

S/L 9
01.9.2023
Court No.26
SD

WPA 24132 of 2016

Sri Anirudha Bose
Vs.
The State of West Bengal & Ors.

Mr. Ranajit Chatterjee
Mr. Partha Sarathi Mullick
Mr. Avijit Dey

...for the Petitioner.

Mr. Satyajit Talukdar
Ms. Piu Karmakar

...for the KMDA.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the Memos dated August 20, 2010, April 9, 2013 and April 5, 2016 under which the respondent authorities have forfeited the amount of money deposited by the petitioner for obtaining a flat in 'Sourav Abasan' on the ground that the petitioner had made wrong representation and suppressed the fact that he already had a flat in 'Purba Abasan'.

Upon perusal of the facts, it appears that the petitioner had made application for a flat in 'Sourav Abasan' on June 28, 2005 while he had made an application for a flat for 'Purba Abasan' earlier on June 17, 2005.

It is to be noted that the allotment of the flat in 'Sourav Abasan' was made on September 14, 2005 while the allotment in 'Purba Abasan' was made on December 1, 2005. Subsequently, the date of possession advice was issued in the case of 'Sourav Abasan' on January 13, 2009 while the date of possession advice of 'Purba Abasan' was received by the petitioner earlier on November 5, 2008.

It is to be noted that at the time of making the application, it is undisputed that the petitioner did not have any flat in any housing complex in Salt Lake and therefore, there has been no misrepresentation made during the time of application by the petitioner. No doubt, upon receipt of allotment and possession thereafter in 'Purba Abasan', the petitioner should have informed the respondent authorities that he is not entitled to another flat in any other housing complex. Before the petitioner could make such a submission before the authorities, Memo dated August 20, 2010 was issued whereby his allotment in 'Sourav Abasan' was declared cancelled.

The contention of the respondent is that since there was a misrepresentation in the application, the amount deposited by the petitioner is to be forfeited and the petitioner is not entitled to any refund.

Upon perusal of the documents and after hearing the submissions made by the parties, I am of the view that at the time of making the application, there was no misrepresentation by the petitioner. This particular factual aspect has not been looked into by the authorities. The cancellation of the allotment of the flat is absolutely in order, as the petitioner cannot have more than one flat in a housing complex at Salt Lake. However, as there was no misrepresentation by the petitioner on the date of making application, I am of the view that the respondent authorities do not have a right to forfeit the amount that has been paid for the flat in 'Sourav Abasan'.

In light of the same, the respondent authorities are directed to refund the amount that has been deposited by the petitioner in lieu of flat of 'Sourav Abasan' along with a nominal interest at the rate of 4%.

With these observations, WPA 24132 of 2016 is disposed of.

There will be no order as to costs.

All parties are to act on the website copy of this order.

(Shekhar B. Saraf, J.)