

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side**

Present :

The Hon'ble Justice Bibek Chaudhuri

WPA 8749 of 2016

Chhobi Mallik

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Dhiraj Kr. Trivedi, Adv.
Mr. Varun Kothari, Adv.
Mr. Bhupendra Gupta, Adv.

For the State : Mr. Biswajit De, Adv.
Ms. Rajlakhmi Ghatak, Adv.

Heard on : 13.06.2023.

Judgment On : 13.06.2023.

Bibek Chaudhuri, J.

It is not disputed that the petitioner has been residing in England. Sometimes in 1974, she decided to have a plot of land in the then upcoming city of Salt Lake. Indisputably she filed an application on 13th March, 1974 before the competent authority praying for allotment of land measuring approximately about 4 Kathas in Salt Lake Township. It is also on record that on 6th May, 1974 "letter of offer of allotment" was made in favour of the

petitioner containing certain terms and conditions. For our purpose
Clauses b, d, f and j are relevant and quoted below:-

(b) You are to deposit 50 per cent. of the said salami as earnest money with the Reserve Bank of India, Calcutta, by a Chalan in T.R. Form No.7 and submit to the Government the receipted Chalan along with your formal application in duplicate in the enclosed form as a token of unconditional acceptance of the terms of the lease, a copy of which is also enclosed herewith, and the premium or salami at which the land is offered. The amount is to be paid within 40 days from the date of issue of the letter failing which it shall be presumed that you are not interested in the plot and the allotment order shall stand automatically cancelled.

(d) The remaining 50 per cent. of the premium or salami will be payable within two months from the date of receipt of the information that the land is ready for delivery of possession.

(f) On failure to make payment of the instalment referred to in clause (d) above within the prescribed period the earnest money mentioned in clause (b) will be liable to be forfeited and the allotment order cancelled and the Government will be at liberty to offer the plot to another party.

(j) Physical possession of the plot will not be handed over before the premium or salami has been paid in full.

It is submitted by the learned Advocate by the learned Advocate for the petitioner that on receipt of the above-mentioned letter dated 6th May, 1974, the petitioner deposited 50 per cent. of the salami in favour of the concerned authority.

It is also an accepted position that the application accepting offer of allotment of land was not executed by the petitioner till date on the ground that the respondent authority never intimated him with the plot of land was ready for delivery which is the condition precedent for execution of the said application on payment of the balance amount of salami.

It is on record (Annexure-P2) that the allottee was informed on 11th /14th September, 1974 that she was allotted plot no.191 in Block AC of Sector I of the Township. It was further directed that the blue-prints of the entire Sector or a particular block thereof may be obtained from the Office of the Special Engineer, Salt Lake Reclamation and Development Circle at No.9, Brabourne Road (4th Floor), Calcutta-1, on payment of a charge of Rs.4 (Rupees four only) per copy. Then again on 29th March, 1976, the respondent authority forwarded two copies of revised agreement books requesting the petitioner to sign and return the said agreement book to the

department immediately in duplicate for taking further action in respect of execution of deed of lease.

It is frankly admitted by the learned Advocate for the petitioner that since the petitioner was at that point of time residing in England, it was not possible for her to take follow up action continuously with regard to the said allotment of land and execution of deed on payment of further sum of Rs.10,000/- (Rupees Ten thousand only). However, the petitioner executed a power of attorney in favour of her sister Smt. Mala Kundu, who used to look after the said issue.

After a long time of 6th September, 2005, the Executive Engineer, Design, Salt Lake Reclamation and Development Circle wrote a letter to the petitioner requiring her to produce original G.O., original receipted challans, original money receipts etc. It is also stated in the said letter that the file concerning AC 191, Salt Lake City was missing from the office and in order to reconstruct the file, the said documents were necessary. However, the said documents were not produced by the petitioner. A reminder letter was issued on 27th October, 2006 to the petitioner requiring those documents once again but the petitioner sat tight over the matter. After a lapse of about 6 (six) years on 11th April, 2012, the constituted attorney of the petitioner submitted certain documents to the Executive Engineer, Design, Salt Lake Reclamation and Development Circle.

However, the respondents did not take any action over the said matter. Finally, on 15th September, 2015 the petitioner wrote another letter requesting the respondent No.4 to grant her permission to pay the balance 50 per cent salami with the penalty in respect of plot No. AC 191 and deliver possession of the said land in favour of her. Finally on 13th January, 2016 allotment in respect of the said plot in favour of the petitioner was cancelled unilaterally by the respondent No.4 mainly on two following grounds:-

- (a) 50 per cent balance amount was not deposited within the stipulated period of time.
- (b) The plot remains unutilized for more than 40 years.

Issuance of the said letter is the cause of action to file the instant writ petition by the petitioner.

In order to buttress his argument the learned advocate for the petitioner has referred to a decision of the Division Bench of this Court in ***Rupa and Co. Ltd. and Ors. versus the State of West Bengal and others*** reported in ***(2020) 2 CALLT 383(HC)***. It is needless to say that this report deals with allotment of plot of land in New Town by HIDCO. The facts and circumstances of the case shows that initially HIDCO used to transfer free hold land to the allottees and subsequently HIDCO unilaterally decided to transfer the land to the allottees executing long term lease with certain restrictive covenants

of non-transferability of land and other grounds by the Division Bench of this Court after taking into consideration series of Supreme Court decisions ultimately held in paragraph 33:-

“There was a change of mind or an alteration in the attitude of the government. It was of the opinion that it should not divest itself of the legal ownership of the land. The entire swath of land in New Town should continue to belong to it. So, the conveyance of land in favour of the appellant was to be abandoned. Instead, they would get only a leasehold subject to stringent conditions like restriction on subletting, partition etc., as the government did not like fragmented holdings in that area. In my opinion, the government should have realized this when they proposed to make the allotment in the appellant’s favour. Once having consciously taken the decision to make the allotment and having made it, they could not change this decision unilaterally. In the contractual field it could be changed only by mutual agreement. The unilateral decision to change the terms of allotment by converting it into an allotment of leasehold interest with the above restrictions without a valid piece of legislation or a lawful administrative act or policy was arbitrary, unreasonable, wrongful and illegal.”

I have gone through the above decision. On factual score the ratio of the above mentioned report is completely different from the

facts and circumstances of this case. In the above report initial offer to the allottee was made for transfer of free hold land. Subsequently, after allotment and better execution of the deed of conveyance the authority decided unilaterally that the allottees would be given possession of leasehold land. The Division Bench of this Court held that such unilateral alteration after allotment of land is not permissible.

The learned advocate for the State Respondent has submitted a report stating contention of the State of West Bengal. Urban Land Development is not represented in the hearing.

Now, let me consider the entire gamut of the issue in the perspective of the law of contract. Basically the letter dated 6th May, 1974 was an offer of allotment made by the Government of West Bengal in favour of the petitioner. The petitioner accepted the offer subject to the conditions mentioned in the said letter of offer of allotment and quoted hereinabove. On payment of initial 50 per cent of the salami or premium an application accepting of her allotment of land was annexed with the said offer of allotment. The application accepting offer of allotment of land was executed by the petitioner. Thereafter on 11th/14th September, 1974 the petitioner was allotted plot No.191 of Block AC of Sector-I at Salt Lake Township. This letter is the allotment letter of the said plot. This is also a communication

that the plot is ready for delivery of possession and the petitioner was under obligation to deposit balance amount within 60 days from the said 11th/14th September, 1974. The petitioner has failed to comply with the said direction contained in the offer of allotment. After a lapse of about 40 years the case cannot be reopened. Therefore, I do not find any merit in the instant writ petition. Accordingly, the instant writ petition is dismissed.

(Bibek Chaudhuri, J.)

***Mithun De/
Suman Das
A.R. (Ct).
SI No.01.***