
(2022) 07 CAL CK 0023
In the Calcutta High Court
Case No : W.P.A. No. 172 Of 2007

Rupali Chattopadhyay

APPELLANT

Vs

State Of West Bengal & Ors

RESPONDENT

Date of Decision : 13-07-2022

Acts Referred:

Citation : (2022) 07 CAL CK 0023

Hon'ble Judges : Aniruddha Roy, J

Bench : Single Bench

Advocate : Aniruddha Chatterjee, Noelle Banerjee, Debabrata Roy, Santanu Kumar Mitra, Subhabrata Das

Final Decision : Dismissed

Judgement

Aniruddha Roy, J

Facts:

1. The present writ petitioners are the legal heirs and successors in interest of the original writ petitioner, namely, Anutosh Chattopadhyay, since deceased (for short, the original writ petitioner). Pursuant to an order dated February 17, 2022 the present petitioners were substituted in place and stead of the original writ petitioner.

2. For the purpose of establishing a Small Scale Industrial unit (for short, SSI Unit), the original petitioner in or about 1982 applied before the respondent authority for obtaining a lease hold land. By a letter dated April 05, 1982 the authority concern in receipt of a letter dated March 09, 1982 informed the original petitioner that it had started allotting land for Small Scale Industries measuring about two and half cottahs to about fifteen cottahs and asked the original petitioner to submit the proof and documents of his registration with the SSI Department, his Project Report and Proof of his Financial Capability. He was also informed that upon submissions of all the above documents his application would be considered on the basis of an interview to be held by the authority and

in such interview the original petitioner could authorize his representative to appear in such interview.

3. By a communication dated April 12, 1982 the respondent authority informed the petitioner to appear for the interview for obtaining an allotment of industrial plot for setting up SSI Unit at Salt-lake on April 22, 1982 and to produce the documents mentioned in the said communication which, inter alia, included a detailed scheme for which the land was sought for duly approved by the SSI Department.

4. On October 01, 1982, Annexure P-3 to the writ petition, the authority concerned by its written communication offered the original petitioner the lease for a plot of five cottahs in Sector IV/V of Bidhannagar (Salt-Lake Township) for 999 years for the purpose of manufacturing transformer and electrical equipment subject to his submission of the necessary certificates mentioned at paragraph 14 of the said written communication and on the terms and conditions mentioned therein. the allotment of plot was provisional. Paragraph 14 of the written communication is reproduced herein below:

"i) Provisional Small Scale Industries Registration Certificate issued by the Cottage & Small Scale Industries Directorate, supported by approved scheme/project report.

ii) Clearance Certificate from Competent Authority for Air and Water Pollution."

5. On November 12, 1982 on the basis of the said terms and conditions, the Original petitioner in writing submitted his choice of plot for setting up a transformer and electrical manufacturing unit. Necessary money was also paid. The plot concerned was at Block EN, Sector V, Salt-Lake (for short, the plot). The further terms and conditions for payment of consideration was duly intimated to the original petitioner through a written communication dated November 21, 1983. The Certificate from the SSI Department as was submitted by the original petitioner was dated February 03, 1983, Annexure P-5 to the writ petition.

6. By a written communication dated May 04, 2004, Annexure P-7 to the writ petition, the respondent authority informed the original petitioner that though a provisional allotment of the plot was made in his favour for the purpose of manufacturing of transformer and electrical equipment, despite several communications made by the authority the requisite papers and documents were not furnished by the original petitioner. It was found that the original petitioner sought to construct a dwelling house without having any prior approval from the authority on the plot, though it was provisionally allotted for setting up an SSI Unit. He was further informed that one Swapan Kumar Mitra being the constituted attorney of the original petitioner applied for delivery of possession of the plot for setting up a hotel under the name and style of LE Sopan Hotel Industries by changing the purpose and nature of user of the plot without the approval of the State Authority. It was also revealed that the original petitioner

had made a complaint before the relevant Police Authority as to an alleged unauthorized agreement with Swapan Kumar Mitra for establishing the said Hotel Project without taking prior permission from the relevant State Authority. In view of this, the original petitioner was asked to explain the correct position within 90 days and as to why the allotment of the plot would not be cancelled by the Government.

7. By a letter dated July 02, 2004, Annexure P-8 to the writ petition, the original petitioner replied to the said communication dated May 04, 2004 and submitted that he had revoked the power of attorney granted in favour of the Swapan Kumar Mitra after realizing his mistake by appointing Swapan Kumar Mitra as his power of attorney holder, who had misused the trust of the original petitioner. It was further submitted that all the requisite papers for setting up the SSI Unit at the plot would be submitted.

8. On the basis of the cause shown in the said letter dated July 02, 2004 and upon due consideration thereof, the respondent authority found the causes shown to be not satisfactory and was not acceptable and the respondent authorities cancelled the allotment of Plot No. 21 in Block EN Sector V, Bidhannagar measuring 5.01333 cottahs which was provisionally allotted under the said allotment dated October 01, 1982 and the plots stood resumed. Such decision was duly informed to the original petitioner by the respondent authorities through the written communication dated September 04, 2004, Annexure P-9 to the writ petition. The petitioner thereafter from time to time made several representations before the State Authority for withdrawal of the said decision for cancellation of the provisional allotment of the plot to the original petitioner. By a letter dated November 25, 2005 the said Swapan Kumar Mitra informed the respondent authorities that the cancellation of the allotment had taken place without any fault on the part of the original petitioner, who was the allottee of the plot and had confirmed that the power of attorney executed by the original petitioner had been revoked.

9. In this backdrop, challenging the said decision of the respondent authorities cancelling the allotment of the plot filed a writ petition being W.P. No. 5055 (W) of 2006. By an order dated April 28, 2006 the writ petition was disposed of directing the respondent authorities to consider the original petitioner's case upon giving an opportunity of hearing and to pass an appropriate order.

10. Pursuant to and in terms of the said direction made in the previous writ petition, the second respondent after hearing the original petitioner had rejected his case and affirmed the decision for cancellation of the allotment of the plot.

11. Thus, the original petitioner was aggrieved and filed the instant writ petition.

Submissions:

12. Ms. Noelle Banerjee, learned counsel led by Aniruddha Chatterjee learned counsel submitted that, the petitioner had not cause any breach of any of the

terms of allotment of the plot. The petitioner was staying abroad at the relevant point of time and with full trust and faith entrusted one Swapan Kumar Mitra (for short, Swapan) by executing a power of attorney. Such delegation of authority was duly permitted by the respondents as a term of the allotment. Swapan then misused the trust of the original petitioner and sought to act in a manner which was not approved by the respondents. Swapan did the mischief behind the back of the petitioner and without any consent or approval of the original petitioner. On the basis of the SSI Certificate and all other relevant documents being furnished by the original petitioner, the provisional allotment was made in his favour.

13. The moment petitioner came to know that the Swapan sought to act contrary to the terms of the allotment, the original petitioner duly revoked the power of attorney and lodged necessary criminal complaint before the relevant police authority against Swapan. Swapan also in writing admitted that he had done the mischief behind the back of the original petitioner and without his approval.

14. It was then submitted that, the hotel had never been set up on the plot. The relevant clearance obtained by Swapan from the Pollution Control Department for setting up a hotel on the plot was subsequently cancelled and withdrawn by the Pollution Control Department and the same did not exist at the relevant point of time when the decision was taken by the respondents cancelling the allotment. The learned counsel then submitted that, at the highest, it could be taken as an intention of the original petitioner to set up a hotel on the plot and thereby to change the purpose of allotment of the plot by changing user from establishing an SSI Unit for establishing a manufacturing unit for transformer and electrical equipment. In reality this had never happened. On the basis of such alleged intention of the original petitioner the allotment of the plot could not and would not have been cancelled.

15. It was next submitted that, the moment provisional allotment of the plot was made, a vested right and a legitimate expectation on the property had accrued in favour of the original petitioner and the manner it was taken away is nothing but arbitrary, illegal and dehorse the law. The authority should have considered before cancelling the allotment that the original petitioner had no role to play in committing any mischief neither had any intention to act in breach of the terms of allotment of the plot. It was Swapan who had done the mischief behind the back of the original allottee, for which the vested right of the allottee should not have suffered. It was submitted that, the original petitioner at the relevant point of time had undertaken before the respondents that he would comply with the terms of allotment of the plot and would establish the necessary SSI Unit, for which the plot was allotted to him. Such request was wrongfully and arbitrarily turned down by the respondents.

16. Mr. Aniruddha Chatterjee learned counsel, in support of the writ petition had relied upon two Gazette Notifications both dated May 06, 2005 issued by the State, Annexure P-16 to the writ petition and submitted that, in many cases

following the said notifications, the State had allowed the conversion of the user to which also the original petitioner was entitled to. By not doing so in case of the original petitioner, the respondents had cancelled the allotment of the plot in a discriminatory manner which is nothing but arbitrary and illegal on the part of the State Authority. In support he relied upon the following decisions:

- i. Judgment delivered by a Division Bench of this Court In the matter of: Sagar Hosiery Mills and Ors. vs. State of West Bengal and Ors., reported at 98 CWN 1030;
- ii. Judgment by a Division Bench of this Court In the matter of: M/s. Western Engineering Works. vs. The State of West Bengal &Ors., delivered in FMA 51 of 2022;
- iii. A judgment of a Coordinate Bench of this Court In the matter of: Ashis Kumar Ghosh vs. The State of West Bengal &Ors., delivered in WP No. 6858 (W) of 2008;
- iv. A judgment of a Coordinate Bench of this Court In the matter of: GPT Health CARE Private Limited & Anr. vs. The State of West Bengal &Ors., delivered in WP No. 12224(W) of 2014;
- v. A judgment of a Coordinate Bench of this Court In the matter of: B.M. Pal Chowdhury & Co. Pvt. Ltd. & Anr. vs. The State of W.B. &Ors., delivered in WP No. 20739(W) Of 2010;
- vi. A judgment of a Coordinate Bench of this Court In the matter of: Smt. Deepa Chakroborty & Ors. vs. The State of West Bengal &Ors., delivered in WP No. 16410(W) of 2009;
- vii. A judgment of a Coordinate Bench of this Court In the matter of: M/s. Din Chemicals & Coatings Pvt. Ltd. &Ors. vs. The State West Bengal &Ors., delivered in WP No. 18668(W) of 2012 and;
- viii. A judgment of a Coordinate Bench of this Court In the matter of: Shibapada Banerjee & Ors. vs. Deputy Secretary & Ors, reported at 2014 SCC Online Cal 11121.

17. On the basis of the above, it was submitted that, the writ petition should be allowed by setting aside the decision for cancellation of allotment and the consequential resumption thereof.

18. Mr. Santanu Mitra learned counsel appearing with Mr. Subhabrata Das learned counsel for the respondents submitted that, the original petitioner was never a bona fide applicant for the plot as would be evident from his conduct itself. Referring to the clauses which were the terms and conditions mentioned in the allotment letter it was submitted that, the original petitioner at first place never submitted the requisite documents to show that he was holding a valid certificate for establishing a proper SSI Unit for which the plot was provisionally allotted. Relying upon the allotment letter dated October 01, 1982 and the

correspondence exchanged by and between the parties even prior thereto, Mr. Mitra submitted, the allotment of the plot at all material time was provisional in nature subject to fulfilling the term of allotment. The original petitioner never submitted the requisite documents which were the mandatory prerequisite for a permanent allotment of the plot and consequently for granting of lease by execution of necessary instrument of lease.

19. He then relied upon a certificate issued by the SSI Department being Annexure P-5 to the writ petition, which was submitted by the Original petitioner before the respondents, seeking allotment of the plot for establishing an SSI Unit for manufacturing transformer and electrical equipment. This document was issued in favour of one M/s Hinny Brothers for manufacturing Foam Bags and the validity of the said registration was till six months from February 03, 1983 being the date of issue of the same. The said certificate was also provisional in nature. Placing reliance upon the records of the proceeding he submitted that, the original petitioner did not apply for change of user of the plot and obtained the necessary clearance certificate for setting up a hotel on the said plot contrary to the purpose for which the plot was provisionally allotted. The pollution clearance certificate to run a hotel industry from the plot was obtained without any prior approval from the respondents. The original petitioner sought to construct a dwelling house on the said plot without obtaining any approval from the relevant state authority for change of user of the plot. In as much as he submitted that the plot was year marked for setting up a SSI Unit for manufacturing transformers and electrical equipment and not for foam bags. The original petitioner also sought to set up a mustard oil mill on the plot, which was also contrary to the purpose for which the plot was year marked. Lastly the original petitioner intended to set up necessary infrastructure for carrying out a Job relating to IT industry from the plot, which was again contrary to the purpose of user year marked for the plot. Mr. Mitra then submitted that for none of these purposes the original petitioner obtained any prior approval from the relevant State Authority.

20. Learned counsel then submitted that, the authority granted by the original petitioner in favour of Swapn by virtue of the power of attorney bound the original petitioner for the mischief, even if, taken to be done by Swapn.

21. Referring to the said two Gazette Notifications, Annexure P-16 to the writ petition he submitted that, these notifications were applicable for the lessees in whose favour lease was granted and executed and such is not the case for the original petitioner, as the original petitioner while applying for provisional allotment for the plot and even after the provisional allotment being made, had failed to comply with the term of allotment and failed to produce the requisite documents before the authority. Therefore, the provisions under the said two Gazette Notifications shall not apply in the facts of this case as the original petitioner acted in breach of the terms of allotment since beginning.

22. In so far as the judgments relied upon in support of the writ petition, the

learned state counsel submitted that, those judgments had no relevance in the facts of this case as the petitioner had caused breach of the terms of the provisional allotment since beginning and did not apply seeking permission for change of user.

23. Learned State Counsel then submitted that, the application of principle of legitimate expectation would not apply in the facts of this case, as the original petitioner had not complied his part of obligation under the terms of allotment. In support, he relied upon a decision of the Hon'ble Supreme Court In the matter of: Food Corporation of India vs. M/s. Kamdhenu Cattle Feed Industries, reported at (1993) 1 SCC 71.

24. The learned state counsel then submitted that, the cancellation of allotment of the plot and the consequential resumption thereof by the State was just and lawful. The writ petition is misconceived and should be dismissed.

25. Mr. Debabrata Roy, Learned Advocate in support of the writ petition in reply submitted that, the original petitioner was and the present petitioners are still willing to carry out the terms of allotment in strict compliance and the decision of cancellation of allotment be set aside. He submitted that, the moment the provisional allotment was made a legitimate expectation arose for the petitioner for obtaining lease by execution of the necessary lease instrument in respect of the plot. The original petitioner was all along willing to be bound by the terms of the allotment and the mischief was done by Swapan behind his back on which the original petitioner had no control and subsequently the original petitioner had revoked the power of attorney. Therefore, the ratio decided In the matter of: Food Corporation of India (supra) had no application in the facts of this case.

Decision:

26. After considering the submissions made on behalf of the parties and upon perusal of records, it appears to this court from the terms of allotment of the plot that it was a plot year marked for setting up of an SSI Unit with the specific object to promote the Small Scale Industries. Accordingly, the original petitioner was asked to submit the necessary documents including his registration with the SSI Department along with a project report, as would appear from the communication issued by the State Authority dated April 05, 1982, Annexure P-2 to the writ petition. Subsequently, from another communication dated April 04, 1982, Annexure P-2 to the writ petition, the original petitioner was called upon for an interview for the purpose of allotment of plot to setup a Small Scale Industry for manufacturing Transformers, the petitioner was asked to furnish a detail scheme approved by the SSI Department. The relevant authority issued the provisional allotment of the plot by its communication dated October 01, 1982, Annexure P-3 to the writ petition. This document clearly spelt out that the provisional allotment was made for granting a lease of a 5 cottah plot for 999 years for establishment of Small Scale Industries for manufacturing of transformer and electrical equipment subject to the original petitioner submitting

the necessary documents. In paragraph 14 thereof which, inter alia, included the necessary SSI registration certificate supported by approved scheme or project report. Paragraph 15 of the said letter clearly spelt out that the said offer shall stand cancelled without notice to the original petitioner for non-compliance of any of the terms and conditions within the time limit. The original petitioner on November 12, 1982 selected the plot for setting up the manufacturing unit for transformer and electrical equipment as SSI Plot and agreed to abide by the relevant Rules and the letter of offer.

27. The only SSI Certificate or document that was submitted by the petitioner was Annexure P-5 to the writ petition, which was a document issued by the Directorate of Cottage & Small Scale Industries, Govt. of West Bengal dated February 03, 1983 in the name and favour of one Hinny Brothers w.e.f. January 29, 1983 and the validity thereof was for six months from the date of issue. The close scrutiny further revealed, it was also a provisional registration certificate for manufacturing Foam Bags and not for manufacturing transformer and electrical equipment. No supporting project report for manufacturing transformer and electrical equipment was also furnished before the authority concerned.

28. By virtue of the power of attorney executed by the original petitioner, Swapan at the relevant point of time took all steps with regard to the allotment and utilization of the plot on behalf of the original petitioner. Contemporaneously there was no objection was received from the original petitioner as to the illegal act of Swapan committed on his behalf for changing the nature and user of the plot other than for which it was year marked and provisionally allotted to the original petitioner. The act of an agent on clear terms binds its principle. Hence the original petitioner could not have contended anything to the contrary which was done by Swapan on his behalf. Mere lodging of a complaint by the original petitioner against Swapan before the relevant Police Authority or merely the letter dated November 25, 2005, Annexure P-12 to the writ petition, would not simplicitor absolve the original petitioner from the mischief committed on his behalf. More so when the mischiefs were committed much prior in point of time. The show-cause notice, Annexure P-7 to the writ petition was issued way back on May 04, 2004 seeking explanation from the original petitioner as to why the allotment of the plot would not be cancelled. In as much as the, first cancellation decision was issued by the respondents on September 04, 2004, Annexure P-9 to the writ petitioner.

29. On a close scrutiny of the records, it is evident before this court that the intention and conduct of the original petitioner was not bona fide since beginning and throughout was in violation of the terms of allotment. The SSI Certificate produced by the original petitioner was to set up a foam bag manufacturing unit. Subsequently the original petitioner intended to construct a Dwelling House. Then the original petitioner intended to setup a mustered oil mill. He then intended to setup a Hotel. Lastly he intended to setup an infrastructural business to support IT Industry. There was no contemporaneous denial by the original

petitioner on such score. None of these intention of the original petitioner were in line and in conformity with the terms of allotment of the plot. Other than setting up of an SSI Unit for manufacturing transformer and electrical equipment, which was the clear terms for provisional allotment of plot, he proceeded and/or intended to utilize the plot for other purposes in clear violation of the terms of allotment. For none of the above change of users, the original petitioner obtained any prior written permission from the respondents.

30. On a perusal of the materials on records, it is clear, to the mind of this court that, since beginning even prior to the execution of the lease deed by the state authority, the original petitioner had acted in violation of the terms of allotment, inter alia, he did not produce the requisite SSI Registration Certificate and without obtaining any prior approval he intended to change of user of the plot.

31. The first notification dated May 06, 2005 at page 101 of the writ petition was issued since the State found that quite a good number of individual/commercial plots and industrial/commercial plots with industrial/commercial unit in Bidhannagar were still lying unutilized although the lessees had taken delivery of possession of such plots of land from the Government long ago. In some cases, the lessees of industrial/commercial plots become unable to carry on their industrial and commercial units any longer. Sometimes many of the lessees approached the Government for permission to transfer their plots of land to other entrepreneurs for various reasons. One of such major reasons being their financial inability to implement their project or to carry on their projects further. The Government had been dealing with such proposals case by case according to their merit. In the facts of this case, the original petitioner being a provisional allottee failed to comply with the terms of allotment since beginning and no lease deed was executed in favour of the original petitioner nor possession of the plot was delivered. So, the said notification was of no assistance to the original petitioner.

The second notification dated May 06, 2005 at page 103 of the writ petition was issued by the State when the State noticed that quite a good numbers of industrial plots in Sector V and commercial plots in Sector V or outside Sector V of Bidhannagar were lying unutilized even after the delivery of possession of the said plots to the lessees, the State found that many of the lessees had failed to utilize the plots of land allotted to them because the project for which the land was allotted became outdated and economically unviable. Many of the lessees approached the Government for permission to change the project for which the plots were allotted to them. The instant writ petition is not such a case as discussed above. Therefore, the said notification was also of no assistance to the original writ petitioner, as the original petitioner did not seek for any such permission before intending to set up the hotel on the plot.

32. In the matter of: Sagar Hosier Mills and Ors. (supra) the cancellation of allotment was set aside on the ground that if a person is allotted a plot of land for setting a Small Scale Industry in the industrial sector of Salt lake, would not

be a disqualification for a relation of the allottee for getting another plot of land for setting another industrial unit. Such is not the case here. In this case the original petitioner had violated the terms of allotment of the plot since beginning. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: M/s. Western Engineering Works. (supra) the relief claimed was for a direction upon the respondent authorities to allow the writ petitioners prayer for change of purpose of use for the concerned land. Though the writ petitioners applied for the same for long back, the state authority without considering the same forfeited the lease. Such is not the fact in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: Ashis Kumar Ghosh (supra) was also on an issue for consideration for change of user of a plot leased out to the writ petitioner for industrial purpose and on the meaning of "consent of lessor" for assignment of lease. The fact is not such in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: GPT Health CARE Private Limited & Anr. (supra) the writ petitioner lessee applied for change of name of the lessee in the records and for change of purpose of use of the land in question from office building to nursing home. The state authority declined the request of the writ petitioner without any reason, such is not the fact in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: B.M. Pal Chowdhury & Co. Pvt. Ltd. & Anr. (supra) an application made by the lessee for permission for change of purpose from cinema hall to commercial complex was directed to be considered. Such is not the fact in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: Smt. Deepa Chakroborty & Ors. (supra) on the basis of the notifications dated May 06, 2005 the application filed by the writ petitioner lessee to transfer the lease hold of the plot was initially declined and such decision was set aside by the writ court and the relevant state authority was directed to grant the permission. Such is not the fact in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: M/s. Din Chemicals & Coatings Pvt. Ltd. & Ors. (supra) on the basis of the said notifications dated May 06, 2005 the permission sought for by the writ petitioner lessee for change of use of the plot of land was allowed. Such is not the fact in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case. In the matter of: Shibapada Banerjee & Ors. (supra) the writ petitioners allottees could not pay a portion of the premium or salami on account of the allotment of the plot and more than after 30 years the allotment was said to be cancelled. Despite the payment being made. Such is not the fact in the instant case as discussed above. Therefore, the ratio decided in the said judgment has no application in the facts of this case.

33. In all the above referred judgments relied upon on behalf of the petitioners,

lease deeds were executed and possession of the land was also delivered. In those cases the terms of allotment were not violated, as in the instant writ petition, as discussed above. In the present case, since the basic terms of allotment was violated by the original writ petitioner, the lease deed was not executed and the possession of the plot was also not delivered. The original petitioner did not furnish the SSI Certificate which was a precondition for allotment and even after provisional allotment he acted in violation of the terms and conditions of the allotment and intended to set up a hotel on the plot by changing the purpose of use for which it was allotted without applying for and without obtaining any prior permission from the respondents.

34. On a close scrutiny of the impugned order of cancellation and resumption of the plot dated October 23, 2006, Annexure P-15 to the writ petition, this court is of the considered view that, the same was passed after considering all the materials available before the authority and in strict compliance of the order dated April 28, 2006. The same is a well-reasoned and well founded decision. There was no perversity on the said decision. The said impugned decision, therefore, does not call for any interference and the same stands affirmed.

35. In view of the foregoing discussions and reasons the writ petition WPA 172 of 2007 stands dismissed.

36. There shall, however, be no order as to costs.