
(2013) 02 CAL CK 0002
In the Calcutta High Court
Case No : F.M.A. No. 1186 of 2012

The Chief Executive Officer and Others	APPELLANT
Vs	
Smt. Baby Dey	RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 1 CALLT 644

Hon'ble Judges : Tarun Kumar Das, J; Girish Chandra Gupta, J

Bench : Division Bench

Advocate : Partha Sarathi Basu and Mr. Satyajit Talukdar, for the Appellant; S.P. Sarkar and Mr. Subhajit Dan, for the Respondent

Final Decision : Disposed Off

Judgement

1. By an indenture dated 24th August, 1995 license for a period of 99 years was granted by the appellants in favour of Sri Ananta Kumar Dutta, since deceased. One of the terms and conditions of the license was as follows:-- (xi) If the Licensee dies after having made a bequest with the permission of the Authority of the said land and the building thereon, if any, in favour of more than one person or dies intestate having more than one heir, then in such case the persons to whom the said land with the building thereon be so bequeathed or the heirs of the deceased Licensee, as the case may be, shall hold the said property jointly without having any right to have a partition of the same by metes and bounds or they shall nominate one person amongst their number in whom the same shall vest.

The said Ananta Kumar Dutta died on 26th March, 2001 without raising any construction. One of the heirs of the deceased, namely, the respondent before us, by a letter dated 2nd August, 2001 addressed to the appellant contended that on the basis of the last will and testament of the deceased the land had been bequeathed to her by her father. She, therefore, prayed for--(a) that her name should be substituted and (b) that she should be permitted to deposit the balance instalments. The appellants replied by a letter dated 5th September,

2001 asking for various documents. The respondent replied by a letter dated 18th June, 2004 that she had applied for probate, which was being contested by her brother. She expressed her willingness to pay the outstanding instalments. By a letter dated 2nd December, 2009 the respondent wrote to the appellants indicating that the application for probate had succeeded and this Court had granted probate. She, therefore, prayed for substitution of her name as an allottee of the aforesaid plot. The respondent by a letter dated 11th June, 2010 requested the authorities to expedite the matter. What transpired between the parties subsequent to 11th June, 2010 and the contention of the writ petitioner/respondent with regard thereto would appear from paragraphs 9 to 11 of the writ petition, which read as follows:

9. Your petitioner state that ultimately on 22.9.2010 your petitioner received a notice dated 15.9.2010 for hearing on 24.9.2010. On the said date your petitioner submitted another representation stating the entire facts of the case before the hearing officer, respondent No. 3. Your petitioner state that after hearing the respondent No. 3 passed the order by which your petitioner come to know that the said respondent No. 3 without considering her contention came to the decision that the said plot "may be cancelled", which effectively proposing the cancellation of the License Deed dated 24th August 1995 with regard to the plot allotted to the said Ananta Kumar Dutta, since deceased only on the ground that "the original licensee did not construct the residential house within the license period.

A copy of the said order passed by the Respondent No. 3 is annexed hereto marked as annexure-P-7.

10. Your petitioner state that thereafter your petitioner's Ld Advocate by his letter dated 20.12.2010 asked the respondent No. 1 to give positive reply or information about the action in this regard and demanded justice from them.

A copy of the said letter dated 20.12.2010 is annexed hereto marked as annexure P-8.

11. Your petitioner state that clause 2(xi) of the license deed provides that legatee under a Will or heirs on intestacy is entitled to be treated as a licensee in place of original licensee, so the claim of your petitioner is genuine and justified. Furthermore the exchange of correspondence between the parties shows that forfeiture clause has not been invoked or implemented in the manner contemplated in clause 4(i) at all. On the contrary, conduct of the respondents authority (viz; asking for various particulars from your petitioner as contained in its letter dated 5.9.2001) shows such right to forfeiture has been waived and it is assumed that the respondent authority acquiesced the provision for completing the construction of house within five years from date of agreement. Your petitioner further state that as per clause 2(iii) is not a mandatory provision but only a discretionary one which provides enough ground to the respondent authority to exercise its discretion in favour of extending the time under the said

clause.

2. On the aforesaid basis, the writ petition was filed praying for the following reliefs:

(a) For issue of a writ of or in the nature of Mandamus;

(i) commanding the respondents and each of them to act and proceed in accordance with law;

(ii) commanding the respondents Nos. 1 and 3 to substitute the name of your petitioner as licensee in place of Ananta Kumar Dutta and accord her all rights and facilities enjoyed by original licensee under the said lease deed including a further period of two years to erect and complete a construction thereon upon payment of all accrued and outstanding dues to the respondent;

(b) For issue of a Writ of or in the nature of certiorari commanding the respondents to produce records of the case concerning the allotment and license deed dated 24th August 1995 so that conscionable justice may be done by quashing the impugned order dated 24.09.2010.

3. The writ petition was heard by brother Dasadhikari, J. It appears from the impugned judgment that during the pendency of the writ petition the appellants by a letter dated 11th March, 2011 cancelled the offer of allotment and the amount paid by the allottee was proposed to be refunded after deduction of 20% towards payment of service charge. The learned trial Court, it appears, noticed the subsequent event and opined as follows:

It appears to me that the respondents did not apply their mind to the facts and circumstances of the case. It is also surprising when the respondents authorities accepted the instalment premium from the writ petitioner without any objection and in reply to her letter for recording her name, the respondent authorities asked the writ petitioner to supply the documents for taking an appropriate decision in that regard, the respondent authorities cannot refuse the prayer for recording the writ petitioner's name in place and stead of her father. The conduct of the respondents clearly shows that they were willing to exercise their discretion in favour of the writ petitioner but after waiting for a long time when the writ petitioner came up before this Court and filed this writ petition they have taken a decision to the contrary in hot haste without proper application of mind. I find substance in the submissions of Mr. Sarkar that a right of legitimate expectation accrued in favour of the writ petitioner. I have considered the judgments cited by Mr. Dutta, two judgments are relating to allotment of commercial plot and in one judgment the point of Government policy was not argued and not decided. I am of the opinion that the aforementioned judgments are of no help to the respondents.

In my view, the action of the respondent is illegal and not at all sustainable in the eye of law. The impugned decision of the respondent authorities dated 11th March, 2011 is set aside.

4. The learned Trial Court, however, proceeded to pass the following directions:

In my view, the respondents are obliged to correct the name of the writ petitioner specially when they have accepted the instalment from the writ petitioner and further they have asked the relevant documents including the probate etc. from the writ petitioner thereby giving an assurance to her that correction would be made in her favour.

I direct the respondent authorities to record the name of the writ petitioner and I further direct the writ petitioner to pay all the entire instalment dues to the respondent with a simple interest assessed at the rate of 12% per annum on the total sum due and payable to the K.M.D.A. authorities.

After the direction was given Mr. Basu submits that the respondent authorities have a policy and they do fix the price for exercising discretion and/or option thereby extending the time to construct. Therefore, the payment should be made on the basis of that policy.

Mr. Sarkar submits that his client has no objection to make such payment which is to be fixed on the basis of such policy which is applicable to all the applicants in whose case such type of extension and/or discretion is exercised.

In my view, the submission of Mr. Basu is acceptable. Therefore, the respondent authorities are directed to assess the amount payable on the basis of the policy they have framed as well as for the construction. Such assessment is to be made within a period of fortnight from the date of communication of this order and the writ petitioner is to pay the entire money within a period of fortnight from the date of notice. In the event such payment is not paid within the period as stipulated, the allotment would automatically be cancelled and the respondent authorities will have no further obligation towards the writ petitioner. They will be at liberty to allot the plot in favour of anyone else.

This order is passed considering special facts and circumstances of the case.

This writ petition is allowed. There would be no order as to costs.

5. It was contended with some amount of justification that the learned Trial Court sought to rewrite the contract between the parties.

6. Mr. Sarkar, learned senior Advocate, appearing for the respondent, submitted that the land was allotted pursuant to the scheme floated by the appellants with the laudable object of providing welfare services so that a shelter can be provided to the common man. He submitted that the learned trial Court passed the order directing the authorities to substitute the name of the writ petitioner upon payment of money according to the scheme and, therefore, this Court should not interfere with the order.

7. Mr. Basu, learned Advocate, appearing for the appellants, submitted that the rights of the parties are governed by the contract and disputes arising therefrom could not have been entertained by the High Court in its writ jurisdiction. After

considering the submissions, we are of the opinion that the direction to substitute the name of the writ petitioner is unexceptionable because it is not contrary to the terms and conditions of the contract entered into between the parties. The order cancelling the decision dated 11th March, 2011 by which the appellants purported to cancel the grant during the pendency of the writ petition, is also unexceptionable because of the facts enumerated by the learned Trial Court and also for the reason that before seeking to cancel the grant the authorities were obliged to give an opportunity to the allottee to remedy the breach, which they did not do. Therefore, the decision dated 11th March, 2011 was rightly set aside. The appellants shall substitute the name of the writ petitioner/respondent. The rest of the directions could not have been issued in the writ jurisdiction and the parties should have been left to take such steps as they may be advised in accordance with law. To that extent the appeal is allowed.

Let urgent Xerox certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all usual formalities.