

WPA 28248 of 2022

M/s. Nirman Construction & ors.
Vs.
The State of West Bengal & Ors.

Adv. Saptangshu Basu, Sr. Adv.,
Adv. Sayan Chattopadhyay,
Adv. Rokon Ali Molla,
Adv. Ayesha Iman,

...for the petitioners.

Adv. Sharanya Chatterjee,

...for the respondent.

Adv. Nilotpal Chatterjee,
Adv. Amrita Lal Chatterjee,

...for the State.

Affidavit of service filed by the petitioners is taken on record.

Heard learned counsels for the parties.

The contention of the petitioners is that the petitioners were provisionally allotted the land in question along with house thereon and deed of lease was executed by and between the petitioners, 1st respondent and the proforma respondent on 25th April, 2006. In terms of Clause (E) (iv) of the deed, the petitioners were required to construct the building in the plot in question within three years from the date of execution of the lease or possession of the land, whichever was earlier. Possession of the land was handed over to the petitioners on January 6, 2005. The petitioners demolished the existing house in the plot after getting necessary permission for building G+4 storied commercial building therein and fulfilled all necessary formalities for the same. The petitioners were unable to

raise construction in terms of the deed of lease due to financial crisis and prayed for extension of time for the same before the concerned authority which was granted to them till 31st March, 2022 by a letter issued on 7th December, 2010. The authority issued a show cause notice upon the petitioners on 6th September, 2012 since the petitioners failed to comply with the terms and conditions of the deed of lease. The time for filing reply to the show cause notice was extended by the authority by a letter issued on 2nd March, 2021 and reply was called for from the petitioners within fifteen days from the date of such letter. The petitioners prayed for further extension of time by a letter dated 12th December, 2019 followed by letters issued on 12th March and 22nd March, 2022. Admittedly, no reply to the show cause notice was sent by the petitioners due to medical issues. The Chief Executive Officer, Asansol and Durgapur Development Authority issued a letter to the petitioners on 8th December, 2022 intimating resumption of the plot in question due to violation of the terms of the lease deed. The said notice of resumption is under challenge in the present writ petition.

It is submitted by the learned counsel for the petitioners that there was no malafide intention on the part of the petitioners in not complying with the terms of the deed of lease and the petitioners were unable to raise construction within the stipulated time frame due to cogent reasons. The request for extension of time was not taken into consideration by the authority prior to issuance of

notice of resumption and no opportunity of hearing was granted to the petitioners before issuance of the said notice.

Placing reliance on the authority in ***TERI OAT ESTATES (P) Ltd. vs. U.T., CHANDIGARH & ORS.*** reported in ***(2004) 2 SCC 130*** wherein the Hon'ble Supreme Court has dealt with the doctrine of proportionality and has observed that the right of the respondents may crystallise if the intention of the allottee is dishonest or the allottee acts with an ill motive, learned counsel submits that there is no malafide or ill motive demonstrated on the part of the petitioners which warrants resumption of the plot in question by the authority. The petitioners seek liberty to submit a comprehensive representation before the concerned authority stating the entire facts and circumstances which were responsible for the petitioners not complying with the terms of the deed and pray for a direction upon the authority to consider the said representation upon providing reasonable opportunity of hearing to the petitioners.

Per contra, it is submitted on behalf of the respondents that the petitioners have failed and neglected to abide by the terms and conditions of the deed of lease despite being given sufficient opportunity. Though an initial extension was granted to the petitioners, the petitioners neither cared to comply with the terms within the said extended period, nor bothered to reply to the show cause notice issued upon them. The show cause notice was

admittedly not responded to and the petitioners repeatedly sought extension of time without any justified grounds whatsoever.

Be that as it may, since the petitioners seek to submit a representation before the concerned authority for consideration of the same by the latter, the writ petition is disposed of with liberty to the petitioners to submit a comprehensive representation before the 3rd respondent within two weeks from date. The 3rd respondent is directed to consider and dispose of the representation within two weeks from date of receipt thereof upon affording reasonable opportunity of hearing to all the interested persons including the petitioners, in accordance with law.

The decision taken by the authority shall be communicated to the petitioners within a week thereof.

Pending disposal of the representation, the notice of resumption issued on 8th December, 2022 be stayed.

With the aforesaid observations and directions, WPA 28248 of 2022 is disposed of.

Since no affidavit is invited, the allegations contained in the petition are deemed not to be admitted.

There shall however, be no order as to costs.

Urgent certified website copy of this order, if applied for, be furnished to the parties upon compliance of necessary formalities.

(Suvra Ghosh, J.)