

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELATE SIDE

Present:

The Hon'ble Justice SHEKHAR B. SARAF

WPA No. 14312 of 2012

SRI SHUBHENDU KUMAR GOSWAMI & ORS.

VERSUS

THE STATE OF WEST BENGAL & ORS.

For the Petitioners : Mr. Kishor Mukherjee, Adv.

For the State : Mr Suman Dey, Adv.

For the Respondent no. 4 : Mr. S. K.Bhattacharyya

Mr. S. Basu

Last Heard On: August 1, 2023

Judgment On: August 9, 2023

Shekhar B. Saraf, J.:

1. The petitioners in the instant writ petition being Shri Suvendu Kumar Goswami, Shri Shyamal Goswami, Shri Ardhendu Kumar Goswami have filed this petition under Article 226 of the Constitution of India challenging the inaction on part of the respondents in releasing the lapsed deposit amount of Rs 66,000/-as per the order No.52 dated March 4, 2008 passed by Learned Civil Judge, Junior Division, Garhbeta in Pre-emption case No.4 of 2004.
2. The petitioners pray that the said petition appeared before this Hon'ble Court under the heading 'Motion' when the counsel of the Petitioner could not attend the Court and hence the petition was dismissed for default by this Hon'ble Court. Subsequently, CAN No. 1301/2017 was filed by the petitioner for restoration and recalling the order of dismissal dated January 10, 2017. On April 17, 2019, CAN No. 1301/2017 was allowed and causes shown by the petitioner for restoration were accepted as sufficient by Hon'ble Justice Debangsu Basak. As a result, the order of dismissal dated January 10, 2017 was recalled and WP No. 14312(W) of 2012 was restored to its original file and number.

FACTS

3. I have enumerated the facts of the instant writ petition below:

- a) The petitioners state that they have purchased a land measuring about 1.5 Decimal in respect of Plot No. 136, under Mouza – Quabat, in the Village of Goaltor, District- PaschimMedinipore.
- b) One Ram Sundar Ponda along with others filed a Pre-emption case being No. 4 of 2004, against the petitioners and in the said case, the petitioners duly deposited the value of the land i.e Rs 66,000/- in the Treasury Department, Midnapore, Government of West Bengal.
- c) The petitioners state that during the pendency of the said Pre-emption case, both the parties settled the dispute out of Court and a compromise petition was filed before the Learned Civil Judge, Junior Divison, Garbetah and in order being No.52 dated March 4, 2008, the said pre-emption case was disposed of wherein the petitioners were given the liberty to withdraw the said deposit.
- d) The petitioners further state that the Order dated March 4, 2008 was passed, but the Learned Court failed to discharge the release of the said amount on the grounds that the said amount has been deemed to be a lapse deposit.

- e) The Learned Civil Judge, Junior Division, Garhbeta, vide letter dated June 23, 2008 intimated the Learned District Judge, Paschim Medinipur, to take steps for refund of the lapse amount of Rs. 66,000 to the petitioners. On the same date, an application for sanction of such amount in favour of the petitioners was also sent to the Accountant General, Government of West Bengal by the Learned Civil Judge, Junior Division, that confirmed the receipt of such deposit and the said letter was received by the Accountant General.
- f) The petitioners, being aggrieved and dissatisfied with the non-compliance of the respondent authorities in not refunding the said lapsed deposit amount to the tune of Rs 66,000 along with interest in favour of the petitioners, to which they are very much entitled to, have moved the said petition.
- g) In compliance with directions of this Hon'ble Court, a report was submitted by the Registrar General on July 30, 2013 wherein it was informed that the refund of the Lapsed Deposit must be as per Rule 737 of the Civil Rules and Orders, which is enumerated below :-

'Rule 737 – When payment of a deposit lapsed under Rule 734 is required by a person entitled thereto, application shall be made through the District Judge, who shall examine the claim, and, if he finds it correct, shall forward an application in Form No. (A) 4 to the

Accountant-General. Several deposit numbers may be included in a single application, if they are payable to the same person. The Accountant-General's letter of authority, when received shall be noted against the items in the Clearance Register (or original register in the case of a B deposit), so as to prevent a second application. This letter shall then be passed for payment at the treasury, as prescribed in the form. No other record of these refunds is necessary; and as such payments are not to be shown in the plus and minus memorandum.'

CONTENTIONS BY THE PETITIONERS

4. Mr Kishor Mukherjee and Mr Ahitagni Dey, counsel appearing on behalf of the petitioners argued that:
 - a) Representation was made to the Judicial Secretary, Government of West Bengal, but till date the said amount has not yet been refunded to the petitioners and such action by the respondents is bad in law.
 - b) The respondent authorities, being the statutory authorities, have obligations to refund the said amount to the petitioners but they have remained silent in the matter without any reason whatsoever.
 - c) The petitioners are entitled to get interest of the said amount of Rs 66,000 since the amount is lying under the custody of the

Government of West Bengal from 2004, because of which the petitioners are suffering irreparable loss and financial crisis.

- d) As per Rule 424 of the West Bengal Treasury Rules, the Accountant General has an obligation to sanction amount and refund the same to the claimant. The petitioners have no other adequate or alternative remedy and relief claimed herein if granted, shall afford complete justice to the petitioners.

CONTENTIONS FOR RESPONDENTS

5. Mr Suman Dey and Mr Billadal Bhattacharyaa, counsels appearing on behalf of the respondents made the following submissions :

- a) The said petition is misconstrued and prima facie is misconceived, and should be dismissed. There has not been any non-repayment of amount to the petitioners, and thereby denied all allegations as to such an act being bad in law.
- a) There are no obligations to refund the petitioners in any whatsoever manner as it may be.

Observations & Analysis

6. I have heard the counsel appearing for the parties and perused the available material on record.
7. The facts before me present a rather unfortunate scenario wherein the petitioners have had to vie with pain for the refund of the deposit they made in court. There is no dispute about the fact that such deposit was made before the court as evident from the letter and application dated June 23, 2008 signed by the Learned Civil Judge, Junior Division, Garhbeta.
8. As per my order dated July 11, 2023, another report was filed by the District Judge, Paschim Medinipur on July 26, 2023, which further surfaces the rather sorry state of affairs that have unraveled. The District Judge, Paschim Medinipur, vide letter dated October 10, 2012 requested the Accountant General (A&E) to sanction the relapsed deposit amount to the petitioners along-with a skeleton statement after due counter signature with necessary certificate. The District Judge, Paschim Medinipur, repeated the said request to the Secretary to the Government of West Bengal, Judicial Department, vide letter dated December 1, 2012. The response from the Accountant General (A&E) was that such sanction cannot be made owing to lack of deposit statements. The District Judge, Paschim Medinipur, repeatedly harped upon

administrative reasons for the lack of deposit statements from 1984-85 onwards, but always re-iterated the right of the petitioners to receive the said deposit and cited other instances wherein such refunds were made on the basis of skeleton statements. Such requests for special sanction of refund and information about the same were made by the District Judge, Paschim Medinipur, time and again, to the Accountant General (A&E) and Judicial Department, Government of West Bengal, vide letters dated July 16, 2013, September 15, 2014, June 19, 2015, July 20, 2016, July 1, 2019, July 19, 2019, March 15, 2021, April 1, 2021 and June 1, 2013, but to no avail.

9. There appears to be no contestation to the fact that the petitioners deposited the said amount, nor to their right to get a refund of the same. It is clear from the facts provided in paragraph 8 above that the petitioners have a right to receive the said deposit. The procrastination on behalf of the authorities is clearly without any logical reasoning and simpliciter a lackadaisical attitude on the part of the authorities. Counsel on behalf of the respondents have unfortunately tried to support the indefensible without providing any facts whatsoever in their support. The above deposit should have been given to the petitioner as a matter of course while in the present case it is clear that petitioners have had to run from pillar to post to obtain the same. The above inaction and 'shifting the blame game' by one authority to another is highly deprecated by

this court. Administrative inconvenience or lethargy cannot be reason enough to defy a right for fifteen years.

10. In accordance with the aforesaid discussion, let there be a writ of mandamus issued in accordance with prayer (a) of the writ petition against the respondent no. 4 being the Accountant General, Government of West Bengal. Accordingly, this Court directs respondent no. 4 to sanction and return the lapsed deposit amount of INR 66,000 along with interest at the rate of 9 percent per annum to the petitioner within a period of six weeks.
11. WPA 14312(W) of 2012 is disposed of accordingly. There shall be no order as to the costs.
12. An urgent-photostat certified copy of this order, if applied for, should be readily made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)