds it proper to hold that, in that event, the respondent Authority shall not have an absolute right, title and interest over the said property, to transfer by way of sale, to any intending purchaser thereof. The best it could have transferred is a leasehold right thereof. In such view of the fact the intention of the authorities to execute a lease deed in favour of the present writ petitioner, who has been given possession of the property in view of consideration money, appears to be the appropriate step in accordance with law. Thus, the court finds no infirmity or illegality as regards the impugned letter of the respondent Authority dated February 19, 2018.

22. The Court finds it appropriate to appreciate the assistance extended by Mr. Talukdar, who has referred to a decision of the Hon'ble Supreme Court dated April 4, 2023, in (Crl) No. 7949/2021 [Malay Kumar Mandal vs Sanghamitra Mandal & Anr] and also a notification by the Government of West Bengal dated January 17, 2023 to promulgate a scheme namely the West Bengal Land Conversion (Leasehold land to Freehold) Scheme, 2023. The Hon'ble Supreme Court, in the said case has been pleased to direct in a similar circumstance, as it is in the present case, that a lease deed shall immediately be executed in favour of the transferee. Upon conversion of the leasehold right of the property to the transferee in this way, the same shall be converted to freehold land as per provisions of the Scheme of 2023, as mentioned above. According to Mr. Talukdar, similar practice may be undertaken in this case in case of the writ petitioner. Mr. Roy has objection to such submission of the respondent Authority

for the reason that transaction between the parties have taken place much prior to the date of promulgation of Scheme of 2023. During his argument in reply, he has raised objection that the Scheme of 2023 may be applicable in case of the present petitioner. However, the transaction between the parties, though have started much earlier with submission of consideration money by the predecessor of the writ petitioner, and handing over possession of the property to her in the year 2003, the same is not completed yet. During pendency of the process, the Scheme of 2023 comes into being which in considered opinion of this Court may be made applicable in the present case too. As the facts of the cases are similar, this court finds it proper to dispose of this writ petition, with a similar direction.

23. Hence, the writ petition being WPA 8260 of 2018 is disposed of, along with pending applications if any, with the following directions:

(i) that the respondent Authority shall execute a lease deed, in favour of the writ petitioner with respect to the property in question as mentioned above, immediately and not beyond a period of 4 weeks from the date of communication of this order;

(ii) upon execution of the lease deed as above, the said leasehold land of the writ petitioner shall be converted to the freehold land in her favour, in compliance with the provisions made in the West Bengal Land Conversion (Leasehold land to Freehold) Scheme, 2023. Such conversion should be done by the concerned authority, under the said Scheme of 2023, as early as possible and positively within a period of 4 weeks from the date of application made by the present writ petitioner, before the competent authority, in terms of the said Scheme of 2023.

(iii) the writ petitioner shall not be charged with any money/fees payable for such conversion of the said leasehold property, into a freehold property, in her favour, by the said competent authority.

24. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities. date of transfer of possession of the concerned property in favour of the predecessor of the writ petitioner.