
(2019) 11 CAL CK 0067

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 2028 (W) Of 2018

Star Abasan Private Limited & Anr

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 20-11-2019

Acts Referred:

Transfer Of Property Act, 1882 — Section 113, 115

Citation : (2019) 11 CAL CK 0067

Hon'ble Judges : Protik Prakash Banerjee, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Srijib Chakraborty, Sunny Nandy, Kishore Dutta, T. M. Siddique, Nilotpal Chatterjee

Judgement

Protik Prakash Banerjee, J

Mr. Mukherjee, learned senior advocate has taken me through the list of dates and pointed out certain glaring anomalies in the conduct of the lessee, The West Bengal Social Welfare Board (hereafter the Board), in respect of its dealings with the Government and what it has directed the petitioners to do in the development agreement.

Even though the learned Advocate General submits that he is representing the Chairman of the Board, which naturally means that there is identity of interest, I would like to have an affidavit from the said respondent no.4, explaining exactly how and why the said Board asked the petitioners to do that which was contrary to the intention of the Government, at annexure P-11 to the supplementary affidavit (page 33) affirmed on July 3, 2018 by Shyamal Dey.

ACO This affidavit must be placed before this Court by next Wednesday (November 27 2019), when the writ petition shall be listed under the same heading as the first part-heard matter.

This is in continuation with what Mr. Mukherjee had submitted on July 22, 2019. He has drawn my attention to the purported notice of cancellation of the lease

which is at page 24 of the second supplementary affidavit affirmed on July 20, 2018 by one Shyamal Dey. In the said notice of cancellation, a recital is given that the lessor has come to know about the possession given to the petitioners and the development agreement in his favour as early as on July 15, 2016 but no notice of forfeiture was served on the lessor.

On the contrary, treating the lease to exist on January 4, 2017, the lessor called on the lessee to show-cause why the aforesaid plot shall not be resumed and only thereafter proceeded to determine the lease by the letter dated January 16, 2017.

On the last occasion, Mr. Mukherjee had relied upon the judgments which I have recorded in my order dated July 22, 2019; today he has placed the documents which would clearly show at least that the lease was treated to exist until January 16, 2017 and by that action the purported act of violation of the lease which would otherwise have led to forfeiture, was waived. As such, the so-called cancellation was for a reason which could not in law, have been taken by the lessor Government. Mr. Mukherjee has relied on section 113 of the Transfer of Property Act (hereafter the Act). He also relies on section 115 of the Act to protect the right created in favour of his clients.

Mr. Mukherjee, learned senior advocate continued to submit that there is no power of the Government to decide any disputed question of fact when the Government is acting qua lessor and no such power has been reserved to it under the lease deed. He has also submitted that he will be arguing on the question as to whether on the facts and circumstances of the case the Government at all has the power to evict his clients without a recourse to law. In a coda, he also submitted that provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would not be applicable in this case.

Lastly, he submits that where a person has made construction on a land, the Supreme Court has held that he cannot be evicted under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. It is his interpretation of the Supreme Court judgment. He will continue on the next date, cite judgments and conclude on the next date.