

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA No. 27406 of 2008

Shri Dinesh Kumar Goyal

Vs

The State of West Bengal & Ors.

For the Appellant

: Ms. Sutapa Roy Choudhury,
Ms. Aratrika Roy.

For the State

: Mr. Ayan Banerjee.

Hearing concluded on

: 19.09.2024

Judgment on

: 03.10.2024

Shampa Dutt (Paul), J.:

1. The Petitioner's case in the Present Writ is as follows :-

- “..... i. The petitioner is now permanently residing at EC-134, Sector- I, Salt Lake City, Kolkata – 700 064 within the State of West Bengal, after purchasing the said plot of land along with the building constructed and erected thereon from one Shri Pratip Chandra Sinha by a Deed of Indenture dated 30th August, 2007. Such transfer of leasehold property was made originally with the necessary permission in favour of original lessee Shri Sudhangshu Ranjan Chakraborty and Smt. Gouri Chakraborty to execute and register the Deed of Transfer in favour of Shri Pratip Chandra Sinha being Vendor/Transferor therein.*
- ii. After the said Deed of Conveyance was registered on 30th August, 2007, the petitioner made an application dated 9th October, 2007, for mutation in the name of the petitioner before the respondent no.2 and the said mutation application was filed on 10th October, 2007, praying inter-alia, to mutate the Plot No. 134, in EC Block, Sector – I, Salt Lake City, Calcutta – 700064, along with the building constructed and erected thereon, as per sanctioned plan, in the name of Shri Dinesh Kumar Goyal, the petitioner herein, in place and stead of Shri Pratip Chandra Sinha, the erstwhile lessee, with immediate effect.*
- iii. That since the respondent no. 2 did not dispose of the said application dated 9th October, 2007 for mutation, the petitioner through the learned Advocate's Letters dated 5th November, 2007 demanded justice from the respondent no. 2, for disposal of the mutation application. The letter dated 5th November, 2007 was received by the respondent no.2 on*

6th November, 2007 but the said Mutation application was not disposed of.

- iv.** *The petitioner having no other alternative, filed an application under Article 226 of the Constitution of India, affirmed on 6th December, 2007.*
- v.** *The said application made under Article 226 of the Constitution of India, came up for hearing on 30th January, 2008 before His Lordship the Hon'ble Justice Dipankar Datta and His Lordship after hearing of the said writ application being W.P. No. 26181(W) of 2007, in the case of Shri Dinesh Kumar Goyal – vs – The State of West Bengal and Another was pleased to dispose of the said Writ Petition with a direction to the Principal Secretary, the respondent no. 2 therein to consider and dispose of the grievance expressed by the writ petitioner in the representation dated 9th October, 2007, in accordance with the law within six weeks from the date of communication of the said order dated 30th January, 2008 upon granting reasonable opportunity of hearing both to the petitioner as well as other concerned parties.*
- vi.** *Thereafter, by a letter dated 24th March, 2008 received from the respondent no.2, a hearing was fixed on 3rd March, 2008 at 5 p.m. In the course of hearing the respondent no.2 refused to accept the locus standi of the petitioner as to the ownership of the said leasehold land in respect of claim for mutation.*
- vii.** *Thereafter on further hearing, an order was passed on 9th May, 2008 by the Principal Secretary, Urban Development Department, Government of West Bengal, the respondent no.2 herein and the said order has been served on 16th May, 2008 upon the petitioner under a covering letter dated 13th*

May, 2008 of the Deputy Secretary, Government of West Bengal.

- viii.** *The petitioner states that it will appear from the order passed on 9th May, 2008 by the respondent no.2 that the said order dated 9th May, 2008 was not made at all in compliance with the direction contained in the said order dated 30th January, 2008 passed by His Lordship the Hon'ble Justice Dipankar Datta but on the other hand, it will appear that the respondent no.2 has exceeded his power of disposal as vested upon him, by delegating his power of disposal of the application for mutation to the Land Manager, upon verification of the original documents relating to transfer of the property. The respondent no.2 has also directed the said Land Manager that simultaneously action should be initiated by him for getting an enquiry done on the alleged violation of the lease condition by way of unauthorized construction and take appropriate action in terms of the lease condition if any breach of the lease condition is found.*
- ix.** *Being aggrieved the petitioner made an application under Article 226 of the Constitution of India being W.P. No. 23384(W) of 2008 affirmed on 9th September, 2008.*
- x.** *A letter dated 12th September, 2008 was received by the petitioner from the respondent No.3 herein, wherein it has been informed that with reference to the letter of the petitioner dated 9th October, 2007 regarding mutation of Plot No. 134, Block EC, Sector - I, Salt Lake City, in the name of Sri Dinesh Kumar Goyal, the Competent Authority has approved mutation of the aforesaid leased property in favour of the petitioner on completion of necessary formalities and payment of requisite charges. It was further informed and requested by the said letter dated 12th September, 2008 by*

the said Joint Secretary, the respondent no.3 herein, to deposit Rs. 2,000/- in the proper head of account and also to meet the said joint Secretary, the respondent no.3 herein, along-with original document of transfer for proper verification.

- xi.*** *The fee of Rs. 2,000/- was deposited on 16th September, 2008 and after complying with the requirements as per letter dated 12th September, 2008 of the respondent no.3.*
- xii.*** ***It is further submitted that the respondent no.3 in a proceedings for mutation has no power to exercise for initiation and/or continuation of proceedings for granting mutation directing the petitioner to file an affidavit as per alleged procedure, for mutation in the residential plot of land at Salt Lake. That an affidavit of the petitioner was to be submitted as per the procedure for mutation in the leasehold residential plots of hand at Salt Lake area and in receipt of which the mutation can be carried on.....”***

- 2.** Hence the writ petition has been filed against such direction to file an affidavit as per rules.
- 3.** Affidavit in opposition and Written Argument filed by the petitioner are on record.
- 4. The Respondents case in their opposition in as follows :-**
 - a)** That in the 1950's the Government of West Bengal planned and decided to build a planned township more or less in the eastern region of the then District of Twenty Four Parganas, mainly to provide with residential plots on lease hold basis to persons coming from different walks of life.

Gradually such township was built. Apart from residential plots, commercial and industrial plots were also allotted to various persons.

- b)** It had been the policy of the Government not to allot more than one plot of land in the said Salt Lake Area to any particular family. Moreover in the cabinet the Government decided that a person having more than 2 Cottahs of plot in Kolkata Metropolitan Area is not eligible to acquire a plot in Salt Lake.

Later on the Government, from time to time imposed several terms and conditions with a view to restrict any individual or any family from acquiring more than one plot of land in the CMD (now KMD) area.

- c)** That the Government of West Bengal allotted such plots of land in Salt Lake Area on leasehold basis, where the Government is the Lessor.
- d)** **That to preserve and/or to uphold the policy of the Government and to comply with the provisions of the Urban Land (Ceiling and Regulation) Act, 1976, it is expedient on the part of the concerned department to seek for a declaration on Affidavit, from the proposed lessee and or the proposed allottee, whether the said Allottee and/or proposed Lessee is holding more than one**

plot of land in Salt Lake Area or not, or whether the said Allottee and/or the proposed lessee is hit by the provisions of The Urban Land (Ceiling and Regulation) Act of 1976 or not.

- e) That much before the execution of the said Deed of Conveyance in this case dated 30.08.2007, there was a complaint from the General Secretary, Association for Protection of Human Rights and Public Interest on 02.11.2005 that the said plot of land had been transferred unauthorisedly and the building standing thereon had been demolished without obtaining any prior sanction.
- f) However after considering all such aspect the said Respondent No. 2 allowed the said mutation subject to the compliance of necessary formalities by the petitioner.
- g) Such decision of the Respondent No. 2 was communicated to the petitioner and in order to give effect to the said order of the Respondent No.2 the petitioner was duly asked to deposit the mutation process fee of Rs. 2,000/- and **a prescribed affidavit whereby and where under the petitioner was supposed to declare on oath whether he or any one of his family member was holding any land in the Salt Lake City Area or not and whether the petitioner and his family member is holding land within the Urban Agglomeration Area or not;**

whether the petitioner is hit by the provisions of the Urban Land (Ceiling and Regulation) Act of 1976, or not.

- h) The petitioner** deposited the said sum of Rs. 2,000/- as required **but did not produce any affidavit.**
- i)** It appears that the petitioner is making an attempt to evade the said formality and/or requirement of filing the said proscribed affidavit by filling this writ petition, which itself reveals the ulterior motive of the writ petitioner.
- j)** The answering respondents state that the existing building has been constructed illegally by demolishing the previous building without having any specific order of Bidhannagar Municipal authority as it would be evident from the Letter No. 91 BNM (P) dated 12.01.2006 issued by the Executive Engineer, Bidhannagar Municipality.

That the **Original Lessee** of the said property, Sri **Sudhangsu Ranjan Chakraborty**, while submitting his application for allotment of the said plot of land mentioned about details of immovable property held in West Bengal.

The application/accepting offer letter submitted by Sudhangsu Ranjan Chakraborty mentions in the very **first paragraph**, “**I hereby declare that I do not possess or have any share or interest in any such property within the limits of the Calcutta Metropolitan Planning Area**”.

That both Sri Pratip Chandra Sinha and the original lessees submitted an affidavit wherein on oath they declared with regard to their immovable properties within Urban Agglomeration and Calcutta Metropolitan Development Area. They even declared that by acquiring the said property they would not be hit by the provisions of Urban Land Ceiling and Regulation Act of 1976.

- k)** That no prior permission and/or sanction was obtained from the concerned Department at the time of the execution of the said Deed of Conveyance that when the said plot of land was transferred by Sri Sudhangsu Ranjan Chakraborty and Smt. Gouri Chakraborty, the original lessee of the said plot of land, in favour of Sri Pratip Chandra Sinha, the Metropolitan Development Department, being the competent authority at that point of time, accorded prior permission for such transfer by letter No. 2451 – SL (AL) SL – 18/66 dated 18th day of September, 1984.

That the plot in question is a leasehold property, so the question of ownership and/or sale does not arise at all.

5. From the materials on record the following is relevant:-

Copy of application submitted by the original lessee Sudhangshu Ranjan Chakraborty accepting offer of Allotment of land dated

16.05.1966 at page 48 of the opposition includes the following clause relevant to this case:-

“.....1. I/We hereby declare that I/We do not possess or have any household property or any share or interest in any such property within the limits of the Calcutta Metropolitan Planning Area as mentioned in the schedule annexed.

8. *That I/ We shall not have the right or be entitled to raise any question regarding the title of the said plot of land or about your right to grant the lease aforesaid, and the title of the said land and your right to grant the lease of the land is and shall be deemed to be accepted by me/us.*

10(c). *To construct the building according to the rules as may be prescribed and according to the plans, elevations, designs and section as may be sanctioned by the Government or by any local or statutory authority in that behalf, within three years from the date of possession of the plot.*

10(f). *Not to transfer or assign the lease hold interest without the previous consent in writing from the Governor or the Government. The decision of the Governor or the Government shall be communicated to the Lessee/Lessees within Ninety days from the date of receipt of the application.....”*

6. The petitioner in the written notes has stated that:-

i. *The decision in Cabinet was held on 05.11.1979 with regard to the eligibility of residential plot of Sector II and III of the Salt Lake Township. The policy decision states that the proposal contained in Paragraph 6 of the Cabinet Memo was approved. On the reading of the Cabinet Policy, it is evident that it relates to the eligibility of the residential plots in Sector II and III of the Salt Lake Township. It has been stated in Para 1 of the Memo to the said Cabinet Policy that 2 or 3 Cottahs of plot in Sector I was not allotted to a person who had any landed*

property in the KMDA area. With Cabinet approval dated 30.08.1977 this restriction was made applicable for residential plots in Sector II and III as well.

It is submitted that the property in question measures around 4.2395 Cottahs and thus the restriction was never applicable on Plot measuring over 3 Cottahs.

- ii.** *Paragraphs 2 and 3 of the Cabinet Memo relates to plot of land in respect of Sector II and III. Howsoever, it has been stated that the relevant portion of the Cabinet note dated 13.08.1977 reads as under :*

“In Sector-I, no.2 or 3-Cottah plot was allotted to any person who possessed any landed property in CMD area. This restriction may remain in force for other sectors also. For 4-Cottah plot, this restriction was waived subsequently. It is proposed that a restriction be imposed that owners of a separate house in CMD area (and not co-sharers) will not be eligible for 4/5/6-Cottah plots in Salt Lake.”

It is submitted that thus, it is apparent that in respect of 4 Cottahs plot in Sector-I, the restriction was waived subsequently and that there was a proposal that restriction be imposed but there has been no approval of such proposal.

- iii.** *Paragraph 3, 4 and 5 of the said Memo are the proposal in respect of residential plots in Sector II and III of Township. Paragraph 6 of the said Memo laid down the proposal which was approved by the Cabinet in respect of*

eligibility of residential plots in Sector II and Sector III of Salt Lake Township.

7. The petitioner's further case is that the policy decision placed on record by the respondents is related to restrictions in respect of the plots in Sector II and III of the Salt Lake Township. In respect of 4 Cottahs plot in Sector I, the restriction was waived and approval of any proposal that the said restriction be imposed is not on record. The petitioner is at present the transferee/Lessee of a plot of land and building in Sector – I measuring over 4 Cottahs.

8. It is further submitted that:-

*“.....It has been held by the Hon'ble Apex Court in **Small Scale Industrial Manufacturer Association versus Union of India reported in (2021) 8 SCC 511** that Court would not interfere with any opinion formed by the Government on the relevant facts or circumstances or based on expert advice. It has been held that when the Government forms its policy, it is based on a number of circumstances which must not be interfered with except for the ground of palpable arbitrariness. It is submitted that the policy decision relied upon by the respondents clearly indicates that there is no restriction in respect of plot of land measuring over 4 Cottahs in Sector-I of Salt Lake Township empowering the respondents to call for an affidavit from the petitioner to the extent of declaring that he or his family members do not have any plot of land in the KMDA area or Urban Agglomeration under the urban Land (Ceiling and Regulation) Act, 1976, Bidhannagar area and as such the respondent authorities acted arbitrarily and without any jurisdiction in not mutating the name of the petitioner for non submission of such affidavit despite mutation be granted by the competent authority.....”*

9. The following Judgments have been relied upon on behalf of the petitioner:-

- i. *Federation of Railway Officer's Association & Ors. –Vs- Union of India (2003) 4SCC 289.*
- ii. *Directorate of Film Festivals & Ors. – Vs – Gaurav Ashwin Jain & Ors. reported in (2007) 4 SCC 737.*
- iii. *Punjab – Vs – Ram Lubhaya Bagga & Ors. reported in (1998) 4 SCC 117.*

10. It is thus submitted that:-

It is respectfully submitted that it is settled law that the policy decision of the state are not to be disturbed unless they are found to be grossly arbitrary or irrational.

The respondents herein relied on a Cabinet Policy decision which favours the petitioner as it relates to property held in Sector II and III of Salt Lake Township and thus is not applicable to property held his Sector I measuring over 4 Cottahs.

The Apex Court held that the Courts also not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy nor are Court advisors to the executive on matters of policy which the executive is entitled to formulate.

It was held by the Apex Court that when Government forms its policy, it is based on number of circumstances on facts, law including constraints based on resources and expert opinion. It would be dangerous if Court is asked to test the utility,

beneficial effect of the policy or its appraisal based on facts set out in affidavits. It is respectfully submitted that the Cabinet policy and the restrictions stated therein are, in no uncertain terms, applicable only to properties situated in Sector II and III of Salt Lake Township and can at no means be extended to properties situated in Sector – I of Salt Lake Township measuring over 4 Cottahs and thus the petitioner cannot be called upon to submit any affidavit declaring that neither he nor his family members own any property in KMDA or Bidhannagar area for the purpose of mutating his name in respect of the said property.

11. Copy of the Cabinet decision dated 5th November, 1979 has been placed.
12. This relates to eligibility of residential plots Sector II and Sector III of Salt Lake.
13. **The relevant extract of the decision is as follows :-**

“2. In respect of 4-Cottah/5 Cottah and 6-Cottah plots of Sector-II and III, the Cabinet in their meeting on 13.8.77 decided that persons having separate house in the CMDA area will not be eligible for a residential plot in Sector-II or Sector-III of the town ship. The relevant portion of the Cabinet note reads as under :-

“In Sector –I, no.2 or 3-Cottah plot was allotted to any person who possessed any landed property in CMD area. This restriction may remain in force for other sectors also. For 4-Cottah plot, this restriction was waived subsequently. It is proposed that restriction be imposed that owners of a

separate house in CMD area (and not co-sharers) will not be eligible for 4/5/6-Cottah plots in Salt Lake.”

5. In this connection, it is felt that a person having following quantum of land or building may be deemed to be holder of sizable land :-

a) In Calcutta Corporation area persons who have separate building on more than 2-Cottah of land.

b) Persons already having land with or without building in the Salt Lake Township including Dhapa Rehabilitation Site.

c) Persons having more than 2-Cottah of vacant land in the Calcutta Corporation area.

d) Persons having building on more than 4-Cottah of land in the CMD area outside the Calcutta Corporation area.

e) Persons having more than 4-Cottah of vacant land in the CMD area outside the Calcutta Corporation area.

6. It is accordingly proposed that the restriction on having a Salt Lake Plot may be only respect of persons defined in para 5 above.”

14. The said proposal has been approved by the decision of the cabinet dated 5th November, 1976, PW (MD) Department.

15. Considering the materials on record the following is relevant :-

i. An Application dated 16th May, 1966 (original lease) contains the following clause :-

“1. I/We hereby declare that I/We do not possess or have any household property or any share or interest in any such property within the limits of

the Calcutta Metropolitan Planning Area as mentioned in the schedule annexed.”

This declaration is the basic requirement of acquiring a plot in Sector 1 of Salt Lake City Extension Scheme. The said requirement is laid down in the urban land (ceiling and Regulation) Act. 1976.

ii. Clause/Para 17 of in the petitioner’s deed of conveyance is as follow :-

“17. To observe, perform and comply with the requisitions as may from time to time be made by the Government or any other authority in respect of the demised land and building thereon.

And the Transferor and Transferee hereby indemnify against all losses and damages in respect thereof.”

iii. Cabinet decision dated 5th November, 1979 proposed that the restriction imposed in respect of 2 or 3 Cottah plot in Sector I, be also imposed in respect of 4/5/6 Cottah plots in Salt Lake. The restriction was extended in respect of 4 Cottah/5 Cottah and Cottah plots of Sector II and III, subsequently extended to plots of all size (Para 5).

iv. The urban land (ceiling and Regulations) Act, 1976 is a piece of legislation in the interest of the public. To

ensure that property is not concentrated on a certain section of people but be distributed equally among the public and for the benefit of the public at large.

- 16. In the present case** the initial application, **clause 1, requires such declaration** and the petitioner having under taken to comply with government rules/regulations (Para 17 of the deed of conveyance), the petitioner is legally bound to do so and his mutation has been held up only for such a declaration on affidavit (in compliance of a law for public benefit) by petitioner, which if complied with would process his mutation as earlier directed by Court orders, **where in the authorities were directed to proceed in Accordance with law.**
- 17. Now, a question comes to the mind of this court, as to why the petitioner is reluctant to file such an affidavit as required.**
- 18. On verification of records of this Court, it appears that one writ petition being W.P. 153(w) of 2003 was filed before this High Court by one Mahesh Kumar Goyal and Dinesh Kumar Goyal (the petitioner in this case), son of Late Ram Niwas Goyal (as in the deeds) staying and praying for mutation in respect of another premises being No. EC -149, Sector -I, Salt Lake City (Bidhannagar).**
- 19. The present case is also with a prayer for mutation by the petitioner Dinesh Kumar Goyal in respect of plot no. EC - 134,**

Sector – I, Salt Lake City, Bidhannagar, (transferred in the year 2007) which prima facie is against the provisions of the Urban Land (Ceiling and Regulations) Act, 1976, if the property EC – 149, Sector I, still stands in the name of the petitioner.

- 20.** A litigant who comes before a court of Justice to seek justice must come with clean hands.
- 21. Considering the said facts, the Writ Petition being devoid of merit stands dismissed.**
- 22.** All connected applications, if any, stand disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)