

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 5563 of 2012
Mediview Diagnostic Services Private Limited and Others
Versus
The State of West Bengal & Ors.

For the petitioner	:	Mr. Saptansu Basu Mr. Ritwik PattanayakAdvocates
For the State	:	Mr. Susovan Sengupta Mr. Sanatan PanjaAdvocates

Heard lastly on : 18.04.2023

Judgment on : 26.09.2023

Jay Sengupta, J.:

1. This is an application under Article 226 of the Constitution of India directing the respondent authorities to cancel and/or rescind the letter being Memo No. 697/1C-21/2009 dated 27.05.2011 issued by the Estate Manager, Kalyani and to give effect to the reasoned order dated 24.08.2010 passed by the Estate Manager, Kalyani in terms of the judgment and order 12.04.2010 passed by this Court in WP 19531(W) of 2009.

2. Learned senior counsel appearing on behalf of the petitioners submitted as follows. The writ petition was filed challenging the impugned order passed by the Principal Secretary, Urban Development Department and communicated by the Estate Manager, Kalyani, Urban Development Department by the letter being Memo No. 697/1C-21/2009, dated 27.05.2011. “Administrator” was defined in Section 2(a) of the West Bengal Government Townships (Extension of Civil Amenities), Act, 1975 and was applicable to Kalyani Township. The Estate Manager, Kalyani was the Administrator of Kalyani Township. Section 4B of the West Bengal Government Townships (Extension of Civic Amenities) Act, 1975 said about the procedure of lease of land within a Government Township. According to Section 4B(1), to obtain settlement through lease of any land situated within a Government Township the intending person might submit an application to the Administrator of the Government Township and in this particular case the Estate Manager, who was the Administrator of the Kalyani Township. The Estate Manager of Kalyani Township/Administrator should have the power to grant or refuse to grant the application for allotment of land by virtue of Section 4B(2) of the West Bengal Government Townships (Extension of Civic Amenities), Act, 1975. But, the order of refusal must be supported with reasons. The aggrieved person had the right to file an appeal under Section 4B(3) of the West Bengal Government Townships (Extension of Civic Amenities) Act, 1975 to the State Government. In March, 1999 the petitioners applied for a plot of land near the District Centre Building, Kalyani for hospital and expansion and modernization of the diagnostic

clinic run by the petitioners. After extensive departmental deliberations, a plot of 10 cottahs of land was allotted to the petitioners. By a memo No. 196/42-1/99 dated 09.03.2001 the Estate Manager, Kalyani cancelled the application of the petitioners without assigning any reason. After several rounds of litigations this Court, by an order dated 12.04.2010 passed a writ petition being W.P. No. 19531 (W) of 2009, directed the respondent Estate Manager, Kalyani to consider the representation of the petitioners for allotment of an alternate area of 10 cottahs land in the vicinity of DC building within two months from the date of communication of the order after giving the petitioners an opportunity of hearing. The Estate Manager, Kalyani, after hearing the petitioner was pleased to pass a reasoned order dated 24.08.2010 and allotted 10 cottah out of 20 cottah land from the east side of D.C. building, Kalyani. After that the Estate Manager, Kalyani issued the impugned letter being Memo No. 697/1-C/2009m dated 27.05.2011 thereby informing the petitioners that the reasoned order dated 24.08.2010 passed by the Estate Manager, Kalyani had not been considered by U.D. Department as the U.D. Department had a clear intention of implementing the scheme for setting up meeting hall with guest house, public library along with shopping complex, as soon as budget permitted, in the land allotted to the petitioners. On 10.02.2012 the said Contempt Application being CPAN No. 652 of 2011 arising out of W.P. 19531 (W) of 2009 was considered by this Court. Without going into the question of the legality of the action alleged, this Court was constrained to observe that the direction of the Court to decide had duly been complied with. So, there was no

question of contempt. If the petitioners were aggrieved by the action, it was open to the petitioner to initiate such appropriate proceedings as they might be advised. The contempt proceedings were dropped with the above observations. There was no denial in the affidavit in opposition filed by the State respondents as regards the jurisdiction of the Estate Manager, Kalyani to allot the plot of land in favour of the petitioners and/or in favour of any intended applicant. Followings were the reasons as to why the impugned order was not sustainable either in law or in fact. The Division Bench while passing the order dated 21.02.2003 in the Public Interest Litigation did not pass any order in respect of act and/or decision of allotment excepting the place of allotment which was alleged to have been earmarked for an auditorium in the master plan of the Kalyani Township. The allotment of land in favour of the petitioners was never questioned nor decided in the Public Interest Litigation. The only issue decided there was the particular place of allotment and it was never decided that the petitioners could not be permitted to be allotted any plot of land within the Kalyani Township. This was further made clear in the order dated 20.03.2009 disposing the review application. After February, 2002 and/or even after the judgment and order dated 21.02.2003 passed by this Court in the Public Interest Litigation, the respondents authority allotted several commercial plots of land to different persons and/or bodies adjacent to the D.C. Building at Kalyani Township, Nadia for different commercial purposes. The order dated 12.04.2010 was passed in WP No. 19531 (W) of 2009 after hearing the learned counsels appearing on behalf of the respective parties including the State directing

the Estate Manager, Kalyani, Urban Development Department, to consider the representation of the petitioners for allotment of alternate area of 10 cottah land in the vicinity of D.C. building. Till date the Urban Development Department did not challenge the order. On 31.08.2010 the allotment made in favour of the petitioners by the reasoned order of the Estate Manager dated 24.08.2010 was also approved by the Special Secretary, Urban Development Department. From the note sheet it transpired that the question of change of Master Plan was also an issue before the Urban Development Department and the same was answered by the Estate Manager, Kalyani by his note dated 14.09.2010 and it was observed that the change of Master Plan was not required as the allotment to the petitioners was made from the land earmarked for commercial purposes. The Estate Manager further opined that in future the scheme for meeting hall, guest house and public library could be implemented by the department in the rest portion of the land. This opinion and proposal of the Estate Manager, Kalyani was duly approved by the Joint Secretary of the Urban Development Department on 15.09.2010 from the office note sheet. It transpired that, during the hearing on 15.03.2011 the personnel from the Office of the Executive Engineer, Public Health Engineering, Nadia, submitted before the Land Manager of the Urban Development Department, that the scheme for setting up meeting hall with guest house, public library along with shopping complex could not be implemented due to some technical reasons as pointed out by the specialist engineer of I.I.T. Kharagpur. The respondent no. 2, the Principal Secretary to the Government of West Bengal, Urban Development

Department, was interfering with the administration of justice without any jurisdiction. The respondent no. 2 could not alter and/or cancel and/or modify and/or take a contrary view against the reasoned decision dated 24.08.2010, passed by the Estate Manager, Kalyani, Nadia, to make the judgment and order dated 12.04.2010 passed in W.P. 19531 (W) of 2009 redundant, just before the execution of the lease agreement.

3. Learned counsel for the State submitted as follows. As per provisions of the West Bengal Government Townships (Extension of Civil Amenities) Act, 1975, for every Government Township there should be an Administrator who shall be responsible for carrying out the purpose of this act in respect of the area included within that Government Township. Under the said Act, the land at Kalyani Township was Government land which belonged to Department of Urban Development and Municipal Affairs, Government of West Bengal. The Estate Manager, Kalyani acted under administrative control of Department of Urban Development and Municipal Affairs. The Estate Manager, Kalyani was not under any Development Authority, and was under the State Government in Department of Urban Development & Municipal Affairs. As per land acquisition case no. 1 of 1947-48 under Section 5(i) of the requisitioned land (continuance of powers) Act, 1947, lands of 35 nos. of Mouzas (in part and full) of cadastral survey were acquired for the purpose of establishment in pursuance of the scheme commonly known as “Kalyani Town” (Kanhrapara Development Scheme 1949) of the Government of West Bengal. The Sanctioning Authority of Plan at Kalyani Township was the office of the Chief Engineer, Construction

Board Directorate, P.W.D. Government of West Bengal. In compliance with the order dated 17.01.2002 passed in W.P. No. 5963 (W) of 2001, allotment order was issued vide memo no. 187 dated 31.01.2002 by the Estate Manager, Kalyani, UD & MA Department, Government of West Bengal for allotment a land of 10 cottahs of Commercial land adjacent to D.C. Building, Kalyani, Nadia. As per said allotment order the petitioner paid Rs. 3, 00,000 (Rupees three lakh) only as total value of said land at a time, which was acknowledged by this office of the Estate Manager, Kalyani vide memo no. 416 dated 01.03.2002. Thereafter, a public litigation was filed being W.P. No. 2797(W) of 2002 and an order was passed by a Division Bench on 21.02.2003 giving liberty to cancel the allotment of land in favour of the petitioner for reason that the land was earmarked for "Auditorium purpose". Thereafter, the said allotment order of land was cancelled vide this office memo no. 754 dated 31.05.2005. It was also observed by the Court that the order would not prevent the authorities from undertaking the change of the Master Plan. So, long as the present Master Plan survived, the change of land could not be made by an Administrative Order. In view of the cancellation of allotment order vide no. 754 dated 31.03.2005 a letter was issued vide no. 754 dated 31.05.2005 the amount deposited against salami of plot so far allotted vide memo no. 187 dated 31.01.2002, might be refunded to the petitioner. A writ petition was filed by the petitioner in Hon'ble High Court being W.P. No. 19531 (W) of 2009 and this Court by an order dated 12.04.2010 directed "the respondent Estate Manager, Kalyani to consider the representation of the petitioner for allotment of alternate area

of 10 cottahs land in vicinity of D.C. Building”. A reasoned order was passed on 24.08.2010 by the then Estate Manager, Kalyani considering the representation of the petitioner for allotment of 10 cottahs of land from the other East side of the D.C. Building, Kalyani. But the land from the other East side of the D.C. Building, Kalyani which was considered by reasoned order, had not been considered by the Department of Urban Development and Municipal Affairs vide no. 697/1C-21/2009 dated 27.05.2011 as the Department had clear intention of implementing the scheme for setting up meeting hall with guest house, public library along with shopping complex as soon as budget permit.

4. I heard the learned counsels appearing on behalf of the parties and perused the writ petition, the affidavits and the written notes of submissions.

5. First, quite indubitably the Estate Manager, Kalyani was the Administrator of Kalyani Township. In terms of Section 4B of the West Bengal Government of Township (Extension of Civic Amenities) Act 1975, the Administrator had the power to grant or refuse to grant allotment of land in the Township. But, the order of refusal must be supported with reasons. The aggrieved person, however, had the right to file an appeal to the State Government.

6. In March, 1999 the petitioners applied for a plot of land near the District Centre Building, Kalyani for constructing a hospital and expanding and modernising the existing diagnostic clinic run by the petitioners. A plot of 10 cottahs of land was allotted but, by a Memo dated 09.03.2001 the

Estate Manager, Kalyani cancelled the application without assigning reason. After several of litigations, by an order dated 12.04.2010 in WP No. 19531(W) of 2009, this Court directed the Estate Manager Kalyani to consider the representation of the petitioners for allotment of an alternate land of 10 cottahs in the vicinity of the DC building within two months of communication of the order. A reasoned order dated 24.08.2010 was passed and a land of 10 cottah out of 20 cottah land from the east side of the DC building was allotted. However, subsequently by a letter dated 27.05.2011 the same Estate Manager informed the petitioners that the order passed by him was not considered by the Urban Development Department as the latter had the intention of implementing the scheme for setting up meeting hall with guest house, public library along with shopping complex as soon as the budget permitted.

7. It may be germane to mention that the Hon'ble Division Bench dealing with a public interest litigation on 21.02.2003 did not pass any order in respect of the decision of allotment of land excepting the place of allotment that was allegedly earmarked for an auditorium in the master plan of the Kalyani Township. The order passed in review made the position very clear.

8. In fact, as per the petitioner after February, 2002 and even after the judgment of 21.02.2003 the respondent authority purportedly allotted several commercial plots to different persons adjacent to the DC building at the Kalyani Township Nadia. But, while considering the petitioner's case the Urban Development Department took a different stand.

9. It is a fact that on 31.08.2010 the Estate Manager Kalyani made allotment of a plot of land in favour of the petitioners by a reasoned order dated 24.08.2010. This was also approved by the Special Secretary, Urban Development Department.

10. The note sheet apparently revealed that the master plan was not required to be changed as the allotment of the petitioner was made from the land earmarked for commercial purposes. The opinion and proposal of the Estate Manager was duly approved by the Joint Secretary on 15.09.2010. One wonders why then the Urban Development Department finally decided to come in the way of such allotment.

11. It is the petitioners further case that during hearing on 15.03.2011 the personnel from the office of the Executive Engineer submitted that the scheme for setting up of meeting hall, public library, shopping complex could not be implemented due to some technical reason.

12. Even if one does not strictly go by the recordings in the note sheet, one wonders under what provision of law can the Principal Secretary to the Government of West Bengal, Urban Development Department set at naught a reasoned decision taken by the Estate Manager, Kalyani in terms of a judgment passed by this Court and that too in exercise of its powers under a statute. Nothing has come from the end of the State respondents in this regard, especially as to what provision of law was exercised by the Principal Secretary to render such reasoned order of the Estate Manager Kalyani redundant.

13. Incidentally, till date no such meeting hall with guest house and public library along with shopping complex have come up at the place.

14. The persistent stand of the State respondents, even during their submissions in the year 2023, that the Department had clear intention of implementing the scheme for setting up meeting hall with guest house, public library along with shopping complex as soon as budget permits can only evoke a sense of pity.

15. Not only is the action of the Principal Secretary in ignoring the reasoned order passed by the Estate Manager Kalyani without any legal basis, the non-grant of the plot of land for bringing up of a medical institution and keeping the said land unutilised for such a long time amounts to waste of valuable resources, which is only indicative of bureaucratic inertia and indifference.

16. In view of the above discussions and in the interest of justice, this Court is inclined to allow the writ petition by quashing the letter dated 27.05.2011 issued by the Estate Manager and directing the respondents to forthwith give effect to the reasoned order 24.08.2010 passed by the Estate Manager Kalayani within a period of two months from the date of communication of this order.

17. 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.)