IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 2129 of 2020
With
I.A. No. CAN 5 of 2026

Shrawan Kumar AGarwal
-Versus-
The West Bengal Housing Board & Ors.

For the Petitioners	**:**	**Mr. Arindam Banerjee, Sr. Adv.,** **Ms. Sulagna Mukherjee,** **Mr. Rohit Chowdhury.**
For the WBHB	**:**	**Mr. Tapan Coomar Dey.** : **Ms. Shreya Chatterjee.**
Heard on		**: 19.11.2026**
Judgment on		**: 19.11.2026**

Partha Sarathi Sen, J.:-

1. The subject matter of challenge in the instant writ petition is the Memo dated 19.09.2019 as issued by the respondent Housing Board whereby and whereunder a previous Memo dated 29.10.1997 as issued by the self-same Board was revoked on the ground that the original allotment

as made in the name of one Jayanta Kumar Basu remained no longer the owner of the flat no. A-3, GGUC complex.

2. For the effective adjudication of the instant writ petition some relevant facts as involved in the instant writ petition are required to be dealt with which are as under:-

    a. At one material point of time, one Jayanta Kumar Basu and one Anita Basu were the joint owners of the flat no. A-3 in a multi-storied building at Galf Green Urban Complex.

    b. On 19.11.1992 the said Mr. and Mrs. Basu, made an application with the respondent Housing Board for allotment of a car parking space in the self-same housing complex and along with their application they have deposited Rs.7,000/- by way of a cheque.

    c. On 18.12.1992 the respondent Housing Board issued an allotment letter in respect of car parking space no. BG-3 in favour of Mr. and Mrs. Basu provisionally subject to fulfillment of certain conditions.

    d. On 29.10.1997 the respondent Housing Board decided to allot car parking space no. BG-9 at the said residential complex in the name of Mr. Basu

and the said Board expressed their intention to prepare the deed of conveyance in connection with the execution and registration of the said car parking space in due course.

e. By a registered deed of conveyance dated 30.03.1993 the said Mr. and Mrs, Basu conveyed and transferred apartment no. 3-A in favour of the present writ petitioner and soon thereafter the present writ petitioner came into possession of the said apartment by virtue of a registered deed of conveyance.

f. By issuing a letter dated 30.03.1993, the said Mr. and Mrs. Basu assured the writ petitioner that they will handover the car parking space to the writ petitioner as and when the same would be allotted to them by the Board.

g. By the impugned memo, the respondent Housing Board declined to allot BG-3/BG-19 car parking space in favour of the vendors of the writ petitioner, for which the writ petitioner is aggrieved on account of the fact that with the decision of the respondent Housing Board, he is being deprived of getting

possession of the said car parking space, being BG-19/BG-3.

3. In course of his argument, Mr. Banerjee, learned senior advocate appearing on behalf of the writ petitioner, contended that on careful perusal of the Deed of Conveyance dated 30.03.1993 read with the allotment letters dated 18.12.1992 and 29.10.1997, as have been issued by the respondent Housing Board in favour of the vendors of the present writ petitioner, it would reveal that by the operation of the said transfer, the allotment as made by the respondent Housing Board in favour of the writ petitioner in respect of the aforementioned car parking space automatically passes with the apartment as sold and conveyed to the writ petitioner.

4. It is submitted by Mr. Banerjee that by issuing the impugned memo, the respondent Board has made an attempt to curtail the right, title, and interest of the present writ petitioner to get the said allotment in his favour, and such an action on the part of the respondent Housing Board is contrary to the principles of the Transfer of Property Act, 1882 ("the said Act" in short), more specifically Section 8 thereof.

5. It is further argued by Mr. Banerjee that when the respondent Housing Board has issued an allotment letter in favour of the vendors of the present writ petitioner in respect of the car parking space number BG-3/BG-19 in the self-same housing complex and

when, by virtue of purchase of the apartment number A3, the writ petitioner steps into the shoes of his vendor, that is, Mr. and Mrs. Basu, there cannot be any difficulty to construe that the writ petitioner is entitled to allotment of the aforementioned car parking space which was allotted in favour of their vendors, especially when the present writ petitioner is agreeable to pay the requisite consideration money to the respondent Board as well as the requisite stamp duty and registration charges for conveying the said property, that is, the car parking space.

6. Mr. Banerjee thus submits before this Court that this is a fit case for granting the reliefs as prayed for by the writ petitioner. It is further submitted by Mr. Banerjee that appropriate relief/reliefs may be granted to the writ petitioner in terms of the prayers made in the interlocutory application being CAN 5 of 2026.

7. Mr. Dey, learned advocate appearing on behalf of the respondent Housing Board, in course of his submission, contended that the writ petitioner is not entitled to the reliefs as prayed for either in the instant writ petition or in the pending interlocutory application being CAN 5 of 2026, inasmuch as the writ petitioner has miserably failed to substantiate that with the passing of the right, title and interest of the vendors of the writ petitioner in favour of the writ petitioner in respect of the apartment number 3A in the said complex, the writ petitioner is also entitled to allotment of any car parking space. In

course of his submission, Mr. Dey draws the attention of this Court to the schedule of the Deed of Conveyance dated 30.03.1993. He says that in the said schedule, there is no whisper regarding transfer of any car parking space in favour of the writ petitioner by his vendors.

8. This Court has meticulously gone through the entire materials as placed before it. This Court has given its due consideration over the submissions of the learned advocates for the contending parties.

9. Since in course of his submission, Mr. Banerjee, learned senior advocate, places much reliance upon Section 8 of the Transfer of Property Act, 1882 ("the said Act", in short), this Court proposes to look to Section 8 of the said Act, which is reproduced hereinbelow in verbatim:-

> *"8.* ***Operation of transfer****:- Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.*
>
> *Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;*

and, where the property is machinery attached to the earth, the movable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows, and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

10. On careful perusal of the provision of Section 8 of the said Act, it appears to this Court that it is the intention of the legislature that upon transfer of a property, the transferee of such property immediately gets the said property and the legal incidents thereof. In the said section, the said legal incidents have been well explained and described, namely; the easement annexed to the said property, the rents and profits thereof accruing after the transfer, and all things attached to the earth, and where the property is a house, the easement annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, etc., provided for the permanent use of the said property, etc.

11. Keeping in mind the aforementioned legislative enactment, if I look to the factual aspects as involved in the instant writ petition, it appears that by virtue of the registered deed of conveyance dated 30th March, 1993, the Apartment No. 3A on the third floor in the aforementioned housing complex, consisting of bedrooms, kitchen, verandah, dining, and toilet, along with all fittings and furniture of the said apartment, was conveyed and transferred to the writ petitioner. The said schedule however does not speak about any car parking space.

12. In course of his argument, Mr. Banerjee, in his usual fairness, did not say that the said car parking space, which is proposed to be transferred to the writ petitioner's vendor, became part and parcel of the property conveyed; rather, it was contended that the said car parking space, which was proposed to be conveyed in the name of the vendor of the writ petitioner, ought to be allotted to the writ petitioner on account of the purchase of the said apartment in view of the provision of Section 8 of the said Act.

13. This Court considers that such argument as advanced on behalf of the writ petitioner is not tenable since the writ petitioner has miserably failed to substantiate that the car parking space, which is the subject matter of the instant writ petition, is an inseparable incident of the property which has been conveyed to the writ petitioner, and that the said car parking space forms an incident of the property within the meaning of Section 8 of the said Act. Materials have been placed before

this Court that though the respondent Housing Board agreed to allot the aforementioned car parking space in the name of the vendors of the present writ petitioner, for some reason or other, such transfer of the car parking space could not be effected. In the considered view of this Court, in the event, on account of non-transfer of the said car parking space, if anybody is aggrieved, that is the vendors of the writ petitioner, and by no stretch of imagination it can be said that the writ petitioner is aggrieved.

14. In other words, this Court is constrained to hold that on account of transfer of Flat No. A3 in the said housing complex in favour of the writ petitioner, the writ petitioner cannot claim allotment of the aforementioned car parking space, which was proposed to be transferred in the name of the vendors of the writ petitioner, since neither the respondent Housing Board conveyed the said car parking space in favour of the vendors of the writ petitioner, nor does the schedule of the registered deed of conveyance as executed in favour of the writ petitioner make any whisper regarding the automatic transfer of car parking space along with the transfer of Apartment No. 3A.

15. In view of the discussion made hereinabove, this Court finds no merit in the instant writ petition. Consequently, W.P.A. No. 2129 of 2020 is hereby dismissed.

16. Consequently, CAN 5 of 2026 is also dismissed.

17. Consequently, the interim order as passed earlier and as has been extended time to time stands hereby vacated. There shall be no order as to costs.

18. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Partha Sarathi Sen, J.)

SM [AR(C)]