

(2018) 09 CAL CK 0074

In the Calcutta High Court

Case No : Tender of Mand Appeal NO. 1263 of 2017 With C.A.N. NO. 8785 of 2017

State of West Bengal & Ors

APPELLANT

Vs

Smt. Kusum Agarwal & Anr

RESPONDENT

Date of Decision : 27-09-2018

Acts Referred:

Karnataka Land Reforms Act, 1961 — Section 21, 24
Transfer of Property Act, 1882 — Section 5, 53A
West Bengal Premises Tenancy Act, 1956 — Section 13(1)(a)
West Bengal Government Land (Regulation and Transfer) Act, 1993 — Section 2(1)

Citation : (2018) 09 CAL CK 0074

Hon'ble Judges : Debasish Kar Gupta, J; Shampa Sarkar, J

Bench : Division Bench

Advocate : Kishore Dutta, Supratim Dhar, Dhananjoy Nayak, Saptangshu Basu, Kumar Gupta, Binay Kumar Jain, Abhishek Jain

Final Decision : Dismissed

Judgement

Shampa Sarkar, J.

1. This intra-court appeal has been filed against the judgement and order dated February 3, 2016 passed by a learned single judge of this court in W.P.

No.29421 (W) of 2015 In re: Smt. Kusum Agarwal & Anr. vs. The State of West Bengal & Ors. (hereinafter referred to as the writ petition).

2. By the judgement and order impugned the learned single judge disposed of the writ petition by directing the concerned respondent authority, that is,

the appellant no. 3 to take appropriate steps and complete the mutation in favour of the respondents/writ petitioners (hereinafter referred to as the writ

petitioners) subject to compliance of all formalities within a period 12 weeks from communication of the order.

3. The principal grievance of the writ petitioners before the learned single judge was that although, they were beneficiaries under the last Will and

Testament of one Ajit Chandra Bagchi which was probated by an order passed by the High Court dated September 18, 2013, the authority concerned

refused to act on the basis of the application dated October 7, 2013 for mutation of the names of the writ petitioners as lessees in respect of premises

No. BK-222, Sector-II, Salt Lake City, Kolkata- 700064.

4. According to the writ petitioners, in view of the decision of the Apex Court in State of W.B and Another vs. Kailash Chandra Kapur and Others

reported in (1997) 2 SCC 387, bequests by way of a Will in favour of even strangers were allowed.

5. The learned single judge in view of the several orders passed by this court in respect of 20-Clause lease deeds under similar facts and

circumstances, disposed of the writ petition with appropriate directions upon the concerned authority for mutating the names of the writ petitioners.

The appellants have assailed the judgement and order impugned on the ground that the bequest to the petitioners should be considered in terms of the

restrictions imposed by Clause 2 (8) of the lease deed. According to the learned Advocate General, under Clause 2 (8) a lessee was prevented by the

covenant from assigning or transferring the premises without the previous permission of the Government in writing. The said Clause, according to him

further stipulated that in case of transfer and assignment of the lease, the lessor had also retained the right of pre-emption and thus, bequest to a

stranger should be considered as an assignment of the demised premises which would take place at a future date, that is, after the death of the

testator. Keeping in view the restrictions imposed in Clause 2 (8) it was urged, that the fact that the Government restricted transfer and assignment of

the demised premises and also reserved to itself the right of pre-emption was indicative of the object of the Government which was to prevent

strangers from entering into the premises. Permitting bequest of the property to strangers by Wills would defeat the very purpose of Clause 2 (8) in

the lease deed.

According to the Learned Advocate General the said covenant put a specific bar and if the language of the same was interpreted with the very object

behind inclusion of the said clause in the lease deed it would be amply clear that

the Government intended to put a bar on transfers and assignments by way of a Will as well. He contended that bequest of the property in favour of the writ petitioners was nothing but assignment which would take effect posthumously if Clause 2 (8) of the lease deed (being a contract between the lessor and lessee) is given a purposive interpretation. The intention behind making such Wills if read with the restrictive covenant in Clause 2 (8) of the lease deed, would clearly indicate that in the instant case, the bequest to the writ petitioners was nothing but an assignment of the property inasmuch as, once the bequest was made and the Will was probated the lease between the Government and the lessee (testator) would come to an end. He further submitted that the lease deed was a contract between the parties and the lessee was bound by the negative covenant in Clause 2 (8), if the said clause was interpreted according to its purpose.

6. It has been urged on behalf of the appellant, that the decision in *Kailash Chandra Kapur* (supra) had not dealt with the proposition that a Will in favour of strangers would amount to transfer by assignment that would take place at a later date. According to the appellants, Clause 2 (12) of the lease deed could not be read in an isolated manner but, Clauses 2 (7), 2 (8) and 2 (12) should be read conjointly. It was further contended that Clause 2 (12) was not an enabling clause permitting a lessee to bequeath a property to any other person but, the said clause merely stated how the demised premises would be dealt with when a lessee died testate or intestate leaving behind more than one legatees or heirs as the case may be. The learned Advocate General submitted that while deciding *Kailash Chandra Kapur* (supra), the Apex Court had not considered the object of Clause 2 (8) of the lease deed and thereby had proceeded to hold that a Will which was a posthumous disposition of the property was not a transfer, by giving a narrow meaning to the word "transfer", that is, passing of a property from one living person to another.

7. The appellants relied on the decisions in *DLF Universal Limited and Others vs. Director, Town and Country Planning Department, Haryana* and *Others* reported in (2010) 14 SCC 1, *Sangappa Kayanappa Bangi vs. Land Tribunal, Jamkhandi* and *Others* reported in (1998) 7 SCC 294, *Jaymma vs. Maria Bai Dead by Proposed LRS. & Another* reported in (2004) 7 SCC 459, *Asansol Durgapur Development Authority & Anr. vs. Tapas*

Banerjee & Ors. reported in AIR 2009 Cal 41, Rajput Ruda Meha and Others vs. State of Gujarat reported in (1980) 1 SCC 677, Suraj Lamp and

Industries Private Limited vs. State of Haryana and Another reported in (2012) 1 SCC 656, State of Punjab vs. Baldev Singh reported in (1999) 6

SCC 172.

8. On behalf of the writ petitioners, Mr. Saptangsu Basu Learned Senior Advocate, contended that the legality of bequest of property by a Will in case of leasehold properties in Salt Lake City governed by 20 Clause leases, had been upheld by the Apex Court in Kailash Chandra Kapur (supra).

According to him the contract (in this case the lease deed) did not by a restrictive covenant prevent bequest by way of a Will of any leasehold

property in Salt Lake. He further submitted that the permissive language of Clause 2 (12) allowed testamentary disposition of the leasehold property in

the absence of any specific restrictive clause preventing such testamentary disposition of the leasehold property. The contentions of the appellants that

the object behind Clause 2 (8) was also to prevent disposition of the property by way of a Will was not tenable in law according to him. Mr Basu

submitted that Kailash Chandra Kapur (supra) had taken into consideration the points similar to those urged by the appellants before us.

9. Mr. Basu contended that the points raised by the appellants in this appeal was hit by the principle of issue estoppel in view of the fact that

subsequent to the decision in Kailash Chandra Kapur (supra) the State Government enacted the West Bengal Government Land (Regulation of

Transfer) Act, 1993 (hereinafter referred to as the said Act) imposing restrictions on transfer of any Government land without prior permission of the

State Government throughout, West Bengal. The said Act did not of course come into effect due to want of notification but, the Government later

started permitting mutation of names of legatees in respect of such leasehold properties on payment of Salami/Premium. Such conduct of the

appellants and its men and agents show that they had acted upon the observations of the Apex Court in Kailash Chandra Kapur (supra), which is

quoted below:-

“12: We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes

appropriate restrictive covenants prohibiting the bequest in favour of the

strangers or by enacting appropriate law, there would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers.â??

10. The final contention of Mr. Basu was that Clause 2 (8) of the lease deed was a restrictive clause as regards transfers and assignments but the

same could not be give a broader interpretation as if it were a specific statutory bar. The lease deed Mr. Basu submitted, was merely a contract and

Clause 2 (8) could not be given a wider interpretation but should be read in its own context to include a restriction on transfer and assignment but not

in making a Will. He relied on the decisions in Kailash Chandra Kapur (supra), an unreported decision in Mahadeo vs. Shakuntalabai bearing Civil

Appeal No. 2283 of 2006, Gain Dinshaw Irani and Others vs. Tehmtan Irani and Others reported in (2014) 8 SCC 294, Sri Pawan Kumar Agarwal &

Anr. Vs The State of West Bengal & Ors., reported in (2014) 1 CHN (Cal) 83.

11. Having considered the rival contentions of the parties, we first proceed to deal with the contention of the Learned Advocate General as to whether

the object of Clause 2 (8) of the lease deed was to prevent bequest by a Will. In the lease deed which is the subject matter of the dispute in this

appeal the expressions â??assignmentâ?? or â??transferâ?? in Clause 2 (8) of the lease deed could not be treated as an absolute statutory bar like

those imposed by statute.

12. In some of the decisions relied upon by the appellants it had been held that a Will was an â??assignmentâ? where the disposition of the property

took place at a future date. In Sangappa Kayanappa Bangi (supra) it was decided by the Apex Court, while interpreting the provisions of Sections 21

and 24 of the Karnataka Land Reforms Act that a bequest under a Will could not be stated to fall outside the purview of the said provisions, inasmuch

as, according to the Apex Court a Will was an â??assignmentâ?? as the same brought the lease to an end.

13. Section 21 of the Karnataka Land Reforms Act, 1961 is quoted herein below:-

â?? Sub-division, sub-letting and assignment prohibited. â?" (1) No sub-division or sub- letting of the land held by a tenant or assignment of any

interest therein shall be valid:

Provided that nothing in this sub-section shall affect the rights, if any, of a permanent tenant:

Provided further that if the tenant dies,-

(i) if he is a member of a joint family, the surviving members of the said family, and

(ii) if he is not a member of a joint family, his heirs, -shall be entitled to partition and sub-divide the land leased, subject to the following conditions:-

(a) each sharer shall hold his share as a separate tenant;

(b) the rent payable in respect of the land leased shall be apportioned among the sharers, as the case may be, according to the share allotted to them;

(c) the area allotted to each sharer shall not be less than a fragment;

(d) if such area is less than a fragment the sharers shall be entitled to enjoy the income jointly, but the land shall not be divided by metes and bounds;

[(e) if any question arises regarding the apportionment of the rent payable by the sharer it shall be decided by the Tahsildar:

Provided that if any question of law is involved the Tahsildar shall refer it to the Court. On receipt of such reference the Court shall, after giving notice

to the parties concerned, try the question as expeditiously as possible and record finding thereon and send the same to the Tahsildar. The Tahsildar

shall then give the decision in accordance with the said finding.]â??

14. In Jayamma (supra) the ratio of the decision of Sangappa Kayanappa Bangi (supra) was followed and it was held that the object of limiting

transfer of land was also to prevent testamentary disposition of the property. The relevant portion is quoted below:-

â??20. When an assignment or transfer is made in contravention of statutory provisions, the consequence whereof would be that the same is invalid,

and thus, being opposed to public policy the same shall attract the provisions of Section 23 of the Indian Contract Act.

21. It is not disputed that in view of the purport and object the legislature sought to achieve by enacting the said provision the expression

â??assignmentâ?? would include a Will.â??

15. It could be concluded from the above decisions that in order to prevent strangers from coming into the property there were statutory bars in the

Karnataka Land Reforms Act, 1961 preventing sub-division, sub letting of the land and assignment of any interest in the tenancy by a tenant. In these

cases Wills were held to be in contravention to the statutory provisions.

16. In *Satyabrata Banerjee vs. Ushaprova Sarkar* reported in (1976) 1 CLJ 13, it had been held that the word "transfer" could not be given a narrow interpretation as defined in Section 5 the Transfer of Property Act. The word "transfer" had a wider import and the definition of "transfer" in the Transfer of Property Act, 1882 was not exhaustive. While interpreting the meanings of the word "transfer" and "assignment" as used in the context of Section 13 (1) (a) of the West Bengal Premises Tenancy Act, 1956, it was held that meaning of the word "transfer" would be conveyance of any right title or interest in any property from one living person to another and the said transfer could take place in present and in future. In the said decision it was further held that the term "assignment" would cover a disposition which could be operative even after death of the person making such transfer. The High Court concluded that the purpose behind the said section was to restrict tenants from putting the landlord to prejudice by transferring and/or assigning the tenancy without the consent of the landlord and the said purpose would be defeated if the tenant was allowed to convey the tenancy by a Will that would take effect after the death, which by law during the life time of the tenancy, was prohibited.

17. In *Suraj Lamp (supra)* the term "Will" had been explained which reads as follows:-

"Scope of will:-

22. A will is the testament of the testator. It is a posthumous disposition of the estate of the testator directing distribution of his estate upon his death.

It is not a transfer inter vivos. The two essential characteristics of a will are that it is intended to come into effect only after the death of the testator

and is revocable at any time during the lifetime of the testator. It is said that so long as the testator is alive, a will is not worth the paper on which it is

written, as the testator can at any time revoke it. If the testator, who is not married, marries after making the will, by operation of law, the will stands

revoked. (See Sections 69 and 70 of the Succession Act, 1925.) Registration of a will does not make it any more effective."

18. However, the ratio of the said decision was that immovable property could only be transferred/conveyed by a deed of conveyance (sale deed) duly

stamped and registered and not by GPA sales or by Living Wills, inasmuch as,

such modes neither conveyed any title nor did they amount to transfer of, or creation of any interest in immovable property except to the limited extent of Section 53-A of the Transfer of Property Act, 1882. We do not find any applicability of the ratio of this judgement which primarily decided the legality of a transfer by Living Wills and other modes.

19. We are unable to accept the contention of the Learned Advocate General that in Kailash Chandra Kapur (supra) the grounds urged by him in this

appeal were not taken into consideration. We refer to paragraph 5 of the said decision which is quoted below:-

â??5: Shri V.R Reddy, learned Additional Solicitor General, has contended that clauses 7,8,12 of the indenture of the lease should be read together

which manifest the intention that the lease was for the enjoyment of leasehold right of the demised site or a building constructed thereon either by the

lessee or his legal representatives and one among them alone should be made responsible to and answerable to the lessor-appellant, the Government

of West Bengal. It prohibited sub-letting or transfer without prior permission of the Governor thereby, there is an implied prohibition to bequeath the

leasehold right in the property in favour of the strangers. In that background, the word â??transferâ? employed in clause 8 of the lease deed would be

understood in a broader sense. If so understood, any bequest made to a stranger, without the permission of the Government, does not bind the

Governor. Therefore, the Government is not obliged to recognize a stranger as a lessee after the demise of the original lessee. In support thereof, he

placed strong reliance on the judgment of a Division Bench of the Bombay High Court in Anant Trimbak Sabnis (Dr) v. Vasant Pratap Pandit.

He also further placed reliance on a report given by the Committee constituted in that behalf on 3-5-1984 of the misuse of the leasehold right granted

by seeking transfer in favour of distant relations. On receipt thereof, the Governor by a notification specified that the near relations shall mean and

include the father, mother, brother, sister, son, daughter, husband and wife. It prohibited registration under the Registration Act by any other relative. It

would amplify the intention of the Government in that behalf in granting leasehold interest of their land for the benefit of use and enjoyment of the

demised premises for the residential purpose by the members of the family or near relations. The strangers were not intended to be inducted in and

given enjoyment of the leasehold interest of the property demised by the Government. Unless the Government gives permission for such a transfer, it cannot be considered to be valid in law. The High Court thereby committed grave error of law in directing that a stranger be treated as a lessee of the Governor.â??

Apart from paragraph 5 of the said judgement which dealt with the interpretation of the word â??transferâ?? used in Clause 2 (8) of the lease deed

in respect of Salt Lake properties, we find that the report of the committee constituted to look into misuse of leases by the holders by transferring the

lands to strangers and distant relations by way of a bequest by Will had also been taken into consideration. We also find that decision in Gian Devi

Anand v. Jeevan Kumar reported in (1985) 2 SCC 683 had been considered for the proposition that a tenant could not by a Will bequeath leasehold

rights in favour of strangers and induct strangers as tenants of the demised premises and such bequest would not bind the landlord in view of the

specific bar in the Delhi Rent Control Act. Gian Devi (supra) was relied upon by the Apex Court in Sangappa Kayanappa Bangi (supra) and

Jayamma (supra). Having considered the aforesaid decision and a decision of the Division Bench of Bombay High Court in Anant Trimbak Sabnis

(Dr) vs. Vasant Pratap Pandit reported in AIR 1980 Bom 69, the Apex Court, in Kailash Chandra Kapur (supra), ultimately decided that Clause 2

(12) of the lease deed should be read separately from Clauses 2 (7), and 2 (8) of the lease deed and the permissive language of Clause 2 (12) should

be interpreted as if bequest by way of Will was not restricted specifically. The relevant portion of the judgement is quoted below:-

â??12. In view of the above-settled legal position, the question is whether the bequest made by Mullick in favour of the respondent is valid in law and

whether the Governor is bound to recognize him. It is seen that clauses (7), (8) and (12) are independent and each deals with separate situation.

Clause (7) prohibits sub-lease of the demised land or the building erected thereon without prior consent in writing of the Government. Similarly, clause

(8) deals with transfer of the demised premises or the building erected thereon without prior permission in writing of the Government. Thereunder, the

restricted covenants have been incorporated by granting or refusing to grant permission with right of pre-emption. Similarly, clause (12) deals with the

case of lessee dying after executing a Will. Thereunder, there is no such restrictive covenant contained for bequeath in favour of a stranger. The word "person" has not been expressly specified whether it relates to the heirs of the lessee. On the other hand, it postulates that if the bequest is in favour of more than one person, then such persons to whom the leasehold right has been bequeathed or the heirs of the deceased lessee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same and one among them should alone be answerable to and the Government would recognize only one such person. In the light of the language used therein, it is difficult to accept the contention of Shri V.R. Reddy, that the word "person" should be construed with reference to the heirs or bequest should be considered to be a transfer.

Transfer connotes, normally, between two living persons during life; Will takes effect after demise of the testator and transfer in that perspective becomes incongruous. Though, as indicated earlier, the assignment may be prohibited and the Government intended to be so, a bequest in favour of a stranger by way of testamentary disposition does not appear to be intended, in view of the permissive language used in clause (12) of the covenants.

We find no express prohibition as at present under the terms of the lease. Unless the Government amends the rules or imposes appropriate restrictive covenants prohibiting the bequest in favour of the strangers or by enacting appropriate law, there would be no statutory power to impose such restrictions prohibiting such bequest in favour of the strangers. It is seen that the object of assignment of the government land in favour of the lessee is to provide him right to residence. If any such transfer is made contrary to the policy, obviously, it would be defeating the public purpose. But it would be open to the Government to regulate by appropriate covenants in the lease deed or appropriate statutory orders as per law or to make a law in this behalf. But so long as that is not done and in the light of the permissive language used in clause (12) of the lease deed, it cannot be said that the bequest in favour of strangers inducting a stranger into the demised premises or the building erected thereon is not governed by the provisions of the regulation or that prior permission should be required in that behalf. However, the stranger should be bound by all the covenants or any new covenants or statutory base so as to bind all the existing lessees."

20. We are in agreement with the submission of Mr. Saptangsu Basu that Kailash Chandra Kapur (supra) had dealt with the points and the legal

proposition which the Learned Advocate General has raised in this appeal. We find that in the decision of Asansol Durgapur Development Authority

(supra), a Division Bench of this court took into account the ratio of the decision in Sangappa Kayanappa Bangi (supra) and held that Section 2 (1) of

the West Bengal Government Land (Regulation and Transfer) Act, 1993 (hereinafter referred to as the said Act) would stand in the way of the writ

petitioners therein to have any benefit under a Will since it was hit by the said Act. Unfortunately, the said judgement will not come to the aid of the

appellants as the said Act had not come into operation for want of notification. The said Act came into operation on 4th March, 1997, but thereafter by

issuing a Government order on 20th March, 1998, the operation of the said Act was kept in abeyance temporarily. Subsequently, an ordinance being

West Bengal Ordinance No. 2009 was published in the Calcutta Gazette on 27th January, 2009 which amended the said Act, inter alia, to the effect

that the said Act would come into force on such date and in such areas as the State Government would by notification, appoint and different dates

would be appointed for different areas. The West Bengal Government Land (Regulation and Transfer) Act was subsequently amended in 2009 and

the amended Act was published in the Calcutta Gazette after it received the assent of the Governor. By the said amendment it was provided that the

said Act would come into force on such date and in such areas as the State Government would, by notification appoint and different dates would be

appointed for different areas. However, no such notification was ever published.

21. In the decision of Pawan Kumar Agarwal (supra) a similar point fell for consideration before a learned Single Judge of this Court and the Learned

Judge had elaborately dealt with all the decisions cited by the appellants and held that if a Will had all the ingredients of a valid Will as per the Indian

Succession Act, it could not be treated as an instrument of assignment and/or gift. The relevant portion is quoted below:-

â??As such this court concludes by holding that since lease does not prohibit bequest by will, the vesting of testatorâ??s right with the legatee on the

basis of the probated will cannot be declared invalid by the State and since such vesting is made by operation of law under the Indian Succession Act,

the State Authority cannot declare such vesting of leasehold right of the original lessee upon the petitioners, as illegal and as such I hold that no

permission of the State authority for such transfer is necessary to legalize such transfer by will inasmuch as such concept of grant of post facto

permission by the State to legalize such is unknown to Indian Succession Act, and for similar reason I hold that State authority cannot demand

permission fees in terms of the impugned notification dated 22nd June 2012 for effecting mutation of the names of the petitioners in the official records

of the State Authority.

I conclude by observing that contractual rights of the parties cannot be altered unilaterally; even by notification. Such contractual right of the parties

affecting rights of the parties can only be altered by enactment through legislative process. Though an act was enacted dealing with this subject, the

said Act is still in limbo, due to want of notification. As such the right of the parties are still regulated by contract which cannot be affected by any

notification issued by the State Authority in its administrative capacity.

Accordingly, this court disposes of the writ petition by directing the concerned State respondents to mutate the names of the petitioners as lessees for

the said plot of land together with the construction made thereon in respect of the residuary period of the said lease by recognizing the vesting of the

lessee's interest with the petitioners by virtue of such probated will. Such exercise should be completed within 15th November, 2013.

In the above judgement the court concluded that the West Bengal land Reforms (Regulation and Transfer Act) 1993, on the basis of which the

judgement in Asansol Durgapur Development Authority (supra) was based could not be looked into as a precedent.

22. Moreover, we find that in an unreported decision in Civil Appeal No. 2283 of 2006, In re: Mahadeo v. Shakuntalabai the Apex Court once again

reiterated the ratio of the judgement of Kailash Chandra Kapur (supra) which reads as follows:-

7. On a plain reading of the aforesaid provision, it is clear that transfer without the previous sanction of the Collector is impermissible by way of

sale, gift, exchange, mortgage, lease or assignment. There is no prohibition in so far as the transfer of land by way of a Will is concerned. In fact, in

view of the decision of this Court in State of West Bengal v. Kailash Chandra

Kapur [(1997 2 SCC 387)], devolution of property by way of a Will

does not amount to a transfer of the property. This is clear from para 12 of the aforesaid decision wherein it has been observed that transfer connotes,

normally, between two living persons during life. However, a Will takes effect after demise of the testator and transfer in that perspective becomes

incongruous.

8. That the beneficiary of a Will receives the property by way of devolution and not by way of transfer is also made clear by the decision of this Court

in *S. Rathinam alias Kuppamuthu v. L.S. Mariappan* [(2007) 6 SCC 724] wherein this Court has held in para 21 that a testator by his Will, may make

any disposition of his property subject to the condition that the same should not be inconsistent with the laws or contrary to the policy of the State. The

Will of a man is the aggregate of his testamentary intentions so far as they are manifested in writing. It is not a transfer but a mode of devolution. In

coming to this conclusion, this Court referred to *Beru Ram v. Shankar Dass* [AIR 1999 J & K 55]

9. The decision of the High Court is, therefore, not sustainable in view of the law laid down by this Court.â??

23. We take assistance from the decisions in *Rajput Ruda Meha and Others* (supra) and *Baldev Singh* (supra) for the proposition that a judgement

was an authority on what it had decided and not everything said therein would constitute a binding precedent. We find from the decision in *Kailash*

Chandra Kapur (supra) that the Apex Court upon interpreting Clause 2 (12) of the lease deed had held that bequests by a Will was not prohibited in

case of leasehold properties of Salt Lake and the same is a binding precedent for us. We cannot accept the submission of the Learned Advocate

General that the Apex Court in *Kailash Chandra Kapur* (supra) had not taken into consideration, the proposition of law that a Will was a posthumous

disposition of the property and that the definition of a Will should be read in the context of the restrictive covenant in Clause 2 (8) of the lease deed.

We find that the Apex Court had elaborately dealt with such proposition of law which was precisely the submission of the learned Additional Solicitor

General in that case before the Apex Court. We hold that the lessees in respect of Salt Lake properties have an unrestricted right to bequeath the

leasehold interest by way of a Will to any person and no fruitful purpose will be

served by making any further enquiry into the motive behind such Wills.

24. The appeal stands dismissed. The concerned authority has already granted provisional mutation but the said authority is directed to mutate the names of the writ petitioners in respect of the premises in question within a period of 6 weeks from date on the basis of the application already submitted by the writ petitioners.

25. There shall be no order as to costs.

26. Urgent Photostat certified copy of this judgment, if applied for be given to the parties on priority basis.

I agree,

(Debasish Kar Gupta, ACJ.) (Shampa Sarkar,J.)

Later

After delivery of this judgment, a prayer is made on behalf of the appellants for stay of operation of this judgment and order. The same is rejected.