

07.08.2023
Item No.22
RP
Ct. No.1

WPA 7333 of 2020
+
IA No.CAN 1 of 2020
CAN 2 of 2022
Pranabesh Mandal
VS.
State of West Bengal & Ors.

Mr. Kumar Jyoti Tewari
Mr. Prantick Ghosh
Mr. Aniruddha Tewari
Mr. Amit Sinha
Mr. Prasad Bhattacharya
Mr. Bitan Das
... for Petitioner

Mr. Jahar Lal De
Mr. Supratim Dhar
... for State/respondent

Mr. Saptansu Basu, Sr. Adv.
Ms. Mandeep Kaur
... for the Respondent No.7

1. By way of this public interest litigation writ petition the petitioner seeks for a direction upon the respondents, more particularly, the seventh respondent, which is an association, stating that occupation of the land in question is illegal and they have no right to put up any construction over the said land. The sheet anchor of the case of the writ petitioner is based upon an order passed by the Government of West Bengal dated 26.12.2012. In the said order the State Government noted that the Corporations, Development Authorities and

Urban Local Bodies have been allotting and pricing the land/other assets in line with various Departmental and other norms which often vary in their content and their applicability. As there is need to introduce uniformity and reduce discretion and avoid case by case decision-making to ensure transparency while dealing with public assets, a land allotment policy was formulated.

2. Learned advocate for the petitioner referred to paragraph 3(iv) of the said policy and submitted that the land meant for commercial use shall invariably be auctioned to the highest bidder for which adequate publicity should be given including through the internet. It is submitted that a vast extent of 7.92 acres of land at Mouza-Gandogol , J:L. 03 has been given on a long term settlement basis in favour of seventh respondent in absolute derogation of the land allotment policy formulated by the government in the year 2012.
3. The seventh respondent/association has filed their affidavit-in-opposition to which a reply has also been filed by the writ petitioner. The facts show that there were several shop owners, who had shops thereat and had been carrying on business on the road side of Indo-Nepal Friendship Road near Panitanki and Batasia, District-Darjeeling. In 2018 during construction of Indo-Asian Highway

No.2 the said shop owners were displaced and thereafter the said shop owners had put up their shops over the said land and since then they are carrying on their business. The said land is the part of the government land, which was allowed to be retained by Satish Chandra Tea Garden for the purpose of cultivation of tea under the provisions of West Bengal Estate Acquisition Act, 1953. In the year 2017 the association made a request for long-term settlement of the land. Considering the plight of the small shop owners, who were displaced on account of construction of Indo-Asian Highway No.2, the Government took possession of the said land and an order to that effect was passed by the Government of West Bengal seeking sanction for long-term settlement of 7.92 acres of government vested land in favour of the association for 30 years on an annual rent of Rs.97,66,080/- with effect from the date of delivery of the legal possession subject to realization of the back period rent at par the land revenue along with interest at the rate of 6.25% per annum for physical possession of the subject land since 2008 in terms of the order dated 15.12.2006 read with West Bengal Land Reforms (Amendment) Act, 2000, 2003 & 2005. The amount to be realized from the seventh respondent/ association was to be credited to the particular

head of the account of the Government. A draft “Indenture of Lease” was proposed to be executed. This aspect was considered by the concerned authorities of the Government and an agreement was entered into and possession was handed over pursuant to sanction memo dated 12.03.2020. Thus, it appears that the Government took a decision to rehabilitate the shop vendors, who were carrying on business in a particular area ever since 2002, were displaced for construction of Asian Highway no.2. The learned advocate for the petitioner is right that encroachers should not be rewarded. However, this cannot become a regular feature as it appears that in State of West Bengal whenever there is an encroachment such encroachers were rehabilitated by way of allotting permanent structures or making allotment of government land in different area.

4. Be that as it may, the facts of the case on hand is entirely different and a policy decision had been taken by the Government which in our view may not offend the land allotment policy framed in the year 2012. The learned advocate for the petitioner places reliance on the decision of the Hon’ble Division Bench of this Court in the case of Humanity, Salt Lake & Anr. Vs. State of West Bengal & Ors. (WPA 579 of 2016). The order

passed in the said writ petition is clearly distinguishable on facts as it pertains to allotment of certain plots of land to certain private individuals. Thus, in our considered view the present allotment stands on a slightly different footing from the other case and on the grounds raised by the writ petitioner. Hence, the allotment cannot be interfered with.

5. With the above observations, the writ petition and the connected applications are **dismissed**.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)