

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

**WPA 8358 of 2014
With
CAN 1 of 2019 (Old No. CAN 12435 of 2019)**

**M/s Neogie Auto (P) Ltd.
Vs.
The State of West Bengal & Ors.**

For the petitioner : Mr. Soumalya Ganguli

For the respondent Nos. 4 to 6 : Mr. Sayantan Bose
Mr. Sarbajit Mukherjee
Ms. Manisha Das

For the respondent No. 7 : Mr. Rajarshi Dutta
Ms. Shyantee Dutta

Heard on 13.12.2024

Judgment on : 13.12.2024

PARTHA SARATHI SEN, J.:

1. This Court has heard Mr. Ganguli, learned Advocate for the petitioner, Mr. Bose, learned Advocate for the respondent Nos. 4, 5 and 6 and Mr. Dutta, learned Advocate for the private respondent No. 7 at length in support of and against the writ petition.

2. By filing the instant writ petition under Article 226 of the Constitution of India the writ petitioner has prayed for issuance of a writ of mandamus commanding the State/respondents to cancel and/or set aside the allotment of land being plot No. C2/1 measuring about 44 cottah land at South G.T. Road at plot Nos. 856, 854, 3030 in mouza Faridput, JL No. 74 under khatian No. 1362, P.S.-Faridpur, District – Burdwan now Purba Burdwan.
3. In course of his submission Mr. Ganguli, learned Advocate for the petitioner at the very outset draws attention of this Court to the writ petition as filed by the petitioner. It is submitted that initially the respondent No. 4 authority allotted a plot of land to the writ petitioner in the year 2006 and in the year 2008, the writ petitioner again approached the respondent No. 4 authority for further allotment of some more land in the same area for the expansion of its business. It is the further case of the petitioner that at that time it was communicated to the petitioner that additional plot of land could not be allotted to the writ petitioner in the same fashion as has been allotted to him on an earlier occasion and on the contrary it has been communicated to the writ petitioner that henceforth the allotment of land would be made by advertisement and open auction and on deposit of earnest money.
4. It is the further case of the writ petitioner that on 09.09.2010 a public advertisement came to be published in the local newspapers inviting applications for settlement of commercial plots of land by the respondent

No. 7 wherein the reserved premium value has been fixed at Rs. 5 lakhs per cottah. It is the further case of the writ petitioner/company that on account of its financial stringency it could not participate in the said auction process. However, subsequently it has come to the knowledge of the writ petitioner/company that the respondent No. 4 authority allotted a plot of land in the same area in favour of the private respondent No. 7 at the rate of Rs. 1 lakh per cottah and, thus, the respondent No. 4 authority violated the basic rules and regulations relating to allotment of land as published in the daily newspaper. It is, thus submitted on behalf of the writ petitioner that the action of the respondent No. 4 authority is violative of the principle as enshrined in Article 14 of the Constitution of India and, therefore, an appropriate writ of mandamus for cancellation of the allotment of land of private respondent No. 7 may be issued.

5. In course of his submission Mr. Ganguli, learned Advocate for the writ petitioner draws attention of this Court to the letter of allotment dated 23.02.2009 being Annexure-R9 of the affidavit-in-opposition of the respondent No. 4. It is submitted by Mr. Ganguli that from the said letter it would reveal that the said letter was issued much after the publication of the advertisement for allotment of land by auction basis and in the said letter dated 23.02.2009 no plausible explanation has been given by the respondent No. 4 as to what prompted it to allot the plot of land in question to the private respondent No. 7 at a lesser rate though in the aforementioned advertisement the reserved price of the plot of land in the

same area was kept fixed at the rate of Rs. 5 lakhs per cottah. Drawing attention to Annexure-R4 of the affidavit-in-opposition of the respondent No. 4 at Page 27, it is contended on behalf of the petitioner that from the said letter it would reveal that the allotment in favour of the private respondent No. 7 as made by respondent No, 4 on 13.02.2004 stood cancelled and the cheque of Rs. 36 lakhs was returned to the respondent No. 7 by the respondent No. 4 on account of violation of the conditions of allotment as would be available from the letter dated 13.02.2004 being Annexure-R1 of the Page 21 of the said affidavit-in- opposition.

6. Mr. Ganguli submits further that in page Nos. 9 and 10 of the affidavit-in-opposition of the respondent No. 4 there is clear admission on the part of the respondent No. 4 authority that it had violated the rules and regulations for no reason whatsoever.
7. It is, thus, submitted on behalf of the petitioner that because of such glaring irregularity and/or illegality on the part of the respondent No. 4 authority in allotting the aforementioned plot of land in favour of the private respondent No. 7 the instant writ petition may be allowed and an appropriate writ may be issued in terms of the prayers made in the writ petition.
8. *Per contra*, Mr. Bose, learned Advocate appearing for the respondent Nos. 4, 5 and 6, i.e., Asansol Durgapur Development Authority and its functionaries at the very outset submits before this Court that the relief as claimed in the instant writ petition is hopelessly barred on account non-explanation of delay on the part of the writ petitioner company. It is further

submitted that from the prayer portions of the writ petition it would reveal that the writ petitioner has practically made a prayer for cancellation of the deed of lease as has been executed by and between the respondent No. 4 authority and the private respondent No. 7 for which alternative remedy is available under Section 31 of the Specific Relief Act. It is further submitted that it is the settled principle of law that while entertaining a writ petition of like nature a writ court is not supposed to enter into the legality and correctness of the decision of the authority and on the contrary in a judicial review the decision making process would be subject matter of consideration by this Court. In his next fold of submission, Mr. Bose contends that the writ petitioner has got no *locus stadi* to initiate the instant *lis* since the writ petitioner did not participate in the auction process.

9. Coming to the factual aspects of the instant case Mr. Bose, learned Advocate for the respondent No. 4 authority draws attention of this Court to the affidavit-in-opposition as filed by his client. Attention of this Court is drawn to the annexures to the said affidavit-in-opposition. It is submitted by Mr. Bose that from the annexures to the affidavit-in-opposition as filed on behalf of the respondent No. 4 it would reveal that on 13.02.2004, 1.03 acres of land was allotted to the private respondent No. 7 at the rate of Rs. 80,000/- per cottah together with 15 percent premium for a corner plot at a total consideration of Rs. 49,85,200/-. Drawing attention to page Nos. 24, 25 and 33 being the copies of the different communications as made by the private respondent No. 7 with the respondent No. 4 authority it is

submitted that from the aforementioned letters of the private respondent No. 7 it would reveal that the land in question which has been allotted to the respondent No. 4 vide allotment letter dated 13.02.2004 did not suit the purpose of the private respondent No. 7 since the said plot of land was under-developed and was lacking from requisite infrastructure. Drawing attention to the letter dated 23.02.2009 being Annexure R9 at Page 34 of the affidavit-in-opposition of the respondent No. 4 it has been contended on behalf of the respondent No. 4 that in the said letter sufficient justification has been given by the respondent No. 4 authority as to what prompted the said authority to allot a separate plot of land at the rate of Rs. 1 lakh per cottah.

10. It is thus submitted by Mr. Basu that there was no foul play in the action of the respondent No. 4 authority in allotting the plot of land to the private respondent No. 7 under cover of the letter dated 23.02.2009.
11. In course of his submission Mr. Basu places his reliance upon the following decisions, viz., *Karnataka Power Corporation Ltd. & Anr. Vs. K. Thangappan & Anr.* reported in (2006) 4 SCC 322 and *Tridip Kumar Dingal & Ors. Vs. State of West Bengal & Ors.* reported in (2009) 1 SCC 768. Mr. Bose, learned Advocate for the respondent No. 4 thus submits that it is a fit case for dismissal of the instant writ petition.
12. Mr. Dutta, learned Advocate for the private respondent No. 7 while adopting the argument of Mr. Bose submits that in Paragraph 14 of the writ petition it has not been specifically stated by the writ petitioner as to when

he came to learn about the alleged illegal allotment plot of land in favour of the private respondent No. 7. Mr. Dutta further submits that non-participation of the writ petition in the auction process does not entitle the writ petitioner to challenge the letter of allotment dated 23.02.2009. It is further argued that nowhere in the writ petition the writ petitioner has challenged the action of the respondent No. 4 while rejecting the prayer for allotment of additional land as made by the petitioner and on the contrary the writ petitioner has made a prayer for cancellation of allotment of the plot of land in favour of the private respondent No. 7 that is to say; that for all practical purposes the writ petitioner has prayed for cancellation of the lease deed for which the writ petitioner ought to have approached the common law forum by invoking Section 31 of the Specific Relief Act.

13. It is further submitted by Mr. Dutta that there was no arbitrariness on the part of the respondent No. 4 in allotting the land in question in favour of the private respondent No. 7. It is further submitted by Mr. Dutta that consideration of this writ court while disposing the instant writ petition should be different since this Court is not hearing any Public Interest Litigation. In course of his submission Mr. Dutta places reliance upon the following reported decision, viz., *Printers (Mysore) Ltd. Vs. M.A. Rasheed & Ors.* reported in (2004) 4 SCC 460.
14. On careful consideration of the entire materials as placed before this Court and after giving due thought over the submissions as made by the learned Advocates for the contending parties it appears to this Court that by filing

the instant writ petition the writ petitioner has practically challenged the allotment letter dated 23.02.2009 as issued by the respondent No. 4 authority in favour of the private respondent No. 7.

15. Though on the part of the respondent No. 4 authority and the private respondent No. 7 a point was taken that the writ petitioner has no *locus standi* to file the instant writ petition since he did not participate in the auction process, however, in considered view of this Court such argument is not tenable in view of the fact that the letter of allotment dated 23.02.2009 is not the outcome of the aforementioned auction process as has been published by way of public advertisement on 09.09.2010.
16. From the materials as placed before this Court it would reveal that on 13.02.2004 a plot of land measuring about 1.03 acre at the rate of Rs. 80,000/- per cottah was allotted by the respondent No. 4 authority in favour of the private respondent No. 7. It appears to this Court that by issuing a letter dated 11.06.2006 such allotment of plot of land in favour of the private respondent No. 7 was however cancelled by the respondent No. 4 authority for alleged violation of Clause 1(a) of the letter dated 13.02.2004 that is non-deposit of requisite amount during the stipulated period. However, on behalf of the respondent Nos. 4 and 7 attention of this Court is drawn to various letters as written by the respondent No. 7 during the period of 2004 and 2009 wherefrom it reveals clearly that the plot of land which was originally allotted to the respondent No. 7 for commercial purpose was under-developed since there was no road, no drainage, no

sewerage and even no power source in and around of the said plot of land. It further appears to this Court that such deficiencies have been brought to the notice of the respondent No. 4 authority by the private respondent No. 7 by issuing several letters which the respondent No. 4 authority duly considered and ultimately considering the predicament of the respondent No. 7 in using the said allotted land as made in 2004, the respondent No. 4 authority issued the letter of allotment dated 23.02.2009. On careful consideration of letter dated 23.02.2009 along with the previous correspondences between the respondent Nos. 4 and 7 it appears to this Court that such allotment of letter was issued in continuation of the earlier application of the respondent No. 7 as well as in continuation of earlier letter of allotment dated 13.02.2004. From the letter of allotment dated 23.02.2009, it further appears to this Court that the allegation of allotment of land at the rate of Rs. 1 lakh per cottah instead of Rs. 5 lakhs per cottah has been sufficiently explained by the respondent no.4 authority since it was noticed that the earlier allotment of land in favour of the respondent No. 7 has practically become useless on account of lack of basic infrastructure.

17. This Court thus finds no arbitrariness and/or perversity in the action of the respondent No. 4 in allotting of the aforementioned plot of land in favour of the private respondent No. 7 by issuing the letter dated 23.02.2009.
18. Since it has been strenuously argued on behalf of the respondent No. 4 authority as well as private respondent No. 7 that the present writ petition

is hopelessly barred on account of un-explained delay, this Court intends to return its finding on that score. As rightly pointed out on behalf of the respondent Nos. 4 and 7 that within the four corners of the writ petition nowhere it has been stated as to when the writ petitioner has come to learn about the allotment of land in favour of the respondent No. 7 by the respondent No. 4 authority.

19. Admittedly the alleged letter of allotment was issued on 23.02.2009 and the writ petition was filed in the year 2014. Therefore, the question arises for consideration as to whether on account of such delay of five years, the writ petitioner is at all entitled to any relief or not and that as to whether the aforementioned delay has been well explained.
20. In this regard this Court proposes to look to the reported decision of Tridip Kumar Dingal (Supra) wherein the Hon'ble Apex Court while dealing with the subject of delay and laches express the following view:

“57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhumed matters which have already been disposed of or settled or where the rights of the parties have accrued in the meantime [vide State of M.P. v. Bhailal Bhai { AIR 1964 SC 1006}, Moon Mills Ltd. V. Industrial Court{ AIR 1967 SC 1450} and Bhoop Singh v. Union of India{1992(2)}

SCC136}}. This principle applies even in case of an infringement of fundamental right [vide Tilokchand Motichand v. H.B. Munshi{ (1969) 1 SCC 110}, Durga Prashad v. Chief Controller of Imports & Exports{(1969)1 SCC 185} and Rabindranath Bose v. Union of India(1970) 1SCC 84}}].

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

21. It appears to this Court that in other reported decisions as cited from the Bar more or less same proposition of law has been discussed by the Hon'ble Apex Court. Coming to the factual matrix of this Court it appears to this Court that admittedly nowhere in the writ petition it has been stated on affidavit by the writ petitioner as to when he came to learn about the alleged illegal allotment of land in favour of the private respondent No. 7 by the respondent No. 4 authority. As correctly argued by learned Advocate for the respondent No. 7 that since the land was allotted in the year 2009 the respondent No. 7 has invested a huge amount for his commercial activity in the meantime and even third parties' rights have also been created in the said plot of land.
22. In considered view of this Court the instant *lis* has another facet. By filling the instant writ petition the writ petitioner could not ventilate as to how his fundamental right and/or constitutional right has been infringed on account

of issuance of letter of allotment dated 23.02.2009. It does not appear to this Court that it is not the case of the writ petitioner that depriving him the said plot of land has been allotted to the private respondent no.7. The consideration for issuance of allotment of letter dated 23.02.2009 in favour of the respondent no.7 by the respondent no.4 is no way connected with the prayer for rejection of allotment of land as made by the writ petitioner.

23. Considering the entire aspect, this Court thus find no merit in the instant writ petition.
24. Accordingly, the instant writ petition being WPA 8358 of 2014 is dismissed. All pending interim applications, if there be any, are also disposed of.
25. There shall be no order as to costs.
26. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)