

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

F.M.A. 2419 of 2014

State of West Bengal & Others
versus
M/s. Carbin Box & Tube & Others

For the Appellants : *Mr. Naba Kumar Das,*
Ms. Diana Ghosh Dastidar.

For the Respondents : *Ms. Noelle Banerjee,*
Mr. Iftekar Munshi.

Hearing is concluded on : *22nd August, 2022.*

Judgment On : **7th September, 2022.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by the State and its functionaries challenging an order dated 29th January, 2014 passed in a writ petition, being W.P. No. 1046 (W) of 2006 preferred by a partnership firm, namely, M/s Carbin Box & Tube (hereinafter referred to as the said firm) and its two partners challenging an order dated 23rd December, 2005 passed by the appellant no.3 cancelling the allotment of a plot of land, measuring about 10 kathas in Salt Lake, for the purpose of a Textile

Conemaking Unit, in favour of the said firm offered *vide* Government order dated 16th September, 1982.

2. Mr. Das, learned advocate appearing for the appellants argues that the learned Single Judge allowed the writ petition and set aside the order dated 23rd December, 2005 on the basis of an erroneous observation that the only ground for cancellation was '*dissolution of the partnership with the death of Sm. P.C. Ghosh with effect from 23rd May, 1990*' though the contents of the order dated 23rd December, 2005 would clearly reveal that cancellation of allotment was also on various other grounds as detailed in the said order.

3. According to him, the learned Single Judge did not consider the arguments as advanced on behalf of the appellants and disposed of the writ petition being oblivious of the facts that the said firm failed to submit the Provisional Small Scale Industries Registration Certificate, the Clearance Certificate from the Competent Authority for Air and Water pollution within the time as specified in Clause 14 of the letter of allotment dated 6th September, 1982. The premium amount was also not paid by the said firm within the time stipulated and no steps were taken for registering and for taking possession of the plot, as would be explicit from the contents of the letters issued by the said firm on 30th June, 2003, 19th September, 2003, 18th October, 2003 and 1st March, 2004.

4. Mr. Das submits that the records would reveal that three partnership deeds were executed dated 20th March, 1991, 17th October,

1992 and 24th April, 2004. The second and the third partnership deeds contained a clause to the effect that '*this partnership agreement cancels and revokes any earlier partnership agreement*'. From such sequence it would thus be explicit that the partnership firm which was granted the allotment in the year 1982 stood dissolved after the death of Kamal Ghosh. In support of such argument reliance has been placed upon the judgments delivered in the case of *Loonkaran Sethiya and Ors. -vs- Ivan E. John and Ors.*, reported in *AIR 1977 SC 336* and in the case of *Krishna Motor Service -vs- H.B. Vittala Kamath*, reported in *AIR 1996 SC 2209*.

5. He submits that it would be explicit from the contents of the letter of allotment dated 6th September, 1982 that the proposal for such allotment was for the purpose of a Textile Conemaking Unit. The letter dated 11th November, 2005 issued by the said firm would reveal that the said firm was interested to set up one Information Technology Infrastructure industry instead of the Textile Conemaking Unit. The said firm cannot insist for allotment of the plot for a purpose different from the purpose for which the proposal was granted.

6. *Per contra*, Ms. Banerjee, learned advocate appearing for the respondents/writ petitioners submits that there is no infirmity in the order impugned and as such no interference is called for in the present appeal. The sole ground for cancellation of allotment was that the partnership firm stood dissolved due to the death of one of the partners. Such ground towards cancellation of allotment is absolutely unfounded. A composite reading of the contents of the partnership agreements dated 20th March,

1991, 17th October, 1992 and 24th April, 2004 would reveal that there was no clause to the effect that death or retirement of the partner would lead to dissolution of the partnership firm. Therefore it cannot be contended by the appellants that by reason of death of one of the partners, the existing firm stood dissolved. In support of such contention reliance has been placed upon the judgments delivered in the case of *Sharad Vasant Kotak and Others –vs- Ramniklal Mohanlal Chawda and Another*, reported in (1998) 2 SCC 171 and *State Bank of India and Others – vs – Bidyut Kumar Mitra and Others*, reported in (2011) 2 SCC 316.

7. Drawing our attention to the averments made in paragraph 9 of the writ petition and paragraph 10 of the affidavit-in-opposition filed by the appellants, she argues that there had been no specific denial of the fact that Mr. Kamal Ghosh, during his life time, duly submitted the project report and the other necessary documents as per the letter of allotment. The appellants, while dealing with the averments made in paragraphs 28 and 29 of the writ petition at paragraphs 20 and 21 of the affidavit-in-opposition, had also not denied the fact that time and again the respondents/wit petitioners asked for execution and registration of the lease deed but the appellants were reluctant. It is well settled that the respondent in a writ petition must deal specifically with each allegation of fact of which, it does not admit to be true. Such allegation of fact, if not controverted, shall be taken to have been admitted by the respondent. The only argument advanced on behalf of the appellants at the time of hearing of the writ petition was that the allotment has been cancelled on the ground of

dissolution of the partnership. In appeal the appellants cannot urge any other ground in support of the decision towards cancellation of the allotment. In support of such contention reliance has been placed upon the judgments delivered in the case of *State of Assam –vs- Union of India and Others*, reported in (2010) 10 SCC 408, in the case of *Premchand Manickchand –vs- Fort Gloster Jute Manufacturing Co. Ltd.*, reported in 1958 SCC OnLine Cal 61, in the case of *State of Gujarat –vs- Memon Mahomed Haji Hasam (Dead) By His Legal Representatives*, reported in AIR 1967 SC 1885 and in the case of *State Bank of India -vs- Bidyut Kumar Mitra*, reported in (2011) 2 SCC 316.

8. She contends that the authorities upon condoning the delay accepted the dues lastly on 23rd June, 1995. For the change in business scenario, the respondents represented before the authorities to grant permission to set up one Information Technology (IT) Infrastructure Company along with project report. Such conversion is permissible as per the subsisting notification of State. Without considering such prayer, the allotment was abruptly cancelled in the year 2005, having kept such proposal valid for about 23 years.

9. According to Ms. Banerjee, a perusal of the show cause notices issued by the appellants would reveal that the alleged guilt of the respondents had been prejudged at the stage of show cause itself. The bias of the appellants which was latent in the show cause notices became patent in the order of cancellation impugned in the writ petition. To buttress such argument reliance has been placed upon the judgment delivered in the case

of *Oryx Fisheries Private Limited –vs- Union of India and Others*, reported in (2010) 13 SCC 427.

10. From the sequence of facts it would be clear that four show-cause notices dated 5th August, 2003, 8th December, 2003, 22nd Mach, 2004 and 13th May, 2004 were issued prior to cancellation of the proposal towards allotment of land. As such, it cannot be contended on behalf of the respondents that there had been a violation of the principles of natural justice. There is no dispute as regards the proposition of law as laid down in the judgments delivered in the cases of *State of Assam (supra)*, *Premchand Manickchand (supra)*, *State of Gujarat (supra)*, *State Bank of India (supra)* and *Oryx Fisheries Private Limited (supra)*, upon which reliance has been placed by the respondents. However, a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight difference in fact or an additional fact may make a lot of differences in the decision making process. The said judgments are distinguishable on facts.

11. A writ of mandamus can be issued only when there is a clear violation of an enforceable right and non-discharge of a co-related duty on the part of the respondents. In the instant case the firm did not secure any indefeasible right towards allotment of land on the basis of the letter dated 6th September, 1982. Such proposal was subject to compliance of the conditions incorporated in the said order. In the letter dated 19th September, 2003, the respondent no.2 himself stated that till the year 1990, he was residing more in Delhi and that he started interest in the above company after the demise of his uncle Late Mr. Kamal Ghosh in November, 1992.

Thereafter the full payment for the above plot was made in the year 1995 and that subsequently he was waiting for the industrial climate to improve in the State. The contents of the said letter thus reveal that the firm itself was responsible for the delay. The respondents cannot take advantage of their own laches and we are inclined to hold that the respondents by their conduct had disabled the Court from redressing their grievance. The Court's discretion to grant relief or to deny relief is not solely dependent on whether a point has been taken in the affidavit-in-opposition or not. The principle of estoppel by conduct or acquiescence has no application to the facts of this case.

12. The exercise of the constitutional power of judicial review, which has been vested in this Court, stands on a different footing than the power vested in any Court trying civil or criminal matters. This Court cannot shut its eyes to the facts which would have a material bearing on the ultimate decision. In the present case the respondents have miserably failed to establish that they had complied with the conditions as incorporated in clause 14 of the order dated 16th September, 1982. The respondents were bound by the rigors of the said conditions and they cannot wriggle out of such preconditions even if we hold that there had been no dissolution of the partnership and as such there is no necessity to deal with the judgments as cited by the parties pertaining to the issue of dissolution of partnership.

13. A perusal of the judgment would reveal that the learned Single Judge had proceeded on the basis that the sole ground for cancellation of the proposal for allotment was '*dissolution of the partnership with the death*

of Sm. P.C. Ghosh with effect from 23rd May, 1990'. This finding, in our opinion is contrary to records inasmuch as the order dated 23rd December' 2005 would clearly reveal that the reasons towards cancellation of the proposal were detailed paragraph wise and in the operative portion of the order it was stated that the proposal was cancelled '*for failure to comply with all the terms and conditions and on the ground of dissolution of partnership firm due to the death of one of the partners*'. The error in the judgment impugned is manifest and apparent on the face of the proceedings.

14. For the reasons discussed above, we set aside the order dated 29th January, 2014 and dismiss the writ petition.

15. However, the appellants shall refund the amount paid by the said firm to the respondent no.2 forthwith subject to execution of an indemnity bond to the satisfaction of the appellants.

16. The appeal is, accordingly, disposed of.

17. There shall, however, be no order as to costs.

18. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)