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W.P.A. 1484 of 2022
(Santanu Ssengupta & Anr. vs. State of West Bengal & Ors.)

Mr. Samim Ahammed
Mr. Arka Maiti
Ms. Gulsanwara Pervin
.... For the Petitioners

Mr.Chandi Charan De
Mr. Anirban Sarkar
.... For the State

Mr. Satyajit Talukder
Mr. Abhishek Sarkar
.... For the KMDA

Learned counsel appearing for the petitioners submits that during pendency of the writ petition, the deed of conveyance has been registered by the Authority. Accordingly, besides the alternative relief claimed by the petitioners, other prayers in the writ petition are redundant.

Challenging the alternative relief claimed by the petitioners directing the KMDA to pay the penal interest paid by the petitioners before the registering Authority, learned counsel for the KMDA has submitted that the claim of the petitioners is purely a money claim, which cannot be entertained by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

Learned counsel has placed reliance on the decisions of the Hon'ble Supreme Court in ***Godavari Sugar Mills Limited vs. State of Maharashtra and Others*** reported in ***(2011) 2 Supreme Court Cases 439*** and in ***Joshi Technologies International INC. vs. Union of India & Others*** reported in ***(2015) 7 Supreme Court Cases 728*** . Therein the Hon'ble Supreme Court has observed that a writ of mandamus for the purpose of refund of money, in other words, a money claim is not normally to be entertained by a writ Court except in exceptional circumstances. The aggrieved party seeking relief should approach the civil Court for redressal of his claim. Learned counsel also relies upon a decision of a co-ordinate Bench of this Court passed on April 26, 2017 in W.P. 11273(W) of 2017 which says that adjudication of money claim by and between the parties is not amenable to writ jurisdiction. Learned counsel points out that such exceptional circumstance under which the writ petition can be entertained has not been satisfied by the petitioners and recording of evidence is necessary in order to deal with the disputed question of fact involved herein.

Per contra, it is submitted on behalf of the petitioners that this Court has ample jurisdiction to deal with the claim made by the petitioners for refund of the penal interest paid by the petitioners to the registering Authority for the reason that there is no disputed question of fact involved herein and the matter may be adjudicated on the facts already available on record. Learned counsel has placed reliance on the judgments of the Hon'ble Supreme Court in ***Smt. Gunwant Kaur and Others vs. Municipal Committee, Bhatinda and Others*** reported in ***1969(3) Supreme Court Cases 769, M/s Hyderabad Commercials vs. Indian Bank and Others*** reported in ***1991 Supp (2) Supreme Court Cases 340*** *and* **ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India and Others** reported in ***(2004) 3 Supreme Court Cases 553*** . Learned counsel for the petitioners prays for a direction upon the KMDA to refund the penal interest already paid by the petitioners. According to learned counsel, the delay in registration of the deed being caused at the instance of the KMDA, the petitioners cannot be penalised for the same and the KMDA is responsible for payment of the penal charges.

I have gone through the judgments relied upon by the parties. It is trite law that exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and such discretion should be exercised on sound judicial principles. Only when questions of fact are of complex nature which may require evidence to be taken, may the writ Court decline to try such a petition. [Smt Gunwant Kaur and others (supra)].

Admittedly, the deed of conveyance has been registered by the registering Authority upon payment of stamp duty by the petitioners at the market rate as claimed by the registering Authority in terms of the Notification published by the Finance Department, Revenue, Government of West Bengal on 23rd March, 2012. In terms of the brochure issued by the KMDA in 2005 the petitioners purchased the property in question. Subsequently by a brochure issued in 2007, the KMDA incorporated the additional clause in the deed restraining the petitioners from transferring the premises in question within a period of five years from the date of purchase. The additional clause was challenged by the petitioners before this Court and by an order passed on 16th August, 2013 in W.P. 14359(W) of 2013, a co-ordinate Bench of this Court allowed the prayer of the petitioners and directed the KMDA to convey the flat in question by deleting the clause incorporated in the deed in terms of the 2007 Brochure. Appeal preferred against the said order was dismissed by an order dated 7th February, 2017 following which a copy of the sale deed was made over to the petitioners on 7th October, 2021 and presented for registration. The only prayer of the petitioners is for refund of the penal interest, which the petitioners were constrained to pay to the Authority for registration of the deed.

The judgment in ***Hyderabad Commercials (supra)*** deals with unauthorised transfer of the disputed amount from the appellant's account and admission of the Bank's liability of such transfer. In the said judgment, the Hon'ble Supreme Court has held that as such an unauthorised transfer was admitted, there was no justification for the High Court to direct the appellant to file suit on the ground of disputed question of fact. The fact situation in the said judgment can be distinguished from the facts and circumstances of the present case.

In the judgment in ***ABL International Ltd. and others (supra),*** the Hon'ble Supreme Court has observed that the plenary right of a writ Court to issue a prerogative writ will not be normally exercised by the Court to the exclusion of the other available remedies unless the action of the State or its instrumentality is arbitrary, unreasonable so as to violate the constitutional mandate of Article 14. In the said matter, most of the facts involved were admitted and the dispute revolved only around interpretation of the agreement of insurance between the parties.

In the case in hand, the insertion of a new clause in the 2007 brochure initiated the litigation between the parties which was set at rest in the appeal which was disposed of in 2017. Under such circumstances, the act of the State Authorities cannot be termed as arbitrary or unreasonable as required for maintainability of an application under Article 226 of the Constitution of India. No violation of the mandate under Article 14 has been made out.

The claim of the petitioners being solely for recovery of the money/penal interest paid by them, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot entertain the said prayer. The petitioners are at liberty to approach the appropriate Forum for redressal. {Godawari Sugar Mills Limited (sura) and Joshi Technologies International INC (supra)}.

The writ petition being not maintainable in its present form, is liable to be dismissed.

Accordingly, W.P.A. 1484 of 2022 is dismissed.

There shall be no order as to costs.

Since no affidavit has been invited, allegations contained in the writ petition shall be deemed not to have been admitted.

Urgent certified website copy of the order, if applied for, be given to the parties on compliance of requisite formalities.

(Suvra Ghosh, J.)