

Kalyan Biswas And Anr Vs Kolkata Municipal Corporation And Ors

Court: Calcutta High Court (Original Side)

Date of Decision: Jan. 7, 2025

Acts Referred: Constitution of India, 1950 " Article 226

Transfer of Property Act, 1882 " Section 108(j)

Hon'ble Judges: Debangsu Basak, J; Md. Shabbar Rashidi, J

Bench: Division Bench

Advocate: Raghunath Chakraborty, Mahboob Ahamed, Mohana Das, Alak Kumar Ghosh, Tanushree Dasgupta

Final Decision: Dismissed

Judgement

Debangsu Basak, J

1. Appellants have assailed the judgment and order dated March 2, 2023 passed by the learned Single Judge in WPO 47 of 2018.

2. By the impugned judgment and order learned Single Judge has dismissed the writ petition challenging an order of the Joint A, Municipal

Corporation A, of Kolkata Municipal Corporation dated January 19, 2018 refusing to grant permission to the appellants to transfer the demised flats in

favour of third parties.

3. Learned advocate appearing for the appellants has submitted that, the respondents have acted arbitrarily, capriciously and in colourable exercise of

power in rejecting the request for transfer of flats in favour of third parties.

4. Learned advocate appearing for the appellants has submitted that, the appellants as the lessee of the two flats are entitled to transfer such flats to

third parties and the respondents as lessor cannot have any valid ground in preventing such transfer. He has compared the terms and conditions of the

lease deeds, existing in favour of the appellants with that of other lessees in the same building. He has submitted that, the allegedly offending clause in

the lease deed of the appellants is not present in other lease deeds. He has contended that, the appellants are being unfairly discriminated against.

5. Referring to the terms and conditions of the lease deed learned advocate appearing for the appellants has submitted that, the appellants can

mortgage the demised flats to banks and financial institutions but cannot transfer such flats to outsiders. He has contended that, there is a dichotomy in

stand taken by the respondent authorities. In the event the demise flats are mortgaged to any bank or financial institution, then on the happening of a

default such banks and financial institution can transfer such flat to third parties. Then, the lessors could not have objected. Therefore, the so called

objection to the application for grant of permission to transfer is mis-placed.

6. In support of his contention that the appellants are entitled to transfer the unexpired period of the lease to third parties, and that permission to do

cannot be withheld unreasonably learned advocate appearing for the appellants has relied upon an unreported decision of a Single Bench of this Court

dated August 12, 2009 passed in WP No. 6858(W) of 2008 (Ashis Kumar Ghosh vs. The State of West Bengal & Ors.), AIR 1921 Cal 99 (E. H.

Ducasse vs. E. M. D. Cohen), 1950 SCC 746 (Kamala Ranjan Roy vs. Baijnath Bajoria), and 2000 SCC OnLine Cal 626 (Dr. Nandalal Paul

vs. State of West Bengal).

7. Learned advocate appearing for the Kolkata Municipal Corporation (KMC) has contended that, the lease deed is clear. The appellants are not

entitled to transfer the unexpired period of the lease in favour of any third party without obtaining permission of KMC. Municipal Commissioner has

correctly rejected the application of the appellants. Learned Single Judge has correctly dismissed the writ petition.

8. KMC had developed a residential complex on land owned by it. KMC had leased the flats in such residential complex for a period of 99 years.

Appellant No. 1 had been allotted a flat being Flat No. B-402. Lease deed in respect of such flat had been executed on June 24, 2010. Wife of the

appellant No. 1, since deceased, had acquired Flat No. C-101 in the same residential complex by way of a transfer from Ganesh Mundra. Lease deed

in respect of such flat being C-101 had been executed on June 24, 2010.

9. Appellant No. 1 and his wife, since deceased had submitted a joint representation dated March 2, 2011 to the KMC Authorities praying for transfer

of both the flats in favour of intending purchasers. Such representation had been rejected by the KMC Authorities on January 20, 2016. Wife of the

appellant No. 1 had expired on August 7, 2015 leaving behind her surviving the appellant No. 1, and her son the appellant No. 2 herein as heirs and

legal representatives. Consequently, on her demise, her right and interest in respect of flat No. C-101 had devolved upon the appellants.

10. Order dated January 20, 2016 of the KMC Authorities rejecting the application for grant of permission to transfer was a sale by the appellants in a

writ petition being WP 419 of 2016. Such writ petition was allowed by an order dated March 23, 2017 after setting aside the order dated January 20,

2016 of the KMC Authorities. Application for grant of permission had been remanded to the KMC Authorities for fresh consideration and decision.

11. KMC had filed an appeal being APO No. 377 of 2017 challenging the order dated March 23, 2017 passed in WP No. 419 of 2016. Such appeal

was disposed of by an order dated September 6, 2017 modifying the order dated March 23, 2017. The Appeal Court had directed the KMC

Authorities not to be influenced by any of the observations made by the learned Single Judge in the judgment and order dated March 23, 2017.

12. KMC Authorities had passed an order dated January 19, 2018 rejecting the prayer of the appellants for grant of permission as contained in the writ

petition dated March 2, 2011.

13. This rejection order dated January 19, 2018 was assailed by the appellants in the writ petition being WPO 471 of 2018 which has resulted in the

impugned judgment and order dated March 2, 2023.

14. Learned Single Judge has noticed the relevant clause of the lease deed. Learned Single Judge has also considered Section 108(j) of the Transfer

of Property Act, 1882. Learned Single Judge has observed that, subject to any contract or local usage to the contrary a lessee is entitled to transfer

absolutely or by way of mortgage or sub-lease the whole or any part or interest in the lease hold property. Learned Single Judge has found that, the

appellant willingly entered into a contract which prohibited the absolute right of transfer.

15. Learned Single Judge has also found that the order of the KMC Authorities rejecting grant of permission contained reasons and therefore, learned

Single Judge refused to exercise discretion under Article 226 of the Constitution of India.

16. E. H. Ducasse (supra) and Kamala Ranjan Roy (supra) have been rendered in a suit. In both those cases, evidence laid at the trial has

established that, the consent to transfer was unreasonably withheld.

17. Ashis Kumar Ghosh (supra) and Dr. Nandalal Paul (supra) have been rendered in a writ petition by learned Single Judge. In the facts and

circumstances of those cases, it has been held that the consent to transfer was unreasonably refused.

18. In the present case, KMC authorities had to consider the application for grant of permission to transfer in terms of the order of the High Court.

KMC Authorities have given cogent reasons for refusal to grant permission. Learned Single Judge has exercised discretion in not granting relief to the

writ petitioner. Refusal to grant relief in the writ petition by the learned Single Judge has not been established to be perverse. Exercise of discretion by

the learned Single Judge has not been established to be irregular.

19. In such circumstances we have not found any ground to interfere with the impugned judgment and order of the learned Single Judge. APO 1 of

2024 along with collected applications are dismissed without any order as to costs.