

Dd **04 24.08.2023**

MAT 1427 of 2023
with
I.A NO: CAN 1 of 2023

SMT CHHOBI MALLIK
Vs.
STATE OF WEST BENGAL & ORS.

Mr. Dhiraj Trivedi,
Mr. Bhupendra Gupta,
Mr. Varun Kothavi,
Mr. Shashwat Nayak, Advocates
... ... For the Appellant

Mr. Jayanta Samanta,
Mr. Hemanta Kumar Das, Advocates
... ... For the State

1. The appeal is directed against the judgment and order dated June 13, 2023 passed in WPA 8749 of 2016.
2. CAN 1 of 2023 is disposed of by treating the appeal as on the day's list.
3. By consent of the parties, the appeal is taken up for hearing.
4. Learned advocate appearing for the appellant submits that, the appellant applied for allotment of a plot of land at Salt Lake City. He refers to the application. He refers to the letter of offer of allotment dated May 2, 1974. He draws the attention of the Court to the contents of the letter of allotment. He submits that, the appellant was required to pay an initial amount. The balance amount was required to be paid after the possession of the plot in question was made over to the appellant. He draws the attention of

the Court to the compliance of the terms and conditions of the letter of offer of allotment. He submits that, the first installment was paid. Subsequently, an application accepting offer of allotment was issued. Thereafter, a writing dated September 11/14, 1974 was issued to the appellant. In such letter, it was not stated that, the possession of the plot in question could be allotted to the appellant.

5. Learned advocate appearing for the appellant refers to a writing dated September 6, 2005, the representation dated April 11, 2012 as also the letter of cancellation of allotment dated January 13, 2016.

6. Learned advocate appearing for the appellant submits that the letter dated January 13, 2016 was issued without affording a reasonable opportunity of hearing to the appellant. The appellant made a representation on April 11, 2012 which was not disposed of.

7. Learned advocate appearing for the appellant draws the attention of the Court to the contents of the impugned judgment and order. He submits that, the learned trial Judge proceeded on an erroneous assumption of material fact. He submits that, the letter dated September 11/14, 1974 cannot be construed to mean that, there was any scope of giving possession of the plot in question to the appellant. Consequently, the question of the appellant depositing the next amount fixed by the agreement did not arise.

8. Learned advocate for the appellant submits that, the appellant was largely residing outside India. Her husband was also not keeping well. There was some amount of delay on the part of the appellant. However, such delay stands adequately explained in the pleadings of the writ petition.

9. State authorities are represented.

10. Appellant applied for allotment of a plot of land at Salt Lake City. Application dated March 13, 1974 was accepted. A letter of offer of allotment was issued on May 2, 1974. Relevant portion of the letter of allotment are as follows :-

"

(b) 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.

... .."

11. The appellant complied with one of the conditions of the offer of allotment. Appellant paid the initial amount on June 14, 1974.

12. The parties, thereafter, was governed by the application accepting offer of allotment of land. Relevant clause of the same is as follows :-

"4. That I/We shall pay remaining fifty per cent. of the said premium or salami in respect of the said plot at the rate of Rs.5,000/- per cottah within two months of receipt of intimation that the plot is ready for delivery. In default of such payment within two months as aforesaid the amount already deposited by me/us as per para. 2 above shall be liable to be forfeited by the Government and I/We shall have no right to claim refund of the same nor shall be entitled to claim any damages. That in default of deposit of the amount of the salami in full the allotment will stand cancelled.

Possession of the plot of land will be given to me/us after payment of the final instalment/salami in full"

13. Initially, the second installment was required to be paid after possession of the land made over to the appellant. Subsequently, on the basis of the application accepting offer of allotment of land, possession of the land was agreed to be given to the appellant after payment of final installment/salami in full. Admittedly, final payment was never made by the appellant.

14. By a writing dated September 11/14, 1974, the appellant was informed by the State authorities that, the appellant was allotted Plot No. 191 in Block AC in Sector I of the Salt Lake City. The appellant was also informed that the blueprint of the entire sector of the particular Block can be obtained from the office of the Special Engineer, Salt Lake Reclamation and Development Circle on payment of charges specified.

15. The writing dated September 11/14, 1974 was considered by the learned trial Judge as a letter of making over possession of the plot to the appellant. It is the contention of the appellant that the possession was not made over to the appellant and that the letter dated September 11/14, 1974 cannot be construed to mean making over possession of the plot in question to the appellant. Consequently, question of payment of the second installment does not arise.

16. There is no answer to Clause 4 of the application accepting offer of allotment of land, is concerned. First portion of Clause 4 is sought to be relied upon by the appellant to contend that, the amount is required to be paid on receipt of installment with the plot is ready for delivery. However, the last portion of Clause 4 stipulates that possession of land will be given only after payment of the final installment in full. Clause 4 read in conjunction with the writing

dated September 11/14, 1974 allows one to infer that, the writing dated September 11/14, 1974 was an intimation to the appellant that, the plot was ready for delivery.

17. The appellant admittedly did not pay the second portion of the amount despite the writing dated September 11/14, 1974. The appellant wrote letters dated February 13, 1995 and June 26, 1995 with regard to the plot in question. The appellant did not follow up on her letters or on her stand with the authorities for a period of about 10 years thereafter.

18. By a letter dated September 6, 2005, the State authorities called upon the appellant to contact the State authorities with the documents in original enumerated therein. It was followed up by another letter dated October 27, 2000 by the State authorities. The appellant did not react thereto again for a period of 7 years. By a letter dated April 11, 2012, the appellant wrote to the authorities enclosing certain documents and took a stand that the appellant was ready and willing to pay the balance amount. This stand, thereafter, was repeated in subsequent writing of the appellant.

19. By a writing dated January 13, 2016, the State authorities cancelled the allotment of the plot in favour of the appellant. This writing dated January 13, 2016 was assailed in the writ petition filed by the appellant resulting in the impugned judgment and order.

20. The ground stated in the letter of cancellation dated January 13, 2016 is that, the appellant failed to deposit the balance 50% of amount within the stipulated period and that the plot remained unutilized for more than 40 years from the offer of allotment.

21. It is the contention of the appellant that, representations made by the appellant earlier were not

disposed of and the appellant was not heard prior to the issuance of letter of cancellation dated January 13, 2016.

22. Establishing a technical breach of the principles of natural justice, will not aid a writ petitioner unless prejudice caused to petitioner is established by the breach. It is consistently held by the Courts that, hearing does not mean that a person needs to be heard physically, but consideration of materials on record including the representation would constitute a fair hearing. Moreover, if on consideration of admitted and indisputable facts, only one conclusion is possible and such conclusion is returned by the authorities, then, it cannot be said that the person concerned suffered prejudice on account of breach of principles of natural justice.

23. In the facts and circumstances of the present case, the irresistible conclusion, on the basis of the conduct of the appellant and the documents placed on record is that, the appellant did not deposit 50% of the balance amount within the stipulated time and that the plot in question remained unutilized for more than 40 years from the offer of allotment. The allotment was liable to be cancelled and rightly done so by the authorities.

24. In such circumstances, we find no merit in the present appeal.

25. MAT 1427 of 2023 along with all connected applications are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)