

(2016) 02 CAL CK 0082
In the Calcutta High Court
Case No : W.P. 26613 (W) of 2015.

Smt. Pritha Dasgupta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 2 CalHCN 385 : (2016) 3 WBLR 112

Hon'ble Judges : Sanjib Banerjee, J.

Bench : Single Bench

Advocate : Rameswar Bhattacharjee, Soumen Bhattacharjee & Ram Uday Bhattacharjee, Advocates, for the Appellant; L.K. Gupta & Ayan Banerjee, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Sanjib Banerjee, J. - The challenge in the petition is to an order dated August 14, 2015 by which the petitioner's request for permission to commence construction on a Salt Lake land allotted in 1990 to the predecessor-in-interest of the petitioner was declined by the Land Manager. Such order of August 14, 2015 was passed following a previous order of this court of July 1, 2015 on WP 17033 (W) of 2010 by which the Land Manager was directed to reconsider the matter of resumption of possession of the plot after affording the petitioner an opportunity of hearing.

2. When this petition was received on October 14, 2015, the salient facts were noticed and the petitioner was given leave to apply before the Land Manager, Bidhannagar for extension of the time to complete the construction on the land as the sole heir of the original allottee of the land. The petitioner was granted a fortnight's time from the date of the order to make the representation and the Land Manager was requested to consider the same after affording a hearing to the petitioner, if deemed necessary. A reasoned decision of the Land Manager was required to be communicated to the petitioner within five weeks of the

receipt of the petitioner's application before the Land Manager. The order dated October 14, 2015 kept the impugned order of August 14, 2015 in abeyance.

3. Pursuant to such previous order on the present petition, an application was filed by the petitioner before the concerned Land Manager and the Land Manager has now rejected the same by a reasoned decision of January 5, 2016. The petitioner has been permitted to bring such subsequent event on record by filing a supplementary affidavit. The challenge to the order of January 5, 2016 is permitted to be canvassed to avoid multiplicity of proceedings and the scope of the petition is enlarged to such extent.

4. It is necessary, first, to notice the facts leading to the perceived failure by the original allottee or his heirs to construct upon the Salt Lake plot in question. The allotment was made in the year 1990 and possession was made over to the lessee around the same time. The original allottee, Tapan Dasgupta, died within a year of the allotment being made. There arose a dispute, thereafter, between the petitioner herein, who was the second wife of the original allottee, and the son of the original allottee through the first wife. A partition and administration suit was filed before the Civil Judge (Senior Division) Alipore being TS 72 of 1992.

5. Thus, it is evident that prior to the expiry of the three-year period within which the construction ought to have been completed in terms of the conditions attached to the allotment of the Salt Lake plot, the original allottee died, disputes arose between the heirs of the original allottee and such disputes were carried to an appropriate court.

6. In the said suit, a preliminary decree was passed in the year 1999. However, the suit lingered on thereafter and in 2011, the principal parties to such suit ? the petitioner herein and the son of the original allottee through the first wife ? settled their disputes and such son agreed to surrender his claim or rights pertaining to the Salt Lake plot in favour of the petitioner herein. On the basis of such settlement of 2011, a final decree was passed in the partition suit in 2015.

7. There does not appear to be any dispute at the moment that the petitioner is entitled to be regarded as the allottee or lessee of the concerned plot at CE-69. The petitioner applied to the office of the Land Manager after the final decree was passed for permission to construct upon the land in question. However, the respondent authorities found that since the land had been left unconstructed upon for a long period of time, the belated request for making a construction thereon was not in order. An order of resumption of possession of the relevant plot was passed. As noticed above, such order was set aside by requiring the Land Manager to reconsider the matter. Upon reconsideration, the Land Manager passed the order of August 14, 2015 which was the original challenge in this petition.

8. The subsequent order of January 5, 2016 records that though the plot was allotted in favour of the original allottee on August 3, 1967, but the lease was executed on July 13, 1990 due to delay attributable to the original allottee and

possession of the plot was handed over to the original allottee on December 7, 1990. According to the order of January 5, 2016, the lessee was required to complete the construction on the plot by December 7, 1993. The authorities apparently issued a notice on November 8, 2005 to remedy the breach within six months. Thus, the relevant order reasoned, that the allottee or his heirs had sufficient time to complete the construction and the time could not be endlessly extended.

9. Only three dates are relevant for the appropriate assessment of the matter: the date of possession of the plot to the original allottee, the date of death of the allottee and the date when the petitioner as the rightful successor-in-interest of the original allottee acquired absolute rights to the plot. Notwithstanding the original allotment in 1967, the condition of completing the construction within three years fastened on the allottee only upon the execution of the deed in 1990 and the possession of the plot being made over to the allottee on or about December 7, 1990. Prior to the expiry of the three-year period, the original allottee died. More importantly, prior to the expiry of the original period of three years from the date of the possession of the plot being made over to the original allottee, a real dispute arose between the heirs of the original allottee which culminated in a partition suit being instituted in the year 1992. The relevant court did not find that the suit was a contrived or collusive action. A preliminary decree was passed therein in 1999 and it was only in 2011 that the rival claimants to the plot settled their disputes. Nothing could have been done by the heirs of the original allottee in respect of the plot in question prior to the final decree being passed in the year 2015. The period between the death of the original allottee and the date of the final decree in the partition suit ought to have been excluded by the Land Manager since the heirs of the original allottee could not have taken any steps for constructing upon the land in question during such time.

10. It is not the Land Manager's case that there has been any delay on the part of the person now entitled to the plot to take steps for commencing construction on the plot after the final decree was passed in the partition suit. Indeed, not even a year has elapsed between the date of the final decree and now.

11. The nature of the power of judicial review exercised in this extraordinary jurisdiction under Article 226 of the Constitution is not appellate in form or substance. The exercise of the jurisdiction under Article 226 of the Constitution is primarily to ascertain whether a fair procedure has been adopted by an executive authority empowered to deal with the matter to arrive at a cogent decision. If the executive functionary, whose action or decision is challenged, is found not have had authority to deal with the matter or having followed an unfair procedure or having rendered an irrational or unreasonable decision, the writ court is entitled to step in.

12. By the order of October 14, 2015, sufficient indication was given to the executive functionary that the decision of August 14, 2015 was unreasonable and

the matter required reconsideration. Indeed, the order of July 1, 2015 on this petitioner's previous petition in this court may also have been taken by the Land Manager to be guiding the concerned officer towards a particular result. As is customary in this jurisdiction, the writ court would, at the first instance, ordinarily not do the thing or render the decision that the executive functionary ought to do in the circumstances. But when the executive authority is unreasonable and fails to be guided by the tenor of the writ court's previous order, it is open to the court to do exactly what the executive authority should have reasonably done.

13. The authority of the Land Manager to render the decision embodied in the impugned order is beyond question. The official adopted a fair procedure, heard out the petitioner and recorded his reasons for declining the petitioner's request. Two of the three boxes that are applicable in a matter of the present kind have to be ticked in favour of the executive functionary whose action or decision is called into question. Unfortunately, a petitioner questioning an administrative order succeeds when any of the three applicable boxes ? as to due authority, fair process and reasonable conclusion ? is not ticked in favour of the administrative authority. It is on the last count that the orders impugned fail since it is evident that no reasonable person in the position of the Land Manager ought to have denied the permission sought by the petitioner in the set of circumstances narrated above.

14. Since it is evident that the petitioner was prevented by reasons beyond her control to commence or complete the construction on the relevant plot prior to obtaining the final decree in the partition suit, the Land Manager's unreasonable decision to deny the petitioner an extension of the time to complete the construction on the plot as reflected in the impugned orders dated August 14, 2015 and January 5, 2016 is set aside.

15. The petitioner will have liberty to commence and complete the construction at the plot in question subject to the following conditions:

(i) The petitioner will take steps for mutation of the plot in favour of the petitioner within a fortnight from date on the basis of the petitioner being entitled to be the sole allottee or lessee of the land.

(ii) The petitioner will have to apply for obtaining the sanction of the building plan within six weeks of the mutation of the plot being allowed in favour of the petitioner.

(iii) The petitioner will have to complete the construction within a period of eighteen months from the date of sanction of the building plan.

(iv) At any rate, the construction must be completed within a period of thirty months from date.

16. It will be open to the Land Manager to monitor the construction such that it is completed within the time permitted by this order.

17. W.P. 26613 (W) of 2015 is allowed to the extent above, but without any order as to costs.

18. Urgent certified website copies of this order, if applied for, be made available to the parties upon compliance of the requisite formalities.