
(1988) 04 CAL CK 0016
In the Calcutta High Court
Case No : F.M.A.T. No. 3179 of 1986

Biswanath Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 25-04-1988

Acts Referred:

Citation : 93 CWN 19

Hon'ble Judges : K.M. Yusuf, J;G.N. Ray, J

Bench : Division Bench

Advocate : Mukul Prokash Banerjee and N.G. Chaudhuri, for the Appellant;S.K. Banerjee, for the Respondent

Final Decision : Allowed

Judgement

G.N. Ray, J.—This appeal is directed against the judgment dated 11th September, 1986 passed by the learned trial Judge disposing of the writ petition relating to Civil Rule No. 11338(W) of 1982. By the aforesaid order, the learned trial Judge dismissed the writ petition and consequently discharged the Rule. The case of the writ petitioner is that the petitioner at the relevant time had been living with his old parents and three unmarried sisters who are dependant members of the family of the petitioner. The Calcutta Metropolitan Development Authority (C.M.D.A.) had undertaken a scheme for, enlarging and improving Prince Anwar Shah Road and adjoining areas and due to the said scheme of the C.M.D.A., the residential area in which the rented premises of the petitioner was situated had been affected and the landlord of the said house had been asking the petitioner and the members of his family to quit and vacate the same. The petitioner was, therefore, under a dire need of searching an alternative accommodation. It was the further case of the petitioner that under such pressing circumstances, the writ petitioner made an application to the West Bengal Housing Board for allotment of a flat of W 2A/R, type at Golf Green Urban Complex, Phase IV. Such application for allotment was numbered as 3792 dated 20th April, 1981. and the same was registered under No.GG/IV/W 2A/210/Off.

The petitioner had also deposited Rs.7,500/- as application fee on 20th April, 1981 by a cheque drawn on the United Bank of India, Tollygunge Branch in favour of the West Bengal Housing Board against receipt granted therefor. After due enquiry made by the Housing Board, the respondent No.5, Sales Manager, West Bengal Housing Board, was satisfied about the eligibility of the petitioner to get allotment of a flat being flat No. 15/2 of W 2A (B) type on the ground floor at Golf Green for a price of Rs.73,529/- and the petitioner was intimated about the allotment of the said flat by allotment letter No. 12525/HB/Golf/PH/IV dated 7th August, 1981. The petitioner was asked to deposit a further sum of Rs.21,911.60 being 40% of the balance sum of the price of the said flat within 60 days from the date of the said letter of allotment. The petitioner deposited a sum of Rs.22,399.06 by a cheque drawn on the United Bank of India, Tollygunge Branch on 2nd December, 1981 for the said 40% of the balance sum together with interest and a receipt for such payment was also granted by the West Bengal Housing Board. The petitioner married Sm. Manika Sengupta on 16th August, 1981. Sm. Sengupta, the wife of the petitioner, was an employee of the West Bengal Housing Board at that time and at the time of presenting the writ petition she was also an employee of the West Bengal Housing Board. Before her marriage on 16th August, 1981, Sm. Manika Sengupta (nee Sarkar) also got allotment of a flat by West Bengal Housing Board in 1979. The petitioner was, however, not aware of the said fact before his marriage. After the marriage, the petitioner came to know that the petitioner's wife had submitted an application to the West Bengal Housing Board for allotment of a flat of W 2CS type in the Golf Green Urban Complex on 26th July, 1979 jointly with her father and the said application was registered and the wife of the petitioner got allotment of a flat No.CS/8/8 of type W2CS on the third floor in the Golf Green Urban Complex for a price of Rs.79,100/- under allotment dated 12th October, 1979. The Sales Manager, West Bengal Housing Board by a letter dated 14th January, 1980 informed the said Mrs. Manika Sengupta that the aforesaid flat was ready for possession and permission from competent authority was also obtained under the Urban Land (Ceiling and Regulation.) Act 1976 and she was asked to deposit further sums of money on different heads and to take possession of the said flat by 31st January, 1980 and Sm. Sengupta having complied with the same, received possession of the said flat on 6th May, 1980 after execution and registration of the deed of conveyance in her favour. It was the case of the writ petitioner that the said Sm. Sengupta applied for the said flat for residence of herself and members of her family consisting of her old parents and unmarried dependant sisters.

2. The writ petitioner by his letter dated 21st May, 1982 requested the said Sales Manager for delivery of possession of the said flat No. 15/2 allotted to him in terms of the allotment letter in view of the fact that the landlord of his tenancy was creating pressure upon him to quit and vacate the same. The petitioner also offered by the aforesaid letter to pay further money towards price of the said flat. The petitioner unfortunately did not get any reply to the said letter and

thereafter he personally caused enquiries at the office of the West Bengal Housing Board on 14th June, 1982. The Sales Manager, however, on the said date handed over a letter to him whereby the allotment of the said flat No.15/2 of W 2A(R) Type in Golf Green Urban Complex, Phase IV was purported to be cancelled on the ground that his wife Sm. Manika Sarkar was already in possession of a flat at the Golf Green Urban Complex and according to the Board's Rule, only one flat could be allotted to one person or more than one person jointly belonging to the same family and the family would mean husband, wife dependent parents and children. The petitioner has contended that the terms and conditions for allotment of the flat by the West Bengal Housing Board appear in Chapter II Rule I.A. printed and published in the Brouchure of the West Bengal Housing Board.. The said rule runs as follows : -

"All adult Indian Nationals who do not own house/flat/house build-ing plot in the Calcutta Metropolitan Development Area and whose annual income is between Rs. 7,200/- to Rs. 18,000/- for LIG people and above Rs. 18,000/- for MIG people are eligible for allotment of flats under the scheme. The Board may at its discretion, relax any of these conditions in suitable cases without assigning any reason".

3. The petitioner challenged the purported cancellation of the allotment of the said flat in favour of the petitioner on the ground that the West Bengal Housing Board could not cancel such allotment because the petitioner was eligible to get allotment of the said flat when he had applied and when the allotment of the said flat was made in favour of the petitioner. He has contended that subsequent marriage of the writ petitioner with Sm. Sarkar who was also allotted a flat long before her marriage, could not disentitle the writ petitioner to get delivery of the said flat since allotted to him prior to his marriage. It may be noted that prior to moving the writ petition before this Court, the petitioner had demanded justice from the West Bengal Housing Board through a letter issued by his learned Advocate. The petitioner had further contended in the writ petition that on receipt of the said letter demanding justice, the Sales Manager instead of withdrawing the said purported letter of cancellation started taking steps for allotment of the said flat to other persons. The Deputy Housing Commissioner, West Bengal Housing Board fixed 14th September, 1982 for personal hearing of the said case. As the said respondent no. 4 was a party to the previous decision of cancellation, the petitioner reasonably apprehended that he would not get fair justice from him but the said respondent no. 4 viz. the Deputy Commissioner of the West Bengal Housing Board overruled such objection and the said respondent no. 4 also passed an order contained in the letter dated 13th October, 1982 that the petitioner was not entitled to allotment of the said flat in view of the fact that his wife was owning and possessing a flat allotted to her and as such the letter of allotment was liable to be cancelled.

4. The petitioner thereafter moved a writ petition against the said cancellation of the allotment of the flat and on the said writ application, Civil Rule No. 11338(W)

of 1982 was issued by this Court.

5. The learned trial Judge dismissed the writ petition and discharged the Rule. The learned trial Judge however rejected the contention made by the respondents that the petitioner was guilty of suppression of the fact that his wife was already in possession of a flat allotted by the West Bengal Housing Board because at the time of making application, the petitioner was not married to Sm. Manika Sengupta and as such there was no occasion for the petitioner to state such facts. The learned Judge also rejected the contention of the respondents that the petitioner had obtained extension of time to deposit the price of the flat and if the petitioner should have disclosed the fact of the petitioner's marriage with Sm. Sengupta, the respondent would not have extended the time for depositing the price of the fiat. The learned judge was of the view that the petitioner was not required either by the rules or by any regulation to disclose or to state the fact of his marriage with a person who had been allotted a flat by the Housing Board. The learned trial judge, however, was of the view that the petitioner was allotted the said flat only provisionally and under the rules framed by the Housing Board it is provided that the flats could be allotted among the applicants usually on the basis of lottery subject to the terms and conditions laid down in that regard. An initial deposit has to be made towards the price payable by the applicants. Thereafter, successful applicants on allotment has to pay either the full price of the flat or pay the price in instalments that may be granted by the Housing Board. It has been provided in the rule that in the event of any default in payment of the allotment money, the allotment will be cancelled and the deposit will be refunded to the allottee after a deduction of 10% of the same. The learned trial Judge has held that the petitioner had failed to deposit the money payable by the petitioner in time, but the time for such deposit was extended by the Housing Board. The learned trial Judge has also held that the rules relating to the allotment and delivery. of possession of the flat required that the transfer of the flat to each of the allottees will be made in execution and registration of the deed of transfer in the form prescribed by the Board and necessary permission for transfer from the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 will have to be obtained by the concerned allottee. It is specifically provided in the rule that possession of the" flat will be handed over to the allottees upon execution and registration of the deed and the execution of the guarantee or security bonds wherever necessary. The learned trial judge has referred to the general guidelines laid down by the West Bengal Housing Board which provided that the applicant must be an adult Indian National and does not own house/flat/house building plot in the name of his/her wife/ husband or in the name of any other member of his/her family. Only one flat/house/plot will be allotted/sold/leased out to one or jointly to more than one members belonging to same family and family means husband, wife, minor children and dependant parents. The learned trial Judge has held that although the petitioner was eligible to get allotment of the said flat before his marriage, but the guidelines not only put limitation on the allotment but also on

sale of the flat. The learned trial Judge has, however, held that although the petitioner fulfilled all the conditions for getting allotment of the said flat such flat was not yet sold to the petitioner before his marriage and the rules have been laid down about the mode and manner in which the transfer of title will take place. If before the actual transfer of the flat to the petitioner on execution of proper deed on payment of price, the petitioner got married to a person who had already been allotted a flat, under the general guidelines laid down by the West Benal Housing Board, the petitioner cannot get delivery of possession of the said flat on execution of the deed of transfer and registration of the same. The learned Trial judge has held that the said cancellation had caused hardship to the petitioner but with considerable hesitation the learned trial Judge was of the view that the action taken by the Board in cancelling the allotment of the said flat cannot be held to be arbitrary or perverse.

6. At the hearing of the Rule, Mr. Mukul Prokash Banerjee, the learned counsel appearing for the writ petitioner appellants Sri Biswanath Sartor has contended that it has been specifically held by the learned trial Judge that the writ petitioner was not guilty of any fraud or suppression of any material fact at the time of making application for allotment of the said flat and he was eligible to get allotment of the said flat by fulfilling all the conditions to get allotment of the flat the West Bengal Housing Board. As a matter of fact, the West Bengal Housing Board on scrutiny of all the terms and conditions and the eligibility of the writ petitioner appellant to get allotment of a flat from the West Bengal Housing Board, issued the aforesaid letter of allotment of a flat. The petitioner had deposited the initial price for such allotment and had also paid further sums as required within the time either initially allowed or extended by the West Bengal Housing Board as per the rules. Mr. Banerjee has also submitted that it is not the case that the petitioner had failed to deposit such price within the specified time and/or failed to obtain permission to get transfer of such flat in favour of the appellant by the authorities under the Urban Land Ceiling Act. Mr. Banerjee has submitted if on the basis of eligibility of an appellant, a flat is allotted to him, the transfer of the said flat by executing and registering the deed of transfer is a matter of course, unless the applicant fails to pay the price within the specified time and/or to get required permission from the authorities under the Land Ceiling Act. After such allotment is made in favour of an applicant, the question the applicant's wife's also owning a flat prior to the marriage of the applicant, cannot be taken into consideration as a bar in completing the transfer of the said flat by executing the document of transfer and registering the same and giving delivery of the possession of the flat in question. Mr. Banerjee has submitted that the learned trial Judge has unfortunately proceeded erroneously that the transfer of the flat will not be complete without the registration of the document of transfer and delivery of possession. Mr. Banerjee has further submitted that the learned trial Judge has unfortunately erroneously proceeded (sic) the footing that although the petitioner was eligible to get an allotment of the said flat at the relevant time, but in the aforesaid facts, the respondents were justified in

declining to sell the said flat to the petitioner in view of the general guidelines laid down by the West Bengal Housing Board. Mr. Banerjee has further submitted that the learned trial Judge has misread the guidelines of the West Bengal Housing Board and was also under doubt as to whether or not such guidelines could authorise the West Bengal Housing Board to decline the sale of the said flat and the learned trial Judge has expressly noted in the judgment that he drew the conclusion with considerable hesitation. Mr. Banerjee has submitted that it is a matter of chance that the petitioner after getting allotment of the said flat had married a lady who was fortunate in getting a similar allotment of a flat and consequently delivery of such flat before her marriage. Mr. Banerjee has submitted that it is not the rule of the West Bengal Housing Board that at no point of time an allottee and the members of the family of the allottee can hold two flats/house/lands and any subsequent acquisition by an allottee or the members of his family of a flat by inheritance, gift or otherwise will disentitle such allottee to hold such flat and allotment of such flat will therefore automatically stand cancelled. Mr. Banerjee has further submitted that if the writ petitioner appellant could get the document of transfer executed and registered prior to his marriage with Sm. Sengupta, possession of two flats by the appellant and his wife was immaterial and that question of cancellation could not have been raised. Simply because the document of transfer was not executed and registered prior to the marriage of the appellant, the West Bengal Housing Board was not entitled to refuse such execution and registration of the document of transfer. He has, therefore, submitted that the decision of the learned trial Judge should be set aside and the respondents should be directed to complete the execution and registration of the deed of transfer in favour of the appellant on payment of the price of the said flat within the stipulated time and on obtaining permission by the appellant for the transfer of the said flat in his favour by the authorities under Land Ceiling Act.

7. Mr. S. K. Banerjee, the learned counsel appearing for the respondents, has, however, submitted that the appellant was undoubtedly eligible to get the allotment of the said flat at the time of making the application for such allotment and also at the time when such letter of allotment was issued in his favour. But simply on getting an allotment and making payment of initial amount or the price of the flat by some instalments, an allottee is not entitled to get the transfer of the said flat in his favour as a matter of course as sought to be contended by the appellant. He has submitted that the allotment is only a step to get the document of transfer executed and registered by the West Bengal Housing Board in favour of the appellant and unless such document of title is. executed and registered, the applicant is not entitled to get delivery of possession of the said flat. He has submitted that for the purpose of getting transfer of such flat, the appellant will not only be eligible for getting allotment of the said flat but he must also be illegible to get the document of transfer executed and registered on subsequent dates. As the appellant married Sm. Sengupta already owning a flat allotted in her favour by the West Bengal Housing Board, the West Bengal

Housing Board was amply justified in refusing to transfer the said flat in favour of the appellant and for the said reason to treat the letter of allotment as cancelled. He has submitted that the learned Judge is, therefore, justified in holding that because of the subsequent events, the appellants was not entitled to get the said flat transferred in his favour and the action of the respondents was not arbitrary or unreasonable.

8. After considering the respective contentions of the learned counsels appearing for the parties, it appears to us that the appellant was eligible to get allotment of a flat when he made an application for the same and when on scrutiny of the relevant facts, a letter of allotment was also issued in his favour. Paragraph 5 of the Brochure published by the West Bengal Housing Board relating - to Golf Green Urban Complex, Phase IV specifically provides for the rules and procedure to be followed for documentation and transfer of the flats. Clauses (i), (ii), (iii) and (iv) of Para 5 are set out hereunder : -

(i) On allotment and soon after payment of the full price or portion of the price, as the case may be, necessary permission for transfer from the competent authority, under the Urban Land (Ceiling and Regulation) Act, 1976 will be obtained. Thereafter the flats will be transferred by the Board to each of the allottees by execution and registration of the deed of transfer in the form prescribed by the Board. The stamp duty and registration fee etc. are payable by the allottees. If the allottee does not get the deed executed within the date notified on receipt of the permission from the competent authority, the allotment will be cancelled at the discretion of the Board and the total deposit will be refunded after deduction of 15% of the same.

(ii) The applicants offering instalment payment shall be required to mortgage the property with the Board for the period till the entire dues have been paid to the Board. In addition they will have to furnish guarantee/security in prescribed form from a Nationalised or Scheduled Bank/Approved Financial Institution/Employer/Two Credit-worthy persons, to the satisfaction of the Board.

(iii) Possession of the flats will be handed over to the allottees upon the execution and registration of the deeds and the execution of the guarantee or security bonds, wherever necessary.

(iv) An incidental charge of Rs.200/- shall be payable by each allottee before taking over possession of his/her flat.

9. It appears that the West Bengal Housing. Board has relied on clause 2 under the heading "General Guidelines for the intending applicants for flats/houses/plots under different schemes of the West Bengal Housing Board" and the learned trial Judge has with considerable hesitation accepted the contention of the West Bengal Housing Board that under clause 2 of such "General Guidelines", the flat allotted in favour of the appellant cannot be transferred. Clauses 1 and 2 of the General Guidelines are also set out hereunder : -

"1. Advertisements are published in leading newspapers for transfer of flats/houses/plots (on lease) by the West Bengal Housing Board.

2. The applicant must be an adult Indian National and does not own house/flat/house building plot in the name of his/her wife/husband or in the name of any other member of his/her family. Only one flat/house/plot will be allotted/sold/leased out to one or jointly to more than one member belonging to same family. Family means husband, wife, minor children and dependent parents."

10. In the instant case, we are not concerned with the lease of any land or flat of the West Bengal Housing Board. It appears to us that such "General Guidelines" really indicate the eligibility for allotment or sale of a flat or land in favour of an intending allottee or purchaser. In our view, if an allotment of a flat has been made in favour of an applicant on fulfilment of all the terms and conditions to get an allotment, such allottee is entitled to get the documents of transfer of the flat in terms of paragraph 5 as referred to hereinbefore and the "General Guidelines" do not override such specific provisions. In our view, once an allotment is made in favour of an applicant on fulfilment of all the conditions for getting allotment, the transfer of the flat since allotted to an applicant is a matter of course and consequential to allotment of the flat and such allotment can only be cancelled if the allottee fails to pay the price within the stipulated time and/or fails to obtain permission from the authorities of the Urban Land Ceiling Act. In our view, the West Bengal Housing Board cannot refuse transfer of a flat already allotted to an applicant eligible to get allotment of such flat, if such applicant gets permission from the competent authority and pays the price of the flat and other outgoings within the stipulated time. The rules and/or guidelines, in our view, do not provide that a successful allottee will not get the effect of allotment on execution of the deed of transfer in his or her favour on the score that subsequently a member of the family of the allottee happens to own a house and/or a flat. It appears to us that the rules and guidelines published by the West Bengal Housing Board for allotment or sale of the flat in Golf Green Urban Complex do not contain any provision that allotment made in favour of an eligible, candidate will be only provisional and will be liable to be cancelled and consequently the West Bengal Housing Board will be entitled to refuse the said flat allotted in favour of the concerned allottee if by a subsequent event a member of the family of the allottee happens to own a flat or house or a land at the time of registration of the document. In our view para 5 of the Brochure published by the Housing Board for allotment and transfer of the flat in Golf Green Complex governs the terms and conditions of such transfer and the "General Guidelines" are basically informative in nature and they only indicate the eligibility of an applicant to get allotment and/or transfer of a flat belonging to the Housing Board and the same do not override the specific provisions of allotment and consequential transfer of the flat and delivery of possession of the same. In the circumstances, we allow the appeal and set-aside the order passed by the learned trial Judge and we direct the West Bengal Housing Board that if the appellant pays the price of the flat within the stipulated time and also gets the permission from the competent

authority under the Urban Land (Ceiling and Regulation) Act, 1976, the respondent should execute the deed of transfer of the flat allotted in favour of the appellant and or, registration of the same should deliver possession of the same in favour of the appellant. In the facts of the case, however, there will be no order as to costs. As the letter of allotment was cancelled, there was no occasion to pay the balance price of the flat by instalments. Let the balance price without any interest, whatsoever, be paid within two months from to-day.

K.M. Yusuf, J.

I agree.