

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

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 13049 of 2019

Indranil Chowdhury & Anr.

-Vs.-

The State of West Bengal & Ors.

For the Petitioners : Mr. N. C. Bihani, Ld. Sr. Adv.,
Mrs. P. B. Bihani,
Mr. Soumya Mukherjee.

For the State : Mr. Sirsanya Bandopadhyay, Ld. Sr. St. Counsel,
Mr. Tarak Karan.

Heard on : 10.04.2025

Judgment on : 28.04.2025

ParthaSarathiChatterjee, J.:-

1. The tenability and propriety of the order passed by the Land Manager, Bidhannagar, Department of Urban Development and Municipal Affairs, Government of West Bengal, in purported compliance with the order dated 6th July, 2018 passed in W.P. No. 8991 (W) of 2018, have been called into question in

the present writ petition. In addition, the petitioner prays for a direction upon the concerned respondents to accept the balance amount of *Salami* in respect of Plot No. 412, situated at Block BD, Sector – I, Salt Lake City, Kolkata (hereinafter referred to as 'the said plot of land'), and further seeks a direction for execution and registration of the deed of lease in favour of the petitioner, along with mutation of the petitioner's name in respect of the said plot of land.

2. Before addressing the contentious issues raised in this writ petition, it would be prudent to outline the key facts that have led to the filing of the present petition, which are as follows:

- (a) Way back in 1967, a letter of offer of allotment (Annexure - P2 appearing at Page 32 of the writ petition) was issued under Memo No. 6868 for the said plot of land, for granting a lease with a tenure of 999 years in favour of one Bhagabat Ch. Chowdhury, the petitioner's grandfather, who is since deceased, subject to certain terms and conditions.

- (b) The letter of offer of allotment stipulated that the offer was made on the condition that the plot would be leased for 999 years upon payment of a premium or *Salami* charge at the average rate of Rs. 2,750/- per katha, subject to subsequent adjustment based on the final measurement of the plot. The allottee was required to deposit 50% of the *Salami* as earnest money with the Reserve Bank of India, Calcutta, through T.R. Form No. 7, and submit the challan showing such deposit along with the formal application within the stipulated period.

- (c) The clause (d) and (f) of the letter further stipulated that the allottee was required to deposit the remaining 50% of the Salami within two months from the date of receipt of information that the land was ready for delivery of possession. In the event of failure to make the payment within the stipulated period of 60 days from the date of receipt of such information, the earnest money would be forfeited, the allotment order would be cancelled, and the government would be at liberty to offer the land to any other party.
- (d) The petitioner deposited the earnest money, representing 50% of the Salami, in accordance with the procedure prescribed in the letter of allotment, as a token of unconditional acceptance of the terms of the lease. By a communication dated 19th December, 1967, from the Deputy Secretary, Government of West Bengal, Irrigation and Water Supply Department, Salt Lake Branch, the petitioner was permitted to make a choice for the plot.
- (e) Record reveals that by another communication dated 31st March, 1970 the Deputy Secretary informed the said Mr. Chowdhury that the land was ready for delivery of possession. However, the allottee, Mr. Chowdhury, expired on 3rd May, 1970.
- (f) Nearly 20 years thereafter, Mr. Rajib Lochan Chowdhury (in short, Mr. Rajib), son of the allottee, the late Bhagabat Chandra Chowdhury, who is also since deceased, submitted a representation dated 27th November 2015 to the Land Manager, Urban Development Department, expressing his intention to deposit the balance amount of

the premium or *Salami* for the said plot. However, no response was received from the recipient of the representation.

- (g) Mr. Rajib subsequently deposited a sum of Rs. 10,000/- with the Urban Development Department through e-challan, towards the mutation processing fees for the said plot of land in the name of the legal heirs of the allottee, the late Bhagabat Chandra Chowdhury.
- (h) By a communication dated 24th August, 2016, the Competent Authority, Urban Development Department, Government of West Bengal, informed Mr. Rajib Lochan Chowdhury that his application for the issuance of a Mutation Order in respect of the said plot of land was being processed, and that a hearing would be held in his chamber on 2nd September, 2016.
- (i) Records reveal that thereafter, Mr. Rajib submitted representations before various authorities, requesting the regularization of the allotment of the plot upon payment of the remaining balance of the *Salami*. He further requested that the necessary follow-up actions be taken, including the execution and registration of the lease deed and the mutation of the plot of land in favour of the legal heirs of the allottee.
- (j) A letter from the Land Manager, Bidhannagar, dated 14th June, 2017, indicates that Mr. Rajib Lochan Chowdhury was requested to submit the original documents pertaining to the plot for further processing and the possession of mutation. In response to this letter, certain documents were duly submitted.

(k) In 2017, Mr. Rajib Lochan Chowdhury passed away. The present petitioners, being the son and widow of Mr. Rajib, then stepped into his shoes and submitted a representation dated 28th August, 2017 to the Secretary, Urban Development and Municipal Affairs Department, U.D. Branch, Salt Lake, Kolkata, requesting the execution of the lease agreement in their favour and the mutation of the land in their name, along with an undertaking to pay all outstanding dues to the State Government.

(l) By an order issued by the Land Manager, which was communicated to the petitioner under a memo dated 10th May, 2018, the petitioner was informed that due to the failure of the allottee, the late Mr. Bhagabat Chandra Chowdhury, to deposit the balance amount of *Salami* within the stipulated time, the Hon'ble Governor of the State of West Bengal had been pleased to cancel the offer of allotment of the plot, in terms of Clause (d) read with Clause (f) thereof.

(m) Assailing the aforementioned order, the present petitioner filed a writ petition, being WP No. 8991 (W) of 2018, which was disposed of by a co-ordinate Bench by an order dated 6th July, 2018. The Bench directed the Land Manager to reconsider the petitioner's application afresh, after affording an opportunity of hearing to the petitioner and all other relevant officials involved in the dispute, and to dispose of the application within the time specified therein. Pursuant thereto, the order under challenge in the present writ petition was issued by the

Land Manager, refusing to entertain the petitioners' prayer for the execution of the lease and mutation on the ground that the allottee had failed to deposit 50% of the Salami within the time stipulated in the letter of offer of allotment. Aggrieved thereby, the present writ petition has been preferred.

3. As directed, the respondent nos. 3 and 4 have filed their affidavit-in-opposition to the writ petition and the petitioners have also filed the reply thereto.
4. The crux of the defense taken in the affidavit-in-opposition is that since Mr. Bhagabat Chandra Chowdhury failed to deposit 50% of the Salami within the period specified in the letter of offer of allotment, the offer was cancelled. Long after 45 years from the cancellation of the allotment, the petitioner's father approached the authorities seeking permission to pay the remaining part of the Salami. However, the authorities correctly deemed this request to be untenable, and therefore, it was not accepted.
5. Mr. Bihani, the learned advocate representing the petitioner, contended that although the letter of offer of allotment specified a time frame for the deposit of 50% of the *Salami*, the respondents did not treat this time period as being of the essence of the contract. He argued that upon acceptance of the earnest money from Mr. Bhagabat Chandra Chowdhury, possession of the plot was effectively handed over to the petitioner. This, he submitted, is substantiated by a communication from the Administrator of the concerned Municipal Corporation, directing the petitioner to clear wild vegetation from the plot. Furthermore, Mr. Bihani submitted that the subsequent conduct of the respondents—such as

affording the petitioner an opportunity of hearing in connection with the mutation of the land, and requesting documents from Mr. Rajib Lochan Chowdhury clearly indicates that the respondents did not treat the offer as having been cancelled and still there is a novation of contract.

6. Inviting my attention to three memoranda dated 8th July, 1988, 2nd September, 1991, issued by the Deputy Secretary, Government of West Bengal, Metropolitan Development Department, and another memorandum dated 31st December, 2001, Mr. Bihani submitted that by the memorandum dated 8th July, 1988, the time for depositing 50% of the *Salami* was extended up to 10 years in respect of allotments that had been cancelled up to the year 1984. He further submitted that the memorandum dated 2nd September, 1991, partially modified the earlier memorandum, extending the said period to 13 years. Subsequently, by the circular dated 31st December, 2001, the period was further extended up to 25 years. Mr. Bihani contended, however, that the petitioner's case had been treated differently and without justification. He pointed out that the petitioner's application was relegated to the concerned Land Manager for reconsideration with certain observations. However, according to Mr. Bihani, the application was ultimately rejected based on extraneous considerations, while relevant factors were ignored. He argued that if an administrative decision is found to be based on irrelevant considerations, such a decision cannot be sustained in law. In support of his contention, he relied upon the judgment reported in (2013) 16 SCC 293 (*Binod Kumar v. State of Haryana and Others*).

7. In rebuttal, Mr. Bandopadhyay, learned Senior Standing Counsel for the State, submitted that the letter of offer of allotment did not contain any provision

permitting even the State to accept the remaining 50% of the salami beyond the date specified therein. According to him, upon the expiration of the stipulated date, the allotment stood automatically cancelled. He further contended that although the petitioners had submitted an application for mutation and were accordingly summoned for a hearing and asked to produce relevant documents, their prayer for mutation was ultimately rejected. He argued that the mere grant of a hearing prior to the rejection of their application cannot be construed as an acknowledgment by the State of any continuing right on the part of the petitioners to deposit the balance salami after a lapse of 45 years. He also emphasized that the fact that, in a few isolated cases, certain allottees were permitted to deposit the balance amount of salami does not create any vested right in favour of the petitioners to compel the State to accept the same and regularize the allotment after such an inordinate delay.

8. Heard the learned advocates representing the parties. Perused the materials on record placed before me.
9. As previously noted, clause (d) of the letter of offer of allotment stipulated that the remaining 50% of the premium or salami was to be paid within two months from the date on which the allottee received information that the land was ready for delivery of possession. Clause (f), which operated as a default provision to clause (d), provided that in the event of failure to make the payment within the prescribed period, the earnest money referred to in clause (b) would be forfeited, and the Government would be at liberty to offer the plot to another party.

10. It is undisputed that on 31st March, 1970, the original allottee, Mr. Bhagabat Lal Choudhury (since deceased), was informed that the land was ready for delivery of possession. However, Mr. Choudhury failed to deposit the remaining 50% of the premium or salami. Notably, the terms of the contract did not contain any provision authorizing the State to accept payment of the balance premium or salami beyond the stipulated period.
11. Referring to the decision in *Binod Kumar (supra)*, Mr. Bihani reminded the Court of the well-established principle of law that judicial review of administrative action is premised on the grounds of illegality, irrationality, and unreasonableness—particularly, Wednesbury unreasonableness. He submitted that, in the present case, there is manifest unreasonableness in the administrative action of the authorities in refusing to accept the remaining 50% of the premium or salami from the petitioners. Accordingly, he urged that this Court should exercise its power of judicial review to address the injustice caused to the petitioners.
12. There is a catena of decisions of the Hon'ble Supreme Court which ruled that in matters involving contracts entered into between a government agency and a private individual, the scope of judicial interference is limited. The government must be afforded a reasonable degree of freedom in matters of contract. It lies within the exclusive domain of the government to prescribe terms and conditions of such contracts. However, such conditions are amenable to judicial review if they fail to meet the tests of reasonableness and fairness in action.

13. In the context of administrative decisions pertaining to contractual matters, the power of judicial review may be exercised only upon a clear finding that the process adopted or the decision taken by the authority was mala fide, or so arbitrary, irrational, or unreasonable that no reasonable person, acting in accordance with law, could have arrived at such a decision. The purpose of judicial review is not to assess the wisdom or soundness of a decision, but rather to ensure that the decision was made lawfully and in accordance with the principles of natural justice.
14. Undeniably, the jurisdiction of the High Court under Article 226 of the Constitution of India is extraordinary, equitable, and discretionary in nature. However, the exercise of such discretion must be guided by judicial principles and not by arbitrariness. While a party may seek relief on equitable grounds, it is a well-settled principle that equity cannot be claimed as a matter of right when the claim is otherwise founded on legal grounds alone. A party invoking the equitable jurisdiction of the Court must approach with clean hands and be free from any blameworthy conduct. Before exercising its equitable discretion in favour of any party, the Court is well within its authority to scrutinize the conduct of that party.
15. Needless to say, the rights and liabilities of the parties to a contract must be determined based on the terms and conditions expressly agreed upon in the contract. A party to the contract is bound by those terms and cannot, at a later stage, unilaterally impose any new term or condition that was not part of the original offer.

16. In the present case, there was no provision in the letter of offer of allotment empowering the State to accept the remaining 50% of the premium or salami beyond the stipulated period. The original allottee, having agreed to the condition requiring him to deposit the said amount within the prescribed time, failed to comply with that obligation. In view of the existence of a default clause in the contract, the failure to deposit the amount within the stipulated period resulted in automatic cancellation of the allotment.
17. After a lapse of 45 years, Mr. Rajib approached the authorities for the first time with a request to accept the balance amount of the salami. A person who remains indolent and fails to assert his rights for such an inordinate period cannot invoke the equitable jurisdiction of the Court. Equity aids the vigilant, not those who sleep over their rights. Therefore, there is neither any infirmity nor perversity in the decision of the respondents in refusing to accept the remaining portion of the salami after such an extensive delay. I find no illegality, irrationality, or unreasonableness in the said decision warranting interference under Article 226 of the Constitution of India.
18. I concur with the submission made by Mr. Bandopadhyay that the act of granting a hearing to Mr. Rajib and directing him to produce relevant documents relating to the land in his possession cannot be construed as conduct indicative of an intention on the part of the authorities not to treat time as the essence of the contract. Such conduct does not lead to a construction that the stipulated timeline was not binding upon the parties.
19. Notably, the authority has accepted the unpaid portion of the salami or premium in appropriate cases up to 25 years from the allottees. However, this

was a policy decision of the State. I find no justification to persuade me to hold that this policy was flawed on any grounds of mala fides, arbitrariness, or that it failed to meet the test of reasonableness. Such a policy decision did not confer any vested right upon the petitioners to compel the State to accept the remaining portion of the salami even after 45 years or to allow the petitioners to resuscitate a cancelled contract.

20. In view thereof, I am of the considered opinion that the petitioners have failed to establish any grounds that would warrant the Court's interference with the decision of the respondents in not regularizing the allotment in favor of the petitioners upon the acceptance of the remaining 50% of the premium or salami after 45 or 50 years.

21. Consequently, the writ petition is, thus, dismissed. However, there shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)