

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR

WP No. 6832 (W) of 2008

Dr. Samar Sengupta

-Vs.-

The State of West Bengal & Ors.

For the Petitioners : Mr. Arabinda Chatterjee
Mr. Mohan Ojha
Mr. Arkadipta Sengupta

For the State-Respondents. : Mr. T. M. Siddiqui
Mr. S. S. Siddiqui

Heard on : 24/09/2019

Judgment on : 25/09/2020

Subrata Talukdar, J:

The short question which arises for consideration in this judgement is whether the offer of allotment made by the Urban Development Department (*UDD*), Government of West Bengal (erstwhile Metropolitan Development Department) of a residential Plot of land at Salt Lake, Kolkata (for short the said Plot or the Plot) on the 30th of October, 1981 is void *ab initio* since the petitioner *then* was admittedly *a Minor*.

The petitioner argues through Mr. Arabinda Chatterjee, Learned Senior Counsel assisted by Mr. Arkadipta Sengupta, Learned Counsel, that the *UDD* took all steps in furtherance of the Offer Letter dated 30th of October, 1981. The petitioner was asked to submit several documents in support of his application for allotment and to deposit *salami* in connection with the allotment, which the petitioner did through his father. The petitioner also submitted undertaking for payment of the *salami* by his father.

It is submitted that all deposits and/or payments connected to the plot were duly received by the *UDD* without demur. It is also submitted that there was no suppression of the age of the petitioner since all particulars, including the date of his birth which is 21st November, 1968, was forwarded to the *UDD* by the father of the petitioner at the time of applying.

Ld. Counsel for the *petitioner* also submits that in 1987, when the petitioner had become *Major* or, in other words, attained majority, the *UDD* called upon the petitioner to deposit arrear *salami* and/or arrear payments connected to the said Plot. The petitioner acted in terms of such communication by depositing the arrear payments with the *UDD* which was accepted. It is submitted that with the raising of the arrear demand by the *UDD* and compliance of the demand by the petitioner at a period when he had attained majority, the purported lapsed allotment stood revived and the contract stood *novated*.

For the above stated reasons, the communication of the *UDD* dated 26th February, 2007 is impugned in this writ petition, by which

the Letter of Allotment (*LoA*) dated 30th October, 1981 stood cancelled on the ground that, as on the date of the allotment, the petitioner was incompetent to contract being a Minor aged only 12 years, 11 months and 9 days.

Appearing for the *UDD*, Mr. T. M. Siddiqui, Learned Senior Government Advocate assisted by Mr. S.S. Siddiqui, Learned State Counsel, submits that the provisions of the Indian Contract Act, 1872 (for short the Contract Act) prohibit a *Minor* from entering into a contract. It is submitted that admittedly the petitioner was *Minor* at the time of submitting his application for allotment of a Plot. The *LoA* was issued in the name of the petitioner and, not in favour of his natural or legal guardian acting on behalf of the *Minor*.

It is submitted that it is not the case of the petitioner that the natural and/or legal guardian entered into the contract on behalf of the petitioner with the *UDD*. The payment of *salami* as well as the furnishing of the particulars of the petitioner by his father were incidental acts which lost their validity once the contract itself was found to be void *ab initio*.

Ld. State Counsel defends the impugned order dated 26th February, 2007 alleging that there cannot be a *novation* of contract in a situation where the contract itself is not recognized in law. The contention of the petitioner that the payment of additional *salami* and/or the arrear payments which were deposited in 1987 when the petitioner was admittedly *Major*, cannot apply to a *void* contract. The same contract, being *void ab initio*, is incapable of being renewed

and/or *novated* at/for a subsequent period treating the petitioner to be *Major*.

At this stage of the discussion, this Court reminds itself of the statutory provision defining Section 11 of the Contract Act which, reads as follows:-

“Who are competent to contract- Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by and law to which he is subject.”

From a plain reading of Section 11, it is transparent that any person who is a *Minor* in law to which such person is subject, is *not competent to contract*. Since the petitioner purported to enter into a contract with the *UDD* at a stage when he was admittedly *Minor*, it does not stand to reason that at a subsequent period when the *UDD* proceeded to notify and accept deposits pertaining to the original contract, a *void* contract could become subsequently legal.

This Court thus reiterates that with the competence to contract by the petitioner during his *Minorityship* being barred or, *void* in terms of Section 11 of the Contract Act (*supra*), the contract and, any step taken in furtherance thereof inclusive of any subsequent undertaking, is a *nullity*.

On a parity of reasoning as discussed above, a contract being *void ab initio* is incapable of being ratified at a subsequent stage or, *novated*. To the mind of this Court, contrary to what has been submitted on behalf of the petitioner, the expressions *ratification* and *novation* work at cross-purposes at least when applied to the present

facts. *Ratification* would mean and imply *reiteration* (of the terms) of a *void* contract and, *novation* would mean and imply giving new terms to a *void* contract. Both the above noted principles fail to carry legal basis in the present case.

Apropos the above discussion, this Court respectfully finds the proposition of law, relied upon by Learned Senior Counsel for the petitioner *In Re: Sri Kakulam Subrahmanyam and Anr. vs. Kurra Subba Rao*, 61 LW (Privy Council) page 441 to be distinguishable *apropos* the present facts. Considering the *Minorityship* of the petitioner proposing to enter into a contract with the UDD, the *voidness* of such action cannot be converted into an actionable, legal claim on the ground of subsequent steps taken *qua* the original contract during the *Majorityship* of the petitioner.

In the backdrop of the above discussion, this Court neither finds Section 62 nor, Section 68 of the Contract Act to be applicable in the present facts. The petitioner cannot now argue that the contract related to extending *necessaries of life* to a *Minor* against reimbursement for such supplies claimed by the person who had extended the necessities.

In support of its findings (*supra*), this Court finds legal sustenance from the majority judgement *In Re: Suraj Narain Dube vs. Sukhu Aheer & Another*, reported in AIR 1928 Allahabad 440, which is extracted below:-

“I would add that where the legislature has declared an infant incompetent to contract, has declared his agreements void, and has pointedly refrained from declaring them to be merely voidable

contracts, and from giving him any power of ratification, it would take very cogent reasons to compel me, were I in doubt, which I am not, to admit a creditor by a back door where the legislature had closed the front. That is, however, only a question of expediency and public policy I am of opinion that the law also forbids it.

On the broad principle of expediency it is urged.

“Why should an adult be unable, having reached maturity, to tame a binding promise to pay money he had actually received.

To my mind there is every reason. A lender would be able to advance money to an inexperienced boy, knowing that, as soon as the boy became of age, he, the lender, could use as a lever to extract a fresh promise the argument that it was a debt of honour and shame him into making a fresh promise to discharge an obligation which he had incurred at a time when, ex hypothesi, he was not capable of judging for himself.

I would dismiss the application.”

On a parity of reasoning, no relief can be extended to the writ petitioner.

WP No. 6832 (W) of 2008 stands accordingly **dismissed**.

Parties are permitted to act on a server copy of this order downloaded from the official website of the Hon’ble Court.

Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

(Subrata Talukdar, J.)

