

(2020) 01 CAL CK 0034

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 27981 (W) Of 2014

Ratna Mitra

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Citation : (2020) 01 CAL CK 0034

Hon'ble Judges : Rajasekhar Mantha, J

Bench : Single Bench

Advocate : Soumya Majumdar, Debasish Saha, Dipika Basu, Sabyasachi Roy, Raja Basu Chowdhury, Tanoy Chakraborty, Kallol Saha, Kishore Dutta, Saikat Chatterjee

Final Decision : Disposed Of

Judgement

Rajasekhar Mantha, J

The learned Advocate General is present on behalf of the State at the specific request of this Court.

Ten cottahs of land was allotted to the petitioner in the year 1974 under the Salt Lake City Extension Scheme of the State of West Bengal.

The petitioner made payment therefor and the same was confirmed by the State. The petitioner chose plot No.204 in Block - CE, Sector-I of the Township.

In the meantime, the Urban Land (C&R) Act, 1976 came into force. By a communication dated 11th October, 1980 the State requested the petitioner to produce appropriate documents to indicate that the petitioner's allotment was not hit by the provisions of the 1976 Act. The petitioner was also offered a plot of 5 cottahs of land instead of 10 cottahs. The petitioner could not produce any documents to satisfy the State under the 1976 Act.

The object and purpose of the Scheme came to be understood by a large cross-section of the city and good part of the North-Eastern India. Land prices in the

area came to escalate. The petitioner did not choose to avail the lesser quantity of land offered in lieu of the original allotment and pursued a request for registration of the original 10 cottahs.

The petitioner filed a writ petition in this Court that was numbered as C.R. No. 388 (W) of 1981. Rule was issued but the same came for dismissed for default. Subsequently after nearly 19 years, the petitioner filed W.P. No. 7261 of 2000 challenging inaction on the part of the State in registering the 10 cottahs of land in his favour. Status quo was directed to be maintained on 6th September, 2000 by a Co-ordinate Bench of this Court. The State in the meantime not only allotted 10 cottahs of land to the Government of Arunachal Pradesh but also registered a long-term lease of 999 years in its favour.

By an order dated 12th July, 2010 passed in W.P. No. 7201 (W) of 2000 came to be disposed of setting aside the cancellation of allotment in favour of the petitioner and the State was granted liberty to proceed afresh.

The petitioner was asked to appear for a personal hearing by a notice dated 9th November, 2010 to which the petitioner submitted a written representation.

Order dated 22nd February, 2011 came to be passed by the Land Manager, O.S.D. & Ex-officio Deputy Secretary to the Government of West Bengal, inter alia, holding that the petitioner had two separate individual plots of land apart from his own residence at Jodhpur Park within the Calcutta Metropolitan Development Area as also the Calcutta Urban Agglomeration Area. The provisions of the 1976 Act were invoked and the representation of the petitioner for revocation of cancellation of allotment and registration of land in his favour was rejected.

The petitioner then filed W.P. No. 14762 (W) of 2011 in which an interim order was passed restraining the allottee, Government of Arunachal Pradesh from carrying on further construction over the property or changing its nature and character. The said order dated 15th February, 2012 was confirmed on 3rd July, 2014, a Single Judge of this Court in the said order, however, granted a twofold liberty to the State, i.e. to allot any other comparable plot of land to the petitioner or to reconsider the writ petitioner's contentions as regards the wrongful cancellation of allotment. Such reconsideration was to be effected by the Principal Secretary, Government of West Bengal. The said order could be interpreted as nullifying the order dated 12th July, 2010 (supra).

The Principal Secretary, Government of West Bengal, in terms of the order dated 3rd July, 2014 (supra), inter alia, held that a mere allotment without registration of lease cannot confer any crystallized right in favour of the petitioner. The claim of the Government of Arunachal Pradesh, based on not just an allotment but also a registered lease, was held at the superior right.

The sheet-anchor of the petitioner's argument is that the provisions of the Urban Land (Ceiling & Regulations) Act, 1976 cannot have any retrospective operation

to cover an allotment made in the year 1974.

The question, however, is whether a mere allotment can have any superior right in the absence of an effective and comprehensive registration of lease. The absence of registration of an allotment, at this stage, can at the most confer a right towards refund of the original allotment fees and that too if made within time, in terms of the Statute of Limitation. What has reduced or diluted the claim of the petitioner is the long period of merely 19 years since prior to the filing of W.P. No. 14762 (W) of 2011 and the original writ petition being C.R. No. 388 (W) of 1981.

This Court also has a second consideration in mind. Given the huge demand for land at Salt Lake, within two years of 1974 i.e. commencement of the Scheme, prices had already escalated even in the year 1980. The application of the principle that persons having other properties within the city of Calcutta, would have a reduced right as opposed to those without any properties whatsoever, cannot be ignored by this Court.

While the petitioner may have a case on application of the technicalities of law, on a practical consideration, given the fact that the petitioner already has substantial properties within the city of Calcutta and also that the original writ petitioner has passed away and his wife, who has been substituted in his place, is in the twilight of age and the litigation is pursued by an nephew in proxy, cancellation of allotment to the Government of Arunachal Pradesh would be inequitable, unfair and improper in the instant and peculiar facts of the case.

The petitioner shall, however, be entitled to file a civil suit for damages against the Government of West Bengal, and if such suit is filed within a period of three months from date, the same may be considered in accordance with law.

The aforesaid order shall not prevent the petitioner and the State Government and the Government of Arunachal Pradesh from working out any other suitable arrangement which is partially reflected from the last page of the order dated 3rd July, 2014 passed by a Co-ordinate Bench of this Court.

Interim order, if any, stands vacated.

With the aforesaid observations, the instant writ petition is disposed of.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.