

**Civil Revision**  
**PRESENT: The Hon'ble Justice Jyotirmay Bhattacharya**  
**Judgment On : 19-02-2010.**  
**C.O. No.717 of 2009**  
**Dr. Abhijit Banerjee**  
**-Vs-**  
**Pradip Kr. Dutta**

**Point:**

**Transfer of suit:** Whether a suit can be transferred under Section 24 of the Civil Procedure Code on the ground of biasness of the Presiding Officer of the Ld. Trial Court since the petitioner was described as a trespasser by the Presiding Officer - Code of Civil Procedure, 1908 – S.24

**Fact:** The defendant/petitioner has filed the instant application under Section 24 of the Civil Procedure Code for transferring a suit for a decree for eviction of the defendant, from the Court of Ld. Civil Judge to any other Court on the ground of biasness of the Presiding Officer of the Ld. Trial Court since the petitioner was described as a trespasser by the Presiding Officer. It was also urged by the petitioner that complicated question of law involving public interest is involved in the said suit and as such, justice will be sub-served if the suit is transferred to the High Court itself for its trial.

**Held:** Passing of a wrong and/or erroneous order does not necessarily lead to an inference of biasness. (Paragraph -18)

The dispute as to whether the defendant is a licensee or a tenant in the said premises cannot be decided finally at this stage, as trial on evidence is necessary for resolving the said dispute and a conclusive finding regarding the nature of occupation of the defendant in the said premises can be arrived at only after conclusion of hearing of the said suit. As such, no reasonable man of ordinary prudence can come to the conclusion that the attitude of the present learned Presiding Officer is biased towards the petitioner because of using the expression as trespasser against the defendant in the said interlocutory application which has nothing to do with the ultimate fate of the suit. (Paragraph -20)

**Cases cited:** Madan Lal & Ors. –Vs- Babulal Agarwal reported in AIR 1962 Manipur page 42.

Rajkot Cancer Society –Vs- Municipal Corporation, Rajkot reported in AIR 1988 Jugrat page 63.

Krishna Kanahya –Vs- Vijoy Kumar reported in AIR 1976 Delhi page 184.

Kulwinder Kaur –vs- Kandi Friends Education Trust reported in (2008)3 SCC page 659.

Abdul Rahaman –Vs- Prasony Bai & Anr. reported in (2003)1 SCC page 488.

Abdul Gaffar –Vs- State of Uttarakhand & Ors. reported in AIR 2009 SC page 413.

Indian Financial Association of 7th day Adventists –Vs- M.A. Unneerikutty & Anr. reported in (2006)6 SCC page 351.

In the case of Sita Ram –Vs- Radha Bai reported in AIR 1968 SC page 534.

Thakur Jagannath Baksh Singh –Vs- the United Provinces reported in AIR 1946 Privy Council PC 127.

Present:

For the Petitioner : Mr. Arunangshu Chakraborty,

For the Opposite : Mr. Subrata Datta, Advocate

Party. Mrs. Kuheli Singh, Advocate.

The Court:

1. The defendant/petitioner has filed the instant application under Section 24 of the Civil

Procedure Code for transferring the suit being Title Suit No.18 of 2006 from the Court of the

learned Civil Judge, Senior Division, 2nd Court at Barasat to any other Court on the ground of

biasness of the Presiding Officer of the learned Trial Court.

2. The petitioner referred to various interlocutory orders passed by the learned Trial Judge

from time to time in the suit, to project the biased attitude of the Presiding Officer against the

petitioner. Of course, in course of hearing of this application, Mr. Chakraborty representing the

petitioner tried to impress upon this Court that apart from the ground of biasness which is made out

in the said application as a ground for such transfer, complicated question of law involving public

interest is involved in the said suit and as such, justice will be sub-served if the suit is transferred to

the High Court itself for its trial.

3. Before entering into the respective submission of the parties made in course of hearing of

this application, this Court feels that the little background of the suit, is required to be put on record

for proper appraisal of the grounds for which such transfer was prayed for.

4. The plaintiff filed the said suit inter alia praying for a decree for eviction of the defendant from the suit flat which is situated in the ground floor of premises no.HA-51, Sector III, Salt Lake City, on revocation of his licence. The plaintiff stated therein that the defendant was allowed to reside in the suit flat as his licensee for a term of 11 months commencing from 16th January, 2005 on the basis of an agreement for licence dated 16th January, 2005 executed by the parties. Before expiration of the term of licence the plaintiff, by his letter dated 7th November, 2005 requested the defendant to vacate and deliver up peaceful and vacant possession of the suit flat to the plaintiff on expiry of the period of licence. In reply to the said letter, the defendant in his letter dated 18th November, 2005 claimed himself to be a tenant and his tenancy, according to him, is governed by the West Bengal Premises Tenancy Act. Thus, he claimed protection under the said Act.

5. Subsequently the plaintiff by his letter dated 1st December, 2005 pointed out to the defendant that if the defendant intended to occupy the suit flat for a further period of 11 months, the defendant should apply to the plaintiff seeking a fresh licence to occupy the suit flat as his licensee. In reply to the said letter the defendant informed the plaintiff by his letter dated 7th December, 2005 that he wished to stay at the suit flat until he could find another suitable alternative accommodation elsewhere. A cheque for a sum of Rs.9,500/- being the occupational charges for the month of December, 2005 was also sent to the plaintiff along with the letter dated 13th December, 2005 written by the defendant but the plaintiff did neither accept the same nor encashed the same as the term of the licence remained valid upto 15th December, 2005 and the licence was not extended thereafter. Since the defendant refused to vacate the suit premises on expiration of the term of said

licence, the plaintiff filed the instant suit for evicting the defendant from the suit premises and for recovery of arrear licence fees and mesne profit amongst other incidental reliefs.

6. The defendant is contesting the said suit by filing written statement claiming his tenancy right in the suit premises. It was contended by the defendant that the plaintiff has no right to transfer or assign and/or grant any licence in the suit flat to any person in general and the defendant in particular. It was further stated therein that the plaintiff, by making a fraudulent representation about his absolute title in the suit property, entered into an agreement in writing with the defendant on 16th January, 2005 for creation of the so-called licence upon acceptance of a sum of Rs.1,00,000/- from the defendant. The defendant contended that a restriction on the plaintiff's right to transfer the suit property and/or its enjoyment was imposed in Clause 2(7) of the lease deed by which the suit property was demised by the Government in favour of the plaintiff. It was further contended that since the said so-called licence was created in violation of Clause 2(7) of the lease deed, the agreement for licence was rendered infructuous and void and consequently such contract is unenforceable in law. The defendant further contended that, in fact, a tenancy was created on monthly rental basis in favour of the defendant. The defendant in his letter dated 18th November, 2005 tried to point out to the plaintiff that the said agreement was virtually an agreement of tenancy and thus he claimed that he cannot be evicted from the suit flat in such a suit for eviction of a licensee. The defendant, thus, prayed for dismissal of the said suit.

7. Several interlocutory applications were filed by the parties in the said suit. Sometime the defendant prayed for a reference to the High Court under Section 113 of the Civil Procedure Code for ascertaining the validity of a notification issued by the Government on 20th March, 1998 by

which the operation of the West Bengal Government Land (Regulation of Transfer) at 1993 was suspended temporarily. Sometime the plaintiff filed an application under Section 151 of the Civil Procedure Code inter alia praying for issuance of direction upon the defendant to go on paying the monthly occupational charges of the suit flat until the suit is decided. Sometime the defendant filed an application for injunction so that the supply of essential services to the defendant in the suit premises such as, electricity supply is not interfered with during the pendency of the suit. The said application was filed at a point of time when the suit was matured for peremptory hearing. Even an application for rejection of plaint was also filed by the defendant when the suit was in the peremptory hearing board.

8. The learned Trial Judge disposed of those applications by passing orders thereon from time to time. The defendant's application under Section 113 of the Civil Procedure Code was initially rejected by the learned Trial Judge but the said order was subsequently set aside by this Hon'ble Court and the learned Trial Judge was again directed to reconsider the petitioner's said application but the present Presiding Judge rejected the petitioner's said application under Section 113 of the Civil Procedure Code by an Order dated 13th January, 2009 after such remand. While rejecting the petitioner's application under Section 113 of the Civil Procedure Code earlier on 8th October, 2007, the present Presiding Judge observed that having perused the plaint as well as the other materials on record, it seems that it is a suit between landlord and trespasser and the suit does not involve determination of any question of law relating to the provision contained in Sections 8, 9, 10 and 10(2) of the West Bengal Government Land (Regulation of Transfer) Act, 1993.

9. Since the petitioner was described as a trespasser by the present Presiding Judge in the said

order, the petitioner smelt biasness on the part of the present Presiding Judge. Fact remains that the order which was passed by the present Presiding Judge on the petitioner's said application after remand on 13th January, 2009 was ultimately affirmed by this Court on 21st April, 2009. While disposing of a revisional application filed by the petitioner before this Court being C.O. No.487 of 2009, this Hon'ble Court held that since the effect of the said notification has already been decided by the Division Bench of this Hon'ble Court in a writ petition arising out of a PIL matter, no further reference to the High Court is necessary for ascertaining the legality and validity of the notification issued by the Governor on 20th March, 1998.

10. The petitioner next referred to an order being no.9 dated 4th July, 2006 by which an application under Section 151 of the Civil Procedure Code filed by the plaintiff was disposed of by the learned Trial Judge. In the said application, plaintiff prayed for issuance of direction upon the defendant to pay a sum of Rs.9,500/- per month towards the occupation charges of the said premises beginning from May, 2006 with a rider that such payment may be ultimately adjusted against the decree for mesne profit which may be passed in near future in favour of the plaintiff. The plaintiff's such prayer was allowed by the learned Trial Judge. The defendant was directed to pay a sum of Rs.9,500/- per month to the plaintiff from the month of July, 2006 until further orders.

11. While passing the said order the learned Trial Judge made it clear that the said order will not in any way affect the right of the parties to suit with regard to their respective claims and if it is found in near future that the plaintiff was not entitled to get such licence fees from the defendant, in that event the plaintiff shall give back the entire amount together with interest at a rate to be fixed by

the Court at the relevant time. Incidentally it may be mentioned herein that the said order was not passed by the present learned Presiding Officer of the said Court. The said order was passed by his predecessor in chair. Being aggrieved by the said order, the plaintiff filed a revisional application before this Court but the said order was ultimately affirmed by this Court in the said revision being C.O. No.3301 of 2006.

12. The petitioner next referred to the orders dated 16th November, 2006 and 11th March, 2008 respectively, both of which were passed by the learned Trial Judge in connection with the petitioner's right of enjoyment of the electricity in the said premises during the pendency of the suit. By the order dated 16th November, 2006 the plaintiff was restrained from disturbing the admitted possession of the defendant until further orders and was further restrained from disconnecting the amenities annexed thereto subject to the condition that the defendant will pay necessary charges which he was paying to the electricity authority through the plaintiff against receipt. It was recorded in the said order that both the parties agreed that the plaintiff will give the accounts to the defendants indicating therein the electricity charges payable by him and the defendant will pay the same within 30 days from the date of receipt of such account from the plaintiff. This order was also passed by the predecessor in chair of the present Presiding Judge.

13. Subsequent order was passed by the learned present Presiding Officer on 11th March, 2008 by which the defendant's application complaining about violation of the said order of injunction by the plaintiff, was rejected on the ground that the plaintiff has not violated the order of the Court willfully as the plaintiff had no control over the introduction of new prepaid metering system in the locality by the WBS&EDCL subsequent to the passing of the order of injunction.

14. According to the defendant such finding regarding introduction of new metering system, is a biased finding as the Presiding Officer before making the said observation had never verified as to whether the new prepaid metering system which was introduced in Salt Lake was mandatory or optional.

15. The defendant was not happy with the said order and as such, he filed an application inter alia praying for issuance of direction upon the plaintiff for supplying electricity to the defendant through the preexisting supply system and further for allowing the defendant to consume electricity exclusively through the meter which was installed in the said premises. The defendant is aggrieved as according to him, the said application was rejected by the present Presiding Judge without even caring to read the said application and also without applying the provision of the Civil Procedure Code and also without caring to rectify its own mistake. These are the orders which were referred to by the petitioner in his said application to demonstrate the biased attitude of the presiding Judge towards the petitioner.

16. Apart from referring to the aforesaid orders, the petitioner contended that the biasness on the part of the learned Presiding Judge can also be noticed from the conduct of various other proceeding where he tried to bypass the West Bengal Land (Regulation of Transfer) Act, 1993.

17. According to the defendant, the said Act is in force and as such, the plaintiff has no right to create any licence. Thus, the agreement for licence according to him was void ab initio and since such agreement was created in violation of the said statute, the defendant claims that no Court can render any assistance to the plaintiff for enforcement of such void agreement.

18. These are the grounds made out by the petitioner in his said application in support of his claim for transfer of the said suit from the said Court. Since the transfer of the suit was prayed for on the ground of bias attitude of the present



learned Presiding Officer against the petitioner, this Court is required to examine the petitioner's allegation very carefully to find out as to whether a reasonable man would have found anything in the conduct of the Judge which would make him apprehended that there was any bias on the part of the Judge against the party applying for transfer which would make it difficult for the Judge to deal with the case impartially. Passing of a wrong and/or erroneous order does not necessarily lead to an inference of biasness.

19. Here is the case where this Court on examination of the orders referred to by the petitioner in the said application finds that the orders which were passed by the present Presiding Judge were either accepted by the parties or were affirmed in revision by the High Court. As such, this Court cannot even come to the conclusion that the orders which were passed by the learned Trial Judge excepting in one case where interference was made by this Hon'ble Court, were illegal and/or erroneous orders. Again it may be mentioned herein that the order of the learned Trial Judge which was interfered with by this High Court, as referred to above, was passed by the predecessor-inchair, of the present Presiding Judge. Let me now consider as to how far the allegation of biasness against the present Presiding Judge can be believed because of the fact that in one of such orders the defendant was described as trespasser at a pre-trial stage.

20. On consideration of the pleadings of the parties this Court finds that it is essentially a suit for eviction of a licensee on revocation of licence. If the licensee continues to remain in possession in the property after expiration of the term of his licence, the possession of such licensee can, no doubt, be equated with the possession of a trespasser as his legal right to remain in possession after expiration of the term of licence ceases to continue. As such, if the learned Trial Judge describes

the defendant as a trespasser in an interlocutory order passed in a suit for eviction of a licence, this Court cannot smell the bias attitude of the part of the present learned Presiding Officer who observed in an interlocutory order that this is a suit between the landlord and a trespasser. Of course, it is true that the defendant has not accepted himself as a licensee under the plaintiff. He claimed himself as a monthly tenant and his tenancy is governed by the West Bengal Premises Tenancy Act. The dispute as to whether the defendant is a licensee or a tenant in the said premises cannot be decided finally at this stage, as trial on evidence is necessary for resolving the said dispute and a conclusive finding regarding the nature of occupation of the defendant in the said premises can be arrived at only after conclusion of hearing of the said suit. As such, no reasonable man of ordinary prudence can come to the conclusion that the attitude of the present learned Presiding Officer is biased towards the petitioner because of using the expression as trespasser against the defendant in the said interlocutory application which has nothing to do with the ultimate fate of the suit.

21. This Court finds that the Court is very much conscious about the rights of the parties as well as the scope of trial of the said suit. As such, the Court, while allowing the plaintiff's application for issuance of direction upon the defendant for deposit of a sum of Rs.9,500/- per month towards occupational charges made it clear that the deposits which are required to be made by the defendant in terms of the said order is ultimately refundable in case it is found that the defendant has no obligation to deposit the said amount towards his occupational charges. Order granting injunction against the plaintiff for restraining him from disturbing his possession in the suit property till the disposal of the suit and/or for restraining him from disrupting the supply of electricity to the defendant in the suit premises, was passed by the predecessor in

chair of the present learned Presiding Officer of the said Court.

22. It is of course true that the complaint made by the defendant against the plaintiff for violating the said order of injunction and relief claimed for redressal of such grievances of the defendant was rejected by the present learned Presiding Judge but the reasons for which such relief was denied to the defendant cannot be held to be unreasonable and this Court cannot draw any inference of biasness on the part of the Presiding Officer as this Court finds from the said order that the learned Trial Judge refused to grant such relief to defendant as he found that subsequent to the passing of the order of injunction, the system of assessment of electricity consumption was changed due to adoption of a new prepaid metering system in the locality by WBSEDCL and as such the arrangement which was earlier made by his predecessor in chair, while passing the injunction order became practically impossible to be followed by the plaintiff after such change was introduced.

23. When under such circumstances the learned Trial Judge dismissed the petitioner's said application, this Court cannot presume that the Presiding Officer was biased against the defendant and as such, the defendant's said application was rejected. In fact, a party suffering from injunction cannot be punished for violation of the order of injunction, if compliance of the said order is made beyond his control due to happening of some supervening circumstances. Introduction of the new prepaid metering system by WBSEDCL is beyond the control of the plaintiff and as such, this Court does not find any unreasonableness on the part of the Presiding Officer in coming to the said conclusion while dismissing the defendant's said application.

24. The defendant has complained that since the learned Trial Judge came to the aforesaid finding without ascertaining as to whether the introduction of the new metering system was mandatory or optional one, the defendant cannot expect fair justice from the said Presiding Judge.

25. In my view, this apprehension of the defendant is baseless as the defendant has also failed to establish before the learned Trial Judge that the introduction of the new system was optional and the plaintiff willfully violated the order of injunction by accepting the said optional arrangement to frustrate the order of injunction.

26. This Court also does not find any unreasonableness on the part of the Presiding Judge in passing the order on the defendant's application under Order 7 Rule 11 of the Civil Procedure Code. Admittedly such application was filed at the stage when the suit was in the peremptory board of hearing. Of course, I do not want to convey any message that such application cannot be entertained and/or decided, if such application is filed at the stage of hearing of the suit. Here, in the instant case, instead of refusing to entertain the said application the learned Presiding Judge decided the application on its own merit. This shows that the present learned Presiding Officer was not biased against the defendant. I do not want to scrutinise the legality and/or correctness of the said order at this stage. But, this much is sufficient to say that the said order at least does not reflect any biasness of the part of the present learned Presiding Officer against the defendant herein. Thus, on overall assessment of the orders which were referred to by the petitioner in support of his claim for transfer of the said suit from the said Court to another Court on the ground of biasness on the part of the present learned Presiding Officer, this Court holds that the apprehension of the petitioner that he will not get fair justice from the said Court is absolutely baseless and

without any foundation. As such, on the basis of such unfounded allegation, the petitioner's prayer for transfer of the said suit from the said Court to another Court cannot be allowed. In this regard reference may be made to various decisions cited by Mr. Datta wherein it was uniformly held by different High Courts that prayer for such transfer cannot be allowed on the basis of unfounded allegations regarding biasness against the Presiding Officer and if a casual approach is taken in such matter, a wrong message will be conveyed with regard to the honesty, dignity and integrity of the Presiding Judge not only to the Judge concerned, but also to the general litigant public, which this Court cannot allow so lightly. The decisions which were cited by Mr. Datta in this regard on

which this Court has placed reliance are as follows :-

1. In the case of Madan Lal & Ors. –Vs- Babulal Agarwal reported in AIR 1962 Manipur page 42.
2. In the case of Rajkot Cancer Society –Vs- Municipal Corporation, Rajkot reported in AIR 1988 Jugrat page 63.
3. In the case of Krishna Kanahya –Vs- Vijoy Kumar reported in AIR 1976 Delhi page 184.

Let me now consider the other phase of the submission of Mr. Chakraborty who contended that since serious question of law of public importance is involved in this litigation, the said suit should be transferred to this Court so that the maintainability of the said suit itself can be decided as per Order 14 Rule 2 sub-rule 2 of the Civil Procedure Code by this Court itself. He further contended that the application of the West Bengal Government Land (Regulation of Transfer) Act, 1993 in the instant case is an issue in the said suit and the fate of the said suit is dependent on the decision on the said issue. Mr. Chakraborty contended that it has already been decided by the Division Bench of this Hon'ble Court that the said Act is in operation and the notification issued by the Governor on 20th March, 1998 suspending the operation of the said Act, was set aside and as a result of which no other conclusion excepting that the said Act was allthroughout in operation right

from its commencement, cannot be denied. Mr. Chakraborty further contended that if the said Act is in operation then the grant of licence is violative of the Section 8 of the said Act and as such, the said agreement which was entered into between the parties, is unenforceable because it is opposed to public policy as per Section 23 of the Contract Act.

27. By referring to the reply given by the concerned authority to the defendant's quarries Mr.

Chakraborty pointed out that, in fact, the defendant was inducted as a tenant in the said premises as

there was no restriction on such creation of tenancy at the relevant time. This Court cannot follow

this part of the submission of Mr. Chakraborty and the stand taken by the Government in rely to the

petitioner's quarry as referred to above. If creation of tenancy is permitted then how the creation of

licence can be held to be opposed to public policy.

Mr. Chakraborty further contended that if the West Bengal Government Land (Regulation

of Transfer) Act, 1993 is applicable in the instant case, then the Civil Court's jurisdiction to try the

said suit is ousted in view of the provisions contained in Section 21 of the said Act. Mr.

Chakraborty further contended that when the fate of the said suit is dependent upon ascertainment

of the issue regarding applicability of the said Act to the present dispute, and further since the

decision on such issue concerns a matter of public importance, such suit, according to Mr.

Chakraborty should be decided by this Court. As such, he prayed for transfer of the said suit to this

Court by relying upon various decisions to show that not only the High Court has the jurisdiction to

transfer any suit to itself under Section 24 of the Civil Procedure Code but also it will be just and

proper to transfer the said suit to itself for deciding such a complicated issue of law having an

impact on public at large. In support of such submission he cited the following decisions :-

1. In the case of *Kulwinder Kaur –vs- Kandi Friends Education Trust* reported in (2008)3 SCC page 659.

2. In the case of Abdul Rahaman –Vs- Prasony Bai & Anr. reported in (2003)1 SCC page 488.

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3. In the case of Abdul Gaffar –Vs- State of Uttarakhand & Ors. reported in AIR 2009 SC page 413.

Mr. Chakraborty also cited the following decisions in support of his submission that if the

parties entered into a prohibited contract, the contract is unenforceable and the Court will refuse to

enforce the illegal contract at the instance of a party who himself is a party to such illegality:-

1. In the case of Indian Financial Association of 7th day Adventists –Vs- M.A. Unneerikutty & Anr. reported in (2006)6 SCC page 351.

2. In the case of Sita Ram –Vs- Radha Bai reported in AIR 1968 SC page 534.

28. By relying upon the aforesaid decision Mr. Chakraborty invited this Court to transfer the said suit to this Court and to decide those complicated issues involved in the said suit by itself.

Let me now consider this part of the submission of Mr. Chakraborty. I have already

indicated above that the prayer for transfer of the said suit, is not founded on the grounds as

indicated above but since Mr. Chakraborty has developed these grounds in course of argument, this

Court feels it necessary to discuss the said ground in the light of the facts of this case.

Admittedly the State of West Bengal granted a lease of the land measuring about 3.11484

kottahs more or less in plot no.61 in Block HA in Sector III Salt Lake in favour of the plaintiff for a

period of 999 years with restriction on transfer and/or assignment of such demised land with a

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further restriction that the lessee shall not sub-divide or sub-let the demised land or the building to

be constructed without the consent in writing of the Government first had and obtained and the

Government shall have the right and be entitled to refuse its consent at its absolute discretion.

Consequences which will follow in case of breach of the terms and/or of the conditions and/or

covenants of the said deed, have also been indicated in the lease deed itself which provides that in case of breach of any of the terms of the said lease by the lessee, the lessor shall have the right to reenter into possession of the demised land or any part thereof and the lease will stand determined forthwith. But the said right of re-entry can only be exercised after giving six months time to the lessee to remedy the breach.

29. When the said lease was executed in 1985, the West Bengal Government Land (Regulation and Transfer) Act, 1993 was not enacted. The said Act came into operation on 4th March, 1997 when grant of Presidential assent to the said Act was published in the Calcutta Gazette, extraordinary issue.

30. It is rightly pointed out by Mr. Chakraborty that the legislature is not debarred from legislating so as to vary the effect of a crown grant, as this Court finds that such submission of Mr. Chakraborty finds support from the decision cited by him in the case of Thakur Jagannath Baksh Singh –Vs- the United Provinces reported in AIR 1946 Privy Council PC 127. In view of the said Privy Council decision, this Court holds that the West Bengal Government Land (Regulation and Transfer) Act, 1993 is applicable to all Government land in West Bengal including Salt Lake but fact remains that the operation of the said Act was kept in abeyance by a notification issued by the Government on 20th March, 1998 and the said notification was quashed by the Division Bench of this Hon'ble Court in a public interest litigation being W.P. No.1095(W) of 2008 on 19th September, 2008.

31. The agreement for licence was admittedly executed between the parties on 16th January, 2005. Thus, it is rightly pointed out by Mr. Datta, learned Advocate appearing for the opposite party that the said agreement was executed at a point of time when the operation of the said Act



remained suspended and as such, there was no illegality on the part of the parties in entering into such agreement on 16th January, 2005. Such agreement, according to Mr. Datta, cannot be held to be an illegal contract and the implementation of such contract by the parties cannot be refused by holding that such contract being hit by Section 23 of the Contract Act, is incapable of implementation.

32. This Court finds much substance in such submission of Mr. Datta as the said contract was admittedly entered into between the parties at a point of time when the operation of the said Act remained suspended and the lease deed did not restrict the lessee's right to induct licensee in such property, without the consent of the Government (lessor). A party cannot be expected to be an astrologer and as such, he cannot anticipate as to the fate of the said notification by which the operation of the Act was suspended until the aforesaid public interest litigation was decided. As such, this Court does not find any wrong on the part of the parties in entering into the said agreement at the time when the operation of the said Act remain suspended.

33. Even assuming that the said agreement for licence was executed by the plaintiff in violation of the provision of Section 8 of the West Bengal Land (Regulation and Transfer) Act, 1993 then the consequence for violation of the said provision as provided in Section 15 of the said Act will follow and under such circumstances, the State Government may take action not only against the plaintiff by enforcing its right of reentry in the said land, on termination of the lease but also may take steps to recover possession of the said land from the transferee by serving notice upon him. But in the event the lessee or the transferee makes any application to the competent authority within the period of 30 days from the service of notice giving reasons for such transfer and the competent

authority is satisfied that there is prima facie justification for such transfer, it shall cause such enquiry as it thinks fit and shall decide whether or not the transfer has been made in contravention of the provision of the said Act and shall proceed accordingly. This provision indicates that wide discretion was given to the competent authority not only to decide the legality of such transfer in the context of the facts of each individual case, but also to decide as to whether such transfer contravenes any of the provisions of the said Act and thereafter to proceed accordingly. Of course, this decision of the authority is not amenable to the jurisdiction of the Civil Court as per Section 21 of the said Act. Needless to mention here that neither any decision has been taken by the authority in this regard nor any such decision is under challenge in the suit. As such, Section 21 of the said Act does not apply here.

34. The said Act does not provide that in case of transfer of right of enjoyment of the Government land by the lessee to the tenant or licensee, the lessee will lose his right under the lease and the tenant and/or the licensee will be upgraded as a direct tenant under the State. On the contrary, the said Act makes it clear that in case of creation of tenancy and/or licensing in such Government land, the Government can take action against its lessee for transfer of right of enjoyment of the Government land to the tenant or licensee but that does not mean that the plaintiff cannot take recourse to law to recover possession from his tenant and/or licensee as the case may be, so long as the possession of the leasehold property is not recovered by the Government from its lessee by enforcing its right of re-entry as per the provision of Section 15 of the said Act. As such, this Court holds that notwithstanding any provision contained in the said Act, the suit for eviction filed by the plaintiff against the defendant for recovery of possession of the suit premises from him

on revocation of his licence is very much maintainable before the Civil Court and Section 21 of the said Act does not create any embargo upon the Civil Court's jurisdiction to decide such suit as the issues involved in the said suit can neither be decided and/or dealt with by any authority under the said Act nor the relief claimed in the suit can be granted to the plaintiff by any authority under the said Act. As such, Section 21 of the said Act, in my view, cannot stand in the way either in entertaining such suit by the Civil Court or even passing any decree therein as per law.

35. Before concluding this Court also wants to keep it on record that this Court was informed that after passing of the Division Bench judgment in the aforesaid PIL matter, West Bengal Government Land (Regulation of Transfer) Act, 1993 was amended but the amended provision of the said Act has not yet come into operation for want of notification under Section 1(2) of the said Act. This Court is also informed that even before such amendment was made, an ordinance viz. the West Bengal Government Land (Regulation of Transfer) (Amendment) Ordinance, 2009, was passed and the same was in operation for a few months, but the same was subsequently repealed by the Amendment Act and presently is not in operation.

36. Be that as it may, on overall consideration of the provisions of the aforesaid Act of 1993, this Court finds that certain additional restrictions were imposed on transfer of the Government Land by its Lessee either by way of transfer, assignment or by way of induction of tenant and/or licensee in the Government land including the building standing therein, over and above the restrictions which were imposed on certain type of specified transfer by the lessees as mentioned in the lease deed.

37. This Court presently is not concerned with the constitutional validity of imposition of such

additional restriction by way of legislation by the State to modify the contractual restriction imposed in the lease deed as per the Government Grant Act. This Court, thus, proceeds on the basis that those additional restrictions are valid and binding upon the lessees. But this much can be recorded here that the Privy Council in the case of Thakur Jagannath Baksh Singh –Vs- The Union Provinces reported in AIR 1946 Privy Council page 127 recognized the power of the legislature to legislate for verifying the effect of a crown grant.

38. Thus, even if I proceed on the basis that these additional restrictions are valid and binding upon the parties, still then, this Court holds that the said Act regulates the rights of the Government (lessor) vis-a-vis the rights of its lessee in respect of the Government grant. The said Act does not regulate the rights of the lessee of a Government grant vis-a-vis the rights of his tenant and/or licensee. As such, the contractual obligation between the lessee and his tenant and/or his licensee cannot be regulated by the said Act.

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Section 15 of the said Act makes it clear that if the transferee is found to be in possession at the time of exercising the right of re-entry by the Government (lessor), then the lessor may also take steps for recovery of possession from such transfer as per the provision made therein. But if it is found that the transferee is not in possession at the relevant time when such right of re-entry is exercised, the State Government need not take any step against the transferee. This provision shows that such right of re-entry can be exercised by the Government notwithstanding the fact that the transferee is in actual possession of the demised property or not at the relevant time. The said Act has not imposed any restriction on the lessee's right in recovering possession from his transferee in accordance with law. Nor the said Act provides that in case of creation of tenancy and/or licence by such lessee in contravention of the said Act, tenant and/or licensee will be upgraded to the position of the inducting landlord/licensor.

39. Thus, this Court concludes by holding that though the present suit is not barred under Section 21 of the said Act, but the maintainability of the said suit can be challenged on a different score by proving that the defendant, in fact, was inducted as a tenant and not as a licensee in the suit premises. But while doing so the parties should bear in mind the principle of Section 116 of Evidence Act which provides that the title of the inducting landlord/licensor cannot be challenged by the tenant/ licensee. Since the dispute as to whether the defendant is a licensee or a tenant cannot be resolved without trial on evidence, such dispute cannot be decided as a preliminary issue.

40. As such, the petitioner's prayer for transfer of this suit to the High Court itself, for deciding the said suit on the ground of the maintainability as a preliminary issue, does not seem to this Court as justifiable.

41. Under such circumstances, this Court does not find any justification to allow the petitioner's prayer to transfer of the said suit as this Court neither can hold that the Presiding Judge showed his biased attitude towards the defendant in conducting various interlocutory proceedings in the said suit nor this Court can hold that any complicated question of law involving public importance which still remains undecided either by this Court or by the Apex Court, is required to be decided by the learned Trial Judge in the suit. On considering the overall performance of the Presiding Judge from the orders which were referred to by the petitioner, this Court cannot come to the conclusion that the Presiding Judge is incompetent to decide the issues involved in the said suit.

42. The manner in which the progress of the said suit was stalled by the petitioner by filing repeated unnecessary application even at the peremptory stage, gives an impression to this Court that the defendant, in fact, wants to prolong the litigation for an unknown duration in order to reap

benefit out of such delayed progress in the suit.

43. Accordingly, this Court thinks that it is a fit case which deserve rejection with exemplary costs of Rs.20,000/- to be paid by the petitioner to the plaintiff/opposite party and the payment of such costs is a condition precedent for his further participation in the suit for contesting the same. Such cost should be paid within two weeks from date.

44. It is, however, clarified that the observation and/or findings with regard to merit of the suit as well as the issues involved therein which are made hereinabove are all final so far as this application is concerned but those are all tentative and/or prima facie findings of this Court so far as the suit is concerned. As such, the learned Trial Judge is absolutely free to decide the said suit on its own merit without being influenced by any of the observations and/or findings made by this Court with regard to the merit of the suit hereinabove. Urgent xerox certified copy of this order, if applied for, be given to the parties, as expeditiously as possible.

**( Jyotirmay Bhattacharya, J. )**

Later

After delivery of judgment Mr. Chakraborty, representative of the petitioners prayed for stay of operation of the order. Such prayer for stay is opposed by the learned Advocate for the opposite party. Having considered the petitioner's prayer for such stay, this Court refuses to grant stay of the operation of the judgment/order.

**( Jyotirmay Bhattacharya, J. )**