
(2023) 04 CAL CK 0038
In the Calcutta High Court
Case No : MAT No. 604 Of 2019

Sakuntala Devi Agarwal

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 18-04-2023

Acts Referred:

Citation : (2023) 04 CAL CK 0038

Hon'ble Judges : Arijit Banerjee, J; Rai Chattopadhyay, J

Bench : Division Bench

Advocate : Sayantan Bose, Sounak Mukhopadhyay, Ankita Choudhury, Amitesh Banerjee, Tarak Karan, S. Bandopadhyay, A. K. Nag, T. Dey

Final Decision : Dismissed

Judgement

Rai Chattopadhyay, J

1. Appellant's contention is that, she has applied for, duly complied with all the formalities and obtained "mutation certificate" with respect to her leasehold property and is now legally free to mortgage her said property for what so ever purpose (for the purpose of a loan in this case), which she has been wrongfully prevented to do, by the respondent vide the impugned letter dated 27.05.2015. Appellant's further contention is that her right to mortgage her leasehold property, is not subjected to the fact as to whether or not the property has been mutated in her name, in the government records. Respondent could not have overlooked her such right in the property, irrespective of its mutation being done in her name in government records. That, her right, title and interest to the said property as a lessee thereof, is not extinguished even if mutation thereof is not done, so is her right to deal with her leasehold property, free from all encumbrances. In such view of the matter, the letter dated 27.05.2015, impugned in the writ petition is arbitrary and illegal.

Thus, the appellant has challenged the judgment of the Hon'ble Single Judge dated 30.01.2019 in W.P.A. No.792 (W) of 2017, by dint of which her challenge

to the said impugned letter dated 27.05.2015 was turned down by the Bench and the said writ petition was dismissed.

2. The impugned judgment of the Hon'ble Single Judge is annexed to the Memorandum of Appeal here. The Hon'ble Single Judge has noted that the concerned leasehold property is situated at Premises No.CA-34, Sector-I, Bidhan Nagar, Salt Lake City, Kolkata-700064. The Hon'ble Single Judge has also noted that by sending the impugned letter dated 27.05.2015, the respondent has informed the appellant regarding its inability to issue 'No Objection Certificate' to her, on the ground that she has not mutated her name as the lessee of the said plot of land. It appears that after considering the submissions of the respective parties, the Hon'ble Single Judge noted the appellant to have failed to come before the Court with clean hands, by disclosing all the materials and circumstances, to seek an equitable relief and on the ground as above has dismissed the writ petition. The Hon'ble Single Judge has also imposed a cost of Rs. 25000/- (Rupees Twenty Five Thousand only) to be paid by the present appellant to the State Legal Service Authority, West Bengal, within a period of 4 (four) weeks from the date of the impugned judgment.

3. The said judgment dated 30.01.2019 is under challenge in this appeal. Mr. Bose appearing for the appellant has during his argument concentrated on one hand on the factual aspect of the case and on the other, on the legal points, as are stated in brief herein below.

4. On the factual aspect Mr. Bose has submitted that it is wholly arbitrary, whimsical and illegal on the part of the respondent authority to deny the appellant a 'No Objection Certificate' for the purpose of mortgaging her leasehold property, on the ground of her not mutating the same in the government records in her name as a lessee of the said property. He has relied strongly on the letter of the respondent authority dated 11.03.2013, to submit that by dint of the said letter the respondent authority has already taken note of the appellant to be the lessee of the concern property and allowed mutation of her name in the records. Mr. Bose has further submitted as to the very disputed question of fact in this case, i.e, relating to payment of 'permission fees' by the appellant, that, as per declaration made by the HDFC Bank, the cheque which the appellant issued to remit the 'permission fee' to the tune of Rs. 16,11,900/- (Rupees Sixteen Lakh Eleven Thousand Nine Hundred only) has already been honoured in favour of the respondent authority on 12.04.2013. He has also pointed out the fact that vide the authority's letter dated 29.10.2014, his client has been informed regarding due amendment of the government records as per the mutation done on 11.03.2013. Therefore, regarding the facts of the case, according to Mr. Bose, the appellant having inherited the leasehold property by dint of a bequest, having deposited the 'permission fees' for mutation and having recorded her name in respect of the said property as the lessee (respondent's letter dated 11.03.2013 has been referred to), has been illegally and arbitrarily denied her right to have a "no objection" from the lessor department, to mortgage the said

leasehold property of her.

5. Secondly, Mr. Bose has submitted that, if for argument's sake, the appellant accepts that her property has not been mutated, even then the respondent authority acted improperly in rejecting her prayer to mortgage her leasehold property in as much as her leasehold right cannot be negated on the ground of the property not being mutated in the government record of rights.

6. Mr. Bose submitted that Ld. Single Judge has erred in not considering that whether or not mutation of the property was done, the appellant being a rightful lessee of the property could not have been denied her right to mortgage the same. It was further submitted that at the time of filing of the writ petition the point whether or not mutation was granted to the appellant was not in issue. He says that the facts of the case cannot be subsequently orchestrated differently to the detriment of his client's interests and to deprive her the right to the property.

7. Mr. Bose submitted that mutation of the name of the lessee in respect of the property concerned is neither mandatory in law nor relevant regarding creation of any right in the said property. He says that non-mutation also does not have the effect of extinguishing or keeping the right of the appellant in the property in abeyance.

8. Mr. Bose has contended that the Hon'ble Single Judge has travelled beyond the scope of the writ petition by deciding the point as to whether the mutation of the name of the appellant, in respect of the said property was necessary or not as firstly, the same would not be a component for creation of appellant's rights to the said property and secondly, it was not a relevant fact for the purpose of determination of the prayers of the appellant/petitioner made in the said writ petition. On his client's behalf Mr. Bose has submitted that even assuming and not admitting the fact of the Memo dated 11.03.2013 to be a forged and fabricated document, the right of the appellant being the lessee of the concerned property to mortgage the same, would not stand extinguished and would not be subject to fulfilment of the condition and mandate of mutation of the same in her name. Mr. Bose submitted that the respondent authority cannot deny its own documents and in the facts and circumstances the steps taken by it by dint of the said letter, impugned in the writ petition is unreasoned and arbitrary. He said that the Hon'ble Single Judge has not considered these points in its proper perspective and has arrived at a decision which is erroneous and not maintainable in the eyes of law. He therefore urges that the judgment of the Hon'ble Single Judge may be set aside and necessary direction may be passed in terms of the prayer of the appellant made in the writ petition.

9. Mr. Bose has relied on the following judgments for the proposition written hereinbelow:-

(i) The State of West Bengal & Ors. Vs. Smt. Kusum Agarwal & anr. Reported in (2018) 5 CHN 441, on the proposition that vesting of testator's right with legatee on the basis of the probated will cannot be declared invalid by the State, and for

this, permission of the State would not be necessary. There the Court relied on the judgment of Pawan Kumar Agarwal Vs. State of West Bengal reported in 2014(1) CHN (CAL) 83, to concur with the findings therein that contractual rights of the parties cannot be altered unilaterally, without an enacted provision.

(ii) An unreported judgment in Smt. Sandhya Rani Mondal & ors. Vs. The State of West Bengal in WPA 22498 of 2019 (Single Bench), on the proposition that the Hon'ble Court has held that lessees (in respect of Salt lake properties) have an unrestricted right to bequeath the leasehold interest by way of a Will to any person.

(iii) Swapan Kumar Das vs. State of West Bengal & Ors. reported in 2019 SCC OnLine Cal 3817, by referring to certain previous judgments, the Court was pleased to hold that any enquiry as to the nature of the deal in respect of a leasehold land, would be in total disregard of the policy decision of the authority.

(iv) An unreported judgment Rina Dasgupta vs. State of West Bengal & Ors. in W.P. No. 2616 (W) of 2018. The Court held here:-

"I therefore do not find that the State of West Bengal has any right, under the deed of lease by which it granted the lease to the original lessee, to restrict the right of bequest by a will of the leasehold to the extent of the unexpired period of lease to any person, whether by regulating the right on the basis of payment of permission fees or otherwise, whether to a stranger or to anyone who is not covered by the expression "closely related by blood" whether under the notification dated June 22, 2012 as in paragraph 5 or September 2, 2013 as in paragraph 6 of this judgment, in terms of the covenants of the lease deed dated July 14, 1976. To that extent therefore, the said notifications cannot be given any effect to, and are quashed."

(v) And finally the judgment of Pawan Kumar Agarwal Vs. State of West Bengal reported in 2014(1) CHN (CAL) 83. The following may be quoted:-

"32. When unrestricted right to bequeath the leasehold interest of the lessees by will was given in the present lease to the lessee, no fruitful purpose will be served by enquiring into the real purpose of such transaction. When the lease itself does not provide for obtaining prior permission from the Government for execution of the will neither the State Respondent can declare the vesting of the testators' leasehold interest in the land upon the legatees, as invalid nor can it demand transfer fees by treating such transaction as irregular and/or for giving a legal safe to it."

10. Such contention, grounds and prayer of the appellant are vehemently disputed and objected to on behalf of the respondent authorities. Mr. Banerjee, Ld. Senior Advocate, appearing for the respondent authorities has accepted the fact that a lease was granted in favour of Smt. Parul Dutta (testator) on 15th February, 1972 on specified terms for a period of 999 years. Physical possession of the plot was also handed over to the said lessee. The said property was

bequeathed to the present appellant by dint of the last Will and Testament executed by the original lessee on 12.08.1992. Mr. Banerjee, has also accepted the fact of the department to have received her application for mutation. He says that in reply to her such application the appellant was instructed to deposit an amount of Rs. 16,11,900/- (Rupees Sixteen Lac Eleven Thousand Nine Hundred only) as the 'permission fees' with the State Bank of India, Bikash Bhavan, Salt Lake, by a Challan being T. R. Form No.7. The stipulated final date for submission of such 'permission fees' was within 30 (thirty) days from the date of receipt of the department's letter dated 3rd October, 2012.

11. According to Mr. Banerjee such 'permission fees' of Rs. 16,11,900/- (Rupees Sixteen Lakh Eleven Thousand Nine Hundred only) has never been remitted by the appellant to the department. Instead by sending the letter dated 04.04.2013 the appellant has prayed before the department for extension of time to remit the requisite 'permission fees' beyond the period of stipulated 30 (thirty) days. Under such circumstances according to Mr. Banerjee, it is only but an untrue statement that the department has ever issued any letter for mutation to the appellant on 11.03.2013. Mr. Banerjee by making emphatic submissions has challenged the veracity, truthfulness and genuinity of the documents produced by the appellant in the Court by way of annexure to her writ petition including the alleged letter of the department dated 11.03.2013. It has also been pointed out that the same letter has been issued on the self-same date under a separate Memo number too and the 2 (two) memos of the department said to have been issued on the same date, show a gap of huge number of memos, issued on the same date, which is practically impossible, to have been issued, on a single day, by the department.

12. Mr. Banerjee has further pointed out to the Court that the requirement of mutation of the name of the lessee would be for knowledge of the State regarding change of lessee and proper management of the leasehold lands of the State by the department and by not doing so the appellant has on one hand contravened the conditions of lessee as well as created hindrance in the smooth and due functioning of the concerned department of the State. He has urged that the dubious act of the appellant by not coming to Court with clean hands may not be looked into, in a very light way. Upon making submissions as to the merits of the case Mr. Banerjee has requested that the instant appeal may be dismissed.

13. It is an undisputed fact in this case that the concerned land, i.e, situated at CA-34, Sector-I, Salt Lake City, Kolkata – 700064, was given in lease to one Smt. Parul Dutta on 15.02.1972 with certain terms and conditions and for a period of 999 years. The physical possession of the plot of land was also transferred to the lessee, with the possession certificate issued in her name. The original lessee died on 19th October, 1993. Before that, she executed her last Will and Testament on 12th August, 1992 to transfer the leasehold right to the said property, after her death, to the present appellant. The appellant obtained probate of the said Will by dint of order of the High Court at Calcutta dated

07.12.2011 and owned the leasehold right to the said property since thereafter. Certain dates are very relevant for proper adjudication of this case, which may be noted as below:-

No.

Date

Event

1.

12.08.1992

Will executed by the original lessee.

2.

07.12.2011

Probate granted as to the said will, by the High Court at Calcutta.

3.

03.04.2012

Appellant's application for mutation.

4.

03.10.2012

'Permission fee' demand by the authority, to the tune of Rs.16,11,900/-, to be deposited within 30 days from the date of receipt of the demand.

5.

17.01.2013

Appellant claims that she issued cheque of Rs.16,11,900/- on this day and deposited in Bank through TR Challan.

6.

11.03.2013

Letter by the 'Land Manager, Bidhannagar & OSD & Ex-officio DY Secretary', informing the appellant that Governor has been pleased to allow mutation in respect of Plot No. CA-34, in favour of the appellant, subject to the conditions stipulated therein.

Respondent has disputed authenticity of this letter.

7.

04.04.2013

Appellant's prayer for extension of time for submission of permission fees.

8.

12.04.2013

Appellant says that Cheque of Rs.16,11,900/- was liquidated on this date, as per the Bank's report.

9.

16.04.2013

According to the appellant, 'permission fees' amount of Rs.16,11,900/- has been credited in the bank's account of the department.

10.

22.04.2013

Appellant says that original TR Challan receipt was submitted by her in the office of 'Land Manager, Urban Development.'

11.

20.10.2014

Demand by the respondent of Rs.87,400/- as fees for amendment/alteration of assessment list, payable to the assessment section.

12.

21.10.2014

Appellant deposited the above sum of Rs.87,400/-.

13.

29.10.2014

Letter, stated to be of the Bidhannagar Municipality, informing the appellant that the Municipality has allowed alteration of the assessment list with respect to the concerned property, in the name of the appellant, with effect from 11.3.2013.

14.

27.05.2015

Appellant's prayer for 'NOC' rejected on the ground of mutation of the property not being done in the name of the appellant.

15.

17.06.2015

Certificate issued by the HDFC Bank to certify liquidation and debit of the 'permission fee' amount of Rs. 16,11,900/- in favour of SBI, Bikash Bhaban, that is the account of the respondent Urban Development department, on 12.04.2013.

14. By relying on the judgments mentioned above Mr. Bose has endeavoured to argue that firstly, the leasehold right, title and interest of the appellant in respect of the concerned land being undisputed in this case, she could not have been denied the right to deal with the property freely, contrary to what the respondent authority has tried by encumbering her such absolute right. Those judgments as relied upon on behalf of the appellant have spelt out the proposition that in case of a lease, it would not be proper for the lessor authority or the government to levy "permission fee" for mutation of the property in the name of the lessee. In this case however it is noted that this point is extraneous to the writ petition. The appellant/writ petitioner has not agitated the point as to whether it was legal and proper for the respondent authority to levy the 'permission fees' upon her to mutate her name in respect of the said leasehold property in government record of rights. Instead her point is that such 'fees' have been deposited by her. Accordingly this court is compelled to hold that in this writ/appeal there is no scope for the appellant to agitate this point. In this regard the prayer of the appellant in the writ petition made before the Hon'ble Single Judge may be noted which are as follows:

" a) A writ of and/or in the nature of Mandamus be issued commanding the respondents and each one of them, their men, agents, subordinates and associates to grant permission to the petitioner to mortgage her leasehold right in respect of the said plot being Plot No.CA-34, Sector-I, Bidhannagar, Kolkata-700064 in favour of Deutsche Bank or any other Scheduled Bank as may be required by the petitioner;

a) A writ of and/or in the nature of Certiorari commanding the respondent authorities and each one of them, their men, agents, assigns and/or subordinates to certify and transmit to this Hon'ble Court the records of the case including the communication dated 27th May, 2015 so that the communication dated 27th May, 2015 may be quashed;

b) Mandatory injunction commanding the respondents and each one of them, their men, agents, subordinates and associates to grant permission to the petitioner to mortgage her leasehold right in respect of the said plot being Plot No. CA-34, Sector-I, Bidhannagar, Kolkata-700064 in favour of Deutsche Bank or any other Scheduled Bank as may be required by the petitioner;

c) Ad-interim orders in terms of prayer (d) above;

d) Costs of an incidental to this application be borne by the respondents;

e) Such further and/or other order or orders be passed and/or direction or directions be given, as to this Hon'ble court may deem fit and proper"

15. The writ petitioner/appellant is found to have sought for a remedy of setting aside the impugned letter dated 27.05.2015 (No 14 in the table at page.11-12). The records also reveal that the writ petitioner/appellant has conceded to the requisition of 'permission fees' placed by the respondent authorities. Her dispute is with regard to the actual remittance of the 'permission fees' which she asserts, whereas the department denies. The legality of such a claim has never been under challenge in this case. Beyond the scope of the writ petition this Appeal Court would not traverse. Therefore this point of argument is found unnecessary. On this score the judgments, as relied on by the appellant, though have laid down the law on the point, cannot be discussed in this case.

16. The question in this appeal only relates as to whether the Hon'ble Single Judge was justified in holding that in view of discrepancy in the materials disclosed by the appellant in the Court, the appellant would not be eligible to get an equitable relief from the Court.

17. From the list of dates as this Court has endeavoured to prepare, as above, a peculiar fact emerges. It appears on 20th April, 2012, the appellant applied for mutation and on demand of the authorities, had issued cheque dated 17.01.2013 to remit the 'permission fees'. That cheque is stated to have been encashed on 12th April, 2013, i.e, after a period of about 3 (three) months (refer to No.8 and No.15 of the table in pages 11-12). It appears that inspite of paying the 'permission fees' by issuing the said cheque and thereby expressing her intention to abide by the rules, norms and requisites of the department for mutation of her name in respect of the leasehold property, she had prayed for extension of time for deposit of 'permission fees' on 4th April, 2013, i.e, after submission of cheque and before the date of its realisation (refer to No.7 of the table at pages 11-12). According to the respondent authority there is no record of the appellant having submitted the original challan of deposit of the 'permission fees'. Taking into account the prayer for extension of time for submission of 'permission fees' on 04.04.2013, it would be but natural inference that no original challan counterparts of T.R. 7 Form was submitted by the appellant, to the department, or else there would have not been any scope for the appellant, to file her letter with the respondents dated 04.04.2013.

18. Even if appellant's claim of due remittance of the 'permission fees' of an amount of Rs.16,11,900/-, for the purpose of mutation and pursuant to the demand of the respondent department, is accepted for argument's sake, it would be far from being reasonable as to how before liquidation of the said 'permission fees' on 16.04.2013, a letter of mutation can be issued by the department on

11.03.2013 (refer to Nos. 6, 8, 9 & 15 of the table at pages 11-12). It is the appellant's case only, that the 'permission fees' deposited by her through a cheque dated 17.01.2013, has been liquidated in favour of the respondent department and credited to its accounts on 16.04.2013 (refer to Nos. 6, 8, 9 & 15 of the table at pages 11-12). By no stretch of imagination, therefore it can be conceived that the department, before receipt of the 'fees', has mutated the land

in favour of the appellant. It is a blatant and gross improbable situation. On this, unfortunately, the appellant had no argument to offer, in the appeal.

19. Suspicious and important, is the discrepancy regarding official memo numbers by dint of which the letter dated 11.03.2013 is claimed to have been issued to the appellant in this case. There is no reason why the Court should not be traversing through the material discrepancy as well as take judicial notice of the fact of suppression of the material documents by the appellant, in the Court.

20. There is no impropriety and that the Court would very naturally express anguish as it has done, that "there is no explanation as to how any permission pertaining to mutation in respect of the plot could have been granted in favour of the appellant on 11.03.2013 when admittedly the cheque of the petitioner had not even being encashed". It is also very natural in the attending facts and circumstances of this case that the Court would notice that "Additionally, in the light of the certificate issued by Bidhan Nagar Municipality, which refers to Memo No. 4439, the reference to Memo No. 492, in the letter dated 11.03.2013 is unacceptable and unbelievable" and also that "I am of the view that its highly improbable that on the same date, i.e, 11.03.2013, the same department had issued memo nos. ranging from 492 to 4439". We also record concurrence with such findings of the Hon'ble Single Judge. It is recorded that in the Writ Court the appellant has not produced her letter dated 04.04.2013, i.e, her prayer for extension of time for submission of 'permission fees'. Had it been produced, the entire facts and circumstances would have been exposed before the Court in somewhat different manner. This has gone to the extent of distorting the facts of the case absolutely. The appellant/petitioner therefore cannot be stated to have come before the Court to seek an equitable relief, with clean hands. This would disentitle her to any relief from a Court of equity.

21. Finding of this Court as above may find support in the judgment of the Hon'ble Supreme Court in *Prestige Lights Ltd. Vs. State Bank of India* reported in (2007) 8 SCC 449 in the following paragraphs:-

"34. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R. v. Kensington Income Tax Commrs.* [(1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] , in the following words:

"[I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts—facts, not law. He must not misstate the law if he can help it—the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement."

35. It is well settled that a prerogative remedy is not a matter of course. In

exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

22. On the discussion as above no infirmity or irregularity could be found in the impugned judgment dated 30.01.2019 of the Hon’ble Single Judge, in Writ Petition No. 792 (W) of 2017. Hence no interference with the same is warranted, including the findings of the Ld. Single Judge, that the appellant should be penalised with cost, for gross suppression of material facts.

23. On the premises as above the appeal being MAT 604 OF 2019 is dismissed.

24. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I Agree,