

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**MAT 421 of 2024
IA NO: CAN/2/2024**

**The State of West Bengal & Ors.
vs.
Mediview Diagnostic Services Private Limited & Ors.**

For the Appellants/
State

: Mr. Suman Ghosh, Sr. Govt. Advocate
Mr. Moniruzzaman, Advocate

For the writ petitioners/
respondents

: Mr. Saptansu Basu, Senior Advocate
Mr. Ayan Banerjee, Advocate
Mr. Ritwik Pattanayak, Advocate

Heard on : 24.04.2025

Judgment on : 24.04.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of the State and directed against the judgment and order dated September 26, 2023 passed in WPA 5563 of 2012.

2. Learned advocate appearing for the appellants submits that, the writ petitioners sought allotment of 10 cottahs of land at Kalyani Township. Initially, allotment was granted which was set aside by the Division Bench in a Public Interest Litigation. Review of such order of the Division Bench was rejected. Therefore, according to him, the initial allotment in favour of the writ petitioners stood cancelled in its entirety. Reasons for cancellation as noted by the Division Bench, in the Public Interest Litigation is that, the plot concerned over which, the allotment was sought to be made, was earmarked for the construction of Auditorium and in view of the relevant statute governing the town plan which not altered, the allotment was cancelled.
3. Learned advocate appearing for the appellants submits that, the writ petitioners initially wanted allotment of 10 cottahs for diagnostic centre. He submits that, application of the writ petitioners was directed to be considered by a learned Single Judge by an order dated April 12, 2010 passed in a writ petition filed by the writ petitioners. He draws the attention of the Court to such order dated April 12, 2010. He submits that, the Estate Manager considered the application of the writ petitioners and passed an order dated August 24, 2010. Subsequently, in terms of the directions contained in the order of the Estate Manager dated August 24, 2010, authorities

considered the request for allotment made by the writ petitioners and found the same not to be acceptable by a writing dated May 27, 2011.

4. Learned advocate appearing for the State draws the attention of the Court to the order dated August 24, 2010 of the Estate Manager as also to the letter dated May 27, 2011 of the authorities. He submits that, the plot in question is earmarked for the purpose of setting up of a meeting hall with guest house public library along with shopping complex. Establishment of diagnostic centre is not contemplated by the authorities at the plot concerned. Therefore, he submits that, the application for allotment made by the writ petitioners for setting up a diagnostic project cannot be accepted. He contends that, learned Single Judge erred in directing allotment of the land in question for the purpose of construction of a diagnostic centre while the land is earmarked for the purpose of setting up of meeting hall with guest house, public library along with shopping complex.
5. Learned advocate appearing for the appellants submits that the present policy of the State Government is to undertake allotment of land by public auction. The impugned judgment and order did not take into consideration such policy of the State.

6. Learned Senior Advocate appearing for the writ petitioners submits that, initially, a plot of land was allotted to the writ petitioners measuring about 10 cottahs of land for the purpose of setting up of diagnostic centre. In a Public Interest Litigation, the allotment of the site was set aside although, the allotment *par se* was not set aside. He submits that, the writ petitioners obtained an order dated April 12, 2010 passed in a writ petition filed by them where, the Estate Manager was directed to consider the application for allotment.
7. Learned Senior Advocate appearing for the writ petitioners draws the attention of the Court to the provisions of the West Bengal Government Townships (Extension of Civil Amenities) Act, 1975 and submits that, Section 4 thereof, particularly, Section 4B permits an application to be considered by the Administrator and an allotment be made by such Administrator. He submits that, the Estate Officer was treated as an Administrator under the Act of 1975. Such finding is returned by the learned Single Judge in the impugned judgment and order. The appellants did not assail such finding.
8. Learned Senior Advocate appearing for the writ petitioners submits that, pursuant to the order dated April 12, 2010, the Estate Manager considered the application of the writ petitioners and made an allotment by the order dated August 24, 2010. Since, the allotment was allowed, there was no necessity for referring the matter to any

- other authority of the Estate Manager, the other authority which passed an order dated May 27, 2011 rejecting application for allotment acted without jurisdiction. In support of such contention, he relies upon 2005 (4) Calcutta High Court Notes 264 (Rani Sati Kerosene Supply Company & Ors. Versus State of West Bengal & Ors.), 2015 (1) CLJ (Cal) 266 (R.K.B.K. Limited & Anr. Versus State of West Bengal & Ors.) and (2004) 2 Supreme Court Cases 65 (Bahadursinh Lakhubhai Gohil versus Jagdishbhai M. Kamalia & Ors.).
9. Relying upon AIR 1978 Supreme Court 851 (Mohinder Singh Gill vs. Chief Election Commissioner), learned Senior Advocate appearing for the writ petitioners submits that, the order of the Division Bench passed in the Public Interest Litigation cannot read to mean that, the entire allotment stood negated.
 10. In the facts and circumstances of the present case, the writ petitioners seek allotment of a government property. It is trite law that, Government largesse including government property can be granted/allotted in consonance with the principles enunciated under Articles 14 and 16 of the Constitution of India.
 11. There is nothing on record to suggest that, there was any public advertisement issued by any authority calling upon the public to apply for an allotment of any land or the plot in question to be

considered by the Administrator of Estate Officer as the case may be under the provisions of the Act of 1975.

12. Writ petitioners applied individually, without any invitation by the State to do so, for the purpose of allotment of a plot of land under the Act of 1975. Initial allotment made to the writ petitioners was set aside by an order passed by the Division Bench dated February 21, 2003. Relevant portion of such order is as follows:-

“Accordingly, the writ petition is allowed and the allotment made in favour of the respondent no.5 is set aside.”

13. Review of such order was prayed for which was disallowed by the order dated March 20, 2009.
14. Order dated February 21, 2003 of the Division Bench in the Public Interest Litigation, in our view cannot be construed to mean that cancellation of allotment made in favour of the writ petitioners was limited only to the cancellation of the allotment of the land and not to the allotment.
15. Allotment cannot survive its cancellation. We are of the view that, allotment made by the writ petitioners stood set aside by the Division Bench on February 21, 2003. .
16. Writ petitioners approached the writ court for consideration of its application for allotment which was directed to be considered by the authorities by an order dated April 12, 2010. Pursuant to such

order, Estate Officer considered the application and passed an order dated August 24, 2010. By such order, Estate Officer, allowed the application after noting that, space was meant for a meeting/auditorium with guest room and public library. However, the writ petitioners can be accommodated in such plot of land.

17. Thereafter, there is a writing dated May 27, 2011 issued by the Estate Manager which notices the earlier order dated August 24, 2010 of the Estate Manager and is of the view that, since, the scheme was for setting up a meeting hall with guest house, public library along with shopping complex, the allotment as prayed for by the writ petitioners cannot be granted as it would be contrary to the existing proposal of development of such land.
18. By the impugned judgment and order, learned Single Judge was pleased to set aside the writing dated May 27, 2011 and directed implementation of the order dated August 24, 2010.
19. As noted above, no public advertisement was made inviting application for allotment of land. The entire process resulting in the order of the Estate Manager dated August 24, 2010 and May 27, 2011 infringes Articles 14 and 16 of the Constitution of India.
20. Section 4B of the Act of 1975 is as follows:-

“4B. (1) Any person desiring to obtain settlement through lease of any land situated within a Government Township may submit an application

to the Administrator, in such form and in such manner as may be prescribed:

Provided that the provisions of sub-sections (1), (2), (3) and (4) shall not come into force until the form of application and the manner of its submission, have been prescribed,

(2) On receipt of such application the Administrator shall, after making such enquiry as he considers necessary, either grant or refuse to grant the same: Provided that the Administrator shall, while refusing to grant an application, record the reasons for doing so,

(3) Any person who is aggrieved by an order of the Administrator under sub-section (2) may, within such period as may be prescribed, prefer an appeal to the State Government and the State Government shall pass such order upon such appeal as it considers necessary.

(4) No further appeal shall lie against the order passed by the State Government under sub-section (3).

(5) Nothing in sub-section (1), (2), (3) and (4) shall apply or shall be deemed to have applied to any lease of land situated within a Government Township which has been granted, or shall apply to any such lease which may hereafter be granted, by the State Government on an application made to it or on its own motion.”

21. In our understanding of Section 4B particularly, the proviso thereto, applicability of the principles enunciated under Articles 14 and 16 of the Constitution of India are not ousted. A statute obviously cannot override the express provisions of the Constitution. In our view, the proviso requires the authorities to make a public advertisement inviting an application so that they may be processed in accordance with law. In the present case no public advertisement was made for allotment of the land in question.
22. **Rani Sati Kerosene Supply Company & Ors (supra), R.K.B.K. Limited & Anr. (supra) and Bahadursinh Lakhubhai Gohil (supra)** we are of the view that, a person who did not possess the requisite authority cannot interfere in the decision making process. In the facts and circumstances of the present case, the initial order dated August 24, 2010 was passed by the Estate Manager. The subsequent order dated May 27, 2011 was also passed by the Estate Manager. If Estate Manager is to be considered as the authority to decide an application under Section 4B of the Act of 1975, its subsequent decision dated May 27, 2011 cannot be quashed on the ground of no jurisdiction.
23. The ratio laid down in **Bahadursinh Lakhubhai Gohil (supra)** is not attracted in the facts and circumstances of the present case. Similarly **Mohinder Singh Gill (supra)** is not attracted as no

material other than the file considered by the Estate Manager is being considered.

24. In view of the discussions above, the impugned judgment and order is set aside. .

25. **MAT 421 of 2024** along with connected application are allowed. WPA 5563 of 2012 is dismissed.

(Debangsu Basak, J.)

26. I agree.

(Md. Shabbar Rashidi, J.)