

S/L 15
04.09.2025
Court. No. 19
Sourav

WPA 1989 of 2025

**Sushila Keeni & Ors.
Vs.
State of West Bengal & Ors.**

*Mr. N. C. Bihani, Sr. Adv.
Mr. Suchayan Banerjee
Mr. S. K. Banerjee*

... for the petitioners.

*Mr. Soumitra Bandyopadhyay, Sr. Govt. Adv.
Mr. Priyabrata Batabyal*

... for the State.

1. The subject matter of the instant writ petitioner is the memo dated 02.01.2017 as issued by the respondent no. 1/authority whereby and whereunder the said respondent no. 1/authority was pleased to cancel the allotment of Plot No. DD-32A or DD-32/A, Sector – I, Salt Lake in favour of the present writ petitioners on account of their failure to comply with the terms and conditions of the original offer letter dated 17.04.1984 as has been issued in the name of one D. H. Mansfield (since deceased) being the predecessor-in-interest of the present writ petitioners.
2. At the time of hearing, Mr. Bihani, learned senior advocate appearing on behalf of the writ petitioners in course of his argument draws attention of this Court to the various annexures to the instant writ petition. It is submitted that from the materials as placed before this Court, it would reveal that initially the originally allottee paid a sum of Rs. 1 lakh with the respondents/authorities on 21.09.1984 towards 50 per

cent 'salami' and thereafter, on account of his death on 13.03.2004, the present writ petitioners were substituted in place and stead of original allottee and even the present writ petitioners being the substituted allottees on various occasions paid various dues towards the said proposed allotment as claimed by the respondents/authorities time to time.

3. It is further submitted by Mr. Bihani that after clearing all the payments, the respondent no. 3 herein under cover of its letter dated 03.09.2008 has forwarded a draft lease deed in respect of the aforementioned plot of land in favour of the writ petitioners for getting the same executed and registered. It is further contended on behalf of the writ petitioners that on 04.01.2009, the writ petitioner no. 1 issued a letter of request to the respondent no. 3 herein to grant extension of time for execution of the deed of lease.
4. It is argued by Mr. Bihani that all on a sudden on 16.11.2016, the writ petitioners were served with a show-cause notice dated 16.11.2016 by the respondent no. 1/authority seeking reply from the writ petitioners as to why he would not take necessary action for cancellation of the allotment order. It is submitted by Mr. Bihani that under cover of a letter dated 12.12.2016, a copy of which has been annexed at Page No. 102 of the instant writ petition, the writ petitioner no. 1 has given a reply to such show-cause notice dated 16.11.2016, however, by issuing the notice under challenge dated 02.01.2017, the respondent no. 1/authority most unilaterally and

without assigning any reason whatsoever cancelled the allotment as made in favour of the writ petitioners.

5. It is argued by Mr. Bihani that the respondent no. 1 being an authority within the meaning of Article 12 of the Constitution of India is expected to act in a just and proper manner and the respondent no. 1/authority while issuing the notice under challenge dated 02.01.2017, is not at all expected to act in a manner affecting the valuable constitutional rights of the writ petitioners in respect of the said plot of land since in the notice under challenge the respondent no. 1/authority has not at all assigned any reason for non-acceptance of the reply to the show-cause as given by the writ petitioner no. 1.
6. It is thus submitted by Mr. Bihani that the action of the respondent no. 1/authority is arbitrary in nature and, therefore, the impugned notice dated 02.01.2017 may be set aside by issuing appropriate writ/writs as prayed for.
7. Such contention is, however, opposed by Mr. Batabyal, learned advocate appearing on behalf of the respondent/State duly led by Mr. Soumitra Bandyopadhyay, learned senior government advocate. Drawing attention to Page Nos. 96 and 97 of the instant writ petition, it is submitted by Mr. Batabyal that after issuance of the letter dated 03.09.2008 enclosing therewith the draft lease deed, the writ petitioner no. 1 though prayed for extension of time, however, the letter dated 12.02.2009 as issued by the respondent no. 3/authority was not replied to by the writ petitioners wherein the respondent no. 3/authority requested the

writ petitioners to clarify as to why they need further time for execution and registration of the said lease of deed.

8. It is thus submitted by Mr. Batabyal that in absence of any reply from the writ petitioners and also considering the fact that the reply to the notice to show-cause dated 12.12.2016 are vague in nature, there cannot be any justification to interfere with the notice under challenge dated 02.01.2017 whereby and whereunder the said allotment was cancelled by the respondent no. 1/authority.
9. On careful consideration of the entire materials as placed before this Court, it reveals that the original allotment was made in favour of the predecessor-in-interest of the present writ petitioners on 17.04.1984. It reveals further that after the death of the original allottee and after mutation of the names of the present writ petitioners as substituted allottees, the substituted allottees being the writ petitioners have made rest of the payments as due and payable to the respondents/authorities and, ultimately, on 03.09.2008 the draft lease deed was forwarded by the respondent no. 3 to the writ petitioners for its execution and registration.
10. It appears to this Court that on 04.01.2009, a letter of request was issued by the writ petitioner no. 1 to the respondent no. 3/authority for grant of extension of time to execute the said lease deed, however, this Court finds no materials in the instant writ petition to

substantiate that any endeavour has been made by the writ petitioners to clarify as to why they need for extension of time in terms of the letter dated 12.02.2009 as issued by the respondent no. 3/authority.

11. It further reveals that since 2008 to 2016, more specifically, from 03.09.2008 to 16.11.2016, the writ petitioners remained idle over the matter and even when a show-cause notice dated 16.11.2016 was issued to them, the writ petitioner no. 1 replied to such show-cause notice by taking a plea that a bereavement occurred in her family and thus once again requested the respondent no. 1/authority to grant further time.
12. Soon thereafter by issuing the letter dated 02.01.2017, the said allotment was cancelled.
13. This Court is really astonished that in the instant writ petition there was no proper and just explanation at all as to what prompted the writ petitioners not to execute and register the deed of lease in respect of the said plot of land in between 03.09.2008 to 16.11.2016.
14. It is equally astonishing to note that the notice under challenge dated 02.01.2017 was challenged by filing a writ petition in the year 2025 that is after a prolonged delay of eight years or more.
15. This Court is conscious that there is no period of limitation for filing a writ petition. However, this Court must not forget to mention herein that the writs issued by the High Court under Article 226 of the Constitution of India are highly prerogative in nature and, therefore, in order to get remedy under Article 226 of the

Constitution of India, the writ petitioners are duty bound to explain the delay and laches in approaching this Court for exercising writ jurisdiction which is discretionary in nature.

16. In this regard this Court proposes to place its reliance upon the decision of the Hon'ble Supreme Court in the reported case of ***Tridip Kumar Dingal and Others Vs. State of West Bengal and Others*** reported in **(2009) 1 SCC 768** wherein the followings have been held:-

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

*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 third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai* reported in AIR 1964 SC 1006; (1964) 6 SCR 261, *Moon Mills Ltd. v. Industrial Court* reported in AIR 1967 SC 1450 and *Bhoop Singh v.**

Union of India reported in (1992) 3 SCC 136: (1992) 21 ATC 675: (1992) 2 SCR 969). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi reported in (1969) 1 SCC 110, Durga Prashad v. Chief Controller of Imports & Exports reported in (1969) 1 SCC 185 and Rabindranath Bose v. Union of India) reported in (1970) 1 SCC 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.”*

17. It appears to this Court that the writ petitioners have made no venture at all to explain the delay to the respondent no. 1/authority in executing and registering the deed of lease in respect of the said plot of land. This Court has also noticed that there was inordinate and unexplained delay in approaching this Court challenging the impugned notice dated 02.01.2017.
18. In view of the discussion made hereinabove, this Court thus finds no merit in the instant writ petition.
19. Accordingly, the instant writ petition being **WPA 1989 of 2025** is thus dismissed.
20. There shall be, however, no order as to costs.
21. 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.)