

**(2010) 10 CAL CK 0065**

**Calcutta High Court**

**Case No:** Writ Petition No. 15944 (W) of 2009

Rear Admiral Amal Ranjan Ghosh  
Dastidar and Another

APPELLANT

Vs

The State of West Bengal and  
Others

RESPONDENT

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**Date of Decision:** Oct. 5, 2010

**Acts Referred:**

- Constitution of India, 1950 - Article 14, 16

**Hon'ble Judges:** Tapen Sen, J

**Bench:** Single Bench

**Advocate:** N.C. Bihani, for the Appellant; Amitava Chowdhury, for State, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Tapen Sen, J.

In this Writ Petition, the Petitioner No. 1 and his wife, the Petitioner No. 2 have challenged the Resumption Order dated 11.6.2009 (Annexure-P/10) whereby and whereunder the Respondent No. 3 (Land Manager-cum-Ex officio Deputy Secretary, Department of Urban Development, Govt. of West Bengal) Ordered the resumption of the demised premises being Plot No. FD-24; Sector-III; Bidhan Nagar; Northern Salt Lake City Extension Area; Kolkata by cancelling the Order of Allotment being 2269-DEF-5L-1/81 dated 10.7.1981 and proceeded to cancel and determine the said Deed of Lease with a further rider that the Lessor would have the right to re-enter into possession with immediate effect.

2. The short facts which are necessary to be taken note of is that on the 31.3.1983, a Deed of Lease was executed by and between the Governor of West Bengal and the Petitioners whereby and whereunder and in consideration of a payment of Premium/Salami of Rs. 64, 334.74 paise and annual rent, the Lessors granted and demised all that piece and parcel of leasehold land measuring 5.36115 cottas (a little

more or less) appertaining to Plot No. 24 in Block FD of Sector-III, Northern Salt Lake City Extension Area; District. 24-Parganas. The said land was demised for a period of 999 years. The Deed of Lease is Annexure-P/1 to the Writ Petition.

3. The Petitioners got possession of the land on 21st August, 1987 and Possession Certificate, vide Annexure-P/2 was granted.

4. Thereafter, and after a period of almost 16 years, the Petitioners claim that they were shocked to see a Notice dated 12.7.2003 (Annexure-P/3) whereby and whereunder it was inter alia notified that the Government had come to know that certain plots had been unauthorisedly transferred in violation of Clause 2 (8) of the Deed of Lease and therefore, the Notice should be treated as a Notice under Clause 4 of the said Deed of Lease and the Lessees were directed to remedy the breach. The Notice contained the names of various other Lessors and the name of the Petitioner was included at Sl. No. 12 thereof alleging that the plot had been transferred to one Manish Murarka.

5. For convenience, the provision of Clause 2(8) and Clause 4 of the Deed of Lease are reproduced below:

2(8) The Lessees shall not assign or transfer the demised land or any part of the demised land and/or the structure erected thereon without the previous permission of the Government in writing. In case of transfer or assignment of the lease the Lessor shall have the right of pre-emption and upon the exercise of this right the building constructed by the Lessees on the land shall be taken over by the Lessor at a valuation of the building made by the Lessor on the basis of the costs of construction of the building less depreciation at the usual rate or the market value thereof, whichever is less. The value of the land will be the amount of the salami or premium paid by the Lessees. In the event of differences between the parties as to the value of building, the matters in dispute shall be referred to the arbitration of an arbitrator if the parties can agree upon one or otherwise to two arbitrators, one to be appointed by each party with an Umpire. The award of the arbitrator or arbitrators or the Umpire, as the case may be, shall be final and binding on both the parties.

Provided however that in case the Lessees transfer or assign the lease hold interest in the land and/or structure standing thereon in favour of L.I.C. or Nationalised Bank or Government or Semi-Government organisation, or registered Housing Co-operative Society, or Statutory Body by creating mortgage for repayment of loan for house building purpose, Life Insurance Corporation of India or Nationalised Bank or Government or Semi-Government Organisation, or registered Housing Co-operative Society, or Statutory Body, as the case may be, it may claim priority over the Government of West Bengal in respect of right of pre-emption on the demised land and/or structure standing thereon subject to the condition that all the dues of the Government as provided herein shall be payable and recoverable to the

Government of West Bengal either from the Lessees or from the Life Insurance Corporation of India, or Nationalised Bank or Government or Semi- Government Organisation, or registered Housing Co-operative Society, or Statutory Body, as the case may be.

Provided however such charge if created shall be subject to the terms and conditions of the lease.

4. Provided always that if there be any breach of any of the terms and conditions and covenants herein on the part of the Lessees contained the Lessor shall have the right to re-enter into possession of the demised land or any part thereof in the name of the whole and thereupon this demise shall forthwith stand determined.

Provided nevertheless the Lessor shall not exercise the right without serving the Lessees a notice in writing giving six months" time to remedy the breach.

(Quoted)

6. Thereafter, on 26.2.2004, the Petitioner No. 1 wrote a Letter to the Respondent No. 5 (Joint Secretary, Department of Urban Development, Govt. of West Bengal) explaining that Manish Murarka was not a Transferee and that he had actually let out the building to Manish Murarka which cannot be interpreted as an unauthorized transfer. He further stated that in view of the Notification dated 4.9.1985, there was no bar in letting out residential buildings in the Salt Lake Area without the approval of the Government.

7. Thereafter, on 3.10.2008, the Respondent No. 6 (Estate Officer) caused a public Notice to be issued vide Annexure-P/5 whereby and whereunder the Lessees of different plots including the Petitioners were directed to submit statements, if any, within a fortnight so that an Enquiry Committee which was considering further action to be taken, could consider the same after hearing interested persons including the Writ Petitioners of another Writ Petition being W.P. No. 5868(w) of 2006. This Notice, appears to have been published pursuant to the direction passed in that case to issue a general Notice with regard to the enquiry so that affected persons could make a Representation before the Enquiry Committee.

8. Consequently, the Petitioner No. 1 wrote a Letter on 20.10.2008 vide Annexure-P/6, addressed to the said Estate Officer stating that he was aged 85 years with a pacemaker fitted in his body. He stated that he was not in a position to appear as he was then lying in a bed ridden condition. He also stated that he was a retired Naval Officer and that he had submitted his medical certificates twice/thrice to him. He also stated that for their survival and to look after his properties, he had rented the building to Murarka as it was not possible to keep a caretaker with a huge amount of salary. He further stated that sometimes they also stayed in the ground floor and that he had several times informed the Department that the property was rented for survival and for being looked after.

9. Thereafter, on 17.2.2009, the Respondent No. 3 issued a letter to the Petitioner vide Annexure- P/7 asking him to appear for hearing on 2.3.2009 at 12 Noon in relation to the alleged violation of the terms and conditions of the Lease and also in relation to "occupancy of the entire building by some Murarkas in the said premises".

10. In reply to the aforementioned letter, the Petitioners, vide Annexure-P/8, stated that since they were both aged persons and bed ridden, they had authorized Manish Murarka to be present at the hearing on their behalf along with all documents. It is the case of the Petitioners that on the day of hearing, Manish Murarka was present and he duly attended the hearing and submitted all relevant documents.

11. The Petitioners have stated in Para-11 that the premises built on the land in question has been let out to Manish Murarka as a monthly tenant by an Agreement of Tenancy dated 1.3.1996 and he has been residing in the said premises in the capacity of a tenant. The Agreement of Tenancy has been marked Annexure-P/9.

12. The Petitioners have stated that other relevant documents were also produced and submitted by Manish Murarka.

13. Thereafter, on 11.6.2009 the impugned Resumption Order was passed. The Petitioners have submitted that tenancy is not a bar and in view of an earlier Notification dated 4.9.1985, even prior permission of the Government is not required to be taken for purposes of letting out a residential house. The said Notification has been brought on record vide Annexure-P/11 and the same is quoted below for convenience:

Government of West Bengal

Metropolitan Development Department 18,

Rabindra Sarani, Calcutta- 700001.

No. 3443-MD/P-8/84. Pt. 1.

From: Sri P.K. Dutta-1419-WBCS Dy. Section To. Government of West Bengal To: The Administrator, Bidhannagar, D/Calcutta- 4.9.1985.

Undersigned is directed to state that the Clause 2(7) of the lease Deed in respect of a residential plot of land in Bidhan Nagar (Salt Lake) provides that the lease shall not be subdivide, or sub-let the demise land or the building to be constructed without the consent in writing of the Government first hand and obtained and the Government shall have the right and be entitled to refuse its consent at its absolute discretion. In the context of the present acute housing problem in and around Calcutta, Government have since received the above provisions of Clause 2(7) of the Lease Deed.

After careful consideration of the matter the Governor is now pleased to order that prior permission of the Government shall not be necessary to let out for residential purpose, a building or a portion thereof constructed on a residential plot in Bidhannagar, on monthly rental basis, provided, however, that such permission as noted above shall be required, before any subsequent letting out of the said building or a portion thereof, if the earlier tenancy in the said building or portion thereof is terminated, either at the instance of the landlord or at the instance of the tenant, before expiry of a period of seven years from the date of the commencement of the said tenancy, and in all such cases the Govt. may either grant, or refuse permission without assigning any reason therefore.

Sd/ P.K. Dutta.

Dy. Section Govt. of W.B.

No. 3443-MD/P-8/84. Pt. 1. Dt. 4.9.1985.

Copy forwarded to

1. Chief Engineering Adviser, Bidhannagar
2. Spl. Engineer, Salt Lake.
3. Chairman, Salt Lake Advisory Committee for information.

Sd/- P.K. Dutta.

Dy. Section Govt. of W.B.

(Quoted)

14. The Petitioners have submitted that in view of the aforementioned Notification, the induction of a tenant is not illegal and that on a number of occasions, they had intimated the Respondent Authorities that Murarka was residing in the premises purely in the capacity of a monthly tenant but they did not take this into consideration and instead proceeded to pass the Resumption Order.

15. On 14.9.2009, when this case was being heard, Mr. Amitava Chowdhury appearing for the State had stated that he had instructions to submit that the authority which passed the impugned order of resumption may be given an opportunity to reconsider the same in the light of the earlier Circular dated 4.9.1985 as contained in Annexure-P/11 referred to and quoted above. Accordingly this Court considered his submission to be reasonable and therefore directed the matter to appear two weeks after the Puja Holidays and granted them leave to act in terms suggested by Mr. Amitava Chowdhury. The Order dated 14.9.2009 reads as follows:

14.9.2009 W.P. 15944 (W) of 2009

Rear Admiral Amal Ranjan Ghosh Dastidar and Anr. ... Petitioners

v.

State of West Bengal and Ors. ... Respondents

For the Petitioners: Mr. N.C. Bihani

For the State: Mr. Amitava Chowdhury

When the case was called out, Mr. Amitava Chowdhury, learned Counsel appearing for the State, while referring to Annexure-P/11, stated that he has instructions to state before this Court that the Authority which passed the impugned Resumption Order on 11.6.2009 vide Annexure-P/10 may be given an opportunity to reconsider the same in the light of the earlier Circular as contained in Annexure-P/11. The stand taken by Mr. Amitava Chowdhury on the basis of the instructions appears to be very reasonable.

In that view of the matter, this Court directs this case to be listed under the same heading two weeks after Puja Holidays but in the meantime, simultaneously grants leave to the Respondents to do the needful as submitted by Mr. Amitava Chowdhury today in Court.

This case will appear as part-heard on the next date of hearing.

(Tapen Sen, J.)

(Quoted)

16. Thereafter the matter was adjourned on various dates for one reason or the other and on 13.5.2010, Mr. Amitava Chowdhury produced a reasoned Order dated 14.1.2010 which was passed by the Respondent No. 3. This Court granted leave to him to bring the said order on record after giving a copy thereof to the learned Counsel for the Petitioner. Thereafter, on 5.8.2010, the learned Counsel for the Petitioner filed an Affidavit challenging the said Order.

17. The said reasoned Order has been marked Annexure-R/1 to the Affidavit filed by the Respondent No. 3.

18. Upon a perusal of the said reasoned Order, it appears that the Respondent No. 3 has attempted to over-reach the processes of the Court. On 14.9.2009, the learned Counsel for the State, had sought liberty to reconsider the Resumption Order in the light of the Circular dated 4.9.1985 as contained in Annexure-P/11. In other words, his entire effort should have been to reconsider the matter in the light of the said Circular and not to have proceeded to pass an Order giving fresh reasons which amounts to virtually "filling up the blanks" by addition of new reasons which were not given in the Resumption Order dated 11.6.2009.

19. In the Resumption Order dated 11.6.2009, it was stated that the plot in question had been unauthorisedly transferred to Manish Murarka and that thereafter, a Notice was served asking the Lessees to show cause as to why the Lease be not

determined and thereafter it was decided to give a fresh opportunity to remedy the breach but instead of doing so, the Lessee had denied the matter of unauthorized transfer without submitting relevant materials and documents. It was further stated that on the date of hearing, Murarka appeared on behalf of the Lessees and from the documents submitted by him it was corroborated that there was unauthorised transfer in a clandestine manner. Nothing was said with regard to the explanations given by the Petitioner by his letter dated 20.10.2008 as contained in Annexure-P/6 nor to his earlier letter dated 26.2.2004 as contained in Annexure-P/4. In both the letters he had stated that he had let out the building to Manish Murarka and in the letter dated 26.2.2004 he had stated and referred to the Notification dated 4.9.1985 (Annexure-P/11). None of these were taken note of by the Respondent No. 3 when he passed the first Resumption Order dated 11.6.2009 vide Annexure-P/10.

20. On 14.9.2009, when an opportunity was given to the Respondent No. 3 to reconsider the matter in the light of the earlier Circular dated 4.9.1985 as contained in Annexure-P/11, instead of doing so, the Respondent No. 3 appears to have "grabbed" this opportunity only to fill up the blanks by addition of fresh reasons which is impermissible in view of the Judgment passed by the Supreme Court in the case of [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), Consequently, the said reasoned Order cannot be sustained. Moreover, the reasoned Order has proceeded on an assumption that merely because the tenancy agreement did not specify the period of tenancy, it was therefore an illegal transfer and was an attempt to cover up such an illegal transfer in a clandestine manner in disguise. An Agreement entered upon by and between parties cannot be set at naught by an Executive officer of the Government. It is only the Civil Court which can do so and the Respondent No. 3 has no authority to nullify an Agreement in the manner that he had chosen to do. Consequently, the subsequent reasoned Order dated 14.1.2010 brought on record in the Affidavit-in-opposition filed by the Respondent No. 3 is set aside.

21. So far as the Resumption Order was concerned, the same cannot also be said to be lawful nor proper. In spite of repeated assertions by the Petitioner that the premises in question was rented out and that there was no bar to such tenancy in view of the earlier Notification dated 14.9.1985, there was no reference to these submissions by the Respondent No. 3 in the Resumption Order dated 11.6.2009. Under such circumstances, coming to a conclusion of unauthorized transfer in a clandestine manner, without dealing with the defenses taken by the Petitioners in their two earlier explanations already given by the two letters referred to above, amounts to "creating a ghost" without there being any basis and then attempting to kill the ghost by passing the impugned Resumption Order. Such a procedure therefore amounts to a deviation from the settled principles of law that the Govt. and the State should not act arbitrarily and that they should act with fairness and reasonableness. In the instant case, the Respondents have clearly acted illegally, unfairly, unreasonably and have attempted to virtually take the law in their hands by

straight away saying the leasehold stands cancelled and determined and that the Lessor has the right to re-enter possession with immediate effect. This cannot be permissible. Under such circumstances, this Court has no option but to hold that the Resumption order is illegal and arbitrary and therefore in violation of Articles 14 and 16 of the Constitution of India.

22. As a result, the impugned Resumption Order dated 11.6.2009 as contained in Annexure-P/10 is also set aside and the Writ Petition is allowed.

23. However, in the facts and circumstances of this case, there shall however be no Order as to costs.

Upon appropriate Application(s) being made, urgent Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.