

(2024) 04 CAL CK 0075

In the Calcutta High Court

Case No : WPA (P) 47 Of 2023, IA No. CAN 1 Of 2023

Mohd. Helaluddin Sk.

APPELLANT

Vs

State Of West Bengal And Others

RESPONDENT

Date of Decision : 30-04-2024

Acts Referred:

Citation : (2024) 04 CAL CK 0075

Hon'ble Judges : T.S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharyya, Supratim Dhar, Tanweer J. Mandal, Raju Bhattacharyya, Somashree Dey, Megha Sarkar, Jaharlal De, Rudranil De, Debabrata Banerjee, Mahendra Prasad Gupta, Himangshu Ghosh, Ayan Mitra, Sartak Singh, Antara Panja, Shabana Khatoon

Final Decision : Dismissed

Judgement

1. This writ petition has been filed styled as a public interest litigation to set aside an order passed by the respondent authorities dated 11/11/2022 by which three plots of land were transferred in the name of the 7th respondent namely M/s. S and D Health Care. The petitioner's sole contention is that the said land has been allotted to the 7th respondent by the 8th respondent namely the West Bengal Small Industries Development Corporation without following any tender process without any advertisement and contrary to the Land Policy as framed by the Government of West Bengal, the Land and Land Reforms Department dated 31.26.2012.

2. In this regard, the writ petitioner had submitted a representation on 11.11.2022 and since the representation though received by the authorities was not considered, had filed the writ petition, notice was ordered to the respondents and an affidavit-in-opposition has been filed by the officer of the West Bengal Small Industries Development Corporation Limited on behalf of the respondents 1 to 6 for which the writ petitioner has filed his reply. The official respondents would contend that the concerned plots were initially leased out to M/s. Satyajug

Employees Cooperative Industrial Society Limited for a particular period of time and that the said lessee had assigned the property in favour of the seventh respondent herein and in this regard, had submitted a request to the respondent Corporation. It is submitted that for the purpose of such transfer application forms have been prescribed of which one has to be filed by the transferor and one has to be filed by the transferee and these applications will be considered and the respondent Corporation has passed orders approving such assignment of the lease hold right granted to the original allottee M/s. Satyajug Employees Cooperative Industrial Society Limited. Therefore, it is submitted that there is no breach of the Land Policy framed by the Government of West Bengal and the assignment which was approved by the respondent Corporation is within the four corners of the Land Policy framed by the Government. Further, the learned Advocate, appearing for the Respondents 1 to 6 would vehemently contend that the petitioner is not a genuine public interest litigant but he is a personally interested litigant which is evident from the representation submitted by the writ petitioner dated 12.12.2022.

3. In reply the learned advocate appearing for the writ petitioner submitted that Clause 3 (4) of the Land Policy clearly stipulates that the land meant for commercial use shall invariably be auctioned to the highest bidder for which adequate publicity should be given including through internet and this had not been followed in the instant case and therefore, the proceedings of the respondent Corporation has to be set aside.

4. We have heard the learned Advocates for the parties and given our anxious consideration to the facts and circumstances of the case. It is evident from the representation given by the writ petitioner dated 12.12.2022, that he is aware of the fact that the plot numbers concerned were allotted to M/s. Satyajug Employees Cooperative Industrial Society. The writ petitioner also mentions about a writ petition filed by the said society and also the decision taken by the Board of Directors to withdraw the writ petition. With these facts brought on record the petitioner would state that allotment/ transfer of the three plots of land in favour of the 7th respondent is illegal as it was done without conducting an auction after giving due publicity.

5. Thus, it is evident that there is a tinge of private interest of the petitioner which is involved in the matter since the petitioner mentions about the name of the society to which the land was originally leased and has knowledge of a writ petition filed by the society. Therefore, this creates a doubt in our mind as to whether at all the writ petition is a genuine public interest writ petition. Be that as it may we are required to consider as to whether there has been any violation of the Land Policy. The Government of West Bengal by order dated 26.12.2012 noted that the State Government and its parastatals (Corporation, Development Authorities) and urban local bodies etc. have been allotting and pricing land and other assets in line with various departmental and other norms which often vary in their context and their applicability. Therefore, a need arose to introduce

uniformity, reduce discretion and avoid case by case decision making to ensure transparency while dealing with public assets. Therefore, the Hon'ble Governor after careful consideration of the matter was pleased to make the Land Allotment Policy which will be applicable to land owned or held by any department of State Government or agency funded by the State Government. Para 3(ii)(b) of the Land Policy would be of relevance of the instant case. The said clause states that the lessee (to whom the land is allotted) is not entitled to assign his leasehold interest whether in full or in part, without prior written approval of the lessor (West Bengal Small Industries Development Corporation Limited) and the assignee shall hold the same on the same terms and conditions as in the original lease and to such other terms and conditions as may be considered to be imposed by the lessor while granting such approval. It further states that in case of such assignment of leasehold interest the assignee concerned shall have to obtain fresh lease after expiry of the unexpired period of the lease on payment of such consideration and annual rent based on the prevailing market value as may then be fixed by the lessor (West Bengal Small Industries Development Corporation Limited) in granting such lease. Thus, the Land Policy provides for a right to the lessee to assign his leasehold interest whether in full or in part to a third party with the approval of the lessor (West Bengal Small Industries Development Corporation Limited).

6. Clause 4 of paragraph 3 of the Land Policy deals with lands meant for commercial use and the said clause states that in such cases it shall invariably be auctioned to the highest bidder for which adequate publicity should be given including through internet. Considering the terms and conditions of the policy Clause 3 (iv) will not apply to the facts and circumstances of the case and the relevant clause will be Clause 3(ii)(b) which empowers the lessee to assign his leasehold interest in favour of the third party with the prior approval of the lessor. In the instant case it has been shown that such procedure has been followed.

7. Thus, we find no grounds to entertain this writ petition as a public interest litigation and accordingly the same is dismissed.