

(2003) 12 CAL CK 0047

Calcutta High Court

Case No: Writ Petition No's. 14235-14236 (W) of 2003

Jhuma Sardar

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision: Dec. 5, 2003

Acts Referred:

- Registration Act, 1908 - Section 22(3), 22A(1)
- Stamp Act, 1899 - Article 63
- West Bengal Registration (Amendment) Act, 1981 - Section 4

Citation: (2004) 3 CHN 7 : 108 CWN 243

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Achyut Basu, for the Appellant; Partha Sarathi Bhattacharya, for the Respondent

Final Decision: Dismissed

Judgement

Subhro Kamal Mukherjee, J.

Both the writ applications are taken up together as it has been submitted by the learned advocates appearing for the parties that similar questions of law and facts are involved in both the matters.

2. The facts in relation to Writ Petition No. 14235(W) of 2003 are narrated for the purpose of appreciating the points involved in the said writ applications.

3. The State of West Bengal granted a lease in respect of the disputed property at Kalyani Township in favour of one Nanigopal Saha for the period of 999 years on April 18, 1969. The possession of the disputed property was handed over to the lessee. Nanigopal Saha intended to transfer his leasehold interest in favour of the writ petitioner and as such an application for permission was filed on March 16, 1999.

4. The Clause 9(f) of the original lease deed, granted by the State of West Bengal in favour of the said Nanigopal Saha, runs as under :

"Not to transfer or assign the leasehold interest without the previous consent in writing from the Government. The decision of the Government shall be communicated to the lessee within thirty days from the date of the receipt of the application".

5. The Government did not communicate anything to the lessee within thirty days from the date of receipt of the said application and it is an admitted position that the Government has not disposed of the said application and it is an admitted position that the Government has not disposed of the said application seeking permission to transfer or assign the leasehold interest.

6. The original lessee, Nanigopal Saha, however, executed a document, transferring his leasehold interest, on July 23, 2001 in favour of the writ petitioner. The said document was presented for registration in the office of the Additional Registrar of Assurance, Kolkata.

7. The present writ applications have been filed on the ground that the registering officer did not release the documents. It is alleged that the registering officer has no right to withhold the documents and the said officer must complete the registration and, thereafter, to hand over the documents to the transferees.

8. Mr. Partha Sarathi Bhattacharya, learned Advocate, appearing for the respondents, argues that the registering officer is right in withholding the documents on two grounds, namely, that the proper stamp-duties have not been paid and the prior permissions were not obtained by the lessors for transfer of the leasehold interests.

9. I have noticed the provisions of Clause 9(f) of the said lease. It was incumbent on the part of the lessee to apply and obtain previous consent in writing from the Government to transfer or assign his leasehold interest. It is true that such decision was to be communicated to the lessee within thirty days from the date of the receipt of the application. It is equally true that the Government did not communicate its decision to the original lessee within the aforesaid period of thirty days. However, I have carefully considered the language of Clause 9(f). It cannot be construed that as the Government has neither granted nor refused to grant permission to assign or transfer the leasehold interest within the period prescribed under the said clause, such permission can be automatically presumed and the original lessee can execute the document in favour of the transferee without obtaining a specific permission from the Government in writing.

10. Moreover, u/s 4 of the Registration (West Bengal Amendment) Act, 1981 Section 22A has been inserted in the Registration Act, 1908. The said Section 22A runs as under :

"22A. Registration of certain documents to be opposed to public policy.--(1) The State Government may, by notification in the Official Gazette, declare that the registration of any document or any class of documents specified in such notification shall be opposed to public policy.

(2) The registering officer shall examine whether a document presented for registration is one to which a notification under Sub-section (1) is applicable and shall take such evidence as may be produced by the parties and may also require them to produce all documents in their possession or custody which the registering officer considers relevant.

(3) Notwithstanding anything to the contrary contained elsewhere in the Act, the registering officer shall refuse to register any document or any class of documents to which a notification under Sub-section (1) is applicable".

11. My attention has, further, been drawn to a notification dated May 18, 1995 issued by the Government of West Bengal, Finance Department, Taxation Branch, under Sub-section (1) of Section 22A of the said Registration Act, 1908 whereby the Government, inter alia, declared the registration of any document in respect of lands in Kalyani Township, in which the State Government has not been a party, without the prior permission of the Department of Urban Development, Government of West Bengal, should be opposed to public policy.

12. Under Sub-section (3) of said Section 22A the registering officer shall refuse to register any document to which a notification under Sub-section (1) of said Section 22A is applicable.

13. Mr. Achyut Basu, teamed Advocate, appearing for the petitioner, argues that stamp-duty on the value of the amount of consideration for transfer has been paid and the registering officer cannot demand stamp-duty on the basis of market price. Such contentions of Mr. Basu cannot be accepted.

14. The document was presented for registration on July 23, 2001. The Indian Stamp Act, 1899 has been amended by the Indian Stamp (West Bengal Amendment) Act, 1998. The said amendment came into force with effect from March 15, 2001. Prior to the said amendment, Article 63 of Schedule 1A of the said Act ran as under :

"63. Transfer of lease by way of assignment, and not by way of under-lease.

The same duty as a Conveyance (No. 23) for consideration equal to amount of the consideration for the transfer.

Exemption.

Transfer of any lease exempt from duty".

By the said amendment the said Article 63 has been amended as under :

"63. Transfer of lease by way of assignment, and not by way of under-lease.

The same duty as a Conveyance (No. 23) for the market value of the property.

Exemption:

Transfer of any lease exempt from duty".

15. Therefore, the registering officer was right in demanding stamp-duty for the market value of the property.

16. The writ applications are, therefore, rejected without, however, any order as to costs.

17. I make it clear that rejection of these applications will not prevent the original lessees or the transferees to apply for permission for transfer from the Urban Development Department, Government of West Bengal and the Urban Development Department will decide such requests for transfer within a period of fortnight from the date of making applications for the same. In the event such permissions are refused, the authorities concerned will give opportunities of hearing to the applicants or their representatives and will pass a reasoned and speaking orders. If such permissions are granted, the writ petitioners will be at liberty to pay the balance stamp-duties. In the event the prior permissions are obtained and balance stamp-duties are paid, the registering officer will immediately complete the registration of the documents and release the documents in favour of the writ petitioners.

18. Xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) be given to the parties on usual undertakings.