

**In the High Court at Calcutta
Civil Appellate Jurisdiction
(Appellate Side)**

**The Hon'ble Justice Subrata Talukdar
And
The Hon'ble Justice Lapita Banerji**

**M.A.T No.660 of 2021
With
IA No. CAN 1 of 2021**

**Barrackpore Co-Operative Colony Ltd. and another
Vs.
State of West Bengal and others**

For the appellant : Ms. Shraboni Sarkar

For the State : Mr. Soumitra Bandopadhyay,
Mr. Subhasis Bandopadhyay

Hearing concluded on : 20.07.2022

Judgment on : 03.08.2022

1. **Lapita Banerji, J:-** This appeal and application arises out of an order passed by an Hon'ble Single Bench of This Court on June 23, 2021 ('impugned order') in WPA 9811 of 2020. By the impugned order, the Hon'ble Single Bench refused to accept the prayer of the writ petitioner for issuing a writ of mandamus directing the respondent authorities to accept a sum of Rs.3,702.52 along with Rs.1,60,648.67 as stated in Memo No.17988-L.Dev dated December 8, 1967 and consequently did not direct the respondent authorities to execute sale deeds in favour of the registered members of the appellant No. 1/ petitioner No.1. The

Hon'ble Single Bench was of the view that the prayers of the writ petitioners/appellants were wholly unsustainable after such a long interval and were made with mischievous intention. Consequently, the writ application being WPA No.9811 of 2020 was dismissed with costs assessed at Rs.2,000/-.

2. Being aggrieved by and dissatisfied with the impugned order, the appellant filed the instant appeal being MAT No.660 of 2021 along with an application for stay being CAN No.1 of 2021.

3. The following facts are admitted in the writ petition :-

(a) The appellant no.1/writ petitioner no.1 is a registered Society since 1949 under Bengal Co-operative Societies Act.

(b) The members of the appellant Society had to leave East Pakistan as refugees under compelling circumstances and searched for shelter in the State of West Bengal.

(c) Under S.10 (2) of the West Bengal Development and Planning Act, 1948 (hereinafter referred to as 'the 1948 Act'), an agreement was entered into between the appellant Society and the Government of West Bengal on March 20, 1953 for facilitating a development scheme for settlement of immigrants.

(d) Pursuant to the said agreement, the appellants deposited the initial money of Rs.30,199-12-3 (Rupees Thirty Thousand One Hundred Ninety-Nine and Twelve Ana and Three Paise) at Alipore Treasury *vide* Receipt No.974097 dated January 2, 1951.

(e) Pursuant to the said agreement, the Government of West Bengal on May 19, 1953 handed over the aforesaid land admeasuring an area

of 10.63 acres to the petitioner no.1 by issuing a Possession Certificate by the competent authority.

- (f) By a Memo dated October 11, 1960, the Land Acquisition Collector, 24-Parganas directed the petitioner no.1 to deposit a balance sum of Rs.3,702.52.
- (g) Pursuant to an application made by the land owners from whom the land was acquisitioned, challenging the award, the Reference Court awarded a further sum of Rs.1,60,648.67 for the said land.
- (h) The appellant society failed to deposit the said sum of Rs.3,702.52 along with the further awarded amount of Rs.1,60,648.67 with the authority concerned.
- (i) By an order dated September 14, 1966 *vide* Memo No.15786(2) L.Dev, the Secretary to the Government of West Bengal communicated to the appellant no.2 that since the Society has failed to pay, on demand, the full cost of acquisition in terms of the agreement dated March 20, 1953 entered into between the Society and the Governor of the State of West Bengal in respect of the land, of which the Society was put in possession of, The Governor, determined the Agreement (*supra*) in accordance with Clause 12 of the same. The Governor withdrew the power conferred upon the appellant no.1 under the said Agreement.
- (j) By an order dated October 14, 1966 *vide* Memo No.17470-L.Dev, the Secretary to the Government of West Bengal authorised one R.P. Roychowdhury, Special Land Acquisition Officer, 24-Parganas (North) to resume possession of the site from the appellant

- no.1/Society and make necessary arrangements for prevention of any unauthorised occupation of the site pending appointment of an administrator to complete the scheme.
- (k) By a Memo dated October 17, 1966 *vide* Memo No.1741-L.Dev, the Assistant Secretary directed the officer concerned to resume possession of the scheme land and obtained all papers and accounts relating to the scheme from the Society.
- (l) Since 1965, the appellant no.1/Society was defunct. Challenging the order passed by the Registrar of Co-operative Societies under Section 89(1) of the Bengal Co-operative Societies Act which directed winding up of the Society, the appellants filed Civil Rule No.6178 (W) of 1968.
- (m) By an order dated January 3, 1973 passed by This Hon'ble Court, the order of the Registrar of Co-operative Societies dated May 21, 1965 directing winding up of the Society was quashed.
- (n) In the meantime, by a Memo dated December 8, 1967 *vide* Memo No.17988-L.Dev, the Assistant Secretary to the Government of West Bengal, Land and Land Revenue Department, informed the Society that in the event the sum of Rs.3,702.52 along with the decretal dues of 1,60,648.67 was paid by the Society, the Government would restore it into existence to take charge of the scheme.
- (o) Admittedly, no payment was made pursuant to the Memo dated December 8, 1967.
- (p) Thereafter, the appellant/Society was revived. It came into operation with effect from January 1, 2008.

(q) Eight years after coming into existence, on July 27, 2016 the appellant no.2 made a representation to the Special Land Acquisition Officer, 24-Parganas (North) on behalf of the appellant no.1 and prayed for leave to deposit the outstanding amount as stipulated in the Memo dated December 8, 1967 *vide* Memo No.17988-L.Dev. The appellant also prayed for correction in the Records of Rights.

(r) In 2019, the appellants/writ petitioners wanted to pay the Government at a price that was fixed in 1955 at the rate of Rs.220 per *katha* and made representations for accepting their deposit of the same.

4. Ms. Sarkar, appearing for the appellants argued that since the Co-operative Society was defunct since the year 1965, the directions given *vide* Memo dated December, 1967 could not be complied with by the appellant No.1/Society. The members of the appellant No.1/Society who have been allotted the land in 1957 are still in possession. The appellants should be allowed to deposit the amount as directed by the Memo dated December 8, 1967. The said Memo has not been withdrawn till date and since there was no stipulated time within which the appellant No.1/society was required to pay its dues, the appellant No.1/Society should be allowed to deposit the amount as per the said Memo. The rights of the appellant/Society have not been extinguished.
5. Mr. Soumitra Bandopadhyay appearing for the State argued that, the rights of the appellant No.1/Society were determined by the order dated September 14, 1966. The agreement dated March 20, 1953 stood

determined under the provisions of Clause 12 of the said agreement due to failure of noncompliance of the terms by the society.

6. He further submitted that the possession of the Government of West Bengal was resumed pursuant to the Memos dated October 14 and October 17, 1966. Hence, the appellants/writ petitioners had no *locus standi* to institute the writ petition and subsequently the Appeal before This Hon'ble Court.
7. Having heard the rival submissions of the parties, This Court directed the state respondents to file a **Status Report** regarding the land-in-question (past and present) by its order dated April 20, 2022.
8. Pursuant to the said order, a **Status Report** was filed by the additional Land Acquisition Officer, 24-Parganas (North), Barasat.
9. From the said **Status Report**, it transpires that the subject land involved in the writ petition as well as in the appeal was acquisitioned for the purpose of settlement of immigrants who migrated from erstwhile East Pakistan at the proposal of Refugee Rehabilitation Department in LA Case No.LD-28/1949-50. The said acquisition proceedings were under the 1948 Act.
10. Subsequently, certain lands were withdrawn from the process of acquisition *Vide* Declaration No.5738-L.Dev dated March 20, 1953 12.39 acres of land in *Mouza* Titagarh, JL No.5, District – 24-Parganas was acquisitioned for public purpose, i.e., for settlement of immigrants who have migrated into the State of West Bengal for circumstances beyond their control. The Refugee, Relief and Rehabilitation Department was the requiring body. The said land admeasuring about 12.39 acres

was recorded in favour of Refugee, Relief and Rehabilitation Department.

11. In terms of the provisions of Section 10(2) of the Act, the agreement was entered into between the appellant No.1/Society and the Government of West Bengal on March 20, 1953 for the purpose of a rehabilitation scheme for the refugees/ members of the societies. Accordingly, possession of 10.63 acres of land out of 12.39 acres was assigned to the Society. However, the Society was required to comply with the terms and conditions of the said agreement dated March 20, 1953.
12. Since the Society failed to comply with the said terms and conditions, the Government of West Bengal determined the grant by an order dated September 14, 1966 (supra). The Special Land Acquisition Officer took possession of the said land pursuant to the order dated October 14, 1966 (supra).
13. From the **Status Report** it appears that even after the revival of the Society in 2008, the Society failed to comply with the obligations under the agreement. Therefore, the grant given by the agreement dated March 20, 1953 became *non est* in the eye of law.
14. From the **Status Report**, it is evident that even though the appellants/writ petitioners claimed that 88 allotments have been made out of 90 plots of lands Certificates of allotments in respect of only 18 *kathas* (approximately) have been shown out of a total area of 10.63 acres up to 1957. The Society failed to comply with the conditions as laid down in Section 11 of the 1948 Act and also the terms contained in Clause 12 of the grant dated March 20, 1953. Given the failure to

comply with the terms and conditions of the grant, the grant stood determined and is *non est* in the eye of law. And no claims could be made by the appellants with regard to the said agreement/grant.

15. Furthermore, in the **Status Report**, it has been clearly indicated that a purported mutation did not confer any right, title or interest of a land upon a person since the same is only for the purpose of collection of municipal taxes. A mutation certificate is not a registered instrument by which the right title or interest in a land can be claimed by a person. The determination of the grant/agreement was pursuant to Section 11 of the 1948 Act and there is no provision to restore the said grant which was determined on the ground of non-compliance of the conditions.
16. This Court also perused the exception to the Status Report filed by the appellants.
17. After considering the rival submissions of the parties and materials-on-record, This Court finds no reason to disagree with the findings made in the **Status Report** filed by the Additional Land Acquisition Officer, 24-Parganas (North), Barasat. It is an admitted fact that the appellants have not taken any steps to make payments of the dues as stipulated by the Memo dated December 8, 1967 (*supra*). After 49 years, in 2016, it suddenly made a representation for making payment in accordance with the 1967 Memo. Thereafter, again the appellants did not take any steps for three years. The next set of representations were made in 2019. The appellants absolutely took no steps from 2008 (time of its revival) to 2016 to pay its dues under the 1967 Memo. After failing to act for almost five decades the appellants have made the prayer of disallowing

the respondents from increasing the price of land from Rs. 220 per cottah as fixed vide Memo No. 4523 L. Dev dated March 10, 1955, which is clearly indicative of their malafide/mischievous intention.

18. In the circumstances, This Court finds that there is no merit in this writ Appeal. Since this Appeal is decided on merits, it is not necessary to consider whether Prayer (b) of the writ petition is hit by Section 2 of the West Bengal Service and Tenancy Tribunal Act, 1997.
19. In the light of the discussions made above, This Court sees no reason to interfere with the order passed by the Hon'ble Single Bench on June 23, 2021. The appeal being **MAT No.660 of 2021** along with **IA No. CAN 1 of 2021** is **dismissed** with costs assessed at Rs.10,000/- payable to High Court Legal Services Authority.
20. All parties to act on the downloaded server copy of this order from the website.
21. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance of all the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Lapita Banerji, J.)