

(2015) 03 CAL CK 0004

In the Calcutta High Court

Case No : M.A.T. 2248 of 2014 and C.A.N. No. 226 of 2015

State of West Bengal and Others

APPELLANT

Vs

Ajay Poddar and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 CHN 509 : (2015) 4 WBLR 187

Hon'ble Judges : Indrajit Chatterjee, J.; Shubhro Kamal Mukherjee, J.

Bench : Division Bench

Advocate : Tapan Kumar Mukherjee (III) and Nilotpal Chatterjee, for the Appellant; Ratnanko Banerjee, N.C. Bihani and Papiya Banerjee Bihani, Advocates for the Respondent

Judgement

Shubhro Kamal Mukherjee, J.—This is an appeal by the State of West Bengal and its officials against judgment and order dated September 18, 2014 passed by the Hon'ble Single Judge of this Court in W.P No. 687(W) of 2014.

2. By the order impugned in this appeal, the Hon'ble Single Judge directed the authorities to mutate the names of the petitioners in relation to plot No. 272 in Block - EC in Sector - I of the Salt Lake City Extension area, within 4 (four) weeks from the date of communication of the aforementioned order dated September 18, 2014.

3. By an indenture of lease dated February 12, 1972, the State of West Bengal granted lease in favour of Somendra Mohon Mukerji for the period of 999 (nine hundred ninety nine) years on annual rent of Re.1 (Rupee one) only or any fraction of any year at the same rate. The only restrictive clause in the said deed of lease was prohibiting the lessee from sub-dividing or sub-letting the demised land or the building to be constructed without the consent in writing of the Government.

4. On or about December 25, 1995 the original lessee, namely, Somendra Mohon

Mukerji, died intestate. Consequent upon his death, the name of the daughter of the original lessee, namely, Shibani Mukherjee, was mutated on or about October 9, 1996.

5. The Principal Secretary of Urban Development Department, Government of West Bengal, issued a circular dated August 25, 2004, inter alia, allowing mutation on the basis of registered deeds of conveyance in relation to the lease deeds where there has been absolutely no restriction on transfer. Corollary of that the Government of West Bengal recognised in the said circular that in respect of 17 clauses lease deeds the restrictive clauses were deleted. The relevant portion of the said circular runs as under:

"...that a good number of lessees could get Salt Lake plots on execution of the 17 clause lease deeds or even 20 clause lease deed from where the restrictive clauses were deleted...." 6. By an indenture of assignment dated March 19, 2012, the said Shibani Mukherjee assigned her rights in the said plot of land in favour of the writ petitioners.

7. The writ petitioners requested the Urban Development Department for mutation of their names instead and in place of the said Shibani Mukherjee.

8. As the Urban Development Department did not grant the request for mutation, the writ petitioners approached this Court with an application under Article 226 of the Constitution of India, which was registered as W.P No. 11478 (W) of 2012. The Hon"ble Single Judge entertained the said writ petition and, inter alia, directed the exchange of affidavits.

9. An Appeal was filed, which was tendered under M.A.T. 1236 of 2012. The division bench, inter alia, disposed of the appeal by directing the Principal Secretary of the Urban Development Department to consider the representation of the writ petitioners.

10. The Principal Secretary, by order dated December 6, 2012, held that as there was no application by the said Shibani Mukherjee seeking permission to transfer the said plot of land, the mutation could not be granted in favour of the writ petitioners. As and when the mutated lessee would apply for permission in the prescribed format as per the existing rules and notification, the prayer would be considered.

11. Being aggrieved by and dissatisfied with the said order dated December 6, 2012, the writ petitioners approached this Court with yet another application under Article 226 of the Constitution of India, which was registered as W.P. No. 687 (W) of 2014.

12. The Hon"ble Single Judge, by the order impugned, allowed the aforementioned writ petition and directed the authorities to mutate the names of these petitioners in respect of the said plot of land.

13. Mr. Tapan Kumar Mukherjee(III), learned Additional Government Pleader,

strenuously, argues that mutation could not be granted in favour of the writ petitioners as they have not complied with the requirements of the circular dated June 22, 2012 issued by the Principal Secretary, Urban Development Department, Government of West Bengal.

14. Clauses 2, 3 and 4 of the said notification are relevant for the purpose of deciding the appeal and they are quoted hereunder:-

"2. It has come to the notice of the Govt. in the U.D. Deptt. that in many cases possession of plots is transferred to third parties on the strength of various documents such as General Power of Attorney (GPA), Agreement of Lease/Tenancy and Will (to a stranger) and that though such documents do not amount to a transfer of lease in law, in effect, possession of the plots is being parted with by the original lessee. Most of the lease deeds executed by the Government contain restriction on assignment/transfer of the nature as is being carried out at present and this transfer without the Government's permission is not binding on the Govt.

3. The Government in the U.D. Deptt. has earlier allowed transfer of lease-hold right in respect of plots of land at Kalyani Township as well as for non-residential plots of land at Salt Lake Township by imposing permission fees and on fulfilment of certain other terms and conditions since 2005.

4. In the like manner and also in order to put an end to such unauthorized transfer as well as to increase revenue in Government Exchequer, the Governor has been pleased to order that the Govt. of West Bengal may allow the lessee of residential plots/building thereon of Bidhannagar to transfer his lease-hold right to others for un-expired period of lease term inter alia by imposing transfer fees @ Rs. 5 lakh (Rupees five lakh) per cottah for the time being and such other terms and conditions as may be fixed from time to time. To seek the permission of the Government to transfer his lease-hold right to others, the lessee/mutated lessee shall have to apply to the Principal Secretary to the Govt. of West Bengal, U.D. Deptt., "Nagarayan", DF-8, Sector-I, Bidhannagar, Kolkata - 700064 stating his intention for such transfer. The transfer fees, however, will not be applicable to the cases that are within close blood relation viz., father-mother, husband-wife, brother -sister, son-daughter, son's daughter, son's son, daughter's son and daughter's daughter and in those cases only a nominal amount of processing fees as may be fixed by the Govt. from time to time will be realized."

15. Interestingly, even in the said notification dated June 22, 2012, there has been an admission that most of the lease deeds executed by the Government contained restriction on assignment/transfer without the permission of the Government. Corollary of that is there are lease deeds with no restrictive clause.

16. We have perused the impugned deed of lease dated February 12, 1972. We find that there was no restriction on the original lessee from assigning or transferring the demised plot of land. Only restriction was not to sub-divide or sub-let the demised land or the building to be constructed without the consent in

writing of the Government.

17. In *Shrimati Nathi Devi Kulthin Vs. State of West Bengal and Others*, , it was held that where the lease deed executed by the Government in favour of the lessee did not contain any restrictive clause in respect of the right of the lessee to transfer his leasehold estate, there would be no bar on the lessee to transfer or assign the lease-hold estate to a third party.

18. It was noted that lease deeds were executed for valuable consideration upon acceptance of a lump sum selami and the Government, also, agreed to accept nominal amount of rent. Therefore, it was a contractual transaction for a monetary consideration. The position of the Government was that of the landlord. The Government Grants Act, 1895, therefore, could not be made applicable in respect of those leases because in all the leases, the lessees had been permitted to construct building on their leasehold lands.

19. *Jyotirmay Bhattacharya, J. in Shiv Surat Pandey Vs. State of West Bengal*, , also, held that the notification dated June 22, 2012, would apply only in case of lease deed which contains 21 clauses wherein restriction on assignment/transfer was imposed.

20. In some lease deeds, there were restriction clauses of transfer/ assignment of the leasehold estate. The Principal Secretary, Urban Development Department, issued a circular dated June 22, 2012 to soften the aforementioned rigour. It provides, inter alia, that transfer or assignment would be permitted on payment of transfer fees of Rs. 5,00,000/- (Rupees five lakh) only per cottah.

21. Therefore, the circular would apply in relation to the deeds with restriction clauses. The circular cannot be applied in relation to a deed where there has been no restriction clause.

22. We have, carefully, considered the deed of lease dated February 12, 1972. It contains 17 clauses. There was no restriction imposed on transfer or assignment or the leasehold interest of the lessee.

23. We, therefore, do not find any reason to interfere with the impugned judgment and order passed by the Hon"ble Single Judge.

24. The appeal and the connected application for stay, filed under C.A.N. 226 of 2015, are dismissed and the appellants are directed to mutate the names of the writ petitioners in respect of the plot No. 272 in Block - EC in Sector - I Salt Lake City, within a month from the date of communication of this order.

25. We make no order as to costs.

Indrajit Chatterjee, J.

I agree.