

(1996) 03 CAL CK 0041
In the Calcutta High Court
Case No : C.O. No. 19192 (W) of 1994

Smt. Ajanta Basu

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 11-03-1996

Acts Referred:

Government Grants Act, 1895 — Section 2
Transfer of Property Act, 1882 — Section 108

Citation : AIR 1996 Cal 309 : 100 CWN 636

Hon'ble Judges : Nikhil Nath Bhattacharjee, J

Bench : Single Bench

Advocate : Ranabir Mahapatra and Manabendra Thakur, for the Appellant;

Judgement

1. In this writ application the petitioner has challenged an order of refusal for mutation of petitioner's name in respect of her purchased Plot No. 264, Block-CF, Sector-I, Northern Salt Lake City Extension Area, Calcutta-700064.

2. Petitioner's case is that by virtue of an indenture dated 3rd January, 1975 between the Governor of the State of West Bengal as lessor of the one part and one Prasanta Kamal Dutt as the lessee of the other part, registered with the office of the Sub-Registrar, Alipore, 24-Paraganas, the State of West Bengal granted and demised with the said Prasanta Kamal Dutt the said plot 264 measuring 4.3249 cottahs. After purchase said Prasanta Kamal Dutt took over possession and constructed an incomplete structure thereon according to the plan sanctioned by the appropriate authority, it is stated that there is no restrictive clause in the said lease deed dated 3rd January, 1975 prohibiting transfer of lease-hold interest of the aforesaid plot. While in possession of the said plot said Sri Prasanta Kamal Dutt transferred his right and interest in the said plot with incomplete structure erected thereon to the writ petitioner for valuable consideration by a registered deed of conveyance dated 8th April, 1985. Being a bona fide purchaser for value, the petitioner acquired valid title to the property and the petitioner by a letter dated 8th October, 1986 requested the

respondent authority to mutate her name in place of the original lessee in respect of the said plot. The respondent No. 3, in reply by a letter dated 10th February, 1987 directed the petitioner to furnish necessary documents regarding the transfer. The petitioner furnished the documents as directed. Keeping silence for quite sometime the respondent No. 3 by a letter dated 5/20-12-1991 refused to mutate the name of the petitioner on the ground that the transfer is hit by S. 2 of the Government Grants Act, 1985. It is the petitioner's case that S. 2 read with S. 3 of the Government Grants Act, 1895 has no manner of application in respect of leases of land in Salt Lake for 999 years granted by the Govt. by a registered lease deed on receipt of salary. It is her case that such a lease is to be governed by the Transfer of Property Act, 1882. It has been stated that the matter in issue came up for consideration before Tarun Kr. Chatterjee, J. in two cases Nos. C.O. 12850(W)/ 1990 and C.O. No. 501(W)/1991 and that in both the writ applications. His Lordship observed that S. 2 of the Government Grants Act, 1895 has no manner of application to the leases granted by the Govt. for 999 years for valuable consideration, particularly in respect of plots of Salt Lake City and that the respondent acted illegally in rejecting the prayer for mutation of the writ petitioners in the said cases by applying Section 2 of the Government Grants Act against them. In the said two Civil Orders Justice Chatterjee directed the names of the concerned writ petitioners to be mutated. In spite of the aforesaid judgments having been brought to the notice of the respondents the respondents have not mutated the name of the present petitioner in respect of her purchased plot of land. By filing this writ application the writ petitioner has therefore prayed for issuance of a writ of mandamus by directing the respondents to allow the petitioner's prayer for mutation in respect of her purchased plot of land in pursuance of the deed of conveyance standing in her favour.

3. None has appeared for the State in spite of specific services upon the State of West Bengal through the Secretary of the Department and the Assistant Secretary, Urban Development Department Salt Lake Branch, Sech Bhawan, Calcutta-64. No affidavit-in-opposition has also been filed by or on behalf of any of the respondents.

4. Annexure "A" to the writ application is the indenture of lease executed between the Governor of the State of West Bengal as the lessor and Sri Prasanta Kamal Dutt as the lessee in respect of 4.3249 cottahs of land in plot No. 264, Block-CF, Sector-I of the Northern Salt Lake City Extension Area. It appears that in consideration of the premium or salary of Rs. 19624.50 P. paid by the lessee, the lessor granted and demised unto the lessee on lease of the said land for 999 years. An annual rent at the rate of Rupee 1.00 per annum has also been provided. The obligations and covenants that are to continue throughout the period of the lease do not appear to have imposed any restriction on the part of the lessee to transfer or assign his interest in the said land without permission of the lessor.

5. Annexure "B" to the writ application is a deed of transfer by which Sri

Prasanta Kamal Dutt has transferred his right, title and interest in the said land in favour of Smt. Ajanta Basu, the writ petitioner herein on payment of a valuable consideration with the express undertaking that the transferee shall be obliged to perform all that the transferor was under obligation to perform under ,the head lessor, i.e., the State of West Bengal.

6. From Annexure "C to the writ application it appears that following the aforesaid transfer the writ petitioner filed an application before the respondent No. 3 for mutation of her name in respect of the said plot. But it appears that by the letter dated 5/20-12-1991, the said respondent No. 3 intimated that the original lease in favour of Prasanta Kamal Dull being a grant of the Government land, under S. 2 of the Government Grants Act, 1895 the said Sri. Dutt did not enjoy any right to transfer his interest in the aforesaid land to any one and accordingly the transfer of the said land by Sri Dutt to the writ petitioner without obtaining prior permission of the Govt was not valid. The writ petitioner was accordingly refused mutation of her name in respect of the aforesaid plot of land.

7. Mr. Mahapatra submitted that there is no provision in the lease dated 3rd January, 1975 granted by the Govt. in favour of writ petitioner's vendor restricting transfer or assignment of the lease-hold interest in favour of any person and accordingly there is no justification for refusing to recognise the instant transfer in favour of the writ petitioner.

8. Mr. Mahapatra placed his reliance on two judgments of this Court passed by Tarun Chatterjee, J. in C.O. 12850(W)/1990 and C.O. 501(W)/1991 wherein upon an exactly similar issue the said single Bench of this Court held that where there is no restriction in the original lease deed against a transfer or assignment of the lease-hold interest, the Government Grants Act would not stand in the way of a further transfer and that refusal by the authority to effect mutation on the ground that S. 2 of the Government Grants Act is a bar is nothing but a totally misconceived view and hence illegal. Copies of the judgment have been annexed to this writ application. It appears that the said single Bench set aside the impugned order of refusal and directed mutation of the names of the petitioners of those writ petitions in respect of their concerned lands. It does not appear that the State of West Bengal preferred any appeal against the said judgments which therefore reached their finality.

9. The facts and circumstances of the, present case are exactly identical and accordingly there is no reason why the said judgments would not apply in the present case. In my view in absence of a provision in the original lease deed restricting transfer or assignment of the lease-hold interest by the lessee, a further transfer or assignment by the lessee in favour of a third person without permission or consent of the head lessor does not become invalid by virtue of the, provision of S. 2 of the Government Grants Act. This being the position, the impugned order of the respondent No. 3 refusing to effect mutation is illegal and inoperative.

10. Having considered the facts, circumstances and materials on record I hold that the writ petition is liable to be and the same is allowed. The impugned order dated 5/20-12-1991 being Annexure "E" to the writ application refusing to recognise the transfer and effect mutation stands set aside. The respondent authority is directed to mutate the name of the writ petitioner in respect of the concerned land being plot No. 264, Block-CF, Sector-I, Northern Salt Lake City Extension Area, Calcutta-700064 in pursuance of the deed of conveyance in favour of the petitioner, within a period of 6 six (sic) from the date of communication of this order.

Issue appropriate writ accordingly.

11. Petition allowed.