

(2023) 09 CAL CK 0066
In the Calcutta High Court
Case No : W.P.A. No. 2028 Of 2018

Star Abasan Pvt. Ltd. & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 19-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 226, 300A
Arbitration and Conciliation Act, 1996 — Section 9
Evidence Act, 1872 — Section 115

Citation : (2023) 09 CAL CK 0066

Hon'ble Judges : Suvra Ghosh, J

Bench : Single Bench

Advocate : Saptangshu Basu, Srijib Chakraborty, Sunny Nandy, Deeptangshu Kar, Md. T. M. Siddiqui, S. Adak

Final Decision : Dismissed

Judgement

Suvra Ghosh, J

1. The writ petition culminates in the following prayers:-

"(b) A Writ of or in the nature of Mandamus commanding the respondent no. 2, each one of them, their men, agents, assigns, subordinates, to remove their sign board from the said plots of land and further not to disturb/disrupt and cause hindrance to the petitioner company in any manner whatsoever in the construction and/or completion of the multi storied building as undertaken by the petitioner company upon the said plots of land; (c) A Writ of or in the nature of Mandamus commanding the respondents, each one of them, their men, agents, assigns, subordinates thereby setting aside and/or quashing any order and/or decision taken by the respondent no. 1 & 2 to resume the said plots of land being plots no. 149, 151, 155 and 156, in Block – CL Sector-II, of Bidhannagar, by cancelling the lease deed dated 20.08.2013, and to repossess the said plots of land and in the alternative to command the respondents no. 1 & 2 to forthwith recall/rescind/withdraw, the purported order and/or decision taken by them to

resume possession of the said plots of land, being plots no. 149, 151, 155 and 156, in Block CL Sector-II, of Bidhannagar, by cancelling the lease deed dated 20.08.2013, and to repossess the same;"

2. The contention of the petitioners is as hereunder:-

In response to an advertisement published by the third respondent on 5th October, 2012 inviting applications from willing companies having turnover of at least Rs. 15 crores for construction of a multi storied building in a land measuring 16.25 cottahs at Bidhannagar, Salt Lake City, under Private Public Partnership (for short PPP) mode, the petitioners submitted an expression of interest on 17th October, 2012 which was responded to by the third respondent vide letter dated 16th November, 2012 informing the petitioners that their expression had been accepted and they were required to submit bid documents on or before 3rd December, 2012. The letter dated 9th June, 2000 was also forwarded to the petitioners which indicated that the first respondent had allotted the plots of land bearing nos. 149, 150, & 156 in Block-CL, in sector-II, at Salt Lake City comprising about 16.8012 cottahs by a deed of lease for 999 years. Letter of intent was issued in favour of the petitioners on 21st December, 2012 and by a letter issued to the Joint Secretary, Government of West Bengal, Urban Development Department on 2nd August, 2013, the third respondent informed the Joint Secretary of its intention to enter into a private public partnership model agreement with the petitioners for construction of Bango Haat, working women's hostel and residential accommodation for backward working women and invited objection/suggestion, if any, in this regard from the department. Deed of lease was executed by the Urban Development Department in favour of the Social Welfare Board on 20th August, 2013 and the proposed project was unanimously approved by the Board by a resolution taken in its meeting held on 17th July, 2013. The petitioners entered into a development agreement under the PPP model with the Board on 9th September, 2013 and possession of the land was made over to them upon issuance of certificate of possession on 30th October, 2013. The Board sought approval of the Minister-in-charge of maximum floor- area ratio and intimated its intention to construct Bango Haat, working women's hostel and residential accommodation for backward working women through PPP model agreement, by a letter issued on 14th February, 2014. The Central Social Welfare Board issued no objection for the project by a letter dated 4th March, 2014. Approval was granted by the Urban Development Department for change of user by a letter issued on 16th May, 2014, thereby permitting use of the proposed working women's hostel as working women's family residential (permanent) accommodation except in the first and second floors of the proposed building. A modified development agreement was entered into between the Board and the petitioners on 20th August with certain changes incorporated therein. The development agreement was cancelled by the third respondent by letters issued on 25th February, 2016 and 18th March, 2016 respectively on the ground that the agreement was entered into without consent of the lessor despite there being a clause in the agreement that the lessee shall not sub-divide

or sublet the demised land or building to be constructed without the consent in writing of the Government and the Government shall have the right and be entitled to refuse such consent at its absolute discretion.

3. The petitioners filed an application under section 9 of the Arbitration and Conciliation Act, 1986 before the Learned District Judge at Barasat, being Misc. Case No. 60 of 2016 on 4th April, 2016 and in terms of the order of the Court, learned Arbitrator was appointed to preside over the Arbitral Tribunal. By an award passed on 31st August, 2017, the Tribunal directed the Board to act in terms of the agreement dated 9th September, 2014 read with the agreement dated 20th August, 2014, particularly in obtaining permission from the Government of West Bengal in terms of clause 6 (2) of the agreement dated 9th September, 2013. The Tribunal granted an award for perpetual injunction restraining the Board from giving effect to/further effect to the letters issued upon the petitioners herein. The said award has not been challenged and has therefore attained finality.

4. The Department issued a show cause notice upon the Board on 4th January, 2017 calling for an explanation as to why the plots shall not be resumed. On 16th January, 2017 the lease was determined and the Department re-entered into the plots in question. The reply to the show cause notice sent by the Board on 30th January, 2017 was not considered by the department since the lease was already determined. The Department installed a sign board in the plots indicating possession thereof.

5. Learned counsel for the petitioner places reliance on an order passed by this Court on 22nd July, 2019 wherein the Court has recorded the submission made by the learned Advocate General that "pervasive control on the Social Welfare Board is exercised by the respondent no. 1." It was also submitted on behalf of the petitioners on that day that the third respondent was nothing but an instrumentality of the first respondent and had no existence independent of special grace, certain knowledge and mere motion of the first respondent.

6. Learned counsel submits that the lessee/Board kept the lessor informed of the PPP model and conversion of the purpose of user was also known to the lessor. Cancellation of the PPP agreement was challenged by the petitioners in arbitration and set aside by the arbitral award which remains unchallenged. The lessor and lessee being two wings of the same Government are bound by the unchallenged arbitral award. The PPP model not being objected to by the Department, the petitioners have spent huge amount of money in the project for infrastructural development and construction over the plot and the respondents have no authority to disown the existence of the agreement which has been upheld by the Tribunal. Installation of sign board in the plots in question by the Department despite the fact that the petitioners are still in possession of the land, is de hors the law. Determination of the lease in violation of the arbitral award is non-est in law. Learned counsel has placed reliance upon the authorities in *Arjun Singh v/s. Mohindra Kumar and Others* reported in AIR 1964 SC 993,

Satyadhyan Ghosal and Others v/s. Deorajin Debi and Another reported in AIR 1960 SC 941, Union of India v/s. Bharat Charcoal Co. Ltd., reported in AIR 1962 CAL 510 and Hari Prakash Sarkar and Others v/s. State of West Bengal and Others reported in 2002 (4) LLN 137 in support of his contention.

7. Referring to section 115 of the Indian Evidence Act, 1872, learned counsel has submitted that the Board having permitted the petitioners to act on the development agreement is estopped from denying or recalling the same at a subsequent stage. Also, since the Department remained silent even after intimation of construction of Bango Haat given to it and as the Board acted with the consent of the State, the subsequent conduct of the State in cancelling the deed of lease is barred by the principles of estoppel and acquiescence.

8. Learned counsel for the respondents, at the very outset, has candidly submitted that the Department and the Board are the two wings of the State and are the same entities. Learned counsel submits that the purpose of the lease granted by the Department in favour of the Board was for construction of hostel building for working women by the Board as appears from a letter issued by the Deputy Secretary to the Government of West Bengal to the Secretary of the West Bengal Social Welfare Advisory Board on 9th June, 2000. The lease deed itself indicates that the lessee was permitted to erect the house and building on the demised plots for hostel building for working women. No prior permission in writing of the Government was taken for change of user in terms of clause 9 of the deed. The newspaper advertisement published by the Board expressing its willingness to construct a multi-storied building in the land under the PPP model subject to approval of the Government and inviting expression of interest therefor is a deviation of the terms of the deed without consent of the department. By such deviation, the entire objective contemplated in the deed was diluted and as such, the conduct of the Board is opposed to public policy. The Joint Secretary to the Government of West Bengal issued a letter to the Joint Secretary, Department of Women and Child Development and Social Welfare on 20th April, 2017 intimating the latter that the Department issued an order for determination of the lease vide memo dated 16th January, 2017. Also, the Board, by a letter issued on 25th February, 2016 to the petitioner sought to cancel the agreement executed by and between them on the ground that it was executed in clear violation of the terms and conditions of the lease deed and the action on the part of the Board was illegal and in contravention of the deed. Clause B of the development agreement proposing setting up of the Bango Haat, working women's hostel and family residential accommodation is contrary to the lease deed and an illegal action of the Board which cannot be supported or allowed by the State. Clause 24 of the development agreement is also contrary to the lease deed. Upon cancellation of the development agreement, the Board, by a letter issued to the petitioners, requested them to submit their claim along with valid documents for further action by the Board.

9. The petitioners have prayed for cancellation of termination of deed of lease

though they are not privy to the deed. The petitioners have no locus standi to challenge cancellation of a deed executed by and between the Department and the Board. Learned counsel draws the attention of the Court to the affidavit submitted on behalf of the 4th respondent/the Board wherein it is stated that fund was sanctioned in favour of the Board for construction of working women's hostel. In the said affidavit, the Board admitted that the development agreement violated clauses 2(7), 2(8) and 2(9) of the original deed of lease dated 20th August, 2013 and accordingly a notice was issued upon the Board by the Department on 4th January, 2017 in terms of clause 4 of the deed, calling for an explanation as to why the plots should not be resumed by the Government. Finally, placing reliance on the authority in Smt. Jayanti Paul and others v/s. Kolkata Municipal Development Authority and others reported in AIR 2012 CAL 36, learned counsel has submitted that when the State within the meaning of Article 12 of the Constitution of India cancels a private law lease asserting right under the lease and not by authority of any law or by any executive action, the lessee cannot question such action under Article 226 on the ground of such cancellation being unfair, unreasonable, arbitrary and violative of Article 14 and consequently of Article 300A.

10. Learned counsel has also referred to the authority in M. Ramanatha Pillai v/s. The State of Kerala and Another and S. Ajit Singh and Another v/s. State of Punjab reported in (1973) 2 SCC 650 for the proposition that the Courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate.

11. Next, learned counsel has relied upon the authority in City Industrial Development Corporation v/s. Platinum Entertainment And Others with City Industrial Development Corporation v/s. Platinum Square Trust and Another with City Industrial Development Corporation v/s. Popcorn Entertainment Corporation and Others reported in (2015) 1 Supreme Court Cases 558 wherein the Hon'ble Supreme Court has seriously deprecated the conduct of authorities showing undue favour to proprietor of a company in dealing with Government property.

12. The proposition laid down in the authority in Union of India and Others v/s. Hindustan Development Corporation and Others with other applications reported in (1993) 3 Supreme Court Cases 499 as referred to by learned counsel is with regard to legitimate expectation owing to existence of different kind of circumstances. The Court holds that unless there is gross violation of natural justice, the concept of legitimate expectation has no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the Court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected.

13. The authority in *Indian Oil Corporation Ltd and Others v/s. Shashi Prabha Shukla and Another* reported in (2018) 12 SCC 85 records that the public authority is entrusted with the role to perform for the benefit of the public and not for private profit and when a prima facie case of misuse of power is made out, it is open to a Court to draw the inference that unauthorised purposes have been pursued, if the competent authority fails to adduce any ground supporting the validity of its conduct.

14. I have considered the rival contention of the parties, material on record and the law on the point.

15. At the outset, it is necessary to record that admittedly the Board is an instrumentality of the State/Department as submitted on behalf of the Department in no uncertain terms and therefore the Department cannot shrug off its responsibility in respect of any action taken by the Board under the aegis of the Department.

16. Placing reliance on the authorities in *Arjun Singh (supra)* and *Satyadhyan Ghosal and others (supra)*, learned counsel for the petitioners has elaborately submitted on the principle of *res judicata* in as much as is applicable to different stages of the same suit. Such submission is made qua the observation of this Court made in the order passed on 22nd July, 2019 which records the status of both the State/Department and the Board. In view of the admission made on behalf of the respondents in this regard, no further discussion is necessary on this issue.

17. The respondents have challenged the maintainability of the writ petition on the ground that since the lease in question has been determined by the department in exercise of a right conferred on it by a private law contract which can be clearly distinguished from a public law power, the writ petition is not maintainable. In case of determination of a lease in exercise of a right, the sole source whereof is the lease itself and not the authority of any law or any executive action, the remedy of the petitioner lies before the Civil Court.

18. The authority in *Smt. Jayanti Paul (supra)* distinguishes between public law power and private law right and holds that though the State is under an obligation to exercise powers conferred on it in consonance with the provision of Article 14, meaning thereby that the action must be fair, reasonable and free from arbitrariness. The authority, when exercises a right conferred on it by a private law contract, is not under any corresponding obligation to exercise the right in consonance with the principles of fairness, reasonableness and non-arbitrariness in State action enshrined in Article 14.

19. In the case in hand, the department has cancelled the lease executed in favour of the Board by a letter issued on 16th January, 2017 for violation of clause 2(7), 2(8) and 2(9) of the lease, the cancellation being in exercise of a right derived solely from the lease itself. The cancellation and the reasons therefor have been accepted and admitted by the lessee/Board. The petitioners,

not being a party to the deed of lease, are not in a position to challenge the legality of such cancellation. Since the lease was executed by and between two wings of the State Government for the purpose of construction of hostel building for working women, that is, for the benefit of the public at large, I propose to deal with the writ petition on merits without discarding the same at the threshold on the maintainability ground.

20. The development agreement entered into by and between the petitioners and the Board has its source in the original deed of lease executed by and between the Department and the Board. Consequent upon cancellation of the deed of lease, the development agreement was also proposed to be cancelled. The development agreement clearly envisages that permission and clearance are required from the Government, Municipality and other statutory authorities for execution of deeds, documents and instruments. Reverting back to the deed of lease, clause 9 restricts user of the land/structure thereon for any purpose other than for construction of hostel building for working women without prior permission in writing of the Government or other authority prescribed in that behalf. The Board invited applications from willing companies for construction of multi-storied building in the land in question under the PPP mode on 5th October, 2012, subject to approval of the West Bengal Government. Such approval was sought from the Government/Department by the Board by letters issued on 2nd August, 2013 and 14th February, 2014 respectively on the strength of a resolution taken in the first Board meeting. Admittedly no written permission for such change of user was accorded by the Department in writing in terms of clause 9 of the deed. By a letter issued on 16th May, 2014, the Government granted permission for change of user to the limited extent that the proposed working women's hostel building can be used as working women's family residential (permanent) accommodation except first and second floors of the aforesaid proposed building, meaning thereby that the Department granted permission for construction of working women's hostel and working women's family residential accommodation in exclusion of the Bango Haat as proposed by the Board. Though construction of the Bango Haat by invoking PPP model was not expressly turned down by the Department, no consent in writing was also granted by the Department for the same. Such approval was granted by the Central Social Welfare Board by a letter issued on 4th March, 2014 but not by the Department as mandated by the lease deed. The development agreement was executed by and between the petitioners and the Board on 9th September, 2013 though permission for limited change of user was granted by the Department only on 16th May, 2014. The Board and the petitioners did not realize the necessity for obtaining prior permission of the Department in terms of deed of lease before entering into the development agreement. Also, clause B of the agreement is contrary to the terms of the lease deed. All correspondence made by and between the Department and the Board aimed at construction of a working women's hostel and it was only by a unilateral resolution taken by the Board that construction of Bango Haat was proposed. The Board admits violation

of clause 2(7), 2(8) and 2(9) of the deed of lease in executing the development agreement.

21. Record reveals that intention of cancellation of the development agreement was challenged before the learned arbitrator and by an award passed on 31st August, 2017, the learned arbitrator has held that since the agreement was not terminated, there could not be any finding on termination of the agreement. The Board, being the respondent therein, was directed to act in terms of the agreements dated 9th September, 2013 and 20th August, 2014, particularly in obtaining permission from the Government of West Bengal in terms of clause 6 (2) of the agreement dated 9th September, 2013. An award for perpetual injunction was also granted restraining the respondent therein from giving any effect/further effect to the letters issued on 25th February, 2016 and the subsequent undated letter. The lease was cancelled on 16th January, 2017, i.e., during pendency of the arbitration. The lease not being subject matter of the arbitration, cancellation of the same by the Department during pendency of the arbitration was not barred under the law. The letter issued by the Board to the petitioners on 25th February, 2016 admits violation of conditions of the lease deed by the Board as well as the action taken by the Board to be illegal and in contravention of the specific terms of the deed. Since the deed was cancelled, the Board was left with no other alternative but to propose cancellation of the development agreement which was only a fall out of the lease. The subsequent letter issued to the petitioners requested submission of their claim accompanied by valid documents for finalization of the same by the Board. Cancellation of the deed of lease was not brought to the notice of the Learned Arbitration Tribunal before the award was passed. Suppression of such fact/cancellation being suppressed by the petitioners before the learned Tribunal, the award passed by the Tribunal was on a wrong premise upon misconception of facts.

22. The case of the petitioners stands on the anvil of the doctrine of legitimate expectation, estoppel and acquiescence. The doctrine of legitimate expectation has been elaborately dealt with by the Hon'ble Supreme Court in the authority in Union of India and Others (supra) wherein the Hon'ble Court has held that if the according of natural justice does not condition the exercise of power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public authority which is empowered to take the decisions under law. The authority in Attorney General for New South Wales v/s. Quin, reported in (1990) 64 AUST LJR 327 demonstrates that to strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to the set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law. The said principle is applicable in the fact situation of the case in hand.

23. The authority in Hari Prakash Sarkar and Others (supra) referred to by the

petitioners demonstrates the principle that no man shall be allowed to dispute his own solemn deed and an agreement entered into by and between the parties would operate as estoppel. Per contra, learned counsel for the respondents has placed reliance on the judgment in *M. Ramanatha Pillai (supra)* which says that generally a State is not subject to an estoppel to the same extent as an individual. Otherwise it might be rendered helpless to assert his powers in Government. An exception arises when it is necessary to prevent fraud or manifest injustice. Though the authority deals with abolition of post and consequential fact of termination of service of a Government servant, the ratio decidendi of the said judgment is applicable to the facts of the present case. The question of acquiescence by the Department also does not arise in view of the fact that pursuant to approval sought by the Board, the Department accorded approval for limited change of user of the land in question.

24. The conduct of the Board is a glaring example of misuse of power and unauthorized purposes being pursued without demonstrating any ground supporting the validity of its conduct, (*Indian Oil Corporation Ltd.*), such act being eventually admitted by the Board.

25. In the said backdrop, this Court is inclined to hold that since the development agreement emerged from the deed of lease which has been cancelled by the Department, the agreement cannot stand on its own. The illegalities and irregularities evident in the agreement as admitted by the Board could not have been allowed to continue for which the Department was constrained to take the decision of termination of the lease which formed the basis of the agreement. The lease having been granted for a specific performance could not have been used for the purpose of patronizing the private company by entering into a development agreement in contravention of the lease deed.

26. It is pertinent to mention here that the petitioners are shielded from suffering irreparable loss by the Board which allowed refund of the caution money and security deposit made by the petitioners and requested them to submit their claim for the expenditure incurred by them in respect of the project along with valid documents justifying the claim, the petitioners thereby being proposed to be compensated in terms of money.

27. Accordingly, the writ petition being W.P.A. 2028 of 2018 is dismissed.

28. There shall however be no order as to costs.

29. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.