IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

MAT 1475 of 2023
+
IA No. CAN 2 of 2024

Principal Secretary, Urban Development Department & Ors.
Versus
Modern Design Associates & Ors..

For the Appellants	:	*Mr. Naba Kumar Das,* *Ms. Suman Singh.*
For the Respondents	:	*Mr. Suddhasatva Banerjee,* *Mr. Shashwat Nayak,* *Ms. Akanksha Mukherjee.*
Hearing is concluded on	:	*27th March, 2025.*
Judgment On	:	**28th March, 2025.**

Tapabrata Chakraborty, J.

1. The present appeal has been preferred by the State and its functionaries challenging an order dated 22.03.2023 passed by the learned Single Judge in a writ petition, being WPA 23221 of 2013 filed by a partnership firm, namely, M/s Modern Designs Associates (hereinafter

referred to as the firm) and its two partners assailing *inter alia* an order dated 02.05.2013 passed by the appellant no.4 quashing an allotment letter dated 23.09.1996 pertaining to allotment of four cottah of land in Plot no.39, Block – CK in Sector II at Bidhannagar (hereinafter referred to as the said land) for a period of 999 years on payment of provisional salami of Rs. 30,000/- per cottah.

2. Records reveal that after issuance of a letter of allotment dated 23.09.1996 in respect of the said land and acceptance of the salami amount several queries were raised by the appellants and lastly by a letter dated 17.10.2012 the appellant no.4 directed the firm to furnish copies of the public notice published in a local newspaper regarding the retirement of three partners and a copy of deed of retirement of partnership executed and registered between the outgoing i.e. retired partners and continuing partners. Aggrieved by the said letter dated 17.10.2012, the firm preferred a writ petition being W.P. No. 6847 (W) of 2013 which was disposed of by an order dated 12.03.2013 observing *inter alia* that nothing in Section 32 of the Partnership Act, 1932 requires the execution of a deed of retirement and its registration by the partners in the firm concerning the retirement of a partner therein and directing the competent authority to give a decision ignoring the said condition. Pursuant thereto, the appellant no.1 passed an order dated 02.05.2013 quashing the letter of allotment dated 23.09.1996 observing *inter alia* that the said allotment was a provisional one on the basis of the liberal land policy of the 1990s when the land premium was very low and that after such provisional allotment 17 years have elapsed

and in the midst thereof the new land allotment policy has come into effect from 26.12.2012 and as per the said policy, the said land cannot be allotted to the firm which would prevent the State to gain largesse of about Rs. 2 crore. Challenging the said order the firm preferred the writ petition being WPA 23221 of 2013 which was disposed of by the order impugned in the present appeal setting aside the order dated 02.05.2013.

3. Mr. Das, learned advocate appearing for the appellants argues that the learned Single Judge passed the impugned order failing to appreciate that the allotment of the said land by the letter dated 23.09.1996 was provisional in nature and did not confer any indefeasible right upon the firm. The said letter was merely an offer. Possession of the said land was not handed over and no lease deed was executed.

4. According to him, the learned Single Judge did not consider the arguments as advanced on behalf of the appellants and disposed of the writ petition being oblivious of the facts that the firm itself did not respond to the queries in time and as such did not take any steps alleging delay on the part of the appellants towards execution of the lease deed even after payment of the salami amount. About three years after issuance of the letter of allotment on 23.09.1996, the partners of the firm by a letter dated 30.11.99 to the appellant no.3 wanted to know as to *'whether it will make any difference to you and whether it will effect the allotment of land to us, if we convert our partnership firm into a company'*. Subsequent thereto, three partners of the firm retired but copies of the public notices pertaining to such retirement were furnished only after the appellant no. 4 sought for the

same by a letter dated 17.10.2012. Due to efflux of time in the midst thereof, the firm was responsible and for such laches, the State cannot be deprived of the prevailing market rate of the said land. In the year 1996, the rate was Rs.30,000/- per cottah and in the year 2013 it stood enhanced to Rs.50 lakhs per cottah.

5. Drawing our attention to the letter dated 05.03.1992, Mr. Das submits that it had not been intimated by the firm as to whether the project report towards utilisation of the land is still viable and as to whether the land would be utilised for the project specified in the letter of allotment. The firm cannot insist for allotment of the land for any purpose different from the purpose for which the proposal was granted.

6. *Per contra*, Mr. Banerjee, learned senior advocate, assisted by Mr. Nayak, learned advocate appearing for the writ petitioners/respondents herein submits that there is no infirmity in the order impugned and as such no interference is called for in the present appeal. The allotment has been quashed applying the land allotment policy notified by the Government of West Bengal on 26.12.2012. Admittedly, the said notification is prospective in nature. An administrative decision affecting the rights of the individuals cannot have any retrospective effect. In support of such contention reliance has been placed upon a judgment delivered by a co-ordinate Bench of this Court in *FMA 56 of 2018*.

7. He argues that the appellants illegally refused to take the follow up steps after issuance of the letter of allotment and acceptance of the salami

amount indicated in the said letter. As per the said letter of allotment, the sole ground for cancellation of allotment was non-payment of the dues. Admittedly, the entire amount, as specified, was paid by the firm and accepted by the appellants. By illegally withholding execution of lease deed and possession of the land, the appellants by the impugned order dated 02.05.2013 claimed that Government would be deprived to gain largesse of about Rs.2 crore if the land is allotted as per the land premium existing in the year 1996. Such ground towards cancellation of allotment is absolutely unfounded. Fairness and reasonableness are paramount issues for administrative action. The State must conduct itself with high probity and candour and cannot take advantage of its own laches and deny to discharge its own obligations.

8. Answering our query, Mr. Banerjee submitted, upon instruction, that the said firm would have no objection in the event, the lease period is reduced from 999 years to 99 years, as provided under Clause 3(i) of the land policy notified *vide* memo dated 26.12.2012.

9. Heard the learned advocates appearing for the respective parties and considered the materials on record.

10. The earlier ground for refusal of allotment was that the said firm had failed to furnish the copy of deed of retirement of partnership executed and registered between the outgoing i.e. retired partners and continuing partners. Such ground was negated by the learned single Judge in the earlier round of litigation. In view thereof, the appellants were aware that

they cannot urge any other ground to the effect that delay that had occurred is attributable to the firm. Accordingly, by the order dated 02.05.2013, the appellant no.1 sought to apply the provisions of the notification dated 26.12.2012.

11. The scope of adjudication before the learned Single Judge was thus restricted to the issue as to whether the appellants could have applied the provisions of the notification dated 26.12.2012 retrospectively. The argument advanced on behalf of the appellants as regards application of the provisions of the land policy notified *vide* memo dated 26.12.2012, in our opinion, was rightly discounted by the learned Single Judge since the said notification had not been given any retrospective effect and could not have been taken into account for cancellation of allotment of land made in the year 1996.

12. However, the litigation has continued for a period of more than 15 years. The firm cannot be directly held responsible for such efflux of time. Had the matter attained finality in the year 1996 itself, the alleged plea of low land premium could not have been urged by the appellants. The said firm cannot be accused of any laches or wrongdoing. It has discharged all its obligations and it is not in any manner responsible for the delay which had occurred. It has admittedly paid the amount of Rs.1,20,000/- in the year 1996. It has also been submitted on behalf of the firm that it would have no objection in the event, the lease period is reduced from 999 years to 99 years. In view thereof, it would be iniquitous to direct it to pay the land premium as per the present market rate, moreso when the land allotment

policy notified by the Government of West Bengal on 26.12.2012 cannot be made applicable in respect of the allotment of land in the year 1996. In the case at hand, it also needs to be borne in mind that the value of real estate and rent rates have skyrocketed with the efflux of time. The land is situated in the prime commercial locality in Kolkata. In consideration of such factors and balancing the equities among the parties, we direct the firm to pay an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs) to the appellants within a period of four weeks from date. The appellants shall accept the said amount and execute the lease deed and hand over possession of the said land to the firm within a period of four weeks thereafter.

13. With the above observations and directions, the appeal and the connected application are disposed of.

14. There shall, however, be no order as to costs.

15. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.) **(Tapabrata Chakraborty, J.)**