

Civil Appellate Jurisdiction (Appellate Side)

MAT 1346 of 2022
With
CAN 1 of 2022

**State of West Bengal & Ors.
-Vs.-
Abdul Odud**

Before:

The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray

For the Appellants	: Mr. Supratim Dhar, Mr. Dhananjay Nayak,
For the respondent No. 1	: Mr. Arindam Chattopadhyay, Mr. S. Dey,
CAV On	: 06.12.2022
Judgment On	: 23.02.2023

Apurba Sinha Ray, J. :-

1. The writ petitioner/respondent No. 1 purchased 4 decimal of land on 13.07.1990 by virtue of a registered Deed of Sale, from the recorded owner Calcutta Road Transport Co-operative Society Limited and has been running a petrol pump thereon under the name and style of "Tutul Fuelling Centre".

The said 4 decimal of land is adjacent to a government land measuring about 22 decimals comprised in Plot no. 5240. For the purpose of expansion of his petrol pump business the writ petitioner submitted an application before the District Land and Land Reforms Officer, Hooghly for granting long term lease in respect of the said 22 decimals of land on 09.04.2012, which was received by the office of the addressee on 11.04.2012. As there was no response from the concerned authority, the writ petitioner again submitted a representation dated 29.08.2012 but in vain. Thereafter the writ petitioner filed an application under Section 10 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 before the Land and Land Reforms Tenancy Tribunal and the same was disposed of on 08.08.2013 by the Tribunal directing the DL&LRO Hooghly to dispose of the representation of the applicant within a period of four months from the date of communication of the order after giving opportunity of hearing to all interested persons and to pass a reasoned order.

1.1. As in spite of receipt of the said order the authority did not take any steps, the writ petitioner initiated contempt proceedings and subsequently during the pendency of such contempt proceedings the concerned authority intimated the Learned Tribunal that the authority recommended a proposal for granting long term lease /settlement of 17 decimals of land out of 22 decimals of land in Plot No. 5240 in favour of the writ petitioner and considering the same the Learned Tribunal disposed of the proceedings by an order dated 11.05.2015. It is also alleged that the above proposal was

issued by the Learned Additional District Magistrate-cum-District Land and Land Reforms Officer, Hooghly in terms of the government allotment policy vide No. 6686-LP-1A-18/2012 dated 26.12.2012 and the said proposal for long term settlement was sent to the Assistant Secretary to the Government of West Bengal, Land and Land Reforms Department (respondent No. 3 herein) and it appears therefrom that the concerned authority recommended a proposal for granting long term settlement of 17 decimals of land out of 22 decimals of land in Plot No. 5240 in favour of the petitioner for 99 years against payment of salami of Rs. 9,87,589 and annual lease rent of Rs. 3119/- but the said proposal was kept pending since 29.04.2015 for approval.

1.2. As the said proposal was pending for a long time the writ petitioner submitted a representation dated 20.11.2020 to the DL&LRO Hooghly with a prayer for execution of long term lease in favour of the petitioner as per proposal dated 29.04.2015. But in spite of receiving the said representation, no reply was given to the writ petitioner. Finding no other alternative the writ petitioner filed a writ petition being WPA No. 135 of 2021 before a learned Single Judge of this Court for a direction upon the respondent authorities to grant approval to the proposal vide Memo No. IX-3/478/2489/S dated 29.04.2015 with a direction upon the DL&LRO Hooghly to execute the long term lease deed in favour of the petitioner. The said writ petition was heard by the Single Bench on 24.02.2021 and after hearing the parties the Learned Single Judge was pleased to pass an order:

“Although the petitioner was granted a recommendation by the Additional District Magistrate, Hooghly, for the purpose of a long term settlement of a piece of government land in favour of the petitioner, as long back as on April 29, 2015, the respondent no. 2 has not yet sanctioned such proposal or taken a decision thereon. Learned Counsel appearing for the petitioner submits that such inaction on the part of the respondent no. 2 is not only causing loss to the petitioner but also financial loss of revenue to the State. Learned Counsel appearing for the respondents submits that no representation, as such, has been given to the Assistant Secretary, Government of West Bengal, but to the Additional District Magistrate, who is the executing authority. Be that as it may, in view of the contentions raised in the writ petition, which are justified, WPA No. 135 of 2021 is disposed of by directing the respondent no. 2 to consider this writ petition itself as a representation by the petitioner and decide on the proposal recommended by the Additional District Magistrate and District Land and Land Reforms Officer, Hooghly, on April 29, 2015 for long term settlement of the land-in-question in favour of the petitioner, within March 31, 2021. The respondent no. 3 shall immediately upon intimation of such sanction, if granted in favour of the petitioner, take steps for expeditious execution of such settlement in favour of the petitioner”.

2. As the said direction was not complied with, a contempt notice dated 19.04.2021 was issued to the respondents of the writ petition for compliance of the order dated 24.02.2021. After receiving the said notice dated 02.07.2021, a hearing was fixed by the concerned officer on 14.07.2021 in

the chamber of the Joint Secretary, Land and Land Reforms and Refugee Relief & Rehabilitation Department, Nabanna, Howrah. The hearing took place but no decision was communicated to the petitioner. Accordingly a contempt application being CPAN 629 of 2021 was filed by the writ petitioner before the learned Single Judge. The said contempt application came up for hearing on 09.12.2021 before the Learned Single Judge whereupon His Lordship was pleased to pass an order directing the petitioner to serve copies of the contempt application on the alleged contemnors. Upon receipt of the notice of the contempt proceeding the respondent no. 2 communicated to the petitioner the impugned order dated 14.09.2021 stating that the prayer for the long term settlement of the above piece of land in favour of the writ petitioner was considered and rejected. The Collector, Hooghly was also requested by the said order to remove unauthorized encroachment of the said land, if any, found on physical verification under West Bengal Public Land (Eviction of Unauthorized Occupants) Act, 1962.

3. After considering the compliance report dated 14/9/2021 the Learned Single Judge in CPAN 629 Of 2021 dismissed the said contempt application and directed the petitioner to take appropriate steps in a competent Court of Law.

4. Thereafter the Writ petitioner filed the writ petition being WPA 1147 of 2022, and after hearing the parties therein the learned Single Judge passed the following order in favour of the writ petitioner:

“ The application for grant of long term lease was filed by the petitioner on April 11, 2012, that is, prior to the notification. There being no retrospective effect given to the notification/policy dated December 26, 2012, the petitioner’s case cannot be said to be governed by the said notification.

The application filed by the petitioner was pending since April 11, 2022 (2012) and it was only on 29th April, 2015 that the Authority chose to deal with the proposal and fix the value of the land comprising 0.17 acres at Rs. 1,02,000/- salami at Rs. 9,87,589/- and annual lease rent at Rs. 3119/-. Such assessment being made in 2015, the petitioner cannot be persuaded to pay salami and annual lease rent calculated on the basis of the present valuation of the property.

In view of the same, the petitioner is directed to deposit the salami and annual lease rent assessed at Rs. 9,87,589/- and Rs. 3119/- respectively within four weeks from the date. Upon the petitioner depositing the said amount, the second respondent is directed to grant approval of the proposal conveyed vide Memo No.IX-3/478/2489/S dated 29th April, 2015 and send the same to the 4th respondent for grant of long term lease in respect of 0.17 acres in favour of the petitioner in accordance with law.

The entire exercise shall be completed within eight weeks from the date of depositing the amount by the petitioner.

W.P.A 1147 of 2022 is thus disposed of.

There shall be no order as to costs.”

5. Being aggrieved by and dissatisfied with the said judgment of the Learned Single Judge, the State of West Bengal has filed this appeal.

Submission from the Bar

6. The respondent / State’s Learned Counsel, Mr Supratim Dhar, has argued that –

6.1. The dispute involved in the writ petition cannot be decided by the writ court as the allegations made in the petition are governed under the West Bengal Land Reforms Act 1955 and therefore, the subject matter of the dispute is to be decided by the Tribunal constituted under sections 7 and 8 of the West Bengal Land Reforms Tenancy Tribunal Act 1997 as the West Bengal land Reforms Act 1955 is a specified Act under section 2(r) of the West Bengal Land Reforms Tenancy Tribunal Act 1997. Learned Counsel has also argued that under Article 323B(2)(d) of the Constitution of India all disputes relating to land reforms and/or any right there in or extinguishment or any modification of any such right or in any other way relating to land reforms should be adjudicated under the said Act. The learned Counsel has further argued that the judgment reported in AIR 1987 SC 1125 (L. Chandra Kumar versus Union of India) and the judgment reported in (2005)10 SSC 110 (State of West Bengal versus Ashish Kumar Roy and others) govern the field.

6.2. The Learned Counsel of the State of West Bengal has also contended that the prayer of the writ petitioner for the grant of long term lease cannot be allowed without following due procedure of law. According to him, the West Bengal Land Reforms Act 1955 read with West Bengal Land Reforms Rules 1965 along with West Bengal Land and Land Reforms Manual 1991 stipulates the terms and conditions for the grant of long term lease .If section 52 of the West Bengal Land Reforms Act 1955 is read with Rule 20A of the Rules, 1965 along with Rules 215 to 220 of the West Bengal Land and

Land Reforms Manual 1991, the petitioner is in no manner qualified for the said long term settlement. The State of West Bengal, in exercise of the power conferred under Section 62 of the West Bengal Land Reforms Act 1955, has notified Rules regarding the grant of lease which was published in the Official Gazette on 26/12/2012 and therefore, unless there is total compliance of the requirements of such rules from the side of the writ petitioner, his prayer cannot be granted. The unreported judgment of Arun Kataruka vs. the Secretary, West Bengal Commerce and Industries Department and others (decided by this Hon'ble High Court in 1747 of 2018 on 24/04/2019) has been placed to show that it is the law which is prevalent at the time of consideration of the representation which should be followed, and not the law which was prevalent at the time of filing the representation. Therefore in the present case the notification published under section 62 of the West Bengal Land Reforms Act 1955 governs the field.

6.3. Moreover, the attention of this Court is also drawn to the judgment reported in (2004)¹ CHN10(Mahesh Housing Co-operative Society Limited versus State of West Bengal and others) and the judgment reported in (1991)² SCC 2005 (State of Tamilnadu versus M/s Hind Stone & others). It is further pointed out that the inter department Communications which the respondent in this appeal is relying upon in support of his case is just a mere recommendation and pursuant to it no right has been accrued in favour of the respondent / the writ petitioner.

6.4. The Learned Counsel of the State has also drawn the attention of this Court to the fact that three kinds of jurisdiction of the court are prescribed under the law, namely, territorial jurisdiction, pecuniary jurisdiction and jurisdiction as to the subject matter. It is settled principle of law that the objections, if any, which relate to the territorial jurisdiction and the pecuniary jurisdiction should be taken at the very first instance but the objection as to the court lacking jurisdiction as to the subject matter can be taken at any point of time in the proceedings.

7. The learned Counsel appeared on behalf of the respondent no.1, Mr. Arindam Chattopadhyay, has categorically argued that –

7.1. The Learned Single Judge by her order dated 12/7/2022 has rightly held that the subsequent land allotment policy of the State of West Bengal would not be applicable in the case of the petitioner as the petitioner had approached the authority concerned prior to issuance of that policy. Accordingly, the Learned Single Judge directed the joint Secretary of the Land Department to accept the amount of Rs 987589/- as Salami and Rs 3119/- as annual rent on the basis of the proposal of LTS dated 29.04.2015.

7.2. The learned Counsel has pointed out that the present appeal revolves round two points of law; first, whether or not a Single Judge of this Court has the jurisdiction to entertain the writ petition filed by the respondent no.

1, and secondly, whether or not only the Cabinet of the West Bengal State Assembly has the authority to grant long term settlement by virtue of the Land Settlement Policy dated 26/12/2012. According to the learned Counsel, the writ petition is maintainable as he challenged the administrative order of the Joint Secretary and also challenged the Land Settlement Policy of the State which is not the subject matter of the Tenancy Tribunal Act Of 1997. As regards the question whether only the cabinet has the sole authority to grant long term settlement, he submitted that this point has already been settled before the Land Tribunal when the proposal of long term settlement dated 29/04/2015 was submitted by the ADM and DL&LRO, Hooghly and, therefore, the State should not have raised this point which has already been settled. Moreover, the Land Settlement Policy of the State was not brought by way of amendment of the West Bengal Land Reforms Act 1955, Land Reforms Rules, 1965 and Land Reforms Manual 1991 and therefore, by virtue of a mere government order or circular, the Act and Rules cannot be whittled down and ,according to him, the land settlement policy of the State is not applicable to the case of the writ petitioner.

7.3. It is also argued that the land allotment policy has already been laid down in Rule 20A of the West Bengal Land Reforms Rules 1965 wherein the District Land and Land Reforms Officer has been empowered to settle government land on long term leases and therefore, the proposal of long term settlement granted by the Additional District Magistrate & District

Land and Land Reforms Officer on 29/04/2015 should be respected. The principle and procedure for settlement of government land for non agricultural purpose has been laid down in Rules 218- 219 of the Land Reforms Manual, 1991 , wherein the District Land and Land Reforms Officer has been given the authority to issue long term lease thereon. As the West Bengal Land Reforms Rules 1965 and the West Bengal Land and Land Reforms Manual 1991 are still unamended and the power of the concerned authority is still in existence for settlement of government land, the subsequent action of the government which is the subject matter of the dispute cannot be accepted. In Lakshmana Rao Yadavalli vs. State of AP and others decided by the Hon'ble Supreme Court on 6/12/13, it has been held that the Legislature can give retrospective effect to any subsequent amendment or the power of delegated legislation, but the Land Allotment Policy of 2012 which has the prospective effect from 26.12.2012, does not specify that it has any retrospective effect. The case law in Mahabir Vegetables Oils Private Limited versus State of Haryana and others reported in (2006)3 SCC 625 related to the power of the legislative authority. The learned Counsel has categorically stated that the decisions referred to by the respondent namely, Arun Kataruka vs. the Secretary, West Bengal Commerce and Industries Department and others decided by the Hon'ble High Court in 1747 of 2018 on 24/04/2019, are not at all applicable to the present case.

Decision with reasons

8. From the materials on record it appears that the learned single judge allowed the contention of the writ petitioner on the ground that the application for granting long term settlement has been submitted prior to the relevant notification dated 26/12/ 2012 and therefore, the petitioner's case cannot be said to be governed by the said notification, and accordingly the Learned Judge has directed the writ petitioner/respondent herein to deposit the salami and annual lease rent as per proposal dated 29.04.2015 and the concerned Government Authorities are directed to act accordingly.

9. The first point which is required to be examined in this appeal is that whether or not there is/was any jural relationship between the respondent and the concerned State Government or any of its wings. Jural relationship necessarily connotes a legal relationship between two or more persons. The term jural means 'legal' or 'pertaining to rights and obligations'. In Black's Law Dictionary, 'jural relation' implies 'relating to rights and obligations'. (Black's Law Dictionary, Ninth Edition, 2009, Page 926, Bryan A. Garner, WEST). It is found from the records that without being invited, the respondent submitted a suo moto application before the District Land and Land Reforms Officer, ('DL&LRO' in short) on 11.04.2012 Hooghly for granting long term settlement of the relevant plot no. 5240 measuring 22 decimals. The records further show that consequent to filing of several judicial proceedings including contempt proceedings, the concerned

DL&LRO sent one favourable recommendation to the higher authorities of the Government of West Bengal. As the said recommendation sent by the DL & LRO Hooghly was admittedly not approved by the higher echelons of the Government, the respondent again took shelter before the writ court and consequent to judicial proceedings the higher authorities of the DL&LRO took up the matter for consideration in presence of the respondent and finding that the respondent was not agreeable to pay the applicable salami and lease rent for the plot of land for the purpose of using the same as commercial one, the prayer of the respondent for granting long term settlement in respect of the relevant plot of land measuring 17 decimals out of 22 decimals, was rejected by the higher authorities of the DL&LRO Hooghly.

10. From the above materials on record it transpires that though the respondent submitted a suo moto application for granting long term settlement of the concerned plot of land, the said invitation-to-offer was never acceded to by the State of West Bengal and therefore, it cannot be said that there exists any jural relation or legal relationship between the respondent on the one hand and the State of West Bengal on the other, at any point of time, and accordingly, no right has accrued in favour of the respondent on submission of his proposal for granting long term settlement over the plot of land as stated above, particularly when, admittedly, the said application for long term settlement of land was submitted by the appellant without being invited from the side of the Government to do so. It is true

that the DL & LRO Hooghly had sent a recommendation for granting long term settlement on certain terms and conditions to the higher authorities but they did not approve the said recommendation and sought for report from the DL & LRO Hooghly again as the respondent intended to use the said land for commercial purpose. The modified report was submitted by the DL & LRO Hooghly to the higher authorities in 2019 and as the respondent was not willing to deposit the assessed salami for the purpose of commercial use of the relevant plot as per the modified report, the higher authorities rejected the prayer of the respondent.

11. It appears from the argument as well as contention of the learned advocate of the respondent/writ petitioner that, as if, the DL & LRO Hooghly is/was the exclusive authority for granting long term settlement of lease on the plot of land prior to coming into force of the notification dated 26.12.2012. But if we scrutinize the relevant provisions of the West Bengal Land Reforms Act, 1955, West Bengal Land and Land Reforms Manual 1991 and West Bengal Land Reforms Rules 1965 we shall find that this argument is not correct.

12. Before delving further into the issue we shall take note of the fact that much argument has been raised from the side of the respondent that on the basis of Rule 20A of West Bengal Land Reforms Rules 1965, the DL&LRO has the exclusive authority to issue order granting long term settlement over the plot of land in favour of the respondent. If we peruse the provision of rule

20A of West Bengal Land Reforms Rules 1965 we shall find that the said rule has been enacted to implement the beneficial provisions of Section 49 of the West Bengal Land Reforms Act, 1955. Needless to mention, Section 49 of West Bengal Land Reforms Act, 1955 has envisaged the principles of distribution of land in respect of certain persons who are in socially and economically disadvantageous position. In other words, the salutary principle as laid down in Section 49 of the West Bengal Land Reforms Act, 1955 aims to provide plots of land to those persons who have no land of their own or who have less than 0.4047 hectares of land used for the purpose of agriculture etc. Section 49 of the aforesaid Act has also provided some benefits to persons in a certain category who have no land for their homestead. Section 49 of the West Bengal Land Reforms Act, 1955 has prohibited the extension of benefits of that section to those persons, who are engaged or employed in any business trade, undertaking, manufacturing, calling, services or industrial occupation. As, admittedly, the respondent, who has been running a petrol pump business on the relevant plot of land, is desirous of extending his such business to the said 17 decimals of land in plot no. 5240, Rule 20A sub-rules (1) to (5) West Bengal Land Reforms Rules, 1965 do not come to his aid, excepting Rule 20A(6).

13. Now, if we peruse the provisions of Rule 20A sub-rule(6) of West Bengal Land Reforms Rules 1965 we shall find the relevant provisions are as hereunder-

“20A(6) Notwithstanding anything contained elsewhere in this rule the Collector or the Additional Collector of a district may, with prior approval of the Board of Revenue, West Bengal, settle a land of any classification or description which is at the disposal of the state Government, with a person, a group of persons, an institution, a corporation, a firm, a company, a society, a trust, a cooperative society, a local body including a Gram Panchayat, Panchayat Samity and Zilla Parishad, an authority established by or under a law, or any other organisation for such purpose and on such terms and conditions, as may, by a general or special order, be specified by the said Board of Revenue.”

14. From the above provision at least two points have emerged for convenience of the present discussion. In the first place, the Collector/DL&LRO is not the exclusive authority for settling a land and consequently in order to settle the land the DL&LRO has to obtain prior approval from his higher authorities. It is further found that subject to approval as aforesaid, the concerned authority in the District that is DL&LRO/Collector or Additional Collector can settle a land of any description or classification which is at the disposal of the state government to a group of persons, an institution, a corporation, a firm, a company etc. including an individual person. Therefore, though the respondent by virtue of Rule 20A(6) of West Bengal Land Reforms Rules 1965 may be entitled to have a land for long term settlement, the discretion is entirely with the State Government whether or not to allow such prayer. Therefore, from the materials on record it transpires that just before coming into force of the notification dated 26.12.2012, the appellant without being invited,

submitted an application on his own motion praying for granting of long term lease in respect of the relevant plot of land and subsequently the DL&LRO Hooghly recommended such granting of long term lease in favour of the respondent to the higher authorities in the Government of West Bengal. As no legal relationship or jural relationship as aforesaid had come into being between the respondent and the State Government, the concerned authorities in the Government were not bound to accept the recommendation of the DL&LRO Hooghly. In other words, the suo moto invitation-to-offer of the respondent, for granting long term settlement in his favour cannot be said to have been accepted by the Government of West Bengal merely because the DL&LRO has sent one favourable recommendation to the Government of West Bengal. There is no incident wherefrom it can be shown that higher authorities or the Board of Revenue ever accepted the recommendation sent by the DL & LRO Hooghly. Therefore, mere sending of proposal from the side of DL&LRO Hooghly which is certainly an interdepartmental matter cannot be equated with an incidence of acceptance usually envisaged in the contractual relationship between the concerned persons. As the jural relationship or legal relationship is not established between the parties, the respondent cannot claim that any of his right, far less his fundamental right, has been infringed.

15. The report dated 29.04.2015 has also disclosed, inter alia, that the respondent is in possession of 17 decimals of land for which the respondent

is claiming a long term settlement. The said report dated 29.04.2015 was not disputed nor challenged by the respondent. Therefore, the respondent after keeping the land measuring 17 decimals under his occupation has been claiming long term settlement over the said land from the concerned department. However, the principles of distribution of land or settling the land on long term basis are for the purpose of upliftment of certain weaker sections of our society and this purpose has a beneficial effect upon our society as a whole. Accordingly, the DL&LRO has been given the authority to identify lands for distribution under Section 49 of West Bengal Land Reforms Act 1955, read with Rule 20A(6) of the West Bengal Land Reform Rules 1965, and Rules 215 to 224 of the West Bengal Land & Land Reforms Manual 1991(in short 'Manual 1991') etc.

16. In this case, the respondent has himself selected a government land and after occupying the same for years together, he has prayed for long term settlement for the purpose of his commercial venture in derogation of the social interest espoused in Rule 20A(1) to (5) of West Bengal Land Reforms Rules, 1965. Let us examine the relevant excerpts from the Manual, 1991:

“CHAPTER XV (‘Manual 1991’)

PRINCIPLES AND PROCEDURES FOR SETTLEMENT OF LANDS FOR NON-AGRICULTURAL PURPOSES

1. This Manual may be called the West Bengal Land & Land Reforms Manual, 1991. Provisions of this Manual shall come into force with effect from 1.1.92.

2. It is a comprehensive Manual and covers more or less the whole spectrum of activities of officials and functionaries at various levels of land and land reforms administration in West Bengal.

3.(i) This Manual lays down principles and procedures to be followed by officials and functionaries in matters relating to land and land reforms in accordance with the provisions of relevant Acts and Rules made thereunder.

(ii) It also embodies Government policy in matters relating to management, use and settlement of Government lands and also in matters relating to sairati interests in such lands.

4. The provisions in the orders, notifications and Manuals of the State Government or of the Board of Revenue, West Bengal which were in force immediately before commencement of this Manual, shall stand repealed to the extent they are repugnant to, or inconsistent with, the provisions of this Manual.....

215. The settlement of land for non-agricultural purposes is provided for under Rule 20A(6) of the W.B. Land Reforms Rules, 1965. Rule 20A(6) authorises the Collector of a district, with prior approval of the Board of Revenue, to settle a land of any classification or description which is at the disposal of the State Government, with a person, a group of persons, an organisation or a statutory body on such terms and conditions as may, by a general or special order, be specified by the Board of Revenue.

216. Lands for non-agricultural purposes shall ordinarily be settled on long-term leases. Where long-term settlement is not possible either because land

has not become sufficiently developed or a suitable lessee is not forthcoming or the purpose for which settlement of land is sought does not require long-term settlement, the land may be settled on a short-term lease. Short-term settlement of land in the urban agglomerations, to which the Urban Land (Ceiling and Regulation) Act, 1976 is applicable, is, however, prohibited. Utmost care should be exercised before deciding to offer short-term settlement of land in other Municipal areas.

217. No long-term settlement of land shall be made without the prior sanction of the Board of Revenue.

.....

220. The Collector/D.L.L.R.O. shall identify suitable plots of land for long-term settlement keeping in view the long-term development of urban and semi-urban areas and advertise the land inviting applications for settlement. Proposals for long-term settlement may also be initiated on application from interested persons.

221. No proposal for long-term or short-term settlement of land shall be initiated if the purpose for which such settlement is sought infringes the land use plan prepared by a Development Authority, Municipality, Panchayat Body or Planning Organization constituted by or under a law.

.....

*224. After determination of the rent and salami the Collector/ D.L.L.R.O. shall advertise the land, invite applications for settlement and send his recommendation to the Board through the Commissioner. **Advance possession of land shall not be handed over except with the express***

approval of the Board of Revenue. *If more than one application is received for the same land, the selection of the applicant in whose favour the settlement proposal is initiated should be made on merit considering the background and financial position of the applicants vis-aLong-term settlement. Drawal of lots in public should be resorted to if a number of plots are offered in a location at the same time.”*

17. From the above it is crystal clear that for settlement of land, either in long term or short term mode, the concerned authorities are to follow structured modalities. According to the principles as discussed hereinabove, the DL&LRO has to identify the relevant lands, and in identifying the same, he has to consider several conditions before selecting the same for settlement. He has to inform the general public by way of advertisement about the process of proposed settlement of land in accordance with law after fixing the proposed rent and Salami for such Land. It is a mandate that long term settlement of land cannot be done without permission of the Board of Revenue. It is also mandated that advance possession of land cannot be given without permission of the Board of Revenue.

18. In this case, we find that the due process for selecting a land from the side of the DL&LRO and subsequent procedure for settling land on long term settlement were not duly followed as the respondent came forward with a suo moto application. It is true that as per Rule to 220 of the Manual 1991 the proposal for such long term settlement can be initiated by the applicant

but that does not mean that he has invariably a right to choose any land of his liking. Without giving the Authority an opportunity to select a land, the respondent himself had identified the land and started occupying the same and thereafter sent an invitation-to- offer to the DL&LRO for settling the said land on a long term basis.

19. From the above it is crystal clear that the Manual of 1991 has laid down certain strict instructions for the officers and authorities of Government of West Bengal who are responsible for maintaining lands and pursuing land reforms in the State of West Bengal. But in this case, the procedures were not followed as the respondent initiated the proposal, after taking the land in his possession.

20. So far as the present case is concerned we find that that the application dated 09/04/2012 was nothing but an invitation-to- offer to the State of West Bengal from the side of the Respondent but the higher authorities of DL&LRO did not accede to the said invitation along with favourable recommendation of DL&LRO, Hooghly, and subsequently the higher authorities of the DL&LRO, Hooghly offered the long term settlement of the relevant land to the Respondent at a price, which was certainly higher than the recommendation of the DL&LRO, Hooghly, but, in fact, legally, this was the actual offer to the respondent by the Joint Secretary, Government of West Bengal for giving the relevant land on long term settlement for 99 years for the purpose of commercial venture of the Respondent which was ultimately not accepted by the respondent, and so there is no concluded

contract between the respondent and the State of West Bengal and accordingly no right has accrued in favour of the respondent.

21. The learned Single Judge did not consider this aspect of the case in her judgment and we would like to do the same herein.

22. Section 52 of West Bengal Land Reforms Act, 1955 is required to be mentioned here since it lays down the provisions for management of lands.

According to Section 52:-

“52. Management of lands.- (1) *All lands to which this Act applies shall be deemed to have been held under the State on such terms and conditions as may be prescribed.*

(2) *Any land belonging to the State or land which is at the disposal of the State Government or held under the State by virtue of the provisions of the West Bengal Estates Acquisition Act, 1953 (West Ben. Act I of 1954), or this Act or any other law in force shall, unless the State Government otherwise directs by any general or special order, be managed, in such manner as may be prescribed, by the Collector of the district under whose jurisdiction the lands are situated [subject to the control of the State Government, particularly determination of terms and conditions of lease as may be specified in the lease deed and fixation of annual rent with or without premium].*

(3) *If the State Government is of opinion that different sets of rules are necessary for the management of different classes or descriptions of lands or lands of different areas, it may make different sets of rules under this section.*

(4) *Until rules made under this section come into operation, management of any land covered by this Act shall continue to be made in accordance with the existing law or rules or manual or principles, whichever may apply].”*

23. Section 62 of the Land Reforms Act has laid down the power of the State Government to give directions. According to this section the State Government may give such directions, not inconsistent with the provisions of this Act to any Collector, Revenue Officer or prescribed Authority under this Act as may appear to the State Government to be necessary for carrying out the purpose of this Act or any Rule made thereunder. The Land Allotment Policy 2012 has been enacted to further the aims and objectives of Land Reforms Act 1955 which contains, inter alia, restriction for accumulation of land in the hands of a few and accordingly Sections 52 and 62 have given the State Government requisite authority to implement the purpose of the Act or any rule under the Act so that the salutary principles of the Act can be achieved. We do not find any reason to support the contention of the respondent in this regard.

24. The learned advocate for the respondent has time and again argued that without amending the provisions of West Bengal Land Reforms Act, 1955, West Bengal Land Reforms Rules 1965, the West Bengal Land and Land Reforms Manual, 1991 the concerned authority cannot implement the Land Allotment Policy (in short 'LAP'), 2012. As we have already discussed that the Land Allotment Policy has been brought into effect by virtue of Section 62 of the West Bengal Land Reforms Act, 1955 the contention of the learned Counsel of the respondent is not acceptable. From the opening words of the said Land Allotment Policy dated 26.12.2012 it transpires that such order has been issued as there is a need to introduce uniformity,

reduce discretion and avoid case by case decision making process and also to ensure transparency. At least three conditions of the Land Allotment Policy dated 26.12.2012 have been brought to our notice by the learned Counsel and they are:

“(iii) The Land and Land Reforms Department is the nodal Department for inter-departmental transfer of land and Long Term Lease (LTS) of vested /khas (Government) land. An inter-departmental Committee under the Chief Secretary would handle all cases of inter departmental land transfers. The valuation for LTS would be based on the sale deeds of the area or the market price as determined by the Inspector General of Registration, West Bengal, whichever is higher.

(iv) Land meant for commercial use shall invariably be auctioned to the highest bidder for which adequate publicity should be given including through the internet. Commercial use will mean use for office, shops, shopping malls, housing not meant for the EWS, LIG or the poor, cineplexes, theme parks, hospital, educational institutions etc, and would include all other activities except those activities for which a different mode of disposal is prescribed.

(ix) All land allotment decisions should be taken by the Board(s) of the entities. In case land is owned departmentally, MIC’s order will be inevitably required followed by a Cabinet decision, Under no circumstances should land allotment decision be taken without placing the matter to the full Board with adequate notice as may be required under the relevant statutes/ rules and without recording detailed minutes.”

25. As we have already discussed, granting of long term settlement for non-agricultural purpose is absolutely within the domain of the higher authorities of the government as provided under the relevant sections and rules of the Act of 1955 and Rules of 1965. We do not find any inconsistency nor conflict between the provisions of the Act and LAP 2012. The State

Government is entitled by virtue of Section 52(3) of West Bengal Law Reforms Act of 1955 or Rules of 1965 to make a reasonable classification between the land used for commercial purpose and land used for non-commercial purpose. Therefore, the condition for auction of the land meant for commercial use to the highest bidder cannot be frowned upon and cannot be described as something beyond the scope of the Act of 1955 and the Rules of 1965. It is not understood as to why the respondent has raised objection as to the condition of LAP, 2012 whereby all land allotment decisions are to be made with the approval of the Cabinet. From the very beginning and also before coming into force of LAP, 2012 it is shown that land allotment decisions are subject to the approval of the higher echelons of the Government. For the purpose of bringing uniformity, reducing discretion and also enhancing transparency in the allotment of land, the above conditions have been incorporated and we are of the considered opinion that such inclusion of conditions in the land allotment policy cannot be said to be inconsistent with the provisions as well as objectives of the Land Reforms Act, 1955 and West Bengal Land Reforms Rules, 1965. It is pertinent to mention that though learned Counsel of the respondent has spent considerable time during argument in challenging the provisions of the LAP, 2012, in the prayer of the writ petition he did not mention anything in respect of LAP, 2012 and therefore it appears that for the purpose of bringing the matter to the domain of writ jurisdiction the respondent has avoided to mention anything about LAP, 2012 in his prayer.

26. It is true that as the respondent has guardedly challenged the impugned order dated 14.09.2021 passed by the Joint Secretary, Department of Land and Land Reforms and Relief and Rehabilitation Department , Government of West Bengal, it cannot be said that the writ court has no jurisdiction to entertain such prayer of the respondent in the relevant writ application.

27. I have considered the decisions cited by both the parties but they are not applicable to the present case in view of the factual scenario. In the case of Lakshmana Rao Yadavalli & Anr. Vs. State of A.P. & Ors., the respondent was granted a mining lease for extraction of major minerals. As per the amendment brought in the year 2008 it was required to pay the environment and health cess imposed under Section 16 of the Act. Questioning the constitutional validity of the impost under the Act it was contended before the High Court that the State Legislature had no competence to impose environment and health cess on major minerals as the field is occupied by the provisions contained in the Mines and Minerals (Development and Regulations) Act, 1957. The High Court had declared the relevant notification ultra vires holding that the notification issued by the Government can only be prospectively effective and cannot have retrospective operation. The Hon'ble Supreme Court found that the view expressed by the High Court on that score was absolutely flawless and concurred with the same. In Mahabir Vegetables Oils (P) Ltd. Vs. State of Haryana And Ors. reported in (2006) 3 SCC 620, R. 28A and Note 2 to

schedule III to Haryana General Sales Tax Rules 1975 and Haryana Industrial Policy 1988-97 allowed certain partial exemption for solvent extraction plants. Pursuant thereto the appellant from the relevant period of operation of such rules invested huge amounts satisfying the norms for exemption and set up a new solvent extraction unit. At this stage the State Government issued notification with retrospective effect omitting Note 2 to schedule III to the rules and also amending R. 28(A)(2) and thereby disentitling the appellant to the benefit of exemption. The Hon'ble Supreme Court held that a subordinate legislation can have retrospective effect only if power in that behalf is contained in the main Act. It was also held that in the absence of an enabling provision in the parent Act at the relevant time such retrospective amendment of the rules attracted the doctrine of promissory estoppel.

28. In both the cases mentioned above, it is found that in the first case, the respondent was a lessee in a mining field and therefore the respondent in our case namely, Abdul Odud cannot be equated with the respondent of the decision of Lakshmana Rao Yadavalli & Anr. In the second case it is found that the appellants Mahabir Vegetables Oils (P) Ltd set up a new solvent extraction unit after satisfying the norms for exemption prevalent at the relevant point of time. In our present case the status of the respondent Abdul Odud is neither that of a lessee nor a tenant nor raiyat under the State of West Bengal in respect of the relevant land and he is merely an unauthorized occupier of the relevant plot of land with whom the State has

no legal relation. Therefore, the above principles of law as enunciated in the said decisions are not applicable to the present set of facts. It may be said at the cost of repetition that by virtue of Sections 52 and 62 of the West Bengal Land Reforms Act, 1955 and also under Rule 20A(6) of West Bengal Law Reforms Rules, 1965 the State of West Bengal has reserved the power to issue appropriate order at the relevant point of time including the power of determination of terms and conditions of lease and fixation of annual rent with or without premium. As the main Act/Principal Acts/Rules have reserved the power of the State Government to issue appropriate order/circular on the relevant subject, the State Government issued its land allotment policy on 26.12.2012 according to above sections. Therefore the respondent, with whom no legal relation of the State is established, in connection with the relevant piece of land, cannot claim the benefit of the decisions as mentioned above as his position is completely different from the lessee in Lakshmana Rao's case or the appellant in Mahabir Vegetables Oils (P) Ltd case. As he did not have any legal relation with the State of West Bengal in connection with the said land at the time of filing his application dated 09.04.2012, or at any material point of time, there is no question of his interests being affected due to issuance of Land Allotment Policy dated 26.12.2012.

29. In view of the above discussion we are unable to accept the judgment passed by the Learned Single Judge on 12.07.2022 and as such the said

judgment and order is hereby set aside. The present appeal is allowed on contest but without any order as to costs.

30. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)