

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**CPAN 347 of 2020
IN
WPA 74 of 2020
IA No: CAN 1 of 2020
(Old No: CAN 3450 of 2020)
CAN 2 of 2021**

**Gurupada Khatua and others
Vs.
Onkar Singh Mina and others**

For the petitioners/applicants	:	Mr. Yamin Ali, Mr. Nirmalendu Bera, Mr. Gora Chand Samanta
For the State-respondents	:	Mr. Anirban Ray, Mr. Sk. Md. Galib, Ms. Subhra Nag
Hearing concluded on	:	12.07.2021
Judgment on	:	19.07.2021

Sabyasachi Bhattacharyya, J:-

1. CAN 2 of 2021 has been filed by the State-respondent for recall of an order dated February 11, 2020 passed by this Court in WPA 74 of 2020. In the said order, a direction was given on the respondent no.2 in the writ petition to immediately take steps for disbursal of the requisite amount to implement the scheme under the "Gitanjali Housing Scheme" to the concerned Zilla Parishad for implementation

of the same in respect of the petitioners and other persons placed in a similar situation. The respondent no.2 therein was directed to take steps immediately to ensure that such amount reached the concerned Zilla Parishad latest by two months from that date. Respondent no.4 was directed to implement the Scheme in respect of the petitioners at the earliest after receiving such amount from the end of the respondent no.3.

2. Liberty was also given to the writ petitioners to approach this Court further in the event either of the directions was not complied forthwith.
3. Although the State was represented when the writ petition was disposed of on February 11, 2020, learned counsel for the State/recall applicant submits that since no affidavits were invited in the matter, counsel did not have sufficient opportunity to take appropriate instruction in the matter. It is contended that "Gitanjali Housing Scheme" was already scrapped and disbursal of amounts under such head had been stopped, even prior to the order dated February 11, 2020.
4. Despite such handicap, it is contended by the State that the respondents in the writ petition tried their level best to accommodate the writ petitioners in any other housing scheme prevalent at the relevant juncture. However, since all the State housing schemes had reached an advanced stage in view of applications under the said schemes having been accepted and already processed, the writ

petitioners could not be accommodated in any of the then available schemes.

5. Learned counsel appearing for the writ petitioners/opposite parties in the recall application submits that this Court had directed the writ petitioners to be accommodated under the “Gitanjali Housing Scheme” considering the suffering of the petitioners, who are victims of the Cyclone “Aila”. Hence, it was the duty of the State and its officers to carry out the order dated February 11, 2020. It is pointed out that CPAN 347 of 2020 has also been filed by the writ petitioners, contending that the respondents in the writ petition, including the present applicants, wilfully and deliberately violated the solemn order of this Court dated February 11, 2020.
6. Upon hearing both sides and considering the materials-on-record, it is seen that the respondents in the writ petition bearing WPA 74 of 2020, did their best to comply with the order dated February 11, 2020. Several communications between the various departments of the State as well as other competent officers have been disclosed and annexed to the recall application, which clearly indicate that no leaf remained unturned in a bid to include the writ petitioners within the purview of other existent housing schemes. However, for the reasons discussed above, the writ petitioners could not be accommodated in any such scheme.
7. It is rightly contended by learned counsel for the present applicant that, on the date of passing of the order under recall, that is, February

11, 2020, the “Gitanjali Housing Scheme” no longer existed and there was no opportunity to allocate funds afresh for the said non-existent scheme.

8. However, it was observed in the order dated February 11, 2020 that the premise of the direction given therein was the immense suffering of the writ petitioners, who come from the weaker sections of the society and have suffered the pangs of being rendered homeless due to the Cyclone “Aila”.
9. Although it is rightly contended that the writ petitioners could not be accommodated in any of the existent housing schemes, on which sufficient materials have been produced along with the recall application, the right of the writ petitioners to have a roof over their head and the privacy of a home, however small, to accommodate their families and belongings to save the writ petitioners from the vicissitudes of Nature, particularly in pandemic times, is an integral part of the right to life, enshrined under Article 21 of the Constitution of India. The writ petitioners have a right to be treated at par with other victims of the same Cyclone and the more financially well-to-do members of the society to lead a proper life, which is a fundamental right under Article 14 of the Constitution and includes the right to have a shelter to call ‘home’. The conferment of the right is not merely by virtue of Article 21, read with Article 14 of the Constitution of India, but is an inherent right of a citizen of any civilised nation. Hence, it is the duty of the State, which is in charge of the

administration of the concerned State as well as of the well-being of all its citizens, irrespective of financial status and/or other distinguishing criteria. Thus, the spirit of the order dated February 11, 2020, which was to grant relief to the victims of the Cyclone, has not yet been satisfied.

- 10.** Although it is well-settled that courts cannot enter into the domain of the Executive by imposing their own views on how the Executive will run the administration, yet, such non-interference is subject to the rider that the basic fundamental rights of all the citizens are protected, not merely by lip-service but in reality.
- 11.** The allocation of funds of a particular scheme or the floating of new schemes is totally within the domain of the State and the Court does not have any intention of entering into the nitty-gritties thereof.
- 12.** However, in order to ensure that the rights guaranteed to the writ petitioners under Articles 14 and 21 of the Constitution of India are protected properly, it is the duty of the State-respondent to cater to the needs of the unfortunate 'Aila' victims.
- 13.** Hence, although the order dated February 11, 2020, cannot be implemented to the letter in view of the circumstances as discussed above, the spirit of the same can easily be carried out by the State, which is in charge of the public coffers and has to ensure that sufficient alternative accommodation and rehabilitation of the writ petitioners and other 'Aila' victims are provided for.

- 14.** Accordingly, CAN 2 of 2021 is disposed of by modifying the order dated February 11, 2020 to the extent that the respondents in the writ petition, including the applicants in the present recall application, shall take steps on an urgent basis to rehabilitate the writ petitioners and other legitimate claimants of such rehabilitation due to the devastation caused by the Cyclone “Aila”. Accordingly, the review applicants shall ensure, either by floating a new scheme or by allocating further funds for the remainder of the “Aila” victims, including the writ petitioners, to be accommodated and/or compensated sufficiently for the loss caused by the devastation caused by the natural disaster, “Aila” to whom the benefits of the then existing housing scheme could not be extended. Such rehabilitation process should be initiated immediately and must be completed within four months from this date, upon ensuring that such relief is granted to eligible candidates, who are actual victims of the “Aila” Cyclone. Necessary funds shall be allocated by the State, under whichever head the State deems fit, for the above purpose.
- 15.** In view of the aforesaid findings, CPAN 347 of 2020 is consequentially dismissed, since no wilful and deliberate contumacious act of the alleged contemnors could be established by the writ petitioners.
- 16.** The parties shall act on the written communication by the learned advocates, accompanied by server copies of this order, without insisting upon prior production of a certified copy. There will be no

order as to costs, in either the recall application or the contempt application.

- 17.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)