

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

Present:

The Hon'ble Justice Rai Chattopadhyay

W.P.A No. 8893 of 2020

**Nishakar Mondal & Anr.
Vs.
The State of West Bengal & Ors.**

For the Petitioners	: Mr. Kishor Datta, Sr. Adv. : Mr. Sabhir Ahmed, : Mr. Dhiman Banerjee, : Mr. Suman Biswas, : Mr. Sohan Chakraborty.
For the Birbhum Zilla Parishad	: Mr. Sandipan Banerjee, : Mr. S. Majumder, : Ms. Utsa Dutta,
For the Respondent no. 7	: Mr. P.S. Bhattacharyya, : Mr. Raju Bhattacharyya.

Heard on: 08/12/2023

Judgment on: 24/04/2024

Rai Chattopadhyay, J.

1. The dispute is with regard to the alleged illegal grabbing of the thorough fare, recorded in favour of the Government of West Bengal in Khatian No. 1 as 'rasta'. The writ petitioner is aggrieved that in spite of raising protest to various authorities in writing, the grievance is not redressed. Respondent no. 7, Barabagan Prantik Sangha is the club, which is the alleged perpetrator. Connivance of respondent no. 7/club, with Birbhum Zilla Parishad/respondent no. 4 has also been stated, which

allegedly has materialized the illegal project of construction of a club room over the said land. On the other hand, respondent No.7/club has made out a case, that the said land area has duly and in accordance with law, been handed over to it, by respondent no. 4/Birbhum Zila Parishad and as such the respondent no. 7/club, being the lawful owner of the land concerned, has duly utilized the same, by constructing club room over there. The immediate cause of action for filing the present case is non-consideration by the respondent authorities of the notice demanding justice sent on behalf of the present writ petitioner, by virtue of a letter dated 18th January, 2016.

2. In the present case the writ petitioner has prayed for the reliefs *inter alia* that, the club room over the concerned landed property may be demolished immediately, the respondent authorities may be restrained to encroach upon the said land as well as on adjacent area of the road/footpath. They have also sought for an order that, construction in progress, if any, over the land in dispute, may immediately be stopped.
3. The factual background necessary to be dealt with in this case may be narrated in a nut shell as follows.
4. The land measuring about 360 sq.ft., appertaining to Plot no. 774, in Mouza – Brojergram, JL No. 104, Block – Suri I, is at the core of the dispute. According to the writ petitioner the same is classified and recorded as ‘rasta’ (road) in the Government record of rights. It has been recorded in Khatian No. 1. He says that the same is a thorough fare, being used by uncountable number of people. The petitioner has further stated that the said Plot no. 774 is recorded under Khatian no. 1, in the name of the “Collector, Birbhum”, to possess the same, on behalf of the State of West Bengal. Thus, the petitioner’s case is that the said land belongs to the State and is not transferable. In spite of the

same, allegedly, the respondent no.4/Birbhum Zila Parashad, executed a registered deed of sale on 16th August, 1983, suggesting sale of the said plot of land in favour of respondent no. 7/club. The respondent club in turn has constructed a room for use of their organization over there. This has made the writ petitioner aggrieved, the act of the respondents being allegedly illegal and not maintainable.

5. Mr. Datta, learned Senior Counsel has appeared for the writ petitioner. His first contention on behalf of the clients is that the land recorded in favour of the State government in Khatian no. 1, in the name of Collector would not be transferable at the hands of the respondent no.4/Birbhum Zila Parishad. Therefore Zila Parishad executing any sale deed in favour of respondent no.7/club, with respect to the said plot of land would be an illegal transaction. The writ petitioners have challenged Zilla Parishad's right over the said land to enable it to transfer its title, in any way whatsoever. Secondly, according to the writ petitioners, such alleged illegal transfer by the respondent no. 4/Zila Parishad of the said plot of land has adversely and prejudicially affected rights of innumerable member of citizen residing and commuting within the locality, including the writ petitioners. The writ petitioners are aggrieved due to the alleged illegal act of the respondents as their rights as citizens of the country, to life, in terms of free movement, has been jeopardized by such act on the part of the said respondents. Mr. Datta has not failed to mention that the illegality as above has been committed due to unholy nexus and conspiracy, particularly between respondent no.4 and respondent no. 7 as mentioned above. According to Mr. Datta there has been a gross violation and prejudice to the right and interest of the writ petitioners by the said illegal act of the respondents and thus arose the petitioner's locus to file the instant case before the Court, for an appropriate order of relief. On this Mr. Datta has relied on the cases

of the Hon'ble Supreme Court reported in **(1986) 2 SCC 68 (State of H.P. vs. Umed Ram Sharma)** and **Institute of Law, Chandigarh vs. Neeraj Sharma** reported in **(2015) 1 SCC 720**.

6. Mr. Datta further submits that in an organized society, rights are guaranteed to a citizen for better and upgraded living as a human being than only the animal existence of a man. All civil, political, social and cultural rights would comprise within the concept of basic human rights of a man. Living space, free surroundings, pure air, water, sanitation and other civic amenities like roads etc. are the components to make those rights available to a man. Depriving the writ petitioners by the action of the respondent authorities from his basic human rights shall not only be amenable to the writ jurisdiction of this Court but also be redressable, by an appropriate order of the Court. On this Mr. Datta has relied on a judgment of the Hon'ble Supreme Court reported in **(1996) 2 SCC 549 (Chameli Singh vs. State of U.P)**.
7. The other submission on behalf of the writ petitioners would be that the state largesse would not be distributed by the state instrumentalities according to their own sweet will and whims. A sound, transparent, discernable and well defined policy should be the backbone for such handing over of state largesse. The fair and equitable manner is the only pivotal requirement for distribution of largesse like allotment of land. According to Mr. Datta in the present case there has been a total go by to those policies and principles settled by law, in so far as the process of transfer the said plot of land to the respondent no. 7, is concerned. It is stated that whereas the law of the land has always deprecated any favoritism and nepotism in the process and upheld only transparent and equitable measures, in this case the respondent authorities have travelled through just the opposite path. According to Mr. Datta the same has made its action vitiated in the eye of law. On

this Mr. Datta has relied a judgment of the Hon'ble Supreme Court of ***Akhil Bhartiya Upbhokta Congress vs. State of M.P*** reported in **(2011) 5 SCC 29**.

By referring to the judgment of ***Akhil Bhartiya*** (supra), the Supreme Court has held in ***Bihar State Housing Board vs. Radha Ballabh Health Care & Research Institute (P) Ltd*** reported in **(2019) 10 SCC 483**, that the practice of allotment of plots dehors an advertisement or invitation by the State or its instrumentality would be deprecatory.

8. Lastly, on behalf of the writ petitioners a judgment of the Co-ordinate Bench of this Court has been referred to, i.e, ***Purba Kalikata Matsyajibi Samavai Samity Ltd. & Anr. vs. State of West Bengal*** reported in **2011 SCC OnLine Cal 3763**. In the same after a detailed discussion the Court has held that according to part 1, 2 and 3 of Chapter IV of the Rules of Business for the State of West Bengal (vide notification no. 1209 A.R. dated 5th June, 1964), no power has been vested in the other department to transfer any land in possession of the Government. It is submitted that the ratio of the said decision of the Hon'ble Co-ordinate Bench would squarely apply in this case also, in so far as the disputed piece of land has been in possession of the Government, being recorded in Khatian no. 1 but said to have been transferred by the respondent No.4/Zila Parishad, to the club by way of a sale. Hence, according to the petitioners, the same would be illegal, being in violation of the Rules of Business for the State of West Bengal (vide notification no. 1209 A.R. dated 5th June, 1964).
9. The respondent no. 4/Zila Parishad is represented by Mr. Banerjee. He is categorical in submitting that the act of transfer of the said plot of land by his client would suffer from no illegality whatsoever, as alleged. To substantiate, Mr. Banerjee would rely on firstly the sale deed

executed by respondent no.4/Zila Parishad in favour of his client on 16th August, 1983. Thus, he says that the respondent no. 7 by dint of purchase of the said plot of land has become the owner of absolute right, title and interest over the same. He says that such purchase would enable his client to effectually make the same in use for its benefit. He says that the respondent no. 7/club has only done so in compliance with the law.

10. He would further refer to a letter issued by the Assistant Secretary, Department of Panchayat and C.D. (Panchayat), Government of West Bengal, written to the Secretary of Birbhum Zila Parishad, Suri, dated 25th November, 1982. The subject mentioned therein is as follows:-

“Sub: Disposal of a piece of land measuring more or less ½ Katha by the Birbhum Zilla Parishad in favour of Barabagan Prantik Sangha, Suri Birbhum.”

11. The text of the said letter is also extracted for benefit of discussion, which is as follows:

“The undersigned is directed by order of the Governor to say that the Governor has been pleased under section 175 of the West Bengal Panchayat Act, 1973 to allow the Birbhum Zilla Parishad to transfer a piece of land measuring 360 sq. ft. or more less ½ Katha out of plot No. 774 in Mouza – Brojergram J.L. No. 104; Police Station – Suri in favour of Barabagan Prantik Sangha, Suri, at a price of Rs. 2000/- per katha, for construction of a building thereon.”

12. Mr. Banerjee has submitted that the deed of sale dated 16th August, 1983, between the respondent nos. 4 and 7 is not disputed in this case. He says that this Court would not be empowered to enter into the question of legality and propriety of the said deed on two counts, firstly, that the same is not challenged in this case and secondly, that even if it was challenged, to determine the questions of legality and propriety of the same, the relevant factual issues would have to be determined, that is, on evidence and by a competent, fact finding civil Court. By saying

so Mr. Banerjee has submitted that the deed of sale dated 16th August, 1983, being undisputed, the transfer pursuant thereto or the right of the transferor or the transferee thereof, could not have been questioned by the writ petitioners, in this case. He says that the extraordinary and discretionary jurisdiction of this Court under Article 226, and a remedy in equity may not be exercised, when the petitioner has intentionally avoided a statutory proceeding of suit before the appropriate forum and indulged into the alternative remedy under the writ jurisdiction. On this Mr. Banerjee has relied on a judgment of three Judges' bench of Supreme Court, that is, ***Satya Pal Anand vs. State of Madhya Pradesh & ors.*** reported in **(2016) 10 SCC 767**. He seeks that the writ petition be dismissed.

13. Mr. Bhattacharyya has appeared on behalf of the respondent no. 7, though no affidavit-in-opposition has been preferred by the same in this case. Be that as it may, according to Mr. Bhattacharyya, his client is a bona fide and valid purchaser of the said plot of land by dint of the registered sale deed dated 16th August, 1983. He says that pursuant to the same his client obtains right to use the said land excepting in a manner, which is not commensurate with law. He submits that being the lawful owner of the said plot of land the respondent no. 7 would not be considered having done anything wrongful or illegal, in making construction over the said piece of land.
14. Mr. Bhattacharyya has said that the law is well settled to the effect, that a writ petition under Group IX could only be maintainable, in case of protection of rights, life and liberty pursuant to a decree and/or order passed by a civil Court. Unless the same, such a writ petition would not be maintainable. According to Mr. Bhattacharyya, here in this case there is no decree of the civil Court, determining the right title interest of the parties with respect to the disputed land. Hence, this petition would

not be maintainable at the threshold, he says. On this he has relied on judgment of the Hon'ble Supreme Court reported in **(2006) 4 SCC 501 (P.R. Murlidharan & Ors. vs. Swami Dharmananda Theertha Padar & Ors.)**

15. He has echoed the submission made on behalf of the respondent no. 4, as mentioned, that the disputed questions of fact regarding the legality of the indenture or the right title interest of the parties with respect to the property would not be a subject matter of the writ Court to determine but for a competent civil Court to adjudicate on the basis of the evidence. He has further substantiated this point by referring to a judgment of the Hon'ble Supreme Court, that is, **State of M.P & Ors. vs. M.V. Vyavsaaya & Co.** reported in **(1997) 1 SCC 156.**
16. Referring to the judgment of the Hon'ble Supreme court reported in **(2010) 8 SCC 329 (Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil & Anr.)**, he says that the redress of grievance against the private party could not have been sought for in a writ petition. He says that the writ petitioner may seek relief against the State or instrumentalities of the State who have some statutory or public duty to perform and there might be breach of the same. As per him against his client that is respondent no. 7, the writ petitioner cannot claim any relief in this case, it being a private entity.
17. It is pertinent to note that none of the contesting respondents have denied the fact that the Plot no. 774 in Mouza – Brojergram, has been recorded in Khatian no.1, denoting thereby the same to have been owned by the Government itself. The same is recorded in the name of the District Collector, Birbhum District. It is also not disputed by any of the respondents as above, that the said plot of land has been used as a thorough fare by people at large. It is also admitted and not denied or disputed that at the behest of the respondent no. 7/club, construction

has been made over the said piece of land, to be demarcated as a club room. The question is that if the writ petitioners have any right of free access to a common thorough fare, which has usually been used by them, as members of public at large. And also that, if subsequent seizure of the same, may result to infringement of their such rights, for redress of which the Court may invoke its plenary writ jurisdiction.

18. The right to life, as enshrined under the Constitution of India as fundamental right of a citizen, has by now, received well expanded definition and meaning, as expounded by the Constitutional Courts, time and again. One can look way back in 1978, in ***Maneka Gandhi's case*** [***Maneka Gandhi vs. UOI*** reported in (1978 1 SCC 248)]. The Supreme Court had held there that the right to life and personal liberty is not confined to mere animal existence, but it also includes the right to lead a meaningful life. The maxim the Courts have observed as to how a person's right to life may be protected, is to live with dignity as the greatest creation of God. These rights have been crucial for the realization of a just and equitable society. In ***Francis Coralie v. Union Territory of Delhi*** reported in (1981) 1 SCC 608, the Supreme Court has further observed:

“The right to live includes the right to live with human dignity and all that goes along with it, viz., the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings and must include the right to basic necessities the basic necessities of life and also the right to carry on functions and activities as constitute the bare minimum expression of human self.”

19. Relevant portion of the judgment of ***Umed Ram Sharma (supra)*** would also benefit discussions in this case. That may be quoted, as herein bellow;

“11. ** ** ** ** ** ** ** ** **
Every person is entitled to life as enjoined in Article 21 of the Constitution and in the facts of this case read in conjunction with Article 19(1)(d) of the Constitution and in the background of Article 38(2) of the Constitution every person has right under Article 19(1)(d) to move

freely throughout the territory of India and he has also the right under Article 21 to his life and that right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. These propositions are well settled. We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.

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Also it has been held in this case that the persons who would be affected by denial of proper roads, would have locus, to maintain a writ petition.

20. The judgment of the Supreme Court in ***Chameli Singh's case (supra)***, shall also be an ennobled illustration, as to how in Court's vision, such right of a person which is also a basic human right, has evoked to be. The relevant portion may be referred to:

"8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so

as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.”

21. Therefore, from the reading as above, it would transpire that civic amenities are held to be the part of dignified living as guaranteed to its citizens, by the Constitution. Communication, uninterrupted and free movement by a person are the basic tenets of the life beyond mere animal existence and his personal liberty, enabling the person to be free from any restrictive or oppressive control. Only when a man is granted certain fundamental civic rights, and is free to move about in order to adhere to the other principles of a well-groomed and well-led life, does life's quality equal those rights as provided by the Constitution. Right to have a commutable road, would be considered to be such a basic and fundamental right of a person leading him to enjoy his life in a free and dignified manner.
22. Admittedly, in this case, over a common, commutable thoroughfare, the petitioners have noticed a construction having been burgeoned, sprawling out from nowhere, as the land could have never been blocked by any construction, that being a public road. The petitioners, who have a right to free passage for unrestricted movement, are thus prejudiced, due to their such rights having been curtailed. Pertinent is to mention that admittedly there is no public purpose or public utility or benefit devoted to such a change of utility and nature of the said piece of land.

- 23.** As a natural corollary, comes the question of propriety and validity of the process by dint of which the said land is bestowed upon the respondent No.7/club. A sale deed dated 16th August, 1983, has been strongly relied on by the respondents, along with the letter dated 25th November, 1982, issued by the Assistant Secretary, Department of Panchayat and C.D. (Panchayat), Government of West Bengal, written to the Secretary of Birbhum Zila Parishad, Suri. It is stated that by dint of the said letter, power was vested upon the Birbhum Zila Parishad, by the government, to settle the said land in favour of the respondent No.7/ club, for construction of a building. By mentioning about transfer of land from the State, to the club, through the Zila Parishad, we are denoting about change of hands of the state largesse and also that the Government/an instrumentality of State within the meaning of Article 12 of the Constitution of India, having entered into a private contract with the respondent here.
- 24.** Where the Government is dealing for distribution of largesse, it cannot act arbitrarily, irrationally and on irrelevant considerations. Observation of Hon'ble Justice P.N.Bhagabati presiding over a 3 Judge's Bench in the case of *Ramana Dayaram Shetty vs International Airport Authority of India* reported in (1979) 3 SCC 489, is classical and may be mentioned :

“11. Today the Government in a welfare State, is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights, etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Governments and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means

power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largesse in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largesse and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largesse, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largesse. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof. Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. We agree with the observations of Mathew, J., in *V. Punnath Thomas v. State of Kerala* [AIR 1969 Ker 81] that:

"The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

By referring to the judgment in *Erusian Equipment and Chemicals Ltd. v. State of West Bengal* (1975) 1 SCC 70

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The Court, speaking through the learned Chief, Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is administering largesse

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The learned Chief Justice said that when the government is trading with the public, “the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. . . The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure”. This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.”

- 25.** Since from then, the Court has upheld reasonable, rational, non-discriminatory, transparent exercise of discretion by the Government, in distribution of the State largesse. Fair and equitable manner of distribution and reasonableness sub-serving the public purpose, are the essence. Policies cannot be construed by keeping common sense in cold storage.

26. Equity is a spice of equality or equalization and the State action is expected to be just, fair and equitable as well in consonance with the basic principles of law. Unless there are compelling circumstances to justify such a decision, the State is obliged to invite all persons interested in participating in the matters of awarding tenders relating to distribution of State largesse. The dimensions of public good in public law are significant and had enlarged by a passage of time. It will not lie in the mouth of the State to argue that it can do what it wants with complete disregard to the Constitutional mandate of equality and public good. In the case of ***Noble Resources Ltd. v. State of Orissa and Anr.*** reported in **(2006) 10 SCC 236**, the court said, it is trite that if an action on the part of the State is violative of equality clause contained in Article 14, a writ would be maintainable even in the contractual field. The court even went to the extent of stating that it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter.
27. In the case of ***Umed Ram Sharma (supra)*** and ***Chameli Singh (supra)*** the Supreme Court has held that when it is an obligation of the State to provide roads for the residents and the same is yet to be subserved, such residents would have the locus to bring forth their challenge to such inaction and get a remedy through Court. It has also been held that providing such facilities to them is the duty of the State, which is fundamental to their basic human and constitutional rights. The ratio therein applies squarely in case of the present petitioners too. The counter argument is with regard to the right of the respondent club emanating from the indenture, as to the disputed property. As discussed, the State property, to change hands, must go through a well formulated, reasonable, fair and transparent process. A field open for all to participate and compete to have and hold the State property and that for

a public purpose is the key for framing of any such policy by the State. An object must be there behind such a policy to promote welfare of the people by securing and protecting, as effectively as it may, a social order in which social and economic justice can be achieved. Public assets cannot be utilized to create private assets or for personal enrichment of an individual or institution. Public purpose or public good should be the moto here, from which the State authorities could not have detracted. As the Courts have held, that, a pick and choose policy can never find place in this kind of a transaction of State property. A well defined scheme to confer social and economic benefit, due to financial or other requirements of the subject, should be the basis on which the State/Government would act to distribute largesse in the form of land and it cannot act arbitrarily, at its sweet will and as a private individual.

- 28.** Coming to as to what is the foundation of the indenture executed by the respondent No 4/Zila Parishad to the respondent No.7/club, one can see that not any policy formulated for public good, but a letter informing that the Zila Parishad may transfer the land to the respondent No.7, is the basis of the same. This Court finds the same to be nothing but a glaring example of pick and choose policy, having been undertaken by the concerned respondent. Firstly, neither from the said letter dated 25th November, 1982, nor the indenture dated 16th August, 1983, one can find that the land is being transferred for any public purpose. Secondly, a decision, that the land should be transferred to the respondent No. 7/club, is not based on a process of open advertisement. It appears that the respondent State has acted as a private transferor, selecting its buyer arbitrarily, according to its own wish and transferring the land to it, for a purpose, not for any common good but for the transferee to construct building and enrich itself by utilizing the State property. The entire, as above, is not commensurate with the law settled in this regard, as

discussed earlier. The finding of the Court in **Akhil Bharatiya Upbhogta Congress (supra)**, would be absolutely appropriate, to be referred to here, which is as follows;

“65. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.”

This has been relied on by the same Court, in its subsequent decision in **Bihar State Housing Board (supra)**.

- 29.** The judgment of **Satya Pal Anand (supra)** as referred to on behalf of the respondent no. 4/Zila Parishad cannot be made applicable in this case being distinguishable in facts. In the same the Court found intentional latches on part of the petitioner to approach the civil Court and thus it held that the writ petitioner there had not come before the writ Court with clean hands and found the proceedings before the writ Court to be

not maintainable. In this case however, the records would not show any such intentional latches performed by the writ petitioners to avoid any other forum and come to this Court. Their pre-dominant grievance is with regard infringement of their fundamental rights which is absolutely amenable to the writ jurisdiction of this Court. So far as the judgment of ***M.V. Vyavsaya (supra)*** as referred to on behalf of the respondent no. 7, is concerned, the same would also not be found to be applicable in this case, for the reasons as stated above. As a matter of fact the present is not a case for determination of title but for infringement of the fundamental right of the writ petitioners. Any questions of disputed facts would not be a question in issue in this case.

- 30.** On the premise as above, this Court finds the present writ petition to be maintainable and legible to be allowed.
- 31.** The writ petition No. 8893 of 2020 is allowed and disposed of with the following directions.
- (i)** The respondents Zila Parishad shall immediately take all necessary steps to provide free access of the road to all, including the writ petitioners, over plot no. 774, in Mouza – Brojergram, JL No. 104, Block – Suri I, District -Birbhum;
 - (ii)** In doing so the said respondents shall take steps for demolition of the structure, constructed over there and all other steps as necessary, to facilitate unhindered and free utilization of the passage; in doing so, it shall obtain full cooperation of the State respondents, as and when necessary and sought for;
 - (iii)** The entire exercise as above shall be concluded within a period of 4 weeks from the date of communication of this order.

- 32.** Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all formalities.

RAI
CHATTOP
ADHYAY

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Date: 2024.04.24
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(Rai Chattopadhyay,J.)

Tudu/p.a