

S/L 3
16.05.2025
Court. No. 19
Sourav

WPA 15186 of 2023

**Lilawati Arya
Vs.
West Bengal Housing Infrastructure
Development Corporation Ltd. & Ors.**

*Mr. Anindya Lahiri, Sr. Adv.
Ms. Pranati Das*

...for the petitioner.

*Mr. Chayan Gupta
Mr. Saaqib Siddiqui*

...for the respondents.

1. The affidavit-of-service as filed in Court today is taken on record.
2. By filing the instant writ petition, the writ petitioner has prayed for issuance of appropriate writ/writs against the respondents/authorities, more specifically, against the respondent no. 4 for quashing of the letters dated 18.12.2013 and 07.11.2014 whereby and whereunder the said respondent no. 4 intimated the present writ petitioner regarding cancellation of offer of allotment of land at Plot No. AA-IIB-938 in New Town, Kolkata.
3. At the time of hearing, Mr. Lahiri, learned Senior Advocate appearing on behalf of the writ petitioner draws attention of this Court to the various annexures of the instant writ petition. It is submitted by Mr. Lahiri that from Page No. 19 of the instant writ petition, it would reveal that the writ petitioner made an application for allotment of land with the Managing Director of the respondent no. 1 under the category

MIG Cooperative Housing Society pursuant to a lottery organized by the respondent no. 1/authority.

4. Drawing attention to Page No. 23 of the instant writ petition, being a copy of the letter dated 18.03.2002 as issued by the respondent no. 4/authority, it would reveal that the writ petitioner was intimated that Shri Om Co-operative Housing Society has been allotted the aforementioned plot subject to payment of consideration money in installments and the particulars of the payment schedule have been mentioned in the same memo dated 18.03.2002. It is submitted by Mr. Lahiri that after payment of the first installment, there occurred a delay on the part of the writ petitioner in paying the second installment, which is why, the writ petitioner approached the respondent no. 4/authority for grant of extension of time and the same was allowed by the respondents/authorities subject to payment of interest and, ultimately, on 09.12.2002, the writ petitioner deposited the second installment in terms of the letter of allotment dated 18.03.2002.
5. It is further submitted by Mr. Lahiri that soon thereafter the writ petitioner remained very much busy for registration of the co-operative housing society though with a different name on account of non-availability of the earlier name as would be evident from the endorsement over a memo dated 18.03.2002 at Page No. 31 of the instant writ petition. It is submitted that, ultimately, the writ petitioner obtained

the said registration and the same has been intimated to the respondents/authorities by a written communication.

6. It is further submitted by Mr. Lahiri that when the writ petitioner approached the respondents/authorities to make further payment, the same was not accepted and when the writ petitioner sought for information(s) under the RTI Act, 2005 from the respondents/authorities, the respondents/authorities replied to the writ petitioner stating, *inter alia*, that the aforementioned allotment has been cancelled on 07.11.2014.
7. At this juncture, Mr. Lahiri draws attention of this Court to the letter of cancellation as has been issued in the name of the writ petitioner as would be available at Page Nos. 75 and 76 being copies of the memo dated 18.12.2013 and 07.11.2014. Attention of this Court is also drawn to Page No. 74 being a copy of the letter dated 10.11.2022 as has also been issued by the respondents/authorities in the name of the writ petitioner. At this juncture, Mr. Lahiri requests this Court to look to the address of the writ petitioner as written in the application form of the writ petitioner for allotment of land and the letter of communication by the respondents/authorities in the memo dated 18.03.2002 at Page No. 23 of the instant writ petition vis-à-vis the aforementioned three memos as issued by the respondents/authorities.

8. It is submitted by Mr. Lahiri that in Page Nos. 74, 75 and 76, the respondents/authorities for the best known to them have mentioned the address of the writ petitioner as 'CD-210-Salt Lake' instead of 'CD-220-Salt Lake'. It is thus submitted by Mr. Lahiri that since the letters under challenge were addressed to a wrong address, the writ petitioner did not receive the said letters and thus got no opportunity to justify her action, on account of all non-payment of residual installment within the stipulated period.
9. It is further submitted by Mr. Lahiri that since the respondent no. 1 is an Article 12 authority and since the action of the said respondent no. 1 and its functionaries are found to be not in accordance with law and since the writ petitioner is deprived of getting a chance to submit a representation before the respondents/authorities, the very principle of natural justice has been violated at the instance of the respondents for which the interference of this Court in a judicial review is very much required.
10. Per contra, Mr. Gupta, learned advocate appearing on behalf of the respondents/authorities at the very outset also draws attention of this Court to Page Nos. 23 to 26 of the instant writ petition being the copy of the memo dated 18.03.2002 i.e. the letter of offer of allotment as made by the respondents/authorities in favour of the writ petitioner. It is submitted by Mr. Gupta that from Clause 7 of the said memo, it would reveal that it has

been clearly indicated therein that in the event of default in payment of installment, delayed payment of charges would be imposed upon the allottee and in the event, the allottee fails to make any payment within the extended period of payment, the allotment would automatically stand cancelled.

11. This Court has also noticed Clause 17 of the said allotment letter which runs as under:

“17. HIDCO would be at liberty, in case of any default on the part of the allottee, to observe and perform any of the obligations recited hereinbefore to cancel the allotment.”

12. On careful consideration of the entire materials as placed before this Court and after hearing the learned advocates for the contending parties, this Court finds sufficient justification in the submission of Mr. Lahiri inasmuch as in the letters under challenge the respondents/authorities for the reasons best known to them had not mentioned the correct address of the writ petitioner. It has been noticed by this Court that in the said letters, the address of the writ petitioner has been typed as ‘CD – 210, Salt Lake’ instead of ‘CD – 220, Salt Lake’.

13. This Court has got no hesitation to hold that letters of cancellation which are under challenge before this Court bear a wrong address. At the same time, this Court must not overlook the Clause No. 7 and Clause No. 17 of the letter of allotment dated 18.03.2002. On being asked by this Court, learned advocate for the writ

petitioner could not show a single scrap of paper that after making delayed payment of the second installment, the writ petitioner has made any endeavour to make payment of subsequent installments within the stipulated period. No material could be placed before this Court that the writ petitioner made any communication with the respondents/authorities even for extension of time for payment of the remaining part of the installments as per the letter of allotment dated 18.03.2002.

14. At the time of hearing though an endeavour has been made by the learned advocate for writ petitioner to justify the action of the writ petitioner by saying that during the said period, the writ petitioner remained busy in the registration of the society, however, such argument does not appear to be much convincing.
15. It is pertinent to mention herein that when a person approaches High Court seeking relief by exercising extraordinary jurisdiction under Article 226 of the Constitution of India, it is to be shown by the said person that he has approached before this Court with clean hand.
16. It is trite law that the relief/reliefs as is/are being granted under Article 226 of the Constitution of India is highly prerogative in nature. Therefore, the High Court must be satisfied that such discretionary power must be exercised with due caution.

17. As already noticed by this Court that in forgoing paragraphs that the writ petitioner has miserably failed to justify her action as to what prevented her to make payment of the remaining installment within due period. The various clauses of the said allotment letter clearly indicates that the respondent no. 1/authority is at liberty to cancel allotment in case of any default on the part of the allottee to observe and perform any of the obligations as mentioned in the said letter of allotment.
18. Since the writ petitioner has failed to make out the case for obtaining a prerogative writ, this Court finds no merit in the instant writ petition. Accordingly, the instant writ petition being **WPA 15186 of 2023** is dismissed.
19. There shall, however, be no order as to costs.
20. 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.)