

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA 1014 of 2021

Ratna Mitra

VS.

The State of West Bengal & Ors.

For the Appellant : Mr. Swarnendu Ghosh,
Ms. Mary Datta, Advocates

For the State : Mr. S. N. Mookherjee, AG
: Mr. T.M. Siddiqui, AGP
Mr. S. Adak
Mr. Y. Singhi, Advocates

For the
Respondent no. 6 : Mr. Shounak Mukhopadhyay
Mr. Kallol Saha,
Mr. Akash Ghosh
Ms. Shinjita Ray, Advocates

Heard & Judgment on : August 4, 2023

DEBANGSU BASAK, J.

1. The appeal is directed against an order dated January 2, 2020 passed in WP No. 27981(W) of 2014.

2. By the impugned judgment and order, the writ petition filed by the appellant, was dismissed. The appellant was, however, granted leave to file a civil suit for damages against the State of West Bengal within a period of 3 months from date. If such suit was filed, the same was directed to be considered in accordance with law. The trial Judge observed that, it will not prevent the appellant and the state Government and the Government of Arunachal Pradesh from working out any other suitable arrangement which is partially reflected from the last page of the order dated 3rd July, 2014 passed by a co-ordinate Bench of this Court.

3. Learned advocate appearing for the appellant submits that, the State authorities purported to invoke the provisions of the Urban Land (Ceiling & Regulation) Act, 1976 (in short 'the Act of 1976) in respect of a transaction happening prior to the Act of 1976 coming into force. The Act of 1976 cannot be said to be with retrospective effect or to be comprising of any retrospectivity.

4. Learned advocate for the appellant draws the attention of the Court to the contents of the order dated **July 3, 2014** passed in **WP 14762(W) of 2011 [Deepak Mitra vs. The State of West Bengal & Ors.]**. He submits that, during the pendency of allotment and even prior to cancellation thereof, 3rd party rights in respect thereof was granted. State of Arunachal Pradesh was granted the allotment in respect of the plot concerned.

5. Learned advocate for the appellant submits that, the authorities proposed to substitute the plot allotted with the plot of 5 cottah of land. The appellant was, therefore, entitled to legitimate expectation with regard to the allotment in respect of 5 cottah of land. The same should be directed to be given to the appellant.

6. Learned Advocate General appearing for the State submits that, the present writ petition is the fifth in a series of writ petitions filed either by the appellant or by her predecessor-in-interest. He submits that, in an exercise concerning allotment of land at Salt Lake, undertaken by the State Government, the predecessor-in-interest of the appellant submitted an application which contains suppression of material facts. He draws the attention of the Court to the effect, in such application, the predecessor-in-interest of the appellant declared that, the applicant did not hold any land in the State of West Bengal. He contends that, it was subsequently discovered that the appellant and/or the predecessor-in-interest of the appellant were in possession of various plots of land in the State of West Bengal.

7. The appellant approached the High Court by way of a writ petition seeking cancellation of an order dated September 5, 2014 passed by the Principal Secretary, Urban Development Department.

8. The Principal Secretary, Urban Development Department was directed by an order dated July 3, 2014 passed in WP No. 14762 (W) of 2011 to consider and dispose of the grievance of the predecessor-in-interest of the appellant. By a reasoned order dated September 5, 2014, the Principal Secretary, Urban Development Department refused to grant any relief to the predecessor-in-interest of the appellant.

9. From the records, it appears that, the predecessor-in-interest of the appellant applied for allotment of land on March 30, 1973. An allotment letter was issued on April 30, 1974. No deed, however, was executed. The appellant paid a sum of Rs.35,000/- on June 8, 1974. Subsequently, the allotment was cancelled on December 29, 1980 and allotted to the Government of Arunachal Pradesh for building office and guesthouse.

Lease deed was executed in favour of Government of Arunachal Pradesh on February 4, 1988.

10. Apparently, the predecessor-in-interest of the appellant was granted the initial allotment without the public at large being invited to participate in the selection process for allotment of land of the Government. No public auction was held. No lottery was also held. In fact, no notice calling for application also was issued. The allotment itself was tainted with illegality. Moreover, the predecessor-in-interest of the appellant suppressed a material fact in the application form. He declared that he was not the owner of any land in West Bengal although he was.

11. The reasoned order dated September 5, 2014 noted such lacunae in the allotment process.

12. The reasoned order dated September 5, 2014, directed refund of the sum of Rs.35,000/- paid by the predecessor-in-interest of the appellant to the State Government.

13. So far as the provisions of the Act of 1976 is concerned, Section 3 thereof makes it abundantly clear that, on and from the commencement of the Act of 1976, no person shall be entitled to hold any vacant land in excess of the ceiling limit in the territories to which the Act of 1976 applies, except as otherwise provided in the Act of 1976.

14. The allotment in question is for a plot of land in excess of 7 cottah. It comes within the mischief of the Act of 1976.

15. In the facts of the present case, the allotment in respect of the land in question was not formalized. No lease deed was executed by and between the predecessor-in-interest of the applicant and/or the State Government. Moreover, 3rd party rights were created in respect of the plot concerned.

16. There is a writing which speaks of granting the predecessor-in-interest of the appellant 5 cottah of land in substitution of the land allotment made. However, there is no record to suggest that the predecessor-in-interest of the appellant accepted such a proposal.

17. In such circumstances, we are of the view that no binding contract came into being either on the allotment of the land in question or with regard to the subsequent offer of substitution of 5 cottah of land.

18. In view of the above discussions, we find no merit in the present appeal.

19. FMA 1014 of 2021 is, accordingly, **dismissed** without any order as to costs.

20. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Debangsu Basak, J.)

21. I Agree.

(Md. Shabbar Rashidi, J.)