12. **18.09.2025**
Court No.37.

(Pritam)

FMA 517 of 2024

Sumana Saha & Anr.
-Vs.-
State of West Bengal & Anr.

Mr. Pratik Dhar, Sr. Adv.,
Mr. Samir Halder,
Mr. Snehal Sinha

.....for the appellants.

Mr. Suman Sengupta,
Ms. Amrita Panja Moulick.

....for the State.

➢ ***Dictated By Om Narayan Rai, J.:-***

1. This appeal is directed against an order dated March 5, 2024 passed by an Hon'ble Single Judge in WPA 2808 of 2001 thereby disposing of the writ petition without granting any relief as prayed for by the writ petitioners.

2. One Mrityunjoy Saha (since deceased), the predecessor-in-interest of the writ petitioners (i.e. the husband of the writ petitioner no. 2) had made an application in the prescribed form for allotment of a plot of land being plot No.B-4/389 in Kalyani to the Government of West Bengal under Kanchrapara Development Scheme. Such application was accepted by the Government of West Bengal on April 24, 1990 and the said plot of land was

allotted to the predecessor-in-interest of the petitioners by way of lease.

3. The said application, which upon being accepted by the Government (hereafter "letter of allotment") resulted in a binding contract, contained *inter alia* the following terms:

> *"3. That I/We shall pay at least one-third of the premium or salami in respect of the said plot (inclusive of the amount deposited as earnest money) at the rate of Rs.1006.25 per cottah within two months from the date of acceptance of this offer. In default of payment as aforesaid of the one-third of the premium or salami I/We shall pay interest on the amount thereof at the rate of 6 per cent per annum from the date of acceptance to the date of payment and should I/We make default in payment of one-third of the premium or salami as aforesaid with interest, if any, payable thereon, for the period of six months from the date of the acceptance of this order, I/We shall be liable to forfeit the amount deposited as earnest money to the Government.*
>
> *I/We shall pay interest at the rate of 6 per cent per annum from the date of acceptance on the balance of the premium or salami or any part thereof which may be allowed by you to remain outstanding in respect of the said plot and interest will be the first charge on the deposited amount and the said amount so reaming outstanding will form a first mortgage and charge on the demised land and the building or buildings as may be erected thereon. The balance of the premium or salami so remaining outstanding together with interest due thereon in respect of the said plot shall be paid by me/us in 03 equal annual installments, the first of such payments to be made within one year from the date of*

acceptance of the offer and the subsequent 02 installments, together with interest payable in 2 successive years. Should I/We made default in payment of three such installments or premium or salami and interest payable within the period of said 03 years and any installment or any portion thereof or any amount of interest payable within the specified period after expiry of (3rd) years. I/We shall be liable to forfeit the amount already paid to the Government who will also have the right and be at liberty to determine the agreement and re-enter possession of the said premises together with the buildings as my be erected thereon and the Government shall not be liable to pay any damages, or make any compensation therefore to me/us.

Provided however that should I/We pay the annual installments of the balance of premium or salami payable by me/us with the interest payable thereon duly and punctually the Government shall accept interest on the said balance of premium or salami at the rate of 5 per cent per annum in lieu of 6 per cent per annum. I/We may pay more than one installment of the outstanding price. In case of short payment I/We may be treated as defaulter/defaulters:-

Provided further that nothing hereinbefore stated shall be deemed to preclude me/us from paying any installment/installments before due date, but the manner and time of such payments of installment or installments before due date shall be specified and approved by you.

***************** ***************** ***************

9. That besides the usual covenants contained in lease of similar nature in respect of lands. I/We shall observe and perform as follows:-

(a) To pay the annual rent reserved on the date and in the manner as may be prescribed by you.

> *(b) To pay all rates taxes outgoings and other impositions whatsoever, payable in respect of the demised land whether by the owner or by the lessee/lessess.*
>
> *(c) To construct the building, according to the rules as may be prescribed and according to plans elevations, designs and section as may sanctioned by the Government or by any local or statutory authority in that behalf, within five years from the date of acceptance and on default Government shall have the right to resume possession of the land and forfeit all or part of the money paid by the lessee provided that the lessee may be given extension of time at the discretion of Government."*

4. The said Mrityunjoy Saha (since deceased) paid the earnest money that is 1/3rd of the premium or *selami* in terms of the conditions mentioned in the said letter of allotment but did not make the balance payment. In the terms of the letter of allotment, the entirety of such payment ought to be made within a period of three years from the date of acceptance of the said letter of allotment.
5. About nine years after acceptance of the letter of allotment, the said Mrityunjoy Saha (since deceased) sought to pay the balance amount by way of a pay order dated June 14, 1999.
6. The Estate Manager, Kalyani and OSD and Ex-Officio Deputy Secretary to the Government of West Bengal returned the said pay order under the cover of a letter dated January 15, 2001, stating as follows:

> *"Sub:- Termination order in respect of plot no.B-4/389 at Kalyani"*
>
> *Whereas you have violated Clause 3 of lease Agreement dated 24.04.1990 and became defaulter for non-payment of 3 consecutive installments.*
>
> *And Whereas the pay order No. D/658563 dated 14.06.1999 for Rs.7,832/- has not been accepted by this Department, the above pay Order is returned herewith."*

7. Assailing the said order, Mrityunjoy Saha (since deceased) approached this court by filing WPA 2808 of 2001 praying *inter alia* for quashing of the said order dated January 15, 2001 and for a direction to hand over possession of the subject plot of land.
8. During pendency of the said writ petition, on September 18, 2018, Mrityunjoy Saha expired. The present writ petitioners got substituted in his place and stead and the writ petition was ultimately heard by a learned Single Judge of this Court on March 5, 2024, after exchange of affidavits. The learned Single Judge has been pleased to dispose of the same by passing the order impugned thereby refusing to grant any relief to the writ petitioner.

9. Mr. Dhar, learned senior advocate appearing for the appellants before us submits that the order impugned cannot be sustained inasmuch as the same has failed to appreciate the spirit of the order dated March 25, 2022 passed in MAT 967 of 2018 (Smt. Mira Sarkar -vs.- The State of West Bengal and Ors.) and the order dated April 24, 2012 passed in FMA 578 of 2011 (Somnath Biswas

@ Somenath Biswas & Anr. -vs.- The State of West Bengal & Ors.) by two Division Benches of this Court. He further submits that if in the aforesaid two cases, this Court had allowed the appellants therein to get the benefit of the Notification dated October 8, 2010, there is no reason why the same Notification cannot be made applicable to the appellants in the present case as well.

10. Mr. Dhar contended that the letter dated January 15, 2001 assailed in the writ petition was not a termination letter at all and that the letter dated January 22, 2001, that had been issued subsequently thereby terminating the allotment, was merely an afterthought. He also asserted that there is no termination of allotment at all. It is also contended that the grounds mentioned in the said letters are not that the allottee had failed to construct a building in terms of Clause 9(c) of the letter of allotment.

11. Relying on the judgment of the Hon'ble Supreme Court in the case of *Lt. Col. Suprita Chandel vs. Union of India & Ors.* reported in *2024 SCC OnLine SC 3664,* it is submitted that if a citizen approaches Court on being aggrieved by the action of the Government, and a declaration of law is made in his/her favour, then others who are similarly circumstanced ought to be extended the same benefit.

12. He also relied on a judgment of the Hon'ble Supreme Court in the case of *Jasbir Kaur vs. Union Territory, Chandigarh & Ors.* reported in *(1999) 9 SCC 22* and submitted that in a somewhat similar situation, the Hon'ble Supreme Court had directed regularization of allotment of site in favour of the appellant before it.

13. He next relied on a judgment of the Hon'ble Supreme Court in the case of *Granules India Limited vs. Union of India & Ors.* reported in *(2021) 20 SCC 419* for the proposition that the State cannot behave like a private litigant and rely on abstract theories like burden of proof.

14. Mr. Sengupta, learned advocate appearing for the State respondents submits that the Notification dated October 8, 2010 is not applicable to the petitioners in the facts of the present case. It is submitted that the said Notification is meant for cases where the allottees intend to transfer the land allotted to them in favour of third parties.

15. It is further argued that in the case at hand the original allottee was never in possession and even his legal heirs i.e. the appellants have not yet taken possession of the property in question. It is then submitted that in the case of Mira Sarkar (Supra), the original allottee had transferred her land to a third party who had taken possession of the relevant property and had raised constructions thereon. It was in such

background that the Notification of October 8, 2010 was applied and the said allotment as well as transfer was regularized. Such is not the case here.

16. Mr. Sengupta further submits that since the writ petitioners have not even taken possession of the subject land, the question of them having raised any construction over the property cannot even arise. He indicated that construction of a building over the property within the time stipulated in the letter of allotment was a mandatory condition of the letter of allotment.

17. Upon a query from Court, as to whether it was possible for the Respondents to regularize the allotment of the plot of land in favour of the appellants or not, Mr. Sengupta submitted that it could be possible if the appellants were ready and willing to pay the prevailing (present) market price in respect of the subject plot of land to the Respondent State authorities. He further submits that regularization without payment of the market price at the presently prevailing rate would not be possible because that would affect the State largesse and in all such cases as that of the present, the State authorities would prefer to make fresh allotments only by way of public auction so that maximum price for the land in question could be fetched.

18. Upon our enquiry, Mr. Dhar, learned Senior Advocate appearing for the appellants submitted that his clients would not be in a position to pay the price of the land at the present market rate but they would be able to pay the price at the rate mentioned in the Notification dated October 8, 2010.

19. We have heard the learned advocates for the respective parties and considered the material on record.

20. Two aspects are not in dispute :

(a) The appellants (and their predecessor-in-interests) have defaulted in payment of the premium in terms of the letter of allotment, within the prescribed time and the payment made thereafter by way of pay order has been refunded to them.

(b) The appellants and their predecessor-in-interests have failed to raise constructions over the property in question in terms of Clause 9(c) of the letter of allotment which was a mandatory condition as would be apparent from the said letter itself.

21. We are not impressed by Mr. Dhar's contention that the letter dated January 15, 2001 assailed in the writ petition was not a termination letter at all and that the letter dated January 22, 2001 that had been issued subsequently thereby terminating the allotment was merely an afterthought.

22. We have gone through the letter dated January 15, 2001 whereby the pay order dated June 14, 1999 for a sum of Rs.7,832/- made over to the Respondents, by the original allottee Mrityunjoy Saha (since deceased), was returned to him by the Estate Manager with the observation that the said allottee had acted in violation of Clause 3 of the lease agreement and that the allottee had become a defaulter in payment of three consecutive installments. The said letter is captioned as "Termination order in respect of the plot of land No.B-4/389) at Kalyani". A holistic reading of the letter dated January 15, 2001 leaves no room for doubt that the lease agreement in favour of the original allottee stood terminated by issuance thereof and by refund of the pay order.

23. The fine distinction which Mr. Dhar, learned senior advocate representing the appellants seeks to make between the two letters i.e., the one dated January 15, 2001 (page 101 of the writ petition) and the other dated January 22, 2001 (page 104 of the writ petition) therefore does not cut ice with us.

24. The other contention of Mr. Dhar that the ground mentioned in the letters impugned in the writ petition do not pertain to default in constructing a building on the subject plot in terms of Clause 9(c) of the letter of allotment also fails to appeal.

25. Once a mandatory condition being that of constructing a building on the allotted plot of land spelt out in Clause 9C has admittedly not been fulfilled, mere non-mentioning thereof in the letter would not, in anyway, make the termination illegal. Law is well settled on this point that if there are two sources of power and power has been exercised mentioning one of such sources then if the exercise of such power is challenged on the ground that the source mentioned could not have been resorted to, the exercise can still be validated by referring to the other source which exists but has not been mentioned.

26. We have noticed that Clause 9(c) of the letter of allotment reserves a discretion with the Government to extend the time. In the case at hand the Government has not extended the time and as would be apparent from the submissions made on behalf of the State respondents, the concerned authorities are willing to extend time in case the petitioners pay the present market value of the land in question. Such condition put forth by the State does not appear to be unreasonable. As a Writ Court, we cannot and should not interfere with sound exercise of discretion vested in a State authority. Given the stand taken by the State and the conduct of the original allottee, we do not find any infirmity in the exercise of discretion not to extend the time by the State respondents.

27. As regards Mr. Dhar's contention pertaining to the two decisions of the Division Bench cited by him, we have gone through the order impugned and we have found that the Hon'ble Single Judge has gone through the two decisions of the Division Bench in case of Mira (Supra) and Somnath Biswas (Supra) and has distinguished the same by observing as follows :-

> *"During course of argument the judgments of the Hon'ble Division Bench relied upon by the learned advocate for the petitioners do not come in aid since Mira Sarkar (supra) the house was already constructed and thereafter question arose for regularization of the land and in the backdrop of the facts as delinated in the order dated 25th March 2022 the Government notification dated 8th October, 2010 was applied which is not the fact situation of the present case. In the appeal being FMA 578 of 2011 the learned advocate for the State-respondents indicated before the Hon'ble Divison Bench the market price of the land in question, same was accepted by the appellants based on which order was passed directing the appellants to take steps accordingly."*

28. The aforesaid observations are correct and we approve the same. It is evident that the case of Mira Sarkar (supra) was one where building had been constructed by the transferee and the allotment in favour of such transferee was regularized upon payment of the sum in default in terms of the Notification dated October 8, 2010, since the Notification applied to cases of transfer. In the case of Somnath Biswas (supra), the

writ petitioner had agreed to pay the price of the land at the rate which was then prevailing in the market.

29. Mr. Dhar, learned Senior Advocate appearing for the appellants also sought to contend that although the writ petitioner might have agreed to pay the market price as observed in the order dated April 24, 2012 passed by the Division Bench in the case of Somnath Biswas (supra), the said price was actually in tune with the notification dated October 8, 2010. We find that in view of the close proximity of the dates of the notification dated October 10, 2010 and the date of order passed by the Division Bench in Somnath Biswas (supra) the market price prevailing on date of the order (i.e. April 24, 2012), the price of land calculable at the rate mentioned in the said notification may not have been at considerable variance with the then obtaining market value but 13 years down the line, in the year 2025, situation has changed substantially.

30. In any case, since the order dated April 24, 2012 passed in Somnath Biswas (supra) does not refer to such a notification, we need not delve deep into it.

31. As regards the judgment in the case of Lt. Col. Suprita Chandel (supra), the same will not be applicable to the present case inasmuch as neither Mira Sarkar (supra) nor Somnath Biswas (supra) has laid down any law or made any declaration of law of which the appellants may seek benefit. The said orders were

passed in the peculiar facts of the case, which are evidently different from the facts of the present case.

32. Insofar as the case of Jasbir Kaur (supra) is concerned, a reading of paragraph 4 thereof would make it clear that the Hon'ble Supreme Court did not decide any question of law in the said case. To be precise, the relevant paragraph reads as follows;

> *4. "After hearing learning counsel for the parties but without expressing any opinion on the question of law as raised in this appeal, it appears appropriate to us now to direct the regularization on the allotment of the site in favour of the appellant. Let the needful be done by the Chandigarh Administration within four weeks. The order of cancellation of lease, is, as a consequence, set aside."*

33. As regards the other judgment in the case of Granules India Limited (supra), the proposition that State cannot behave like a private litigant and rely on obstructive theories like the burden of proof is well-settled but then for the same to be applicable to the facts of the present case it needs to be demonstrated that the State has acted arbitrarily or in a manner not compatible with law. There is nothing on record to demonstrate the same.

34. We are not unmindful of the fact that the we are sitting in appeal over a judgment passed by the Hon'ble Single Judge in exercise of its jurisdiction under Article 226 of the Constitution of India and while exercising such appellate power, we have to be cautious that we

interfere only when the order impugned is clearly wrong and not when it is not right. It is now well settled that the appellate Court would not interfere if the view taken by the learned First Court is a plausible view, notwithstanding the fact that the appellate Court might have a different view. The order impugned is unexceptionable. For all the aforesaid reasons the instant appeal being FMA 517 of 2024 stands dismissed.

35. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.) **(Arijit Banerjee, J.)**