

Constitutional Writ

Present: The Hon'ble Mr. Justice Jayanta Kumar Biswas.
Judgment on: March 17, 2010

W.P. No. 16410 (W) of 2009
Smt. Deepa Chakroborty & Ors.

v.

The State of West Bengal & Ors.

POINTS:

Transfer of Lease----Transfer of leasehold land in Salt Lake, Bidhan Nagar-----Policy of the Government-----Permission to transfer, whether to be decided on the basis of Government's policy decision---No----Land Acquisition Act, 1894.

FACTS:

Plots were allotted for commercial and industrial use in Bidhan Nagar Sector V, Salt Lake. Original allottees failed to use the said land for the purpose of allotment given to them. Policy decision of the Government was modified in May 2006, allowing allottees to transfer and sell balance lease hold rights to third parties on terms and conditions stated in the policy. On being refused to transfer the land, the Petitioner challenged the action of the Respondents.

HELD:

On the date the Petitioners submitted application seeking permission to transfer their leasehold of the plot the lease and the policy decisions of the Government were in force. The question is whether the official concerned of the Government could refuse the Petitioners permission to transfer their leasehold of the plot.

PARA----7

The Government's policy decision no. 1722 dated May 6, 2005, deals only with the question of permission to change the project. It is a decision taken by the Government in terms of cl.2(9) of the lease. On the contrary, the policy decision no.1721 dated May 6, 2005, taken in terms of cls.2(6)(a) and 2(8) of the lease deals only with the question of permission to transfer the leasehold of the plot. It is evident that the one has no connection with the other.

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The Court therefore, is unable to accept the argument that the question of permission to transfer the leasehold of the plot was to be decided on the basis of the Government's policy decision no. 1721 dated May 6, 2005, read with the Government's subsequent policy decision no. 1722 dated May 6, 2005. Under the circumstances, the Court is of the view that the official giving the decision was wrong in refusing the petitioners permission to transfer the leasehold of the plot.

PARAS---10&11

Mr Saktinath Mukherjee, senior advocate,
Mr Aniruddha Chatterjee and Mr SrijobChakraborty for the petitioners.
Mr Sandip Srimani and Mr Amitava Chowdhury for the state.

The Court: -

1. The petitioners in this art.226 petition dated September 9, 2009 are aggrieved by the decision stated in the letter of the Joint Secretary to the Government of West Bengal, Urban Development Department dated July 16, 2009, Annexure P11 at p.63. The contents of the letter are quoted below:

“In response to your letter dated 24th March, 2009 on the subject noted I am directed to inform you that formal possession in respect of Plot No. EN-24 Sector-V of Salt Lake was handed over to its lessees i.e., the partners of M/s. Crystal Clear Filtration on 5th September, 2006. And since then the lessee firm has not shown any interest for proper utilization of the said plot of land in question.

Moreover, the cause as cited by the lessees in their letter dated 11th February, 2009 is not at all convincing and acceptable to the Government. Again, no proposal for change of land use purpose in lieu of original purpose has been received from the lessees for effective utilization of the said plot of land.

So, it is crystal clear from the correspondences made by the lessees from time to time that they only wanted to use the plot for pecuniary gain and the lessees lack initiative to utilize the demised plot of land on their own which goes against the intention of the Government toward small entrepreneurs.

Hence, the Government’s decision in this regards as intimated vide this Department’s letter No. 849-UD dated 6th March, 2009 still stands.”

Mr Mukherjee, counsel for the petitioners, submits that in view of the policy decision of the government no.1721-UD/O/M/SL(AL/NR)/8L-8/2004(pt.) dated May 6, 2005 the official giving the decision was wrong in refusing the petitioners permission to transfer their leasehold of the plot. The contents of the policy decision no.1721 dated May 6, 2005 are quoted below:

“It has come to the notice of the Government of West Bengal that quite a good number of industrial/commercial plots and industrial/commercial plots with industrial/commercial units in Bidhannagar are still lying unutilized although the lessees had taken delivery of possession of such plots of land from the Government long ago. In some cases, the lessees of industrial/commercial plots become unable to carry on their industrial/commercial units any longer.

2. Sometimes many of the lessees approached the Government for permission to transfer their plots of land to other entrepreneurs for various reasons. One of the major reasons being their financial inability to implement the project or to carry on their projects further. The Government has been dealing with such proposals case by case according to their merit. The process becomes lengthy and time consuming. The plots of land, in the process, remain unutilised although there is a huge demand for land for expansion of industries in the State.

3. In order to streamline the entire process and to ensure that all the unutilised plots of industrial and commercial land and industrial and commercial land with industrial/commercial units in Bidhannagar are put to effective use in all manners, the Governor has been pleased in terms of clause 2(8) and clause 2(6)(a) of the lease-deed or the relevant clause of the lease-deed restricting transfer to order that the Government of West Bengal shall allow the lessee of Bidhannagar industrial/commercial plots of land and industrial/commercial land with

industrial/commercial units either partly or wholly to others for the unexpired period of lease-term subject to certain conditions laid down hereinbelow. The Governor has further been pleased to order that for the aforesaid purpose the words “the lessee” shall mean proprietor (s)/partner(s)/private limited company/public limited company and “the transferee” shall mean proprietor(s)/partner(s)/private limited company/public limited company. To seek the permission of the Government to transfer his leasehold right to others, the lessee shall have to apply to the Principal Secretary to the Government of West Bengal, Urban Development Department, “Nagarayan”, DF-8, Sector-I, Bidhannagar, Kolkata -700 064 specifying the reasons for such transfer. The transfer of the above leasehold right to the close-blood relations will, however, continue to be governed by the order which is already in force.

4. The Governor is also pleased to order that if such permission is granted by the Government of West Bengal in the Urban Development Department for transfer of leasehold right to others by the lessees of the afore-mentioned plots all the terms and conditions of the original lease deed executed between the Government of the State of West Bengal and the lessee (here the transferor) of the industrial/commercial land and industrial/commercial land with industrial/commercial units shall apply to the transferees of such plots. The Governor is further pleased to order that the lessees shall have to deposit an amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only per cottah for industrial plots and Rs.3,00,000/- (Rupees three lakhs) only per cottah for commercial plots as permission fee before the final permission order is issued by the Government.

5. The Governor is also pleased to order that if there is subsequent further transfer of leasehold right of the same plot, the same terms and conditions and the procedure as mentioned in this notification shall apply. In the event such permission/order is issued by the Government, the character of the land (industrial/commercial) shall have to be retained by the transferee of the leasehold right. A deed of transfer shall have to be executed between the transferor and the transferee and the said executed deed should be registered at the Office of the Addl. Dist. Sub-Registrar, Bidhannagar or the District Registrar/Addl. Registrar of Assurances those are concerned with due approval by the Government in the Urban Development Department. On production of the certified copy of the transfer-deed to the Government by the transferor of such leasehold right, the Government shall issue the necessary mutation order.

6. The Government is further pleased to order that for the purpose of registration of the transfer-deed usual rules shall be followed and in no case concession shall be allowed. The head of account under which the permission fee shall have to be deposited by the transferor to get permission for transfer of the leasehold right of his land/land with industrial and commercial units from the Government will be communicated in due course in each such final permission order.”

Mr Srimani, counsel for the state, submits that in view of the government’s subsequent policy decision no. 1722-UD/O/M/SL(AL/NR)/8L-8/2004(pt.) dated May 6, 2005 the official giving the decision was justified in refusing the permission. The contents of the policy decision no. 1722 dated May 6, 2005 are quoted below:

“It has come to the notice of the Government of West Bengal that quite a good number of industrial plots in Sector-V and commercial plots in Sector-V and outside Sector-V of Bidhannagar are lying unutilised even after the delivery of possession of the said plots to the

lessees were made long ago. It has also come to the notice of the Government that a good number of such industrial and commercial plots with industrial/commercial units are lying unused in Sector-V and outside Sector-V of Bidhannagar.

2. While examining the reasons for such a situation, it has been found that many of the lessees have failed to utilise the plots of land allotted to them because the project for which the land was allotted has now become outdated and economically unviable. Many of the lessees approach the Government for permission to change the project for which the plots were allotted to them. The Government deals with such proposals case by case according to their merit.

3. In order to streamline the entire process and to ensure that all the unutilised industrial and commercial plots of land and industrial and commercial lands with industrial/commercial units are put to effective use, the Governor has been pleased in terms of clause 2(9) of the lease-deed to order that the Government of West Bengal in the Urban Development Department shall allow the lessee or a transferee of leasehold right to change his old project for which the land was allotted to him/her subject to the observance of the formalities mentioned hereinbelow.

4. The lessee of a land or a transferee of leasehold right of a land in Bidhannagar industrial and commercial plots, if they intend to change the original purpose of allotment, shall have to apply to the Government seeking such permission. The Government of West Bengal in the Urban Development Department shall examine the proposal and if it is found suitable, shall allow such change of purpose subject to payment of fees at the following rates and execution and registration of a deed of rectification to the original lease-deed following the usual rules of registration of the Government:

(i) Rs.10,000/- (Rupees ten thousand) only per cottah if an I.T. related project is proposed.

(ii) Rs. 20,000/- (Rupees twenty thousand) only per cottah for non-I.T. projects.

In no case any concession of registration fees shall be allowed.

5. The Governor is also pleased to order that in this case the character of the land (industrial/commercial) shall have to be retained and cannot be changed.

6. The Governor has further been pleased to order that for each subsequent change of purpose all the terms and conditions and the procedure as mentioned in this notification shall apply.”

7. The admitted position is that at the date the petitioners submitted application seeking permission to transfer their leasehold of the plot the lease and both the above-mentioned policy decisions of the government were in force. The question is whether for the reasons set out in the impugned decision the official concerned of the government could refuse the petitioners permission to transfer their leasehold of the plot.

8. It is evident from the government's policy decision no. 1721 dated May 6, 2005 that the government decided to permit the transfer of leasehold of plots such as the one leased out to the petitioners subject to the conditions laid down in the decision itself. None of the grounds mentioned in the impugned decision has anything to do with the conditions laid down in the policy decision of the government no. 1721 dated May 6, 2005. The policy decision does not provide that permission to transfer the leasehold of a plot is to be refused if the lessee (a) does not submit a proposal for change of land use purpose in lieu of the original purpose, or (b) wants to make pecuniary gain, or (c) did not take any initiative to utilise the leased plot. But these are the grounds on which the permission has been refused. It is not the case of the respondents that

the petitioners do not satisfy any condition laid down in the policy decision of the government no. 1721 dated May 6, 2005.

9. According to Mr Srimani, the question whether permission to transfer should be granted is to be decided on the basis of the government's policy decision no. 1721 dated May 6, 2005 that is to be read with the government's subsequent policy decision no. 1722 dated May 6, 2005.

10. The government's policy decision no. 1722 dated May 6, 2005 deals only with the question of permission to change the project. It is a decision taken by the government in terms of cl.2(9) of the lease. On the contrary, the policy decision no. 1721 dated May 6, 2005 taken in terms of cls.2(6)(a) and 2(8) of the lease deals only with the question of permission to transfer the leasehold of the plot. It is evident that the one has no connection with the other. I am, therefore, unable to accept the argument that the question of permission to transfer the leasehold of the plot was to be decided on the basis of the government's policy decision no. 1721 dated May 6, 2005 read with the government's subsequent policy decision no. 1722 dated May 6, 2005.

11. Under the circumstances, I am of the view that the official giving the decision was wrong in refusing the petitioners permission to transfer the leasehold of the plot. The question whether a request for permission under the government's policy decision no. 1722 dated May 6, 2005 will be made by the lessee is a matter of speculation at present. Needless to say that if a request is made, then the government will be free to deal with it according to law.

12. For these reasons, I allow the petition, set aside the impugned decision and issue a mandamus commanding the respondents to grant the petitioners permission to transfer their leasehold of the plot in question within a fortnight from the date of communication of this order. No costs. Certified xerox.
(Jayanta Kumar Biswas,