
(1997) 03 CAL CK 0027
In the Calcutta High Court
Case No : C.O. No. 1357 (W) of 1996

Green Hut Private Limited and another APPELLANT
Vs
State of West Bengal and others RESPONDENT

Date of Decision : 19-03-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 298, 299, 32

Citation : AIR 1997 Cal 214

Hon'ble Judges : Bijitendra Mohan Mitra, J

Bench : Single Bench

Advocate : Gautam Chakraborty, Jayanta Mitra, Mukul Lahiri, A. Bagchi and P.D. Mukherjee, for the Appellant; P.K. Dutta and B. Mukherjee, for the Respondent

Judgement

1. The petitioner No. 1 is a Private Limited Company being incorporated under the Companies Act and petitioner No. 2 is a share holder and director of the said petitioner No. 1 who is also a citizen of India. The said petitioner No. 1 company filed an application for allotment of a plot of land sometime in the year 1980 for the purpose of construction of a three Star Hotel in Salt Lake area. By letter No. (sic) dated 6-5-1982 issued by the then Deputy Secretary of the Metropolitan Development Department of Govt. of West Bengal which is marked as Annexure "A" to the connected petition and the offer was given in favour of the said petitioner for grant of lease an area of land approximately measuring about 1 acre in Block I Bin Sector III of the Salt Lake City on a payment of Salami at the rate of Rs.20,000/- per Cottah far the purpose of construction of the proposed hotel. Pursuant to the said offer and in compliance of the terms of the offer, a sum of Rs. 12,10,000/- as Salami was paid in favour of the concerned Authorities. Thereafter, the respondents caused a letter to be issued on 5-1-1987 to the petitioner asking them to pay a further sum of Rs. 8,368/- on account of balance residuary amount of Salami and a further sum of Rs.80/-. Thereafter, by letter No.(sic) dated 13-11-1986 the petitioner was intimated that on account of delay in payment of the money as aforesaid there has been acumenlation of interest and so a demand was put forward for payment of outstanding interest on

the amount. The" petitioners paid the interest for delayed payment to the tune of Rs.3,57,818.90 p. towards interest and the same was accepted by and / or on behalf of the concerned Authorities namely, the respondent. The same was followed up by a communication that the exact area of land proposed to be allotted to the petitioner on measurement was actually found out to be 1.0069 acres instead of 1 acre and demanded from the petitioner of the balance amount of Rs. 8,3618/- and the same was also duly paid. On acceptance of money due and payable by way of consideration of the plot of land proposed to be allotted in favour of the petitioner No. 1 for the purpose specified therein from time to time including those of balance re,siduaries under different heads the then Assistant Secretary of the respondent No. 1 by his letter dated 1-2-1993, as men mentioned in paragraph 11 of the writ petition, sent a draft of the lease deed to be executed in favour of the petitioners with specific directions for observance in connection with the execution and registration of the lease deed. The petitioners then applied to the Collector of the Stamp Revenue, Calcutta together with a copy of draft lease for adjudication of stamp duty chargeable on the lease deed under Indian Stamp Act. The Stamp Duty chargeable on the instrument was assessed by the Collector of Stamp Revenue, Calcutta at Rs.2,13,370/-. Thereafter the petitioners purchased the requisite Stamp paper for the said amount.

2. The facts as delineated above from the persual of the connected writ petition seem to be undisputed and there is no material controversy with regard to specific allegations made as aforesaid. On despatch of the certificate issued by the Collector of Stamp Revenue, Calcutta on 5-5-1993, instead of giving effect to the same the then ex officio Assistant Secretary to the respondent No. 1 directed the petitioners to submit certain documents mentioned therein for completing the execution and registration of the said lease deed. It was alleged that on receipt of the said letter the petitioners furnished the said documents and it was alleged that the requisitions made in the said letter under reference were duly complied with and the petitioners were anxiously waiting for the respondents to take action in the matter. The same was followed up by lapse of time and the petitioners-were constrained to send reminder on 19-8-1994. As the same did not accelerate the course of action due to be taken by the respondents, further letter was sent on 26-6-1995. The writ petitioners have alleged conspicuous silence as a result of which time was allowed to consume by which the petitioners were made to suffer substantially. The pith and substance of the case of the petitioners rotate round their stand on the doctrine of legitimate expectation. The petitioners, therefore, prayed for issuance of a writ of Mandamus directing the concerned respondents to execute and register the lease Deed in respect of their allotted plot No. 1B-167 in Sector III, Salt Lake City and for Writ of Certiorari calling for records and for issuance of Writ of Prohibition restraining the respondents from withholding the prayer for execution and registration of the lease Deed. The concerned respondents in their Affidavit-in-Opposition have made a thrust primarily on the preliminary ground that the writ

petition is not maintainable. The sheet-anchor of suggestion offered in the Affidavit-in-Opposition with regard to the maintainability of the writ petition is on the score that the parties having entered into concluded contract and the contract being non-statutory in nature, the same is capable of being enforced by a suit for specific performance before a competent Civil Court and the reliefs cannot be obtained by way of writ petition for enforcement of the rights as covered by the ambit of Art. 226 of the Constitution of India. The further stand "was taken in the said Affidavit-in-Opposition is on the footing that the petitioners had adopted a dilatory tactics in the matter of execution of the Deed of Lease. It was alleged that one Sri S. Roy and another Sri S. Mitra carried on a previous correspondences in their capacities as directors though they were not directors at the material point of time since they had resigned from the said post. The respondents developed doubts about the bona fides of the company and according to the respondents they addressed two letters dated 20-4-1994 and 9-9-1994 which remained unheeded and no reply was given to the same. There was another letter according to the respondents dated 6-9-1995 addressed to the petitioners which was allegedly returned with the endorsement on the Postal cover as "Not Known". The respondents took the plea that because of the same they started harbouring doubts about the existence of the petitioner No. 1 company and they were in a mood to embark into a journey of enquiry about the financial ability of the petitioner No. 1 company and also the bona fides of its office bearers including of directors. The petitioners in their Affidavit-in-Reply have taken the stand that Sri S. Roy had signed a letter dated 18-2-1983 as director and thereafter his designation was Director (Project) of the petitioner No. 1 company and he still continues to be so being in charge of the hotel project. As regards two letters, mentioned in the Affidavit-in-Opposition dated 20-4-1994 and 9-9-1994, no copy of the same was annexed to the affidavit when the positive stand of the petitioners that they did not receive the aforesaid letters. There was much wrangling about the exchange of letters between the parties and in the contentions and counter-contention as to whether Sri S. Roy and Sri S. Mitra were the directors and they had authority, to take correspondences on behalf of the company. It has been stated in: succinct terms by way of submissions in the Affidavit-in-Reply that the allotment of the proposed plot of land was made in favour of the petitioner No. 1 which is a corporate entity being distinct and separate from its directors. The placement or replacement of directors or other office bearers of the company are matters of internal administration of the company and it has been contended that offer of the land in favour of the respondent No. 1 company must have been made after being satisfied about the financial capacity of the said company by the concerned respondents. The affirmation of the subjective satisfaction about the financial capacity of the subjective satisfaction about the financial capacity of the petitioner No. I company is to be borne from the subsequent payment duly made by the said company as per demands made from the side of the respondents. It has been also alleged that after having received the entire consideration money at its escalated rate including that of interest on account of delayed payment,

the, respondents are duty bound to perform their obligation and they cannot enjoy the benefit of the receipt and acceptance of the consideration money and the said respondents cannot in law afford to sit tight over the matter for indefinite duration. From the perusal of assessment of the totality of the affidavits-filed in the proceeding and on persual of the pleadings taken by the respondents this Court is to consider as to after acceptance of money from a corporate entity which has a distinct juristic character and the respondents are required to deal with the said juristic entity namely, the company itself and not its office bearers. The controversial aspects of facts about the alleged representation of one S. Roy and S. Mitra about their continuance as directors in the company how far can in law activate the hands of the respondents and their over-jealous officers to sit tight on the matters. It does not appear that any counter offer was made at any point of time to return the said amount with interest laying with the respondents but the petitioners have been kept at a bay from proceeding further with the proposed construction of the three Star hotel. The terms and stipulations as contained in the offer letter are binding on the parties and the petitioners may also be interested to go ahead with the matter in view of the possibility of escalation of cost of construction with price hike.

3. The case as made out by the petitioners in its affidavit-in-opposition that as regards Sri S. Roy, he signed only one letter dated 18-2-1993 as Director and prior to that he was designated as Director (Project) of the petitioner company and still continues to be so in charge of the Hotel Project at the allotted plot of the land. As regards two letters dated 20-4-1994 and 9-9-1994 referred to in affidavit-in-opposition, no copy of the same was annexed to the said affidavit in respect of petitioners' categorical statement that no such letter was ever received by them. It is also strange that the respondents started insisting on scrutiny Of Annual Return of the petitioner company and it is not known how the officers of the company assumed the role of self appointed scrutiniser of the Annual Return of the company which was duly submitted to the Registrar of the Companies. It has been argued by the petitioners that regarding the purported enquiry into the financial capacity of the petitioner No. 1, such should have been made before allotment of the plot in question and the same should be insisted upon as a condition precedent. After having received the full consideration of the plot in question the de novo enquiry about financial capacity of the petitioner No. 1 may also appear to be in illusory exercise. The respondents are entitled in law to insist from the petitioners to pay the consideration money and before taking up the decision for allotting the land in favour of the petitioners they should have formed their subjective satisfaction about requisite fulfilment of preconditions for allotment of land including those of the bona fides of the petitioners. The respondents could have also asked for furnishing of the Annual Returning could have also asked for furnishing of the Annual Return long time back even if the draft lease contains a clause that if the lessee fails to construct the three-star hotel within the stipulated time period as mentioned, then the lessor may cancel and, re-enter into the property which is by way of adequate safeguard against

such contingent situation. This Court after making meticulous scrutiny about the facts does not find any justification of the stands taken by the agents. of the State who are the officers to demonstrate such acrobatics by way of roving and purposeless enquiry without being bothered to persuades the State to return the money covered by the consideration amount. The respondents want to buy time, for reasons, which may be far from bona fide conduct and the officers of the State Government should not project such attitude when they because of. their official authority are not permitted to be unconcerned about somebody losing money in investment. Investment once made the. same should be time bound and time should not be allowed to run in this process. In out, country, the State being the "Leviathan is; proverbially known for its behavioral pattern of procrastination and conduct of red tapism is posing forward a serious threat and insurmountable obstacle and the consequent ces flowing therefrom cannot match with the flow of time. In a dynamic world, time is precious but the authorities of the State seem. to be set in a State of oblivion forgetting that time has a serious dimension and bearing on any transaction. This has perhaps led to rethinking of free economy and curtailment of State power because State could not rise up to the expectations of the people and the machinery through which the State works and particularly when it is manned by, personnel they do not seem to appreciate that they have some responsibility to the persons who have made investment. In an economy which is largely financed by facilities offered by Banks and other Financial Institutions with regard to supply of flow of money, therefore the financial capacity is to be discerned not only in terms of the resources of the organisation but also in the perspective of the possibility of the company and/or organisation likely to secure money and funds from outside financial agencies. Persons who are connected with the State, they should not make themselves divorced from the promise of those who are investment oriented and those of interference with their conduct are uncalled for. Mr. Dutt, the learned Counsel appearing on behalf of the State respondents in his overzealousness as a Union Advocate tried to project the officers of the Slate Government as self-styled champions of honesty in the socio economic fabric of life and this Court feels that the scenario would have been better projected if all people concerned would have learned more in favour of practice then in precepts. It can be understood that laxity on the part of the officers of the State and non exercise of the discretion on their part is not warranted but the same should not be bordered on exercise of disproportionate interference causing erosion of the scope of play of exercise of discretion. The entire details of the case has to be deciphered from the records which tells a tale of sorry state of affairs and it seems that investors in the commercial world are cap-lives in the hands of arbitrariness and their attempts to rejuvenates the economy may be nipped in the bud.

4. Now this Court is confronted in the background of the facts of the case because of the point seriously argued by the respondents on the legal basis that the contract which was entered into by and between the petitioner company and the respondents for allotment of the said land for a certain consideration is a non

statutory one and purely contractual and as such when the contract is entered into the relations can no longer be governed by the Constitutional provisions but by the provisions of a subsisting contract which determine the rights and obligations of the parties inter se. It has been further submitted that the relief claimed for in the writ application cannot be granted as said reliefs emanated from contract and therefore High Court in exercise of its jurisdiction under Art. 226 of the Constitution of India cannot grant such relief. From the perusal of the prayers of the connected writ petition it appears that a Writ of Mandamus has been prayed for seeking directions from the respondents No. 1 to 4 to execute and register the lease deed in respect of their allotted plot No. 1B-167 in Sector III, Salt Lake City, Calcutta for the period as mentioned and also for an order of injunction restraining the respondents from allotting the aforesaid plot to any other person during the pendency of the writ application and from withholding their consent in conceding the prayer for execution and registration of the aforesaid lease and for other ancillary reliefs. The petitioners have also tried to project grievance about denial of their legitimate expectation and interference with their right to carry on with the proposed business. The petitioner No. 1 has further asserted that it after having fulfilled its part of contract and/ or agreement being ready and willing to perform the rest of it, it is incumbent upon the respondents to complete and fulfil their obligations thereunder by executing the Deed of Lease. It brings us to the arena of the expanding field of the complicated question that even in contractual field where State is a party, how far State is required to act fairly, honestly and arbitrary action on the State clouding the effectuation of a contract, how far is amenable to interference in Writ Jurisdiction.

5. Mr. Gautam Chakraborty, the learned Counsel appearing on behalf of the petitioners has referred to catena of cases in support of his submissions and he has tried to enlighten this court on the legal aspect of the controversy involved in this proceeding as to what the Writ Court should do under the aforesaid circumstances. A reference was made to a Division Bench judgment in the case of *Marine Engineers v. Siddhueswar Halder* reported in (1991) 1 Cal LJ 467 where the division Bench presided over by the then Chief Justice N, P. Singh has held that where a petitioner makes a grievance of a breach of promise on the part of State in case where an assurance or promise made by the State has acted to his prejudice and even if the agreement is short of a contract within the meaning of Art. 299 of the Constitution and secondly, where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules framed thereunder and the petitioner alleges a breach on the part of the State, then the writ application under Art. 226 of the Constitution will be maintainable. So far as the contract entered into between the State and the person aggrieved is non statutory and purely contractual and rights and liabilities of the petitioners are governed by the terms of contract, it was opined that it has been held that no application invoking jurisdiction of the High Court under Art. 226 of the Constitution is maintainable. To deal with the

said decision Mr. Dutt, learned counsel for the respondents has submitted that in the instant case the petitioners cannot make any grievance of a breach of promise emanating from a contract or agreement as still the same is awaiting consideration by the authorities concerned. Mr. Chakraborty has made strenuous endeavour in giving copious references to numerous decisions and the Court while making scrutiny of the same comes across one of the latest decisions of the Supreme Court reported in the case of LIC of India and Another Vs. Consumer Education and Research center and Others, where the Apex Court has elongated the principle by ascertaining the scope of the jurisdiction of the High Court under Art. 226 of the Constitution by holding, inter alia, that the actions of the State, its instrumentality, in public or person where actions bear insignia of public law element or public character are amenable of judicial review and validity of such an action would be tested on the anvil of Art. 14. It has been further observed that distinction between the public law remedy and private law field cannot be demarcated with precision as the distinction has now been narrowed down. The actions of the State which bear the imprint of public interest element in their offers with terms and conditions invite public to enter into such contract and it has been held that in such case writ is maintainable. In the backdrop of the stand of the said decision and to draw a connecting line a reference was made to the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, . In the said decision it has been held that the State acts in its executive power under Art. 298 of the Constitution in entering into or not entering into contract with individual parties Article 14 of the Constitution would be applicable to those exercises of powers. Every action of the State Executive Authority must be subject to rule of law and must be informed by the reasons. If a Government action every in matters of entering or not entering into contracts fails to satisfy the test of reasonableness, the same would be unreasonable. Rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are parts of the rule of law applicable in situation or action by State instrumentality in dealing with citizens. Even though the right of the citizens are in the nature of contractual rights, the manner, method and motive of decision are subject to, judicial review on the touchstone of relevance and reasonableness. Mr. Chakraborty particularly has emphasised on the aspect of the method and motive of a decision of inaction and according to Mr. Chakraborty, the same is subject to judicial review founded on touch-stone of relevance and reasonableness apart from fair play and natural justice. Even malice in law is considered in the said decision as part of the dimension of the rule of relevance and reasonableness as well as rule of fair play and inaction. A reference was made by Mr. Chakraborty to the case of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and specific attention of this Court has been drawn to the germane observation contained in the said judgment that it is not as if the requirements of Art. 14 of the Constitution and contractual obligations are alien concepts which cannot co-exist. The situation does not envisage or permit unfairness or unreasonableness in its action in any sphere of its activity contrary to the professed ideals in the preamble. Exclusion of Art. 14

in contractual matters is not permissible in constitutional scheme. It would be difficult and unrealistic to exclude the State actions in contractual matters after the contract has been made from the purview of judicial review to test its validity on the anvil of Art. 14. This Court is made to ponder on the instant case where reference is made that after the contract has been made still it would be open to test its validity on the anvil of Art. 14. Therefore the entire texture of the dimension has gradually been projected by the Apex Court seems to be changing. Another reference has been made to the decision of Union of India and others Vs. Hindustan Development Corpn. and others, where the Supreme Court has taken note of the role of the State as a Welfare State which is recognised to have wide powers in regulating and dispensing of social services like leases, licences and contracts etc. The company while entering into contacts or issuing quotas is expected not to act like a private individual but should act in conformity with such certain healthy standards and norms which not to be arbitrary, irrational or irrelevant. Here also one finds that standard insisted upon by the Apex Court of the State actions are something which is not ravaged by arbitrariness, irrational element or want of relevance and the Government is not expected to act like a private individual as it should have no personal axe to grind in such matters because of considerations of social goods as even execution of contract is rated as special service meted out at the behest of the State.

6. Mr. Dutt, appearing on behalf of the respondents, has heavily relied on the decision in the case of Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, and he has drawn the attention of this Court to paragraphs 20 and 22 of the said judgment. In the said decision, a two Judges' Bench has held when the contract entered into by the State is a non-statutory and purely contractual, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determine the rights" and obligations of the parties inter se. In the said sphere, the petitioners can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the said authority in the said contractual field. Even it has been held that no writ under Art. 226 of the Constitution can be issued to compel the authorities to remove a breach of contract pure in civil nature. Mr. Dutt has further referred to the case of Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, thereof and it has been pointed out on the said decision that reciprocal rights and obligations arising out of contract do not depend on further enforce-ability upon whether a contracting party finds it prudent to abide by the terms of contract. By such test, no contract would ever have a binding force. The jurisdiction of the Apex Court under An. 32 of the Constitution is not intended to facilitate avoidance of obligations voluntarily incurred. A particular reference was made by Mr. Dutt from the case of A.C. Roy Co. and others Vs. Union of India and others, and attention of this Court has been particularly drawn to para 44 of the said judgment where it has been opined by the learned Judge that it is difficult to comprehend as to how the

doctrine of legitimate expectation can be invoked in contractual field and when contract was concluded, then it was held that the said doctrine of legitimate expectation would have no bearing. Even a reference has been drawn to the case of Ghaziabad Development Authority and State of U.P. Vs. Delhi Auto and General Finance Pvt. Ltd. and Maha Maya General Finance Co. Ltd. and another, where the Supreme Court held that High Court in exercise of its jurisdiction under Art. 226 of the Constitution of India cannot interfere in a matter of contract of demand of money under a contract unless there exists a public law element. Though many other cases have been cited by both the learned counsels appearing for the respective sides but this Court instead of making a reference to plethora of decisions cited has picked up only those decisions relied on by the respective sides which, according to the opinion of this Court, has relevance on the controversy and can stem light in the way of evolution of law on the subject namely, scope of interference of the High Court under Art. 229 of the Constitution and its extent in contractual fields.

7. This Court after applying the principles of law as crystallised from the catena of decisions referred to above is of the view that the actions of the State which bear insignia of public law elements or public character and the State actions must bear the imprint of public interest element in the behavioral pattern of the officers of the State and if liberty of the public is invaded to enter into such contract, then same appears to be amenable (o judicial review on the anvil of the twin concepts of equality and absence of arbitrariness. The conduct of the agents of the State must be reasonable and unreasonableness of their conduct cannot be allowed to eat into very vitals of the investors made on honest believe that State and/or its agents would discharge their functions fairly. In the instant case, this Court has not been able to appreciate the conduct of the agents of the State respondents by embarking into a roving enquiry about any suspicion either of financial capacity of the petitioners or of the bona fides of their move for investment and as per stipulation of the agreement itself if they are found to be incapable of responding to the offers meted but to them by completion of the transaction, the Authorities have their remedies to forfeit the benefit of allotment as per provisions of subsisting agreement. Here, rule of reason and rule against arbitrariness and discrimination and rules of fair play and natural justice are the cementing bones which build the layer of the super structure of rule of law applicable in situations of actions by the State instrumentality in dealing with citizens". Even the manner, method and motive of decision in the field of contractual domains where one of the parties to the contract is "State", the manner, method and motive of prosecution in giving shape to the contract of agreement are subject to judicial review on the touchstone of relevance and reasonableness. This Court after giving its anxious consideration and meticulous scrutiny about the records of the transaction emanating from the agreement does not find any justification of the stand taken by the agents of the State. Accordingly, on contested hearing of the matter this Court issues a Writ of Mandamus directing the respondents Nos. 1 to 4 to execute and register the

Lease Deed in favour of the petitioners in respect of their allotted plot No. 1B-167 in Sector III, Salt Lake City, Calcutta and also issue an order of injunction restraining the State respondents Nos. 1 to 4 from allotting the aforesaid plot to any other person till execution of the Lease Deed an question which is to be executed within a period of three months from the date of the communication of this order. The writ petition thus stands allowed subject to grant of above noted directions against the respondents and the main petition under Art. 226 of the Constitution of India succeeds on contest.

8. Petition allowed.