

Samar Kumar Basu and anr. Vs. the State of West Bengal and ors.

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Court : Kolkata

Decided On : Dec-09-2014

Judge : Debangsu Basak

Appellant : Samar Kumar Basu and anr.

Respondent : The State of West Bengal and ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA Ordinary Original Civil Jurisdiction Original Side Before: The Honble Justice Debangsu Basak G.A.No.3136 of 2014 W.P.No.254 of 2012 Samar Kumar Basu & Anr.

versus The State of West Bengal & ORS.For the Petitioners : Mr.Sabyasachi Chowdhury, Advocate Mr.Rajarshi Dutta, Advocate For the Respondents : Mr.Joydeep Kar, Sr.Advocate Mr.S.Sarkar, Advocate Mr.S.Bhattacharjee, Advocate Hearing concluded on : December 02, 2014 Judgment on : December 09, 2014 DEBANGSU BASAK, J.: - The writ petitioner is a lessee of a plot of land at the Behala Industrial Estate.

The lease in favour of the petitioner No.1 had expired by efflux of time in 2008.

The writ petitioners entered into negotiations with the respondent authorities for renewal of the lease as well as bifurcation of the plot.

During such negotiations it was agreed that, petitioner No.1 will give up a portion of the lease area in favour of the petitioner No.1.

The writ petitioners seek an order on the respondents to register a deed of lease in favour of the petitioner No.2 and to renew the deed of lease in favour of the petitioner No.1.

During the pendency of the writ petition the respondent No.1 issued a notice dated June 18, 2014 under Rule 3(1) of the West Bengal Government Premises (Tenancy Regulation) Act, 1976.

The prescribed authority appointed under Section 2(e) read with Section 8 of the West Bengal Government Premises (Tenancy Regulation) Act, 1976 by an Order dated August 20, 2014, directed eviction of the petitioner No.1 from the industrial plot concerned.

The writ petitioners moved an interim application being G.A.No.3136 of 2014 seeking stay on those two actions in respect of the industrial plot concerned.

Both the interim application as well as the writ petition were taken up for hearing.

Mr.Sabyasachi Chowdhury, learned Advocate for the petitioners contends that, the petitioner No.1 was a lessee in respect of 2,002 square feet of land at the Behala Industrial Estate.

Such lease expired by efflux of time in 2008.

The petitioner No.1 had applied for bifurcation of the plot.

This was approved by a letter dated January 17, 2008.

He refers to another letter dated May 19, 2008 by such the respondent No.1 called upon the writ petitioner to submit various documents.

He points out that, the parties met on May 29, 2009.

A minutes of such meeting was prepared.

It was decided in such meeting that, the writ petitioner No.1 will be allowed to retain 1,202 square feet and the balance 800 square feet will be given to other entities.

He submits that, his client is willing to take 1,202 square feet as agreed in the meeting held on May 29, 2009.

He refers to the Order dated May 6, 2010 passed in a suit filed by his client and submits that, pursuant to the consensus arrived at on May 29, 2009 which required the petitioner No.1 to withdraw proceedings in respect of the plot of land withdrew the suit which was filed against the trespassers. His client, therefore, altered his position to his prejudice.

He points out that, in spite of his client taking steps in accordance with the consensus arrived at on May 29, 2009, the respondent authorities issued a notice dated June 18, 2014 requiring the writ petitioner to vacate the industrial plot concerned.

He submits that, the grounds for eviction noted in the notice dated June 18, 2014 does not exist as a ground reality.

Four grounds have been alleged in the notice dated June 18, 2014.

He submits that, his client cannot function on and after the expiry of the lease in 2008 and as such the ground of non-functioning cannot be considered as a ground for eviction.

He submits that, his client is ready and willing to execute the renewal of the lease.

He submits that, the question of non-payment of dues and illegal sub-letting also does not arise in the facts and circumstances of the instant case.

He contends that, these issues referred to in the notice dated June 18, 2014, were raised subsequent to the meeting dated May 29, 2009.

He therefore submits that, in the facts and circumstances of the instant case, the respondent authorities should be directed to execute a lease deed in favour of the

petitioner No.1 for 1,202 square feet.

His client is ready and willing to set up an industrial project at such plot after the lease deed is executed.

Mr.Joydeep Kar, Learned Senior Advocate for the respondent authorities submits that, the lease was granted in favour of the petitioner No.1 in 1993 for a period of 15 years. The lease deed expired by efflux of time in 2008.

He submits that no consensus was arrived at on May 29, 2009 as contended by the petitioner.

In any event, the petitioners acted at variance to the alleged consensus.

He refers to a letter dated April 2, 2010 issued by the petitioner No.2.

By such letter the writ petitioner sought a variance of the consensus arrived at on May 29, 2009.

He points out that the plot concerned does not have electricity since March 2011.

In support of such contention he refers to a letter dated June 2, 2012 issued by the respondent authorities.

He submits that, by a letter dated June 24, 2010, the petitioner No.1 made a request to remove one of the occupiers at the plot concerned inducted by the petitioner No.1.

This is at variance to the so-called consensus arrived at on May 29, 2009.

He submits that, by a letter dated March 14, 2012, the petitioner No.1 sought to contend that, he did not sublet any portion of the premises in favour of any other person.

He points out that, the contents of the letter are at variance to the ground reality.

He refers to paragraph 6 of the affidavit used by the respondents in G.A.No.3136 of 2014.

He contends that, the petitioners have parted with possession of a part of the premises in violation of the lease.

Referring to the notice of termination dated June 18, 2014, he points out that, the petitioner No.1 did not deal with the grounds for eviction stated in the notice dated June 18, 2014 in the reply dated July 2, 2014.

Mr.Kar contends that, it would appear from the termination notice that, the writ petitioner were found not to be functioning at the plot concerned.

The onus is on the writ petitioners to prove that the writ petitioners were functioning at the plot concerned.

In support of such contention he relies upon All India Reporter 2006 Calcutta page 176 (Associated Indem Mechanical Private LTD.& Anr.v.W.B.Small Industries Development Corporation LTD.& Ors.) and 2007 Volume 3 Supreme Court Cases page 607 (Associated Indem Mechanical (P) Ltd.v.W.B.Small Industries Development Corporation LTD.& Ors.) I have considered the rival contentions of the parties and the materials made available on record.

The petitioner No.1 obtained a lease hold right for 15 years commencing from July 19, 1993 in respect of 2,002 square feet at the Behala Industrial Estate, Kolkata from the respondent No.1.

The lease deed is registered.

The petitioner No.1 applied for transfer of a part of the lease plot to the petitioner No.2.

The respondent No.1 by its letter dated August 12, 2003 responded to such request by calling upon the petitioner to submit relevant documents.

The petitioners responded to the letter dated August 12, 2003 of the respondent No.1 requesting for documents by a letter dated April 16, 2007.

It took four years for the petitioners to submit the requisites to the respondent No.1.

The respondent No.1 agreed to transfer a part of the plot on as is where is basis by a letter dated June 26, 2007.

The petitioner deposited the transfer fee and the security money.

Thereafter, the petitioner was requested to construct a permanent wall between the two entities on the plot by a letter dated January 17, 2008.

This was followed up on July 21, 2008 with a request to enhance the rent.

Since the lease had expired by efflux of time the petitioner was requested to arrange for renewal of the same.

By a letter dated May 19, 2008 the respondent No.1 called upon the petitioner No.1 to submit various documents.

Request was also made to the petitioner No.1 to evict the trespassers at the plot concerned.

It was pointed out that, only after evicting the trespassers the petitioner No.1 would be entitled to seek execution of a fresh lease deed.

The existence of persons other than the petitioners at the plot is an admitted position.

Such admission of the parties will appear from the minutes of the meeting held on May 29, 2009.

In such meeting the petitioner No.1 was present.

Two other entities were found to occupy the plot concerned apart from the petitioners. Both the two entities are signatories to the minutes of the meeting dated May 29, 2009.

The minutes of the meeting dated May 29, 2009 required the petitioner No.1 to transfer 800 square feet to M/S. Srikanta Machine Tools subject to approval of the respondent No.1.

The respondent No.1 agreed to explore all the possibilities so that around 200 to 300 square feet of additional space can be allotted to Sr.Amalendu Das proprietor of M/S.Binapani Enterprise.

All the parties to the minutes of the meeting dated May 29, 2009, agreed to abide by the decision to be taken by the respondent No.1 in this regard.

They also agreed to withdraw all Court cases pending under different Courts of law.

The admitted position is that, the respondent No.1 did not execute a fresh lease in favour of the petitioner No.1 in the manner as alleged by the petitioners or at all.

The writ petitioners seek to enforce their alleged right to obtain a fresh lease in respect of the plot concerned.

Their right is founded on the minutes of the meeting dated May 29, 2009.

It is submitted on behalf of the writ petitioners that, they are willing to give up 800 square feet as recorded in the minutes dated May 29, 2009 and that they have already withdrawn the Court cases.

An arbitrary or unreasonable conduct of an instrumentality of the state in discharge of contractual obligations can be justiciable.

In the instant case, the lease had expired by efflux of time in 2008.

Execution of a fresh lease was at the discretion of the respondent No.1.

Such discretion however cannot be exercised unreasonably.

The respondent No.1 has refused to execute a fresh lease on the ground that the lessee being the petitioner No.1 is guilty of breach of essential conditions of the then existing lease.

The petitioner No.1, according to the respondent authorities, committed breach of the then existing lease by inducting third parties into the plot without the consent of the respondent authorities.

It is an admitted position that, the petitioners allowed third parties to enter into the plot concerned.

On this score the action of the respondents authorities cannot be faulted.

Relying on the minutes dated May 29, 2009, the petitioners suggest that, the respondent authorities had condoned such induction by third parties into the plot.

I have given serious consideration to the minutes dated May 29, 2009.

To my mind the respondent No.1 did not condone the induction of third parties into the plot by the writ petitioners by the minutes dated May 29, 2009.

The respondent No.1 noted the existence of third parties in the plot concerned and the possible solution to the illegal occupation of third parties in the plot concerned.

On May 29, 2009 the respondent No.1 did not condone the induction of the third parties into the plot, nor did the respondent authorities promise to execute any lease deed in favour of the writ petitioners. All that the respondent authorities promised on May 29, 2009 was to explore the suggestions given by the parties to get over the impasse.

No material has been placed before me to suggest that the respondent No.1 agreed to execute a fresh lease notwithstanding the existence of third parties at the plot concerned.

Subsequent to the meeting dated May 29, 2009 the petitioners called upon the respondents to vary the terms suggested on May 29, 2009.

This conduct of the petitioners appears from the letters dated April 2, 2010 and June 24, 2010.

By the letter dated June 24, 2010 the petitioner No.1 called upon the respondent No.1 to remove M/S.Srikanta Machine Tools.

By this letter also the petitioners acknowledged M/S.Srikanta Machine Tools to be a trespasser.

The respondent No.1 invoked the provisions of West Bengal Government Premises (Tenancy Regulation).1976 and the regulations framed thereunder to issue a notice dated June 18, 2014 calling upon the petitioner No.1 to vacate the premises concerned.

The respondent No.1 gave such notice to quit on the ground that the petitioner No.1 was guilty of violating the terms and conditions of allotment and flouting the object of the respondent No.1.

The respondent No.1 specified that the petitioner No.1 was not functioning at the concerned premises, the petitioner No.1 was guilty for non-payment of dues and has illegally sublet the premises.

The petitioner No.1 was allowed 30 days to respond to the notice and approach the Appellate Authority within such period.

So far as the allegation of non-functioning of the petitioner No.1 is concerned, the petitioners have not produced any materials before me to show that they were functioning at the plot concerned.

The contention on behalf of the petitioners is that, subsequent to the expiry of the lease for 2008 they cannot function in absence of requisite permission from the relevant authorities as the relevant authorities will not grant permission in absence of the renewed lease deed.

The petitioners however did not produce any materials before me to establish that they were functioning till 2008.

In Associated Indem Mechanical Private LTD.& Anr.

(supra) the Division Bench was of the view that, it was for the writ petitioners to show that they were manufacturing anything in the plot concerned.

In that case a similar lease deed of the respondent No.1 was considered.

The lessee was served with notice to quit, inter alia, on the ground that no manufacturing activity was carried out by the lessee.

In such context the Division Bench made the aforesaid observation.

The appeal from the judgment of the Division Bench was dismissed by the Honble Supreme Court in Associated Indem Mechanical (P) LTD.(supra).The writ petitioners by the interim application seek relief with regard to the Order dated June 18, 2014 and August 20, 2014.

A Writ Court is not a Court of appeal.

No material has been placed before me to demonstrate that the respondent authorities exceeded their power while issuing the two notices.

The petitioners contend that, the two notices could not have been issued in view of the consensus arrived at on May 29, 2009.

The petitioners did not canvass any other ground.

The minutes dated May 29, 2009 cannot be construed to impede the exercise of powers under the West Bengal Government Premises (Tenancy Regulation) Act, 1976.

The minutes dated May 29, 2009 neither vest the petitioners with unfettered right to have renewal of the lease, nor does it prevent the respondents to obtain possession of the plot by refusing to renewal the lease.

In such circumstances I find no merit in the writ petition as well as in the interim application.

W.P.No.254 of 2012 as well as G.A.No.3136 of 2014 is dismissed.

No order as to the costs.

[DEBANGSU BASAK, J.].

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