

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 1429 of 2008
CAN 1 of 2008, CAN 3 of 2015
Tai Industries Limited & Anr.
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Ranjan Batchawat Mr. Suman Kr. Dutt Mr. Syamantak Banerjee Mr. S. Dasgupta Ms. Subhra Das Mr. S. Mitra Advocates
For the KMDA	:	Mr. Kishore Dutta Mr. Satyajit Talukdar Advocates
Heard lastly on	:	16.05.2023
Judgment on	:	02.11.2023

Jay Sengupta, J.:

1. This is an application praying for direction upon the respondent authorities not to dispossess the petitioner no. 2 from the land in question being plot no. IND-8/1 in Mouza-Nonadanga measuring about 6 acres of

land, cancel and set aside the letter of cancellation of allotment dated 14/17.12. 2007.

2. Learned senior counsel appearing on behalf of the petitioners submitted as follows. The unilateral imposition of new terms by the KMDA despite full payment was only with an intention of cancelling the allotment of the petitioner. Construction was directed to start within 90 days from date of approval and completed within 3 years of date from the month of approval of plan by the KMC by letter dated 13.02.2007. In the termination notice dated 14/17.12.2007, it was recorded that construction was required to be started within 3 years from the date of approval. A ground that allotment was terminated for failure on the part of petitioner to start construction within two months of allotment had been taken in the affidavit-in-opposition for the first time. The same was not permissible. The decision of KMDA to unilaterally apply the new condition, to change the terms of the allotment was both arbitrary and discriminatory. A right which had once been vested could not be taken away by the State unilaterally. Physical possession was handed over to the petitioner on full payment. There was no due from the petitioner. Ground taken by the KMDA that as per the New Scheme of 2007 construction was to start within 2 years from the date of approval, could not apply in this case of the petitioners. All laws that affect substantive rights operate prospectively and there was a presumption against their retrospectivity if they affected vested rights and obligations, unless legislative intent was clear and compulsive. Reliance was placed on Shree Krishna Woollen Mills Limited, Bombay versus Controller of Imports

and Exports, 1989 (24) ECR 15 (Bom). A detailed Project Report (DPR) was accepted by the KMDA. The DPR was admittedly submitted by the petitioner on 21.03.2007. KMDA admitted that DPR was submitted, but it was not comprehensive enough. No subsequent communication concerning the quality of DPR was disclosed. The DPR submitted by the petitioner had not been formally rejected, till this date. The KMDA seemed to have accepted the DPR submitted by the petitioner. Additional new grounds for wrongful termination could not be permitted to be taken at a later stage, once administrative order was passed. The wrongful termination of allotment was made by KMDA by alleging failure to submit DPR and copy of sanctioned building plan; failure to start construction as per approved DPR within 3 years from the date of allotment; failure to initiate construction after 6 years. Grounds were taken in Affidavit-in-opposition that termination of allotment was made by alleging failure to submit DPR within the extended time till 23.03.2007 and failure to initiate construction within 2 years from the date of allotment. Reliance was placed on *Mohinder Singh Gill & Anr. Versus Chief Election Commissioner New Delhi & Ors.* – (1978) 1 SCC 405. Jurisdiction of writ court was not excluded in contractual matters. *ABL International Ltd. and Ors. versus Export Credit Guarantee Corporation* was relied upon in *Unitech Limited and Ors. versus Telengana State Industrial Infrastructure Corporation*, 2021 SCC Online SC 99. Public authority could not be confined to statutory authority. Failure to perform the duty imposed on it was enough to attract writ of mandamus [*Andi Mukta Sadguru versus V.R. Rudani* reported in (1989) 2 SCC 691]. Learned advocate representing

the State of West Bengal, being the respondent no. 1, made it categorically clear that he did not have any submission to make at the time of hearing of the writ petition. It is pertinent to note that it was within the knowledge of the respondent KMDA that the name of the petitioner no. 1 was changed to petitioner no. 2 being Tai Projects Limited by way of letters dated 20.03.2002 and 12/13 December, 2006. In spite of such knowledge, the respondent KMDA served the termination notice dated 14/17th December, 2007 to the petitioner no. 1, instead of petitioner no. 2. The judgment reported in AIR 1952 SC 12 had been relied upon by the learned advocates of the KMDA for establishment of legal right was the essence to invoke the jurisdiction of mandamus. This view of the Hon'ble Supreme Court had been subsequently changed and the present/recent view of the Hon'ble Supreme Court had been upheld in (2004) 3 SCC 553 and 2021 SCC Online SC 99, thereby enlarging the scope of jurisdiction of mandamus, which included the case of the petitioners. The judgment of Andhra Pradesh Industrial Infrastructure Corporation Limited versus Team-Asia Lakhi Semiconductors Limited reported in (2014) 14 SCC 716 referred by the learned advocates of KMDA was not applicable in the present case, since, in this writ petition the permissive possession had been accrued from the full payment of consideration amount. The factual premise of the judgment relied upon by the learned advocates of the KMDA was based on non-payment of the entire consideration amount. Moreover, the case of the petitioner was not of permissive possession. The petitioner, in the present writ petition, challenged wrongful termination by the KMDA. Although during the course

of hearing, no other judgment was formally cited by the learned senior counsel for the KMDA on this issue of permissive possession, however, a judgment of the Hon'ble Supreme Court of India, in the case of Maria Margarida Sequeira Fernandez versus Erasmo Jack Ded Sequeira reported in (2012) 5 SCC 370 had been relied upon by the KMDA in its written notes of argument, contending that in a case of permissive possession, it was the title which has to be looked at first and possession could not be looked in vacuum and the protection of the Court could only be granted to a person who has valid or subsisting written document in his favour. The said judgment of the Hon'ble Supreme Court was not applicable in the present case, since, it was the case of the petitioners that the title document, being a registered lease deed had deliberately not been executed by the KMDA. Moreover, in the referred paragraphs, the only principle of law clarified by the Hon'ble Supreme Court was that the protection could be granted to the person who had a valid written document in his favour on the factual matrix of that case, where the dispute arose through the divorce proceeding between a married couple and ultimately relief was granted in favour of the appellant/wife who suffered an order of injunction despite having a valid title over the suit property. The present case involved a complete opposite factual situation, where the writ petitioners were in possession of the subject premises with a letter of allotment, which had been illegally terminated by the KMDA, and challenging such illegal termination, the present writ petition was filed. The petitioners in this case did not claim any right on the basis of any permissive possession and the rights of the

petitioners flow from the issuance of the letter of allotment, payment of the entire money consideration, unilateral imposition of new terms by the KMDA despite full payment, compliance of all clauses of the allotment, and wrongful termination. Moreover, looking at the petitioners' case in the light of this judgment, the petitioners were neither caretakers nor watchmen nor servants acquiring interest in the property, irrespective of long possession, rather the petitioners had acquired every right and interest in the property on paying a full consideration amount of Rs. 8,75,17,360/- and an additional amount of Rs. 3,49,33,400/- on satisfaction of which, possession was handed over to the petitioners by the KMDA. Similarly, no judgment was formally cited on the issue that writ of mandamus can be granted only in the case where there was a statutory duty imposed upon the respondent and there was a failure on the part of the respondent to discharge that statutory obligation, and in the present case, no such obligation had been breached by the respondent. However, a judgment of the Hon'ble Supreme Court of India, in the case of Lekhraj Sathramdas Lalvani versus N.M. Shah, Deputy Custodian Cum Managing Officer, Bombay and Ors. reported in AIR 1966 SC 334 had been relied upon by KMDA in its written notes of argument, in support of such issue. The said judgment of the Hon'ble Supreme Court was not applicable in the present case, since, in a subsequent judgment reported in (1989) 2 SCC 691, the Hon'ble Supreme Court had already held that failure to perform the duty imposed on it was enough to attract writ of mandamus. In addition to that, in another subsequent judgment reported in (2004) 3 SCC 553, the Hon'ble Supreme

Court had further clarified that, jurisdiction of writ court was not excluded in contractual matters. Even otherwise, in the said judgment reported in AIR 1966 SC 334, the writ petitioner was merely appointed as a manager by the respondent authority, and final allotment letter was not issued. However, in the present case, not only a formal allotment letter was issued by KMDA, but possession was also handed over to the petitioners, and full payments were also received. The other proposition argued by the learned advocates of KMDA was that judicial review could not be taken in contractual matters, while relying upon the judgment of State of U.P. and Anr. Versus Johri Mal reported in (2004) 4 SCC 714. It was itself referred in that judgment that the Court could interfere and reappreciate the facts if the decision was shown to be irrational and unreasonable. Consideration of administrative inconvenience caused was to be considered over deciding on merits itself. In the present case, the decision of termination by KMDA, was absolutely unreasonable and irrational.

3. Learned senior counsel appearing on behalf of the KMDA submitted as follows. Admittedly physical possession of the plot was not given to the writ petitioners and lease deed was not executed in their favour. Allotment of land did not create any possessory right over the land. The writ petitioners were in permissive possession. While in permissive possession, a person held possession on behalf of the owner or title-holder. It was well settled that where permissive possession was given to a person for some limited purpose, such permissive possession would not create any interest or right in favour of such person. The plot would remain the property of the owner

since the conditions on which the transfer was to take place had not been fulfilled. The judgment of the Hon'ble Supreme Court *A.P. Industrial Infrastructure Corpn. Ltd. versus Team-Asia Lakhi Semiconductors Ltd.* reported in (2014) 14 SCC 716 was relied in this regard. There was no illegality in cancelling the allotment of land made in favour of the writ petitioners. Assuming that the order of cancellation was illegal, the writ petitioners were not entitled to move this Hon'ble Court for grant of a writ in the nature of mandamus under Article 226 of the Constitution inasmuch as a writ of mandamus might be granted only in a case where there was a statutory duty imposed upon the respondents and there was a failure on the part of the respondents to discharge that statutory obligation. The chief function of the writ was to compel the performance of public duties prescribed by statute and to keep the respondents exercising public functions within the limits of their jurisdictions. In the present case, there was no statutory obligation cast in the respondents in the matter of allotment or cancellation of land. It was a matter of contract simpliciter between the writ petitioners and the respondents. Any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant could not be enforced by the machinery of a writ under Article 226 of the Constitution. The judgment in *Lekhraj Sathramdas Lalvani versus N.M. Shah* reported in AIR 1966 SC 334 was relied in this regard. The power of judicial review was now well defined in a series of decisions of this Court. It is trite that the Court would have no jurisdiction to entertain a writ application in a matter governed by contract qua contract

as therein public law element would not be involved. One of the conditions for exercising power under Article 226 for issuance of a mandamus was that the Court must come to the conclusion that the aggrieved person had a legal right, which entitled him to any of the rights of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus. A mandamus was available against any public authority including administrative and local bodies, and it would lie to any person who was under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant had to satisfy that he had a legal right to the performance of a legal duty by the party against whom the mandamus was sought and such right must be subsisting on the date of the petition. [Director of Settlements, A.P. versus M.R. Apparao, (2002) 4 SCC 638] The existence of the rights was the foundation of the exercise of jurisdiction of the Court under article 226 of the Constitution of India [State of Orissa versus Madan Gopal Rungta reported in AIR 1952 SC 12].

4. I heard the learned counsels for the parties and perused the writ petitions, the affidavits and the written notes of submissions.

5. The petitioners have quite rightly contented that writ jurisdiction is not necessarily excluded in contractual matters. A reference may be made to the decision in ABL International Limited (supra).

6. However, in the instant case it does not appear that physical possession of the plot was given to the petitioner. Moreover, no lease was executed in their favour. Allotment of land need not create a possessory

right over such land. Thus, the writ petitioners were at best in permissive possession. In this regard, the respondents rightly relied on the decision in the case of Team-Asia Lakhi Semi Conductor Limited (supra). Therefore, the respondents had a right to cancel the allotment of land made in the favour of the writ petitioners.

7. It appears that at the request of the petitioners the price of land was scaled downwards. Necessary payments were made and an allotment letter was issued for entering into a lease for the land for a period of 99 years. It further appears that subsequently some money was also paid for the change of name of the petitioner concerned.

8. It is the contention of the respondent authorities that the writ petitioners failed to act in terms of the said offer of allotment despite several requests and reminders from the respondent authorities. Despite such allotment being made in 2001, till 2006 they had hardly taken any steps and had only been praying for extension of time.

9. It appears that in 2007 the respondent authorities came up with an allotment policy for KMDA and KIT land. According to such policy, the allottees were supposed to start and complete construction within a stipulated periods.

10. The answering respondent authority considered the petitioner's prayer for extension of time and granted a final extension by a letter dated 13.02.2007 and directed the petitioners to obtain building plan from the KMC, to start the actual construction activities within 90 days thereof and to complete the construction activities within 36 months from the date of

approval from the KMC. This letter has, quite significantly, not been challenged by the petitioners then.

11. What was issued to the petitioners was an allotment letter for lease of land. It was made clear that the terms were not exhaustive and would be contained in a lease deed that was to follow. Therefore, the respondent authorities can fairly contend that since the petitioners immensely contributed to the delay in entering into a possible lease deed in which such stipulations as meant for starting or concluding a project could have been incorporated. Non-mention of the same in the allotment letter cannot mean that the writ petitioners could wait for an inordinately long time either to start the project or to conclude the same, especially when they did not object to the imposition of such further conditions in the last letter of extension dated 13.02.2007.

12. Imposition of such further conditions would, thus, not amount to a law operating retrospectively. As discussed earlier, such condition could have been imposed and is usually imposed in a lease deed which could not be entered into for the inordinate delay caused substantially by the petitioners.

13. In any event, the writ petitioners after accepting the letter dated 13.02.2007 allowing extension of time on certain conditions cannot thereafter turn back and now question the imposition of such further stipulations as bad for being retrospective. If the petitioners had not conceded to such conditions, extension might not have been allowed by the

respondent authorities and the allotment could have been terminated on such or some other ground, as available.

14. The availability of land, especially in this State, is very limited. The State or, for that matter, any statutory authorities cannot allow such land to lie vacant and unused. Therefore, necessary stipulations are brought in for user of such land. A letter of allotment may not contain such stipulation. In fact, as clearly mentioned in the letter exhaustive terms would have followed in the lease deed. The writ petitioners cannot take the advantage of their own wrong doing in not having such lease deed executed in time and avoid being bound by any such stipulation regarding user of land.

15. In view of the above discussions, I do not find any merit in the writ petition.

16. Accordingly, the same is dismissed. The connected applications also stand disposed of.

17. Interim order, if any, stands vacated.

18. However, there shall be no order as to costs.

19. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)