

S/L 44
03.05.2023
Court. No. 12
Sourav

WPA 22785 of 2010

Naresh Kumar Agarwal
Vs.
West Bengal Housing Board & Ors.

Mr. Ishaan Shah
Mr. Tanish Ganeriwala
Mr. Anirudhya Dutta

...for the petitioner.

Mr. Soumya Majumder
Mr. Paritosh Sinha
Mr. Amitava Mitra
Mr. Shuvadip Banerjee

...for the respondent no. 1 to 5.

1. Both the petitioner and the respondent nos. 1 to 5 are represented by their respective learned advocates.
2. None appears on behalf of the respondent no. 6/State.
3. The present writ petition is now taken up for hearing.
4. Heard learned advocate for the writ petitioner and the learned advocate for the respondent nos. 1 to 5 in support of and against the writ petition.
5. The instant writ petition is now taken up for passing appropriate order.
6. By filing the instant writ petition under Article 226 of the Constitution of India, the writ petitioner has prayed for an issuance of writ of mandamus commanding the respondent nos. 1 to 5 to prepare, execute and register a deed of conveyance in respect of plot no. CE/1/B/140 at Eastern Green Project, New Town with a further prayer directing the respondent nos. 1 to 5 to hand over the possession of

the said plot of land to the writ petitioner immediately after the registration. In support of the instant writ petition, learned advocate for the writ petitioner at the very outset draws attention of this Court to the Annexure P-2 being the photocopy of the letter dated 25.10.2005 as issued by the respondent no. 1/Board wherefrom it would reveal that the aforementioned suit plot has been allotted in favour of the present writ petitioner.

7. It is contended on behalf of the writ petitioner that immediately after allotment of such plot of land, the petitioner has deposited the requisite money in the account of the respondent no. 1/Board and intimated the said factum of deposit to the respondent no. 1/Board under cover of various letters with a request to hand over the physical possession of the said plot of land in favour of the writ petitioner by executing a proper registered deed of conveyance. It is further contended by the writ petitioner that in spite of receipt of such letters, the respondent no. 1/Board failed and neglected to comply with the requisition of such letters and on the contrary by issuing a letter dated 16.07.2008 a photocopy which has been annexed with the mark P-5 of the instant writ petition, the respondent no. 1/Board expresses its intention to refund the money to the present writ petitioner.
8. Drawing attention to the Annexure P-10, it has also been submitted on behalf of the writ petitioner that

suddenly on 03.05.2009 the respondent no. 1/Board published an advertisement/notification in a daily widely circulated newspaper in West Bengal stating, *inter alia*, that in respect of the allotment of the land in the office of the respondent no. 1/Board, some illegality and/or irregularity occurred at the instance of one Balaram Das, the then Assistant Housing Commissioner I of the respondent no. 1/Board. It is argued on behalf of the writ petitioner that taking advantage of such advertisement/notification, the respondent no. 1/Board for no reason whatsoever intends to avoid their responsibility and at the same time is reluctant to allot the land to the present writ petitioner by executing the proper deed of conveyance.

9. *Per contra*, the learned advocate for the respondent no. 1/Board draws attention of this Court to the Page nos. 7, 8 and 9 of the affidavit-in-opposition as filed before this Court. It is argued on behalf of the respondent no. 1/Board that from the page nos. 7, 8 and 9 of the affidavit-in-opposition as filed before this Court, it would reveal that practically there is no existence of the said plot of land in question and the allotment of land has been done by one Balaram Das, a WBCS (Exe) Officer who at that point of time was appointed as Assistant Housing Commissioner I of the respondent no. 1/Board and at his instance, some illegal, fake and sham allotments of various plots of

land in different projects including the suit plot of land had taken place.

10. It is submitted on behalf of the respondent no. 1/Board further that since there exists no plot of land as have been claimed by the present writ petitioner even if a writ of mandamus is issued, that would become unenforceable in the eye of law because of the non-existence of the suit plot of land. Learned advocate for the respondent no. 1/Board submits before this Court that considering the grievance of the present writ petitioner, his client i.e. respondent no. 1/Board has already expressed his intention to refund the entire booking money to the writ petitioner.
11. Considering the entire materials as placed before this Court and after hearing the learned advocates for both the sides, it appears to this Court that by filing affidavit-in-opposition, the respondent no. 1/Board has substantially and materially proved that the alleged allotment as has been done in favour of the present writ petitioner was a fake one since there is no existence of the said plot of land. Sufficient materials have also been placed before this Court to substantiate that a scam occurred at the instance of one of the officials of the respondent no. 1/Board for which the present writ petitioner had to suffer.
12. Considering the entire scenario as discussed hereinabove, this Court thus finds that even if, a favourable order is passed in favour of the writ

petitioner, the respondent no. 1/Board cannot execute such order since the very plot in question is not in existence.

13. In view of the circumstances as discussed hereinabove, this Court has got no other alternative but to dismiss the instant writ petition, however, considering the plight and sufferings of the writ petitioner, this Court directs the respondent no. 1/Board to refund the entire money as deposited by the writ petitioner together with 12 per cent interest per annum from the date of deposit till actual payment.
14. It is, however, made clear that while disposing the instant writ petition, this writ court has not made any observation with regard to the right of the writ petitioner to recover damages, if therebe any, from the respondent no. 1/Board.
15. In view of the aforementioned observation, the writ petition being **WPA 22785 of 2010** is disposed of.
16. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Partha Sarathi Sen, J.)