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W.P.A. 2808 of 2001

Sumana Saha & Anr.

-vs-

The State of West Bengal & Ors.

Mr. Pratik Dhar,
Mr. Samir Halder

....for the petitioners.

Mr. Suman Sengupta,
Ms. Amrita Panja Moulick

....for the State.

In the writ petition order dated 15th January, 2001 has been assailed by the heirs of original allottee who was to get the allotment of land situated at Kalyani being Plot no. B-4/389. The Estate Manager, Kalyani and OSD and Ex-Officio Deputy Secretary, Government of West Bengal passed order on 15th January, 2001 and subsequent order dated 22nd January, 2001 which is annexed to the affidavit-in-opposition filed on behalf of the State-respondents terminating agreement for lease due to failure to make payment of three consecutive annual instalments in terms of the lease agreement.

It has been contended on behalf of the petitioners that requisite amount of salami as per lease agreement was paid within the specified time and the rest of the amount was required to be paid

within a particular time which in the present case petitioners could not pay and ultimately it was paid on 14th June, 1999 and the said amount was Rs. 7832/-. According to the petitioners in spite of accepting the final amount on 14th June, 1999 by two consecutive orders dated 15th January, 2001 and subsequently on 22nd January, 2001 the lease agreement was terminated forfeiting the amount which was paid previously but as per the relevant terms and conditions of the said lease agreement Rs. 7832/- has been refunded to the petitioners.

It has been submitted by Mr. Dhar, learned senior advocate while questioning the validity of these two orders dated 15th January, 2001 and 22nd January, 2001 that though the first order dated 15th January, 2001 was supplied to the petitioners but subsequent order dated 22nd January, 2001 has first been disclosed while filing affidavit-in-opposition upon enclosing the same in the said affidavit. In support of the contentions made on behalf of the petitioners while questioning the aforesaid two orders reliance has been placed on the two orders of the Hon'ble Division Bench dated 25th March, 2022 passed in MAT 967 of 2018 **(Smt. Mira Sarkar –vs- The State of West Bengal & Ors.)** and another dated 24th April, 2012 passed

in FMA 578 of 2011 (**Somnath Biswas @ Somennath Biswas & Anr. -vs- The State of West Bengal & Ors.**).

It is also submitted on behalf of the petitioners that though there were orders passed on this writ petition in order to find out the market value of the plot of land which was to be allotted in favour of the petitioners, but determination of market value i.e. Rs. 59,40,000/- is exorbitant and that is not in terms of the relevant Government notifications which are applicable in case of executing lease agreement for settlement of land at Kalyani. According to the petitioners determination of market value ought to be in terms of the Government notification which is in vogue as on date governing the execution of lease agreement for settlement of land in favour of the applicant.

State-respondents are represented by learned advocate who submits that in terms of the previous order it has been found that Rs. 59,40,000/- is the market value of the land in question which petitioners are required to pay since as on date the benefit of lease agreement which was scheduled to be executed upon making payment within time cannot be extended in favour of the petitioners since petitioners were found defaulters

in making payment which led the Estate Manager to pass orders terminating lease agreement.

Having considered the submissions made on behalf of the parties and on perusal of the relevant materials available on record, it appears that the father of the petitioners namely, Mrityunjoy Saha was the original allottee of the aforesaid plot of land and payments were made in first two phases as per the relevant terms and conditions of the lease agreement but the final amount could not be paid by June, 1993.

It also appears from the order dated 22nd January, 2001 passed by the Estate Manager that in terms of Clause 9(c) of the lease agreement dated 24th April, 1990 the allottee was under obligation to construct residential building within a period of five years i.e. within 1995 whereas in the present case the final payment was made beyond the stipulated period on 14th June, 1999 resulting in termination of lease agreement vide two consecutive orders dated 15th January, 2001 and 22nd January, 2001. Taking cue from the submission made on behalf of the petitioners that the second order dated 22nd January, 2001 was not supplied to the petitioners contemporaneously, Court has given option to the learned advocate for the petitioners whether he is

willing to make deliberation afresh before the Estate Manager on receipt of second order dated 22nd January, 2001 in order to vindicate his grievance. It has been replied by the learned advocate for the petitioners that it is too late in the day to make such deliberation on receipt of the order dated 22nd January, 2001 and at the same time this Court does not find any argument made in order to impress upon Court to infer that the orders passed by the Estate Manager dated 15th January, 2001 and 22nd January, 2001 are erroneous, reason being simple that in terms of the lease agreement original allottee/present petitioners were required to make payment within time being fully aware of the terms and conditions of the lease agreement. Since the petitioners failed to make last payment within time which led the Estate Manager to pass orders against the petitioners terminating the lease agreement.

During course of hearing before the coordinate Benches issue cropped up whether petitioners were willing to pay the sale price of the land in question on the basis of the market rate or not and accordingly the learned advocate representing the State-respondents were directed to apprise the Court what would be the present

market rate of the said plot of land in question. It has been submitted on behalf of the state-respondents that petitioners are required to pay Rs.59,40,000/- being the market rate as determined by the concerned State-respondents which has been controverted by the learned advocate representing the petitioners on the ground that as per the relevant Government Order dated 8th October, 2010 the said sum ought not to be treated as market rate. However, determination of the market rate of the land in question is not the issue to be delved into in this writ petition considering the case made out in the writ petition.

Since vide orders dated 15th January, 2001 and 22nd January, 2001 the lease agreement is terminated thereby refunding Rs. 7832/- to the petitioners according to the appreciation of this Court the present notification which deals with rate of making payment by the allottee as per lease agreement in connection with land situated at Kalyani is not applicable.

During course of argument the judgments of the Hon'ble Division Bench relied upon by the learned advocate for the petitioners do not come in aid since in **Mira Sarkar** (supra) the house was already constructed and thereafter question arose

for regularization of the land and in the backdrop of the facts as delineated in the order dated 25th March, 2022 the Government notification dated 8th October, 2010 was applied which is not the fact situation of the present case. In the appeal being FMA 578 of 2011 the learned advocate for the State-respondents indicated before the Hon'ble Division Bench the market price of the land in question, same was accepted by the appellants based on which order was passed directing the appellants to take steps accordingly.

Before parting with it needs to be addressed that it is a scheme formulated by the State authorities for providing land to the applicants for a period of 99 years upon execution of lease deed provided the terms and conditions of the lease deed are fulfilled by the allottee upon making payments within time. Since the petitioners have failed to take benefit of the said lease deed by making payment within time which led the Estate Manager terminating the lease agreement by passing orders which are not interfered with based on discussion alluded above; the petitioners are not permitted to get the settlement of the said land in question upon getting the benefit of the relevant Government notification.

However, it will be open to the petitioners to make fresh application before the concerned respondent authorities for allotment of the land at Kalyani in question. If the application is made within four weeks from date the steps shall be taken by the concerned respondent authorities within a reasonable time in accordance with law for taking decision.

With the aforesaid directions and observations the writ petition stands disposed of.

There shall be no order as to costs.

After dictating the order in open Court on conclusion of hearing Mr. Dhar, learned senior advocate has prayed for stay of operation of this order. The same is considered and refused.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Saugata Bhattacharyya, J.)