Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Supratim Bhattacharya

FMA 728 of 2021

Dr. Samar Sengupta
Vs.
The State of West Bengal and others

For the appellant	:	Mr. Swarup Banerjee, Mr. Arindam Chatterjee, Mr. Subham Biswas
For the State	:	Mr. Suddhadev Adak, Ms. Richa Pramanik
Heard on	:	04.12.2025 & 11.12.2025
Judgment on	:	11.12.2025

Sabyasachi Bhattacharyya, J.:-

1. The present challenge has been preferred against an order passed by a learned Single Judge of this Court on September 25, 2020 in WP No. 6832 (W) of 2008.

2. The appellant, as the writ petitioner, sought a direction on the respondent authorities for execution of a registered deed of lease in his favour on the strength of an offer letter issued by the respondent authorities for allotment of a plot in Bidhannagar, on the North

Eastern fringes of Kolkata, in the name of the appellant, which was accepted by the writ petitioner by payment of due salami.

3. Even after the said process of allotment having reached an advanced stage, the same was refused by an order dated February 26, 2007 on the ground that the writ petitioner was a minor at the time of entering into the transaction, which was suppressed by the writ petitioner and, as such, the transaction was void *ab initio* and the allotment offer was liable to be cancelled as there was gross misrepresentation of fact.

4. Learned counsel appearing for the appellant submits that there was no suppression at all, since the appellant all along disclosed his age and the fact that he was a minor. In particular, reliance is placed by the appellant on his request for allotment dated July 24, 1981, where the date of birth of the appellant was categorically disclosed to be November 21, 1968.

5. Even subsequently, a letter was written by the appellant to the Deputy Secretary, Government of West Bengal, MD Department, where it was categorically mentioned that the appellant was a minor.

6. It is argued that despite such clear disclosure, the respondent authorities, with their eyes wide open, proceeded in pursuance of the offer letter and demanded salami to be deposited by the appellant.

7. By a subsequent letter of offer of allotment dated October 30, 1981, it was *inter alia* given out to the appellant that after the salami in full/part was deposited, an agreement with the Government had to be entered into, accepting all the terms and conditions of the lease in the form to be sent to the appellant separately. It was further mentioned

that after full payment of all dues, the appellant had to get the lease deed drawn up, executed and registered.

8. Thus, it is argued that the allegation of suppression or misrepresentation was incorrect and the transaction could not be called off at the behest of the respondents on such ground. It is argued that the learned Single Judge failed to take into consideration such aspect of the matter.

9. Learned counsel for the appellant next argues that although Section 11 of the Contract Act creates a bar to a minor entering into a contract, there is no legal bar in a transfer being effected in favour of a minor. In support of such contention, learned counsel cites *Neelam Gupta vs. Rajendra Kumar Gupta,* reported at *AIR OnLine 2024 SC 678.*

10. Learned counsel for the appellant next contends that the offer of allotment given to the appellant is not a contract but an agreement to enter into a subsequent lease agreement and, as such, cannot be said to have been vitiated by operation of Section 11 of the Contract Act.

11. Thirdly, it is argued that the respondent authorities are bound by promissory estoppel, even if not by contract, from resiling from the offer letter initially issued to the appellant, since the appellant acted on the basis of such representation by paying the salami in different tranches and interest for delayed payment of the balance salami.

12. Learned counsel for the appellant cites *Khan Gul and another vs. Lakha Singh and another,* reported at *ILR Volume.IX (Lahore Series),* wherein a Full Bench had observed, *inter alia,* that in India, the

jurisdiction of the Courts, to require a party at whose instance an instrument has been adjudged to be void to make any compensation to the other party which justice may require, has been expressly recognized by the Legislature in Sections 39 and 41 of the Specific Relief Act. The discretion of the Courts in the matter, it was held, seems to be absolutely unfettered. They might, in appropriate cases, while adjudging a deed executed by a minor to be void, order refund of the monetary consideration received by him under the contract and in addition make him restore any other benefit which he had derived therefrom. The Court further held that there cannot be any distinction on such ground even if the minor is not the plaintiff but a defendant in the proceeding.

13. Thus, it is argued that the order of the learned Single Judge ought to be set aside and the respondents ought to be directed to execute a regular registered lease deed in favour of the appellant.

14. It is lastly pointed out by learned counsel for the appellant that since the appellant had attained majority when the respondent authorities had given a fresh offer letter in the form of a revival, the bar under Section 11 cannot be said to be applicable at all on such count as well.

15. Learned counsel for the State opposes such contentions and argues that in view of the appellant being a minor at the relevant point of time, when the initial offer letter was issued, the contract was barred by Section 11 of the Contract Act and, as such, there cannot be any scope of implementing the same.

16. Upon hearing learned counsel for the parties, we find that the ground of suppression, which was *inter alia* taken by the respondent authorities for rejection of the allotment in favour of the appellant, cannot be sustained. In the request for allotment of plot of land dated July 24, 1981, when the appellant was still a minor, the date of birth of the appellant was categorically disclosed to be November 21, 1968. Even thereafter, in a subsequent communication to the Deputy Secretary, Government of West Bengal dated September 24, 1981, the appellant had mentioned that as he was a minor, upon which he had been asked to submit a letter of undertaking for payment of salami.

17. Hence, at all relevant points of time, the fact of the appellant being a minor was within the knowledge of the respondent authorities.

18. Even in the letter of revival of the offer dated December 14, 1988, by which time the appellant had attained majority, it was stated by the respondent authorities that the offer was cancelled as per the terms and conditions therein. However, upon sympathetic consideration, subsequently the same was revived.

19. Thus, the ground of suppression was not available to the respondents at the juncture when the transaction relating to the allotment of the plot-in-question to the appellant was turned down.

20. However, we are unable to agree with the contention of the appellant to the extent that the offer-in-question was not void *ab initio* by operation of Section 11 of the Indian Contract Act at the juncture when the offer was accepted by the appellant. When the initial request for allotment of plot was made, that is, on July 24, 1981, the

appellant was admittedly a minor. Since the date of birth of the appellant was November 21, 1968, by simple arithmetic, he attained his majority only subsequently, on November 20, 1986.

21. However, the letter of allotment which was initially granted to the appellant was on October 30, 1981 and, as such, on the said date, the appellant was still a minor. Even subsequently, the appellant deposited salami and thereafter, interest on the delayed payment of the balance salami, all pursuant to the initial offer letter which was accepted by the appellant by such payments.

22. By the initial acceptance of the allotment by the respondent authorities on the request of the appellant and the subsequent payment of salami on the offer letter issued by the respondents, at a juncture when the appellant was a minor, the agreement itself was vitiated.

23. The appellant seeks to argue alternatively that the transaction comprised of the offer letter and the payment of salami did not tantamount to a "contract" within the ambit of the said expression as used in the Contract Act. However, if such argument is to be accepted, the very basis of the cause of action for the writ petition of the appellant goes, since the right of the appellant to get a registered lease deed executed in his favour is entirely based on the contract comprised of the reciprocal promises constituted by the offer letter and the acceptance of the appellant by payment of salami. If there is no agreement in the eye of law, there cannot be any right in the first place of the appellant to claim execution of a lease deed in favour of

the disputed plot in his favour. Even if the transaction is deemed to be an agreement to enter into a further agreement of lease, it would not be enforceable in law as an agreement to enter into a further agreement is not specifically enforceable.

24. Thus, such argument of the appellant can be discounted at the threshold.

25. However, proceeding on the premise that the said transaction tantamounted to an agreement/contract, as held above, the bar under Section 11 of the Contract Act comes in and the agreement was void *ab initio*, irrespective of whether there was any suppression or not by the appellant and/or any acceptance on the part of the respondents.

26. It is well-settled that there cannot be any estoppel or waiver against the law. Since a minor is not competent to enter into a contract under the contemplation of the Indian Contract Act, the agreement was void *ab initio* by operation of law.

27. The alternative argument of promissory estoppel cannot override a bar of law. The concept of estoppel emanates from the law of evidence which has now crystallized into a doctrine of equity.

28. The law lays down that if a promise is made by one party, upon which the other party acts to his detriment, the first party becomes bound by promissory estoppel to perform his part of the contract in favour of the second party, who acted on the promise of the party.

29. However, the entire edifice of promissory estoppel is based on equity. It is an equally well-settled law that equity cannot override a specific legal bar, nor can a legal bar be waived by any of the parties to a

contract. In the present case, we are looking at an absolute bar under Section 11 of the Contract Act which could not have been overridden by either of the parties. Hence, the reliance of the appellant on the principle of promissory estoppel against the law is misplaced at the outset.

30. Insofar as *Khan Gul (supra)* is concerned, the said judgment does not help the appellant in any manner whatsoever. In the said judgment, it was only laid down that where a contract with a minor is set aside, the party at whose behest such contract is set aside may be liable to pay compensation to the other side. The said proposition was held to be irrespective of whether the minor is the plaintiff or the defendant in the proceeding.

31. In the present case, compensation was not even sought for by the appellant. The appellant elected the remedy of having the void agreement implemented by filing the writ petition asking for a mandamus on the respondents to execute a registered deed of lease in favour of the appellant on the strength of such agreement. Hence, the reliance of the appellant on the said judgment cannot be taken note of.

32. Insofar as *Neelam Gupta (supra)* is concerned, it was laid down therein that the bar under Section 11 of the Indian Contract Act, read in conjunction with Section 54 of the Transfer of Property Act, would not come in the way of a transfer of an immoveable property in favour of a minor.

33. There is no quarrel with such well-settled proposition. Definitely, a property can be transferred in favour of a minor. However, in the present case, as admitted by the appellant as well, no transfer had taken effect but there was only an agreement which is sought to be enforced by the appellant, who was a minor at the relevant point of time, by relying on said void agreement. Section 54 of the Transfer of Property Act itself provides that a mere agreement to transfer a property does not, by itself, comprise of a transfer. Hence, the proposition laid down in *Neelam Gupta's* case is also not attracted in the present case.

34. An interesting argument has been made by the appellant to the effect that when the offer was revived on December 14, 1988, the appellant had already attained majority and, as such, the said offer should be construed as a fresh offer. If so construed, the agreement comprised therein would not be vitiated by Section 11 and the appellant would have a contractual right to have a lease deed executed in his favour.

35. However, we are unable to accept such contention as well. The clear language of the communication dated December 14, 1988 to the appellant by the Assistant Secretary to the Government of West Bengal, U.D. Department was that as the appellant had failed to pay the balance salami within three years from the date of offer of allotment order under reference, the said offer stood cancelled as per terms and conditions contained therein. Importantly, immediately thereafter it is stated that, however, after "careful and sympathetic" consideration of the difficulties of the appellant mentioned in his

letter, the Assistant Secretary was directed by order of the Governor to say that the Governor had been pleased to decide that the offer of allotment under reference will stand *revived* on the appellant making payment of the *balance* salami in prescribed manner and submit receipted challans within 60 (sixty) days from the date of issue of the letter on the conditions stipulated thereafter. The use of the two expressions "revive" and "balance" to qualify the said offer unerringly point to the said offer not being a fresh one but merely a continuance, on revival, of the initial offer which was accepted by the appellant, both at a juncture when the appellant was a minor. It is a settled proposition of law that if an act is void *ab initio*, the same cannot, by subsequent ratification, be legalized or regularized. In the present case, the said principle is squarely applicable, since the initial contract between the parties was void due to the minority of the appellant, which could not subsequently be revived at a later date when the appellant attained majority, *post facto*.

36. In view of the above, we are of the clear opinion that the learned Single Judge acted well within his jurisdiction in dismissing the writ petition of the appellant on the ground that the appellant was a minor at the relevant point of time when the agreement was entered into between the parties.

37. However, since the respondent authorities cannot be permitted to have a windfall gain by being unjustly enriched by the amounts where were deposited by the appellant at various points of time in pursuance of the offer letter, which was issued by the respondent

authorities with their eyes wide open, despite full knowledge of the minority of the appellant, the respondents are liable to return the entire amount paid by the appellant to the appellant.

38. Upon a consideration as to whether we should impose interest on such payment, we find that all along, both parties had acted on the premise that the agreement between the parties was enforceable, prior to the order of refusal to act on such agreement, which was challenged in the writ petition. Thereafter, till date, the matter has been *sub judice*, first before the learned Single Judge and thereafter before this Bench. Hence, at no point of time could it be said that the right of the appellant to get back the money was crystallized; more so, since no prayer, even in the alternative, for refund of the money was made in the writ petition. Hence, we do not find any reason to saddle the respondents with interest, since the right of the appellant to get back the money paid as salami, balance salami, interest etc. accrues/ripens only now, upon our passing of this order.

39. Accordingly, in the light of the above observations, we dispose of FMA 728 of 2021 on contest without interfering with the impugned order. However, we further direct the respondent authorities to refund the entire amount of salami, interest, balance salami as well as other monetary amounts paid by the appellant to the respondents pursuant to the void allotment offer at all points of time to the appellant within 90 (ninety) days from this date.

40. In default, the appellant will be entitled to have the said component of our order executed in due course of law.

41. We further make it clear that this Court has not entered into the question as to whether the appellant would be entitled to damages at all. It will be open to both parties to seek damages against each other on the basis of the cause of action before us, if so entitled in law, before the competent civil court having jurisdiction. If such proceeding is initiated by either of the parties, such court shall deal with the same in due process of law and in accordance with law without being unduly influenced by any of the observations made in that regard by us.

42. There will be no order as to costs.

43. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)

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