
(2019) 01 CAL CK 0151

In the Calcutta High Court

Case No : Writ Petitions (Wp) No. 792 (W) Of 2017

Shakuntala Devi Agarwal

APPELLANT

Vs

State of West Bengal & Anr.

RESPONDENT

Date of Decision : 30-01-2019

Acts Referred:

Citation : (2019) 01 CAL CK 0151

Hon'ble Judges : Ravi Krishan Kapur, J

Bench : Single Bench

Advocate : Rajarshi Dutta, Madhurima Das, Amitesh Banerjee, Tarak Karan, Billwadal Bhattacharyya

Final Decision : Dismissed

Judgement

Ravi Krishan Kapur, J

1. The primary challenge in this petition is directed against the communication dated 27.05.2015 issued by the Land Manager, Bidhannagar, Urban Development Department, Government of West Bengal being the respondent no.2, whereby permission has been denied to the petitioner to mortgage the leasehold right in premises number CA-34, Sector-1, Bidhannagar, Salt Lake City, Kolkata-700064 (the plot). By the impugned communication the respondent no.2 had, inter alia, informed the petitioner that she is not the mutated lessee of the plot and as such a "No Objection Certificate" in her favour could not be granted.

2. The case of the petitioner is that the plot was leased to Parul Dutta (since deceased). By her last will and testament dated 12.08.1992 Parul Dutta had made and published her will bequeathing her right, title and interest in the plot in favour of the petitioner absolutely and permanently. Probate of the will was granted by this High Court in PLA No.87 of 2011. After grant of probate, the executor handed over the plot together with the two storied building standing thereon to the petitioner.

3. Thereafter, the petitioner applied to the Government of West Bengal for

mutation of her name in respect of the plot. Subsequently, the petitioner filed an application with the authorities. By a letter dated 03.10.2012, issued by the respondent no.2, the petitioner was directed to pay a sum of Rs.16,11,900/- towards permission fees within the time stipulated therein. Pursuant thereto it is submitted that the petitioner deposited a sum of Rs.16,11,900/- in favour of the State Bank of India. In this connection, a copy of the certificate issued by the HDFC Bank on 17.06.2015 has been annexed to the writ petition. In the said communication, issued by the HDFC Bank it is stated that the cheque issued by the petitioner to the Appropriate Authority had been encashed on 12.04.2013. The petitioner also relies on a letter dated 11.03.2013 allegedly issued by the respondent no.2, inter alia, granting the petitioner the right to mutate the property in her name.

4. Subsequently, by a letter dated 20.10.2014, the petitioner was requested to deposit a sum of Rs.87,400/-, as fees for amendment/alteration of the assessment list of the Assessment Section of the Bidhannagar Municipality. In terms of that direction, it is submitted that, the petitioner had on 21.10.2014 deposited the sum of Rs.87,400/- in favour of the Assessment Department of the Bidhannagar Municipality. The petitioner furthermore, relies on a letter dated 29.10.2014, inter alia, informing the petitioner that pursuant to an order Memo No.4439-SL(AL) 6L-1299/68(CA-34) dated 11.03.2013 the amendment/alteration of the Assessment list in respect of the said plot in favour of the petitioner had been duly granted. Subsequently, the petitioner applied for creating a mortgage of the leasehold right in respect of the plot in favour of Deutsche Bank to obtain a loan. By a letter dated 27.05.2015 which is the impugned communication the request for No Objection Certificate had been rejected by the respondent no.2 on the ground that the petitioner is not the mutated lessee of the plot and as such, the prayer for issuance of No Objection Certificate could not be considered.

5. Mr. Amitesh Banerjee, Senior Advocate appearing on behalf of the respondent no.2 vehemently opposed the challenge to the impugned communication primarily on the ground that the petitioner is guilty of suppressing material facts in filing the instant writ petition. He placed strong reliance particularly on the communication dated 04.04.2013 being Annexure R-5 at Page-18 to the affidavit filed on behalf of the respondent no.2. He also challenged the authenticity and veracity of the documents relied by the petitioner in the writ petition and submitted that there is not only a calculated and designed suppression of the material facts but also that the petitioner is guilty of making misleading and false statements on oath. The crux of his argument is based on the communication dated 04.04.2013 being Annexure R-5 to the affidavit filed by the respondent no.2. By this letter, the petitioner had on 04.04.2013, requested for time to deposit the requisite fee of Rs.16,11,900/- as transfer and mutation charges in respect of the said plot. Accordingly, he submits that there is a clear and categorical admission on the part of the petitioner that as on 04.04.2013 the petitioner was not in a position to arrange for funds to make the deposit of the transfer or mutation charges demanded by the Appropriate Authority.

Additionally, in the said letter there is a request by the petitioner for extension of time to deposit the transfer fees. Thus, he submits that the letter dated 4.4.2013 has been deliberately suppressed by the petitioner. He also challenges the authenticity of the letter dated 11.03.2013.

6. At the invitation of the parties, by an order dated 05.12.2018, I had directed the Bidhannagar Municipal Corporation to appear in the instant proceedings.

7. It is elementary that a petitioner has no right to move the Court for enforcement of a fundamental right on a petition containing misleading and inaccurate statements. It is the bounden duty of every petitioner to make full and true disclosure of material facts before approaching the Writ Court. As a general rule, suppression of a material fact by a litigant disqualifies a litigant from obtaining any relief. This rule has evolved out of the need of the Court to prevent any litigant from abusing the process of Court by deceiving it. "It is well settled that a litigant who approaches the Court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain an advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite side." [S.P. Chengalivaraya Naidu Vs. Jagannath & Others (1994) 1 SCC page 1 para 6]

8. I have considered the issues raised by the parties and I am of the view that the letter dated 04.04.2013 being Annexure R-5 to the affidavit filed on behalf of the respondent no.2 ought and should have been disclosed by the petitioner. By the said communicated the petitioner as on that date i.e. 04.04.2013 had not only failed to make payment of Rs.16,11,900/- being the transfer and mutation charges in respect of the said plot but had also sought for extension of time to deposit the same. I have taken into consideration the fact, that the petitioner has relied on a certificate issued by the HDFC Bank being Annexure P-4 to the petition which reflects that the cheque had been issued by the petitioner dated 17.01.2013 but had been ultimately encashed on 12.04.2013. Furthermore, 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 petitioner on 11.03.2013 when admittedly the cheque of the petitioner had not even been encashed. Additionally, in the light of the certificate issued by Bidhannagar Municipality, which refers to Memo no.4439 the reference to Memo no.492 in the letter dated 11.03.2013 is unacceptable and unbelievable. Counsel on behalf of the petitioner sought to clarify that the said Memo No. should be read as 0439. However, at page 11 of the Note filed on behalf of the Bidhannagar Municipal Corporation, there is a legible copy of the letter dated 11.03.2013 wherein the Memo No. clearly reads as no.4439. In the circumstances, on a comparison of the two letters dated 11.03.2013 one annexed to the writ petition at page 52 being Annexure P-5 and the other at page 11 of the Note filed on behalf of the Corporation it appears that the same letter has different Memo Nos. i.e. 492 and 4439 respectively. I am of the view that it is highly improbable that on the same date i.e. 11.03.2013 the same Department had issued Memo numbers ranging

from 492 to 4439. In any event, as discussed hereinabove, there is a glaring discrepancy in the copies of the letter dated 11.03.2013 relied on by the petitioner and the copy of the same letter disclosed by the Corporation. In the circumstances, I find that no reliance can be placed on the letter dated 11.03.2013 allegedly granting mutation in favour of the petitioner.

9. In the light of the aforesaid facts and in view of the calculated distortion of material facts and documents by the petitioner, I dismiss the challenge to the impugned communication. Accordingly, I am of the view that no other relief can be granted to petitioner in the instant writ petition.

10. I also impose costs of Rs.25,000/- (Twenty five thousand) to be paid within a period of four weeks from the date of the passing of this order to the State Legal Services Authority, West Bengal and the same shall be earmarked towards 'Mediation'. A copy of this order be forwarded to the Member Secretary Legal Services Authority in order to ensure compliance.

11. WP No.792 (W) of 2017 stands dismissed.