

Asit Kumar Modak and ors. Vs. State of West Bengal and anr.

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Court : Kolkata

Decided On : Apr-12-2010

Judge : Dipankar Datta, J.

Appeal No. : W.P. No. 12351 (W) of 2008

Appellant : Asit Kumar Modak and ors.

Respondent : State of West Bengal and anr.

Advocate for Def. : Amitabha Chowdhury, Adv.

Advocate for Pet/Ap. : Debasish Chattopadhyay and; Nilay Saha, Adv.

Disposition : Appeal dismissed

Judgement :

Dipankar Datta, J.

1. It is revealed from the petition that the first petitioner is the lessee in respect of a plot of land measuring little more than 5 cottahs, bearing No. B10/132 at Kalyani Township (hereafter the said plot). The Government of West Bengal is the lessor.

2. The first petitioner by a writing on plain paper dated 4.12.2007, addressed to the Estate Manager, respondent No. 2, sought for permission to transfer the leasehold interest of the said plot along with construction made thereon in favour of the

second and the third petitioners. It was indicated therein that the first petitioner was facing family trouble as well as financial hardship which led him to decide in favour of such transfer. For the purpose of transfer processing fees, the first petitioner had deposited Rs. 500/- with the treasury on 11.12.2007.

3. The petition further reveals that the petitioners had submitted a joint application dated 20.12.2007 seeking permission of the respondent No. 2 for transfer of the leasehold interest in the said land in favour of the second and third petitioners.

4. The respondent No. 2 by his memo dated 12.5.2008 conveyed to the petitioners that their prayer for permission to transfer leasehold interest of the said plot was under consideration of the Government and that they were required to deposit of Rs. 8,98,125/- only as transfer permission fees in terms of notification dated 18.12.2007.

5. It is noted that by the notification dated 18.12.2007, the Principal Secretary to the Government of West Bengal, Urban Development Department had notified the revised rates of fees for transfer of leasehold right of different categories of land at Kalyani Township. In so far as residential plots is concerned, the notification provided as follows:

Sl. No.

Type of plot

Rate per cottah

a)

Commercial

Rs. 2,00,000

b)

Industrial

Rs. 1,50,000

c)

Residential:

i) Less than 3cottahs

ii) Between 3 & 4 cottahs

iii) Above 5 cottahs

1/2 of the land value

1/2 of the land value same as land value

6. The second and the third petitioners by their representation dated 19.5.2008 informed the respondent No. 2 that the application for permission seeking transfer had been filed before issuance of notification dated 18.12.2007 and thus they solicited reconsideration of the issue in respect of deposit of transfer permission fees as per old rate. However, the respondent No. 2 by his letter dated 18.6.2008 again conveyed to the first petitioner that the Urban Development Department had ordered to realise transfer permission fees as per revised rate and, therefore, he was called upon to deposit transfer permission fees as per office order dated 12.5.2008 referred to above.

7. Questioning the decision of the respondents to demand transfer permission fees at the revised rates, this petition dated 26.6.2008 was presented before this Court by the petitioners praying for, inter alia, the following relief:

a) A writ in the nature of Mandamus directing the respondent No. 2 to accord permission of the application for transfer as submitted by the petitioner No. 1 in favour of the petitioner No. 2 & 3 in respect of the Plot No. B-10/132, Kalyani, Nadia without demanding transfer permission fees in terms of the Government Notification No. 4247/UD/O/M/K&P;K/L-2/05 dated 18.12.07 in any manner whatsoever;

b) A further writ in the nature of Mandamus direction the respondent No. 1 & 2 to grant transfer permission in terms of Govt. Notification No. 2401-

UD/O/M/K&P;/K/L-1/2005 dated the 12.07.2005. And further writ in the nature of Mandamus directing the respondent no.3 to allow the petitioner No. 1 to execute and register a deed of transfer in favour of the petitioner No. 2 & 3 forthwith without demanding any formal permission from the respondent No. 2;

c) A writ in the nature of Prohibition prohibiting the respondent authority from taking any adverse step or steps, order or orders against the claim of the petitioner.

8. The Court directed exchange of affidavits while admitting the petition. It has since been finally heard on affidavits.

9. From the counter affidavit of the respondents it appears that by notification dated 30.1.2009, published in the Kolkata Gazette dated 12.2.2009, a partial modification of the notification dated 18.12.2007 was sought to be made. Insofar as residential plots measuring 5 cottahs and above are concerned, it was notified that rate of transfer fees would be 40% of the land value.

10. Soon thereafter, the respondent No. 2 informed the first petitioner by his memo dated 1.9.2009 the decision of the Department that he would have to pay reduced transfer permission fees, i.e. Rs. 3,59,250/- instead of Rs. 8,98,125/-. A request was made to withdraw this petition if the first petitioner was willing to pay the revised transfer fees.

11. Mr. Chattopadhyay, learned advocate for the petitioners contended that the demand for payment of Rs. 3,59,250/- towards transfer permission fees is also without jurisdiction. According to him the initial application seeking permission to transfer leasehold interest of the said plot having been made on 4.12.2007, neither notification dated 18.12.2007 nor notification dated 30.1.2009 referred to above would be applicable since both ordain that the revised rates would take immediate effect meaning thereby that the terms thereof would operate prospectively and not retrospectively. He referred to notification dated 12.7.2005 on the subject of withdrawal of restrictions on transfer of plots of land in Kalyani Township and making provision for realization of transfer fee in respect of granting permission for transfer. According to him, this being the relevant notification existing on the date

the first petitioner made the application dated 4.12.2007 the respondents ought to have followed the same for determining transfer permission fees. Insofar as residential plots measuring more than 5 cottahs are concerned, the notification prescribes the rate of permission fee as 'half the existing rate of salami', and the first petitioner having paid Rs. 3951.75p towards premium or salami prior to allotment of the said plot on lease, 50% of the said sum should constitute the permission fees for transfer. Since the revised fees for permission to transfer leasehold right were determined and notified for information of the general public after 4.12.2007, the respondents in terms of the registered lease deed are entitled to claim nothing more than what has been mentioned in the notification dated 12.7.2005. He, accordingly, prayed for appropriate order on the respondents to correctly determine the permission fees for transfer to enable the petitioners take follow up steps in accordance with law.

12. Mr. Chowdhury, learned Advocate for the respondents, while opposing the petition contended that the prayer for permission to effect transfer dated 4.12.2007 is non-est in the eye of law. The prayer was made on a plain paper and, therefore, did not merit consideration. The first petitioner was required to apply for permission in the prescribed format which he did on 20.12.2007 and, therefore, notification dated 18.12.2007 would govern such application. Accordingly, he prayed for disposal of the petition with a direction upon the first petitioner to deposit Rs. 3,59,250/- as transfer permission fees if at all he is interested in proceeding further with the application dated 20.12.2007.

13. Having heard learned advocates for the parties, the first question that arises for determination is whether the application dated 4.12.2007 made by the first petitioner is non-est, as contended by Mr. Chowdhury or not. Depending on the answer to this question, it would fall for consideration of the Court as to whether the petitioners would be required to deposit transfer permission fees in terms of notification dated 12.7.2005 or in terms of notification dated 18.12.2007, since modified by notification dated 30.1.2009.

14. Mr. Chowdhury has expressed his inability, while replying to a query of Court, to place any statutory provision or contractual term in the registered lease deed

which requires a lessee to apply for permission to effect transfer of leasehold interest by making application in the prescribed format. By the notification dated 12.7.2005, restrictions which were hitherto before existing in respect of granting permission for transfer of plots of land in Kalyani Township leased out by the Government were withdrawn. There is no provision therein obliging the lessee to make application in prescribed format. All that is required in connection with making an application is contained in Clause 3 thereof which reads as follows:

Prior to effecting such transfer, the transferor shall make an application to the authority disclosing the name of the proposed transferee and also undertake to pay the prescribed permission fees on grant of permission and the proposed transferee shall in like manner in paragraph 2 above and also stating that he/she will abide by the other terms and conditions of the lease mentioned in the deed of lease.

15. It is settled principle of law that if the Government intends its subjects to abide by a particular law/rule/stipulation, the same must be notified for information. In the event the prescribed format referred to by Mr. Chowdhury had indeed been part of a statute, the same would have assumed the status of a statutory form. That is not the case here. The notification dated 12.7.2005 also did not specify any prescribed format for making an application seeking permission to effect transfer of leasehold interest of a plot of land. Therefore, if a lessee intends to transfer leasehold interest of any plot of land in Kalyani Township he is not, in terms of the notification dated 12.7.2005, required to apply in any specific format or prescribed format as contended by him. If an application or prayer is made, even on plain paper but contains the particulars as stipulated by Clause 3 supra, the application cannot be refused on the specious ground that it is not in the specific format or the prescribed format. This Court, therefore, overrules the objection of Mr. Chowdhury that the application is non-est.

16. It now merits consideration as to whether the application dated 4.12.2007 made by the first petitioner fulfills the requirements of Clause 3 supra or not. In terms thereof, it is a condition that the transferor (here the first petitioner) is required not only to disclose the name of the proposed transferee (here the

second and the third petitioners) but he is also required to give an undertaking to pay the prescribed permission fees on grant of permission. It appears from the application dated 4.12.2007 that although the first petitioner disclosed the names of the second and the third petitioners as the proposed transferees, he did not undertake to pay the prescribed permission fees on grant of permission. Instead, it appears, he had submitted four copies of challan in T.R. Form No. 7 for necessary endorsement to deposit Rs. 500/- towards transfer processing fees. Also, there was no undertaking given by the proposed transferees in respect of condition mentioned in paragraph 2 to the effect that they would construct house on the plot of land to be transferred in their favour within 3 years from date of transfer, if not already constructed by the transferor.

17. On the contrary, it would appear from the application dated 20.12.2007 that it is a printed format, the dotted portion whereof is required to be filled up with relevant particulars. The dotted portions were duly filled up by the first petitioner as transferor and the second and the third petitioners as the proposed transferees. The first petitioner undertook to pay transfer permission fees on grant of permission and the proposed transferees also undertook to complete construction of residential house on the said plot within three years from the date of mutation thereof in their favour. If the statement in the petition that the first petitioner intended to transfer leasehold interest of the said plot alongwith construction thereon is correct, the second and the third petitioners were not required to give any undertaking in terms of Clause 2. However, nothing turns on it since it is clear that the application dated 4.12.2007 made by the first petitioner was incomplete and not liable to be acted upon.

18. Additionally, it appears from paragraph 7 of the petition that the petitioners had visited the office of the respondent No. 2 and it is the admitted position on facts that they had submitted the prescribed transfer application form on 20.12.2007. The petitioners on their own showing, therefore, were aware of the format for filing an application for transfer. Indeed, having submitted application complete in all respects only on 20.12.2007, the same was required to be considered in terms of the notification dated 18.12.2007 and not by the one dated 12.7.2005.

19. In view thereof, this Court holds that the respondents did not commit wrong in initially demanding Rs. 8,98, 125/- towards transfer permission fees and thereafter reducing the demand to Rs. 3,59,250/-, presumably in view of the notification dated 30.1.2009.

20. The petition stands dismissed. However dismissal of this petition shall not preclude the petitioners to deposit Rs. 3,59,250/- towards transfer permission fees and on such deposit being made, the respondents shall proceed to grant permission in accordance with law if other formalities are complied with by the petitioners.

21. There shall be no order as to costs.

22. Urgent photostat certified copy of the judgment and order shall be given to the applicants, if applied for, as early as possible.

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