

28.11.2024
Ct. 39
Sl.no.2
samarpita

WPA 19887 of 2019

Balai Kundu & Anr.

-Vs-

**The W.B. Housing Infrastructure Dev. Cor.
& Ors.**

Ms. Anwesha Basu,
Mr. Sandip Ray
... for the petitioner

Mr. Jishnu Chowdhury,
Mr. Chayan Gupta,
Mr. Saqib Siddiqui,
Mr. Aviroop Mitra
..for the respondent/WB HIDCO

This writ petition has been filed under Article 226 of the Constitution of India for setting aside the order dated 3rd August, 2015 of respondent no.3-Joint Managing Director, WBHIDCO cancelling the allotment of the petitioners' in respect of plot No. B-340 in Action Area-II, New Town, Kolkata granted to the petitioners earlier.

The petitioners' case in nutshell is that the petitioners made an application to the Minister-in-Charge, Housing & Public Health Engineering Department, & Chairman, WBHIDCO, for allotment of a residential plot under Medium Income Group (MIG) measuring about three *katahs*. Pursuant thereto an approval letter was issued in favour of the petitioner on 7th August, 2010. By letter dated 18th May, 2011 of

respondent-WBHIDCO the petitioner was directed to deposit the application money amounting to Rs. 67,200/- (i.e. 10% of the price of the plot of Rs. 6,72,000/-). Pursuant thereto the petitioners deposited the application money. A letter of allotment was issued in favour of the petitioners in respect of the plot-in-question on 29th September, 2011 and the petitioners were asked to deposit the balance consideration amount within a stipulated period. In compliance thereof, the petitioner deposited the entire amount within the stipulated period as directed in the letter dated 29th September, 2011. However, in-spite of complying all formalities as per requirement including payment of entire consideration of money, the allotment of the petitioners' were cancelled by the respondents-WBHIDCO by its letter dated 3rd August, 2015. Being aggrieved and dissatisfied with such action of the respondent authorities the petitioners have preferred the present writ petition.

The writ petition has been keenly contested by the respondents-WBHIDCO by filing affidavit-in-opposition, contending *inter alia* that the petitioners were allotted a plot of land under the Special Quota of the Chairman. However, by 60th meeting of the Board-of-Directors the respondent authorities-WBHIDCO abolished the Special Quota of the Chairman and subsequently, issued cancellation of all plots issued under such scheme by it. The Board-of-Directors of

the respondent-WBHIDCO in 61st and 70th Board Meeting resolved to cancel all allotments of plots where offers of allotments were issued on or after 28th February, 2011. The letter of allotment of the plot in favor of the petitioner was issued on 29th September, 2011, which is after the cut-off date i.e. 28th February, 2011. Therefore, the case of the petitioner was squarely covered by the resolution for cancellation of plots made on 70th meeting of the Board-of-Directors. Challenging the decision of the respondents-WB HIDCO, 60 allottees filed writ petitions before this Hon'ble Court and the writ petitions were dismissed upholding such cancellation by judgment dated 13th May, 2015. In light of such decision, 87th Meeting of Board of Directors were convened to comply the direction of this Court, which held such allotment as arbitrary and unfair. Thus the petitioner is not entitled to any plot of land as the Chairman's discretionary quota has been done away with. Further the subsisting land policy of the Government promulgated in the year 2012 debars from allotment of plots on freehold basis or without calling for public auction. Therefore, the writ petition is liable to be dismissed *in limini*.

Mr. Sandip Ray, learned Advocate appearing on behalf of the petitioners submits that the approval of the plot in favour of the petitioners were prior to 28th February, 2011 and, therefore, the case of the

petitioners is not covered by the judgment of this Court dated 13th May, 2015. After the resolution of the Board of Directors, the petitioners' were asked to deposit the consideration amount. The petitioners have duly complied as per requirement of the respondents-WBHIDCO by depositing the entire consideration amount. The decision of the respondents-WBHIDCO for cancellation of the plot where offers of allotment were made on or after 28th February, 2011, does not affect the allotment of plot granted in favour of the petitioners for the simple reason that the allotment of the petitioners were much prior to the cut-off date. He submits that the cancellation of the plot allotted to the petitioner by the respondents-WBHIDCO is arbitrary and illegal and therefore should be set aside.

Mr. Jishnu Chowdhury, learned Senior Advocate appearing for respondents-WBHIDCO, submits that the exercise of discretion by the Chairman allotting plots of land under the Special Quota has been held to be arbitrary and illegal by the Hon'ble Single Judge, in WP 2522 of 2014 and other batch of writ petitions after going through the records. It is observed by the Hon'ble Judge that the allotments to the allottees on or after 28th February, 2011 is arbitrary and against public policy. The arbitrariness with which the allotments under the Chairman's discretionary Quota was made betrays the conspiratorial appropriation of

State wealth by those who were in power at that point of time. By the 70th Board Meeting of the Board of Directors all the allotments of plots made on or after 28th February, 2011 under the Discretionary Quota of the then Chairman was cancelled. The decision of the respondents-WBHIDCO to cancel such allotments have been upheld by the Hon'ble Court on 13th May, 2015, dismissing the writ petitions filed by aggrieved allottees. The case of the petitioners is covered by the said judgment. The allotment of the petitioner being made on 18th May, 2011 also stood cancelled in view of the 70th and 87th board meeting. Thus, the prayer of the petitioner for setting aside of order dated 3rd August, 2015 passed by respondents-WBHIDCO pertaining to cancellation of their allotment falls short of merit. To buttress his contentions, he relies on the decisions of this Court passed in ***Govinda Prasad Ladia and Others versus WBIDCO Limited and Others*** reported in ***2015 SCC OnLine Cal 890*** and in *M.A.T. 1309 of 2015 (West Bengal Housing Infrastructure Development Corporation Limited & Ors.)*.

Having heard the learned advocate for respective parties, the only issue which falls for consideration is whether the cancellation of the allotment of the plot-in-question made in favour of the petitioners by the respondent WBHIDCO is legal and sustainable or not.

Admittedly the approval of the plot of land was made on 7th August, 2010 in favour of the petitioners

upon their applications. The intimation for allotment in favour of the petitioners was issued by the respondents-WBHIDCO on 18th May, 2011. As per requirement of the aforesaid letter, the petitioners deposited the application money. Another letter was issued by respondents-WBHIDCO on 29th September, 2011 directing the petitioners to deposit the balance amount. The petitioners have deposited the balance amount in compliance thereof. Be that as it may, the respondents-WBHIDCO on 1st December, 2012 by 70th meeting resolved as follows:

“Resolved that, further to policy decision adopted by the Board in its 60th & 61st Meeting in respect of all types of allotments made on or after 28.02.2011, approval be and is hereby accorded to cancellation of all these allotments, both residential and non-residential, without keeping the same pending, any longer, for which approval was given on 28.02.2011 by the then Chairman of the Board without discrimination, for the sake of clarity an transparency.”

The allottees whose allotments were cancelled by such resolutions preferred writ petitions before the Hon’ble Court being WP 2522 (W) of 2014 (Govinda Prasad Ladia & Ors.-vs.-W.B. Housing Infrastructures Dev. Corporation Ltd. & Ors. and batch of other writ petitions), the Hon’ble Single Bench after going through the records observed as follows:

“234. The facts as they have unfolded may have justified the cancellation of all or most of the allotments in New Town made under the chairman's discretionary quota, but that may have been too sweeping. In such a scenario an allottee who had built upon an allotted land would have been treated on the same footing as an allottee who may not have obtained possession of the land or title thereto; and the rationale could have been seriously doubted. Except for a solitary case where the company has sought to repossess the plot for non-use, the company's decision to cancel the allotments is restricted to such allottees who have neither obtained title nor possession of the plots

allotted and, in some cases, who have not even been made firm offers of allotment by identification of any plot. The facts undeniably demonstrate that the process of allotment of plots in New Town, both by the board and under the chairman's discretionary quota, was unfair, irrational and otherwise improper. Once such position is established, it cannot be said that merely because the company had informed some of the applicants that their allotments had been approved or even the formal offers of allotment were issued, the process could not be revisited or reviewed. The company had due authority to cancel any allotment if it reasonably perceived the process to have been improper. Merely because the company has chosen a cut-off date which allows some of the other unworthy allottees to retain their allotments, it cannot be said that no action could have been taken by the company despite discovering the colossal irregularity in the process. Article 14 of the Constitution does not operate in a negative sense. Just because another citizen has got away with a wrong does not imply that the next wrong-doer has also to be let off.

x x x

252. In the light of the factual position that has emerged in course of the present proceedings, none of the allotments made in favour of the petitioners appears to be beyond question or on the basis of any rational exercise of discretion or by way of any fair procedure. The facts show that the erstwhile chairman of the company vainly perceived that he had unfettered discretion to make allotment of plots to whoever he pleased without assigning any reasons or without reference to the guidelines. The discretion was exercised in a most capricious, inequitable and feudal manner. There was no basis in the choice of the beneficiaries from among many and the manner of exercise of discretion does not satisfy the tests laid down by high judicial authorities.”

Bearing in mind the aforesaid observation, it manifest that the Hon’ble Single Judge found the process of the allotment of plots under the Chairman’s Discretionary Quota to be unfair, irrational and otherwise improper. The Hon’ble Court upheld the decision of the respondents-WBHIDCO of cancellation of such allotments as well as the cut-off date of 28th February, 2011. The petitioners’ allotment of plot is made under Chairman’s Discretionary Quota and offer of allotment has been made after the cut-off date. After passing of the judgment in the writ petitions, the

respondents-WBHIDCO by its 87th Meeting of Board of Directors on 27th May, 2015 made a review of impact of the aforesaid order and resolved as follows:

“Resolved that, keeping in mind the Judgment delivered by Hon’ble Justice Sanjib Banerjee of High Court at Calcutta on 13-05-2015 and the Opinion of M/s. Fox & Mondal, Retainer Solicitors Firm of HIDCO, approval be and is hereby accorded to cancellation of all the six (6) plots as detailed in the Board Note (excluding sl. No.2) with immediate effect.

It was also Resolved that CMD be and is hereby authorized to do all such other acts and things as he may deem fit and most appropriate in this context.”

Thus from the above resolution it is palpable that the cancellation of allotment of plot of the petitioners were made considering the judgment of this Court dated 13th May, 2015, which has subsequently been upheld in appeal.

At page 31 of Annexure-R -9 of the opposition it is found the amount which was deposited by the petitioners amounting to Rs. 6,73,000/- (*Rupees Six Lakh Seventy Three Thousand only*) has been refund by way of a cheque bearing No. 013381 dated 10th June, 2015. Since the letter of allotment of the petitioners was issued after 28th February, 2011 the case of the petitioner is squarely covered by the decision dated 13th May, 2015 passed in WP 2522 (W) of 2014 and batch of other writ petitions by the Hon’ble Single Judge. Thus the action of respondents-WBHIDCO of cancelling the allotment of plot in question made in favour of petitioners cannot be interfered with. Such being the position this Court find no merit in the present writ petition.

Accordingly, the writ petition being no. **WPA 19887 of 2019** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities

(**Bivas Pattanayak, J.**)