

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Prasenjit Biswas

FMA 1227 of 2024
State of West Bengal & Ors.
Vs.
Eastern Paper Mills Limited & Ors.

For the Appellants : Mr. Aniruddha Chatterjee, Sr. Adv.
 Mr. Mohan Lal Banerjee, Adv.
 Mr. Abir Lal Chakraborty, Adv.

For the Writ Petitioners/ : Mr. Saktinath Mukherjee, Sr. Adv.
 Respondents Mr. Debasis Kundu, Sr. Adv.
 Mr. Arindam Banerjee, Sr. Adv.
 Mr. Samrat Mukherji, Adv.
 Mr. Shubrojoyoti Mookherjee, Adv.
 Mr. Rik Mukherji, Adv.

For the Bidhannagar : Mr. Sirsanya Bandopadhyay, Adv.
 Municipality Mr. Arka Kumar Nag, Adv.
 Mr. Tirthankar Dey, Adv.

Hearing Concluded on : July 04, 2025
 Judgement on : July 09, 2025

DEBANGSU BASAK, J.:-

1. State of West Bengal and its functionaries have preferred the present appeal against the judgement and order dated August 16, 2024 passed in WPA 13591 of 2013.

2. By the impugned judgement and order, learned single judge has allowed a writ petition of the private respondent and

directed the appellants to offer a plot and executed and register the lease deed at the original price in respect thereof. In the event such plot could not be allotted to the private respondent then, the appellants have to offer any other suitable plot to the private respondent.

3. Learned senior advocate appearing for the appellants has contended that, the private respondent is not entitled to any relief in the writ petition. He has contended that, the writ petition was essentially in the nature of a specific performance of an allotment that was granted to the respondent in 1981. He has contended that, the claims made by the private respondent in the writ petition are barred by the laws of limitation. Moreover, according to him, the private respondent is seeking to bypass the issue of limitation by way of the writ petition.

4. Learned senior advocate appearing for the appellants has contended that, questions of limitation with respect to specific performance involve disputed questions of facts and that, such disputed questions should not be decided by way of a writ petition. He has relied upon **2022 SCC Online SC 247 (Municipal Council Gondia vs. Divi Works & Suppliers, HUF and Others)** and **2025 Volume 2 Calcutta High Court**

Notes (Cal) 461 (State of West Bengal vs. Savin World Resorts Private Limited) in support of such contention.

5. Learned senior advocate appearing for the appellants has contended that, the pleas of the private respondent in seeking to explain the delay in filing the writ petition are unacceptable. He has pointed out that, the allotment was made in the year 1981 while the writ petition was filed in 2013. He has pointed out that, the plea that, the private respondent was before the Board for Industrial and Financial Reconstruction (BIFA) for a substantial period of time is not material since, there was no impediment in the private respondent proceeding with the execution of the lease even during the period when, it was governed by the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985.

6. Learned senior advocate appearing for the appellants has contended that, learned single judge erred in not dismissing the writ petition on the ground of delay alone. In any event, learned single judge has erred in directing execution of the lease deed in favour of the private respondent and in the alternative to execute a lease deed for a suitable plot of land in the event, the original plot cannot be given to the respondent, at the original price. He has contended that,

with the passage of time, the appellants are entitled to the market price, if nothing else.

7. Learned senior advocate appearing for the private respondent has contended that, the allotment of the first plot was made in August 27, 1981 and the allotment for the second plot on January 3, 1985. He has contended that, both the allotments create rights in respect of the immovable properties in favour of the private respondent and therefore, falls within the ambit of Article 300 A of the Constitution of India. He has pointed out that, the amounts payable by the private respondent were paid in respect of both the allotments. His client has paid the original amount along with interest to the appellants.

8. Learned senior advocate appearing for the private respondent has contended that, the private respondent sought and corresponded with the appellants for the grant of possession, execution and registration of the lease deeds which the appellants failed and neglected to do. Consequently, the private respondent was constrained to file the writ petition seeking completion of all formalities in execution and registration of the lease deed.

9. Learned senior advocate appearing for the private respondent has contended that, none of the allotments have been cancelled by the appellants.

10. Learned senior advocate appearing for the private respondent has contended that, the private respondent was referred to the BIFR for its revival and rehabilitation which reached its conclusion in or about 2019. The State government had actively supported the revival of the private respondent.

11. Learned senior advocate appearing for the private respondent has contended that, during the pendency of the writ petition, the larger plot was wrongfully allotted to Bidhannagar Municipal Corporation (BMC) without the notice and knowledge of the private respondent and in any event is hit by the principles of lis pendens. According to him, such position has been accepted by the appellants in view of the nature of the possession certificate issued to BMC.

12. Learned senior advocate appearing for the private respondent has contended that a swimming pool was constructed by BMC on the larger plot.

13. Learned senior advocate appearing for the private respondent has relied upon **2005 Volume 9 Supreme Court**

Cases 446 (Haryana Urban Development Authority vs. Vijay Aggarwal) in support of his contentions that, directions issued by the learned single judge in the impugned judgement and order are in consonance thereto.

14. Learned senior advocate appearing for the private respondent has contended that, the ratio of **Savin World Resorts Private Limited (supra)** is not attracted to the facts and circumstances of the present case. He has contended that, the facts obtaining in the present case are different than that of **Savin World Resorts Private Limited (supra)**.

15. Relying upon **1990 Supp Supreme Court Cases 727 (Wander Ltd. vs. Antox India Pvt. Ltd.)** learned senior advocate appearing for the private respondent has contended that, since the view taken by the learned single judge is a plausible view and the same is not perverse, the appeal court should not substitute its own views.

16. Learned senior advocate appearing for the private respondent has contended that, the Supreme Court authorities which **Savin World Resorts Private Limited (supra)** considered, are distinguishable on facts as obtaining in the present case. In any event, he has submitted that, authorities of the Supreme Court which laid down that a writ

petition is maintainable in contractual matters were not taken into consideration. He has relied upon **2004 Volume 3 Supreme Court Cases 553 (ABL International Ltd. vs. Export Credit Guarantee Corporation India Limited)**, **2023 Volume 2 Supreme Court Cases 703 (MP Power Management Co. Ltd. vs. Sky Power South-East Solar India Pvt. Ltd.)** in this regard. Relying upon **2000 Volume 8 Supreme Court Cases 262 (In re: Netai Bag & Others vs. State of West Bengal)** learned senior advocate appearing for the private respondent has contended that, auction is not the only method of disposal of government land.

17. By a letter dated August 27/28, 1981, Deputy Secretary had communicated to the private respondent sanction of the State for the grant of lease of a plot on payment of specified premium for the purpose of construction of residential flats. State by a letter dated January 3/16 1984, had allotted another plot of land to the private respondent. Private respondent had paid the premium for the first allotment on January 14, 1981 and August 29, 1984 while for the second allotment on April 13, 1984 and October 29, 1988.

18. Between the period 1992 to 1993, private respondent had paid the additional cost towards fencing of the boundary

pillars of the first allotment and the interest for the delay in payment.

19. Between the period 1991 and 1992 private respondent had entered into correspondence with the State requesting for completion of formalities for registration of the deed of lease.

20. Private respondent had made a reference under section 15 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 to the BIFR on January 17, 1989. By an order dated December 11, 1989 BIFR had declared the private respondent as a Sick Industrial Company. The BIFR had proceeded to explore the possibility of reviving the private respondent. Attempts to revive the private respondent by the BIFR had failed and resulted in an order dated November 12, 1991 recommending winding up of the private respondent. Private respondent had preferred an appeal before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) which was dismissed on August 26, 1993.

21. Recommendation of the BIFR for winding up of the private respondent as affirmed by the AAIFR was transmitted to the High Court for appropriate order.

22. By an order dated May 20, 1994, the High Court had passed an order of winding up of the private respondent.

Private respondent had preferred an appeal against the order of winding up. Various proceedings had taken place with regard to the affairs of the private respondent before the High Court. Ultimately, the High Court in its company jurisdiction sanctioned a scheme for revival of the private respondent by an order dated October 9, 2007. The private respondent is no longer in liquidation.

23. By a letter dated April 8, 2013 private respondent had requested the State to complete the formalities relating to execution and registration of lease deed and handing over physical possession of the plots. Similar request had been made on May 2, 2013 when, the private respondent became aware that at the first plot a swimming pool was intended to be constructed and that, a foundation stone for such purpose would be laid on May 5, 2013. Private respondent had filed the writ petition being WPA No. 13591 (W) of 2013 seeking orders restraining the appellants from dealing with the two plots allotted to the private respondent in any manner contrary to the allotment or in favour of any third party.

24. By an order dated March 14, 2014, the High Court had refused to grant any interim order in favour of the private respondent on the grounds that, the private respondent did

not show any interest between 1981 in 2013 and that, the private respondent can be compensated by refund of money along with the interest or in the alternative allotment of another land. Private respondent had filed an appeal against the order refusing to grant interim relief. The appeal court had refused to grant interim protection to the private respondent. Appeal court had disposed of the appeal of the private respondent by an order dated June 19, 2019 requesting the learned single judge to hear and dispose of the writ petition being WPA 13591 (W) of 2013 as expeditiously as possible.

25. Learned single judge has disposed of the writ petition of the private respondent by the judgement and order which is impugned in the present appeal.

26. It is trite law that, provisions of the Limitation Act, 1963 does not apply in all its rigours to a writ petition. However, delay and laches are relevant considerations for the purpose of both maintainability and entertainability of a writ petition. Writ courts are extremely slow to entertain a writ petition where the claim is otherwise barred by the laws of limitation as enshrined under the Limitation Act, 1963 or the law applicable prescribing the limitation on the subject matter. However, if the writ petitioner canvases cogent

reasons to explain the delay in approaching the writ court, then notwithstanding the issue of limitation, a writ court may intervene.

27. In the facts and circumstances of the present case, taking the claim of the private respondent as true and correct, for the sake of argument, that, a concluded contract obliging the State to execute and register a lease deed for the two plots allotted to the private respondent had come into being, between the parties, then, such concluded contract was entered into on March 12, 1993 when the last payment was made. Since thereafter, the first letter demanding execution and registration of the deed of lease is dated August 29, 2006 which way beyond the three years from the date of the contract with no events taking place in between to extend the period of limitation. The next letter is dated April 18, 2013. There is a claim that approach was made for execution and registration of the lease deed on May 2, 2013. The present writ petition was filed on May 3, 2013. There is nothing on record to suggest that the State by its action extended the period of limitation.

28. On the strength of the documents noted in the preceding paragraph, a suit for specific performance would be defeated on the ground of limitation alone.

29. Before us, the delay in approaching the writ court is sought to be explained by the reference of the private respondent pending before the BIFR, AAIFR and the winding up proceedings before the High Court.

30. The private respondent cannot be held to be ready and willing to perform the contract, at all material point of time. It was under financial stringency and therefore made a reference to the BIFR on January 17, 1989. Therefore, for the period from 1989 till its revival in 2007 it did not possess the financial wherewithal to perform the contract.

31. As has been rightly pointed out on behalf of the appellants, the provisions of the Act of 1985 did not preclude the private respondent from availing of its rights, if any, with regard to the claim contract for execution and registration of the deed of lease. In other words, the private respondent did not suffer from any legal impediment in availing of its rights, if any, with regard to execution and registration of the deed of lease in respect of any of the plots, within the period of limitation.

32. The plea of pendency of the proceedings before the BIFR, AAIFR and the resultant liquidation proceedings of the private respondent does not explain the delay in approaching the writ court at the proper time, at all.

33. Appellants have taken a stand before the learned single judge that, the private respondent was made to pay interest for the late payment, and the acceptance of interest payment condoned the delay. The last payment as has been noted above does save the limitation for a civil suit on the date of filing of the writ petition.

34. The private respondent during the pendency of the proceedings before the BIFR had asked for permission to sell the plots, which was not granted. Bidhannagar Municipal Corporation had submitted a proposal for construction of a swimming pool by a letter dated June 6, 2012. Urban Development Department had sought for a status report by a writing dated July 3, 2012. An enquiry had been conducted where it was found that the plot was lying vacant with the temporary nursery there. Urban Development Department had asked for a detailed project report and financial statements regarding construction of a swimming pool at the plot. Bidhannagar Municipal Corporation had the submitted a

detailed project report which the Urban Development Department agreed in principle. By a letter dated March 21, 2013, Urban Development Department expressed the terms and conditions on which, the plot could be made over to the Bidhannagar Municipal Corporation. One of such terms and condition is that no commercial use will be done on the plot and that the plot will be used for the benefit of local people and swimming pool and beautification purposes only. Bidhannagar Municipal Corporation had accepted the same.

35. Possession of the plot in question had at all material point of time been with the State till such time it was made over to Bidhannagar Municipal Corporation for the purpose of construction of a swimming pool for public use. In fact, the private respondent has never claimed to be in possession.

36. Appellants have explained their conduct on the grounds that, the plot was remaining unused for 33 years. Appellants were not receiving any revenue in respect of such plot. Appellants had decided to put it in use for public purpose and at the same time generate revenue therefrom. This decision of the State cannot be said to be arbitrary, capricious, mala fide or in colourable exercise of power.

37. Essentially, the private respondent is seeking specific performance of a contract which the private respondent has claimed, entitles the private respondent to execution and registration of a deed of lease and possession of the plot concerned having allegedly performed its part of the obligations.

38. ***Savin World Resorts Private Limited (supra)*** has relied upon various authorities of the Supreme Court including ***2022 SCC Online SC 247 (Municipal Council Gondia vs. DIBI Works and Suppliers, HUF), 2022 Volume 15 Supreme Court Cases 536 (Surjeet Singh Sahni vs. State of Uttar Pradesh)*** and ***MP Power Management Co Ltd, Jabalpur (supra)*** and held that, no writ petition under Article 226 of the Constitution of India is maintainable for specific performance of a contract.

39. A special petition directed against ***Savin World Resorts Private Limited (supra)*** being Special Leave to Appeal (c) Nos. 30875-30876/2024 was disposed of by an order dated January 3, 2025. Supreme Court was not inclined to interfere with the impugned judgement after recording that a writ petition is not an appropriate remedy for the reliefs sought and prayed for. Supreme Court however allowed the

writ petitioners there into take recourse to any other remedial measure and if so taken, the new forum would not be bound/influenced by the observations made by the High Court.

40. *MP Power Management Co Ltd, Jabalpur (supra)* has considered various authorities including ***ABL International Ltd (supra)*** on the subject of maintainability of a writ petition against an Article 12 authority in respect of a contract entered into by. It has held that, the reach of Article 14 of the Constitution enables a writ court to deal with arbitrary State action in the realm of contract entered into by the State. It has noted that, each and every case involving breach of contract by the State cannot be passed off as a case of arbitrary State action. The test is whether the action/inaction complained of is palpably unreasonable or absolutely irrational and bereft of any principle.

41. Applying the test of ***MP Power Management Co Ltd, Jabalpur (supra)*** in the facts and circumstances of the present case, action/inaction complained of as against the State cannot be classified as palpably unreasonable or absolutely irrational and bereft of any principle.

42. In the context of grant of interim relief by the learned single judge in an infringement of trademark action, ***Wander Ltd (supra)*** has held that, the appeal court should not interfere with the discretion exercised by the learned trial judge. Same principles, would not, with the deepest of respect, apply for the purpose of hearing and disposing of an appeal directed against a final order passed in a writ petition.

43. In view of the discussions above, we are not in a position to sustain the impugned judgement and order. The same is set aside. WPA 13591 of 2013 in which the impugned judgement and order was passed is dismissed.

44. FMA 1227 of 2024 along with all connected applications are disposed of accordingly without any order as to cost.

[DEBANGSU BASAK, J.]

45. I agree.

[PRASENJIT BISWAS, J.]