IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 24999 of 2012

Ashoke Kumar Bhattacharya

Versus

State of West Bengal & Ors.

For the petitioner	:	Mr. Debasish Chattopadhyay Mr. Loknath Paul Mr. Tirthankar Basu .....Advocates
For the State	:	Mr. Lalit Mohan Mahata Mr. Prasanta Behari Mahata .....Advocates
Heard lastly on	:	18.04.2023
Judgment on	:	04.10.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities to allow the petitioner to construct a dwelling unit on the plot in question and to quash the impugned notice.

2. Learned counsel appearing on behalf of the petitioner submitted as follows. On the basis of an application submitted by one Bibhuti Bhusan

Dey and his wife Smt. Sukumari Dey to the Governor of the State of West Bengal, for a lease of plot no. 432 in Sub-Block No. B-1 of plot no. B of Kalyani Town (Kanchrapara Development Scheme of the Government of West Bengal) for the period 999 years, the Governor accepted the proposal subject to the payment of premium or salami and rent and faithful performance observance and fulfilment of the terms and conditions and covenants embodied in agreement for lease. Accordingly, an agreement for sale was executed on 31.05.1963. Thereafter by virtue of a deed of transfer dated 12.04.1966, the said Bibhuti Bhusan Dey and Smt. Sukumari Dey transferred the aforesaid leasehold property situated at Kalyani in favour of one Smt. Dipti Bhattacharya, wife of Sri Ranadhir Bhattacharya and the said deed of transfer was executed on the basis of the prior permission granted by the authority and the same was registered on 12.04.1966 and recorded in Book No. 1, Volume No. 72, pages No. 113 and 117 being No. 1845 for the year 1986. Thereafter, Smt. Dipti Bhattacharya submitted an application and also swore an affidavit on 22.03.1986 and on the basis of the same, the authority concerned was pleased to permit Smt. Dipti Bhattacharya to transfer the leasehold interest in respect of the aforesaid property in favour of the present writ petitioner. By virtue of an indenture of lease dated 26.06.1987, a lease deed was executed and registered between the Governor of the State of West Bengal hearinafter referred to as 'the Lessor' through the Estate Manager, Kalyani being the respondent no. 2 herein and the present writ petitioner as Lessee. Prior to execution and registration of the lease deed, the physical possession in respect of the

aforesaid plot of land was handed over to the writ petition by the surveyor of the Department on 28.08.1986. The petitioner, thereafter, took all necessary steps for utilizing the aforesaid plot and accordingly, a building plan was submitted before the Municipal Authority on 23.07.1988 and the same was sanctioned after long period of time of 10 years i.e. on 13.11.1998 vide Resolution No. 17, meeting dated 13.11.1998 of the Board of Councillors. The said building plan was valid upto 12.11.2000. Prior to getting sanction of the Municipal Building plan, the petitioner duly submitted return under Section 6(1) of the Urban Land Ceiling Regulation Act, 1976 before the competent authority vide Case No. 34(KLY)/93-94 dated 21.02.1994 as it was found on the physical measurement that the plot as aforesaid was measuring an area of 8 cottahs 5 chittacks and 15 sq.ft. and as Kalyani town was lying within the jurisdiction of Urban Agglomeration Area and according to the Urban Land Ceiling Act, one could retain only 7.5 cottahs of land and if any Government land was allotted more than that, then the allotee was bound to get exemption order to retain the excess vacant land from the Urban Land Ceiling Authority. After getting a sanctioned plan in respect of the aforesaid plot of land, the petitioner could not raise the construction as being a government servant, as his service was transferable one, the petitioner was, at that point of time transferred to North Bengal and thereafter transferred to different places within the State of West Bengal and finally to Bolepur wherefrom he took retirement from his service. The petitioner, finally, obtained the Land Ceiling Clearance order to retain the excess vacant land of only half cottah sometime in the year 1997 and

thereafter, the building plan was sanctioned in the year 1998. Initially, the petitioner along with his family members used to stay at a rented house at Kalyani being No. B-2/395. After a few years, the petitioner and his family took another rental house at B-1/298, Kalyani, Nadia and despite the fact that the last known address was recorded as B-1/298 in the office of respondents, still the show cause notice and the order of termination which were under challenge in the writ petition were sent to the petitioner at the earlier address i.e. B-2/395. Therefore, neither the show cause notice nor the termination notices were received by the petitioner and after getting the knowledge about such termination from the Municipality in the month of November, 2012, he immediately rushed to the office of Estate Manager, Kalyani for giving him an opportunity to utilize the plot as a last chance, but the authority did not agree. The writ petitioner was a senior citizen suffering from various ailments and still he was in this battle for his land as the same was arbitrarily snatched away from the petitioner. The lease was on bilateral terms of an agreement, which could not be deviated from unilaterally as in the present case. The respondent authority while issuing the show cause notice and thereafter, the termination notice did not apply their mind properly in terms of Sub-Clause (iii) of Clause 2 read with Sub-clause (ii) of Clause 5 of the lease deed. The petitioner form the very beginning had a good intention and still had to have his own house at Kalyani from his hard earned money. But, he was restrained by the authority as the building plan was sanctioned after a long gap of 11 years. The respondents tried to re-enter into the possession forcefully and without any due process of law by

violating the provisions as laid down in Section 114A of the Transfer of Property Act. In the present case, the respondent had not alleged that the petitioner was aware of the forfeiture before he claimed to have discovered the same as it was well-settled principle that "if the mistake was known" as laid down by Their Lordships in case of State of MP versus Bhailal reported at AIR 1964 SC 1006. In the present case, the respondent issued termination order on 9th October, 2012 under Memo No. 1168 which was admittedly not received by the petitioner. In the said termination notice, the respondent authority mentioned about a show cause notice dated 18.07.2018 which was also admittedly not received by the petitioner. Despite knowing the last known address of the petitioner was at B-1/298, Kalyani, still they sent all the notices and the letters at the address mentioned as B-2/395, Kalyani, Nadia. In the present case admittedly the lease was executed in the year 1987 and since the construction was not within 1989 as the building plan was sanctioned in the year 1998, the authority ought to have issued the terminating order followed by show cause notice either in the year 1989 or 1990, but they issued the show cause notice on 26.12.2011 and the termination notice on 09.10.2012, which clearly proved that they had already waived the time limitation. In Deb Kumar versus Helena Ghosh (1990) 2 CHN 346:95 CWN 274, it was decided that Section 114A could be invoked only when there was an express condition which provided that on breach thereon, the lesser might re-enter. Since in the present case, the lesser did not serve proper notice upon the lessee, no proceedings of ejectment should lie. Sub-clause (iii) of Clause 2 of

the lease deed dated 26.06.1987 did not provide anything regarding re-entry in the possession by lesser if the construction was done within the specified period of time. In W.P. No. 21167 (W) of 2008 (Ram Prasad Mukherjee versus the State of West Bengal) (unreported), this Court set aside the order of termination of lease issued in respect of a plot of land lying and situated at Kalyani as the same was done in violation of Section 114A of the Transfer of Property Act as in the present case.

3. Learned counsel appearing on behalf of the respondent no. 2 submitted as follows. By virtue of indenture of lease dated 26.06.1987, a lease deed was executed and registered between the Governor and the State of West Bengal through the Estate Manager, Kalyani measuring an area of 8 Cottahs 5 Chittacks and 50 Sq.ft. for residential purpose with the condition that the residential building would be constructed within a period of two years. The petitioner was under the obligation to complete his residential building within two years from the date of the lease i.e., on and from 26.06.1987 in terms of Clause 2 (iii) of the lease deed dated 26.06.1987. As per inspection report dated 25.03.2011, the plot of land was lying vacant and as such, the petitioner failed and neglected to comply with the terms of the lease to construct the residential building for which the land was given to the petitioner under the lease and he had no locus standi to allege violation of the principles of natural justice. The show cause notice was issued in terms of letter no. 1040/B-1/432 dated 18.07.2011 for violation of Clause 2(iii) of the lease deed and later opportunity by way of hearing was given by the government in terms of letter no. 2608/UD/B1/431 dated

26.12.2011 mentioning his last known address with a request to explain the reason for violation of Clause 2(iii) read with Clause 5(i) of the lease deed. Unfortunately, both the letters were returned undelivered with postal remarks “no such person at the address”. It is pertinent to mention herein that the petitioner did never communicate to the respondents regarding any change of address and/or any explanation from 1987 to 2011 in any manner whatsoever. The petitioner illegally and arbitrarily did not comply with the terms of the clause of the lease deed and did never communicate any reason for the period from 26.06.1987 up to 08.12.2012 and thereby there was a sheer negligence on the part of the petitioner with regard to compliance with the terms of the lease deed to complete the residential building within the stipulated period of two years from the date of the execution of the lease deed. After execution of the lease deed on 26.06.1987 for long period up to 08.10.2012, the petitioner did not take any step for construction of his residential building for which purpose it was allotted to him. Thus, the government was compelled to terminate the leasehold right of the plot in terms of Memo No. 1168/B-1/432 dated 26.12.2011 and thereafter, the land was entered into by the Government on 27.11.2012 and this was also communicated to the petitioner and all concerned. It was pertinent to mention herein that till date, no information about the sanctioned building plan had been received by this office. The petitioner did never communicate his address and state of affairs of the residential building since 26.06.1987 up to 08.12.2012 and till date. No sanctioned plan was submitted to the competent authority and in the written notes of

argument it was admitted that after getting sanction of the municipal building plan the petitioner could not raise construction since 1998 and as such, the said sanctioned plan could not be executed in 2023 in any manner whatsoever. The lease was already determined and resumed and the Government had re-entered as per office process and the plot of land was under the custody of the Estate Manager, Kalyani, and as such the lessee had no right over the said plot. No one can take the benefit of his own wrong in the garb that the petitioner was not served proper notice though admittedly notices were served at the address as was recorded in the office record of the competent authority and the petitioner did never communicate any change in address.

4. I heard the learned counsels for the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. It appears that the lease deed was executed in favour of the petitioner on 26.06.1987. Prior to this, physical possession of the plot was handed over to the petitioner on 28.08.1986. Clause 2 (iii) of the Deed required that within two years of such date, the lesser shall construct a residential house as per approved plan. Clause 5 (i) of the Deed provides for a forfeiture clause in the event of breach of any covenant. Therefore, the petitioner ought to have constructed such house by 25.06.1989. However, the petitioner's case is that he applied for a sanctioned building plan on 23.07.1988 and the same was sanctioned on 13.11.1998, after a period 10 years. It is very unfortunate indeed that a plan could be sanctioned after a period of ten

years. But, at least within two years of the date of sanction of such plan, the petitioner should have constructed his residential house.

6. Keeping the land vacant for so long, even after obtaining a sanctioned plan, prima facie amounts to a breach of the above referred covenant contained in the lease deed. Such clauses of forfeiture can be traced back to the requirement to utilise a valuable resource like land with promptitude as such resource is limited and numerous others are in need of the same. In fact, if such land is kept unused for so long in breach of a covenant, one might have to presume that the allottee was no more in need of the same.

7. On the contrary, there is no provision that a delayed action on this by the respondent authorities might result in some kind of waiver of a right to take such action.

8. Even on merits, that the petitioner had a transferable government job and his wife had to take care of their daughter and parents and the petitioner is now quite ill could hardly be the reasons to make an exception to the covenant, if at all the same could be done.

9. Now, comes the question of whether the petitioner was given an adequate opportunity of being heard and consequently, whether the notices were properly served to the petitioner in this regard.

10. Admittedly, the respondents served a show cause notice to the petitioner on 26.12.2011 and a termination notice on 09.10.2012 purportedly at the address of a tenanted premises of the petitioner. The respondents claim that the said address was the last known address of the petitioner. On the contrary, the petitioner claims that he had informed the

authorities about the change in address. However, the petitioner has not produced any proof of intimation of his new address to the respondent authorities.

11. Section 27 of the Government Clauses Act provides that if a notice is sent to the correct address by prepaid registered post, it is deemed to be served at the time when it is supposed to be served. Return of notice with the endorsement like “addressee not found”, “addressee has left”, “not in Station”, etc. may be held to be good service. On this, reliance is placed on Madan & Co. Versus Wazir Jaivir Chand, AIR 1989 SC 630. Thus, it was fair for the respondents to have sent the notices to the known address of the petitioner.

12. Here, the only requirement was to notify the allottee so that he could present his case. In the present case of execution of lease of government land, the allottee did have an obligation to notify his address to the respondent authorities. A necessary corollary is that a change in address should also be intimated, which was not done. Therefore, even regardless of Section 27 of the General Clauses Act, it is sufficient for the respondent authorities to show that they had tried to reach the allottee at the last known address, that too at two different stages.

13. The decision in Ram Prasad Mukherjee (supra) is distinguishable on facts. There, the High Court could arrive at a positive finding that “there was nothing to show that any opportunity was given to remedy the breach on the basis of which the lease was forfeited”. The facts are not similar here.

14. In view of the above discussions, I do not find any merit in this application.

15. Accordingly, the same is dismissed.

16. Interim order, if any, shall remain vacated.

17. However, there shall be no order as to costs.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

Later

At this stage, learned counsel for the petitioner prays for a stay of operation of the order passed.

The prayer is considered and is rejected.

Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

S.M