

(2009) 12 CAL CK 0013
In the Calcutta High Court
Case No : Writ Petition No. 27255 (W) of 2007

Susanta Kumar Ghosh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Contract Act, 1872 — Section 51

Citation : (2010) 3 CALLT 174

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : B.R. Bhattacharya, Mr. P.S. Basu, Mr. S.K. Das and Mr. T.K. Sen, for the Appellant; Gita Mukherjee for the State, for the Respondent

Final Decision : Dismissed

Judgement

Debasish Kar Gupta, J.—This writ application is filed by the petitioner assailing the order passed by the respondent No. 4 under his memo No. 1849(2)/UD/SL(AL)/9L-113/ 82 dated May 19/20 of 2005 with regard to the automatic cancellation of the conditional offer of allotment of the plot of land at Salt Lake.

2. The brief facts of the case are as follows:

An offer letter dated October 4, 1982 was issued to the petitioner by the respondent No. 4 for grant of lease of a plot measuring about 5 cottas more or less in Sector v. of Bidhannagar, Salt Lake Township for 999 years for the purpose of manufacturing Leather Goods subject to the terms and conditions mentioned in the above offer letter. Clause 3 of the above offer letter prescribed the mode of payment of Salami or premium for such allotment as follows:

3. Payment shall be made in the following manner:

(i) (a) Payment of full amount of the said salami or premium calculated provisionally at the abovementioned rate which is Rs. 20,000/- (Rupees Twenty thousand) only in one instalment within 90 days from the date of issue of this

offer and the balance salami as may be finally calculated on the basis of actual measurement of the plot and the location of the plot, after selection of the same, within 90 days from the date of issue demand notice, failing which interest @ 7% per annum will be charged for first year and @ per annum for the third year: OR

(b) Payment of fifty percent of the said provisionally calculated salami within 90 days from the date of issue of the allotment offer and the balance of the salami calculated on the aforesaid basis with interest @7% per annum from the date of issue of this offer if the payment is made within first 2 years and interest @ 10% per annum for the third year. If you fail to make payment of the balance sum and other dues within 3 years from the date of issue of this offer, this allotment offer shall stand cancelled and the salami already paid by you will be refunded after deduction therefrom administrative charges of Rs. 50/-

(ii) Choice of selection of the plot may be given to the allottee after he has deposited at least 50% of the salami.

(iii) For corner plots (if available and selected) an additional salami of 12% of the total salami will be charged.

(iv) You will have to pay rent, rate and taxes as may be prescribed from time to time.

(v) Necessary standard charges for fixation of boundary pillars will have to be paid by you when intimated.

3. Clause 15 provided for the mode of cancellation of the offer without notice to the allottee as follows:

15. This offer shall stand cancelled (without notice to you) for non-compliance of any of the above terms and conditions within the time-limit.

4. The petitioner deposited 50% of the total salami amounting to Rs. 10,000/- only by treasury challan in the office of the Urban Development, Department, Government of West Bengal in acceptance of the conditions provided in sub-clause(b) of Clause 3(i) of the aforesaid offer letter and took the possession of a plot of land lying and situated at plot No. 39, Block DN, Sector V, Salt Lake (hereinafter referred to as the said plot of land).

5. The respondent No. 5 issued a communication to the petitioner under memo No. 514 AL(Ex/D) dated February 16, 1984 directing him to pay the balance sum of Rs. 10,010.62 only along with an additional sum of Rs. 30 for the cost of fixing boundary pillars on the said plot of land.

6. According to the petitioner he could not pay the aforesaid amount in terms of the above direction due to financial stringency for illness of his mother. According to the petitioner he had been to the office of the respondent time and again for extension of time limit to deposit the balance salami as aforesaid. The petitioner submitted a written representation dated September 3, 1986 to the respondent No. 5 containing therein that the communication dated February 16, 1984 of the

respondent No. 5 had not been served upon him and consequent thereupon he had to collect a xerox copy of the above communication from the office of the respondent No. 5 on May 14, 1986. As a result the petitioner requested the respondent No. 5 to issue a fresh letter for enabling him to deposit the balance salami together with up to date interest. The above communication of the petitioner was followed by reminders dated April 8, 1987, January 18, 1988, August 18, 2004, January 28, 2005. Ultimately, the petitioner received a communication of the respondent No. 4 issued under his memo No. 1849(2)/UD/SL(AL)/9L-113/82 dated May 19/ 20, 2005 with regard to the automatic cancellation of the conditional offer of allotment of the said plot in favour of the petitioner due to failure on his part deposit the balance salami with interest in full within the maximum followable period of three years.

7. The petitioner filed an application under 226 of the Constitution of India bearing W.P. No. 6988(W) of 2006 (in re: Susanta Kr. Ghosh v. State of West Bengal & Ors.) challenging the aforesaid order dated May 19/20, 2005 and the above writ application was disposed of on July 17, 2007 by directing the principal secretary to the Government of West Bengal, Urban Development department to dispose of the representation dated July 20, 2006 of the petitioner by passing a reasoned order and after giving an opportunity of hearing to the petitioner. Pursuant thereto the respondent No. 3 passed an order dated July 17, 2007, rejecting the representation of the petitioner after giving him an opportunity of hearing. Hence this writ application.

8. It is submitted by the learned counsel appearing for the petitioner that the petitioner could not pay the balance salami together with interest in respect of the said plot of land complying with the conditions prescribed in sub-clause(b) of Clause 3(i) of the offer letter without any fault or laches on his part. According to him the communication dated February 16, 1984 was not served upon him and consequent thereupon he had to collect a Xerox copy of the same from the office of the respondent No. 5 on May 14, 1985. At that point of time it was not possible for him to deposit the money without supply of a challan by the respondent authority for depositing the balance salami together with up to date interest thereon. As a result, the petitioner had to submit a number of representations but the respondent authority did not pay any heed to the same. Therefore, the order dated May 19/20, 2005 was not valid in the eye of law. According to the learned counsel the order dated July 17, 2007 is liable to be set aside because of its perverse findings. According to him extraneous grounds were taken into consideration for passing the above order.

9. It is further submitted by the learned counsel appearing for the petitioner that the State Government did not refund the amount which had been paid by the petitioner towards part payment of salami. Therefore, the impugned order of cancellation of allotment of the said plot was bad in view of the provision of sub-clause(b) of Clause 3(i) of the offer letter.

10. It is submitted by the learned counsel for the State Government that the said

plot of land was allotted in favour of the petitioner on the basis of the terms and conditions mentioned in the offer letter dated October 4, 1982. The petitioner failed to comply with the conditions prescribed in Clause 3 of the above offer letter. Consequent thereupon the allotment of the said plot of land stood cancelled automatically in terms of the conditions prescribed in Clause 15 of the aforesaid offer letter. According to the learned counsel the petitioner approached the authority on September 3, 1986 for the first time for extension of time by issuing a communication afresh for payment of balance salami with up to date interest. The above approach was beyond the time limit prescribed in Clause 3 of the offer letter. Drawing the attention of this Court towards the communication of the petitioner dated August 18, 2004, it is submitted by the learned counsel appearing for the State that admittedly the petitioner approached the authority on January 18, 1988 for the first time to pay the balance amount of salami. According to the learned counsel the terms and conditions prescribed in the aforesaid offer letter were binding in nature and on the occasion of failure to comply with any of the above terms and conditions, the cancellation of allotment of the said plot of land in favour of the petitioner was an inevitable consequence.

11. I have heard the submissions made by the learned counsels appearing for the respective parties and I have considered the facts and circumstances in of this case. Admittedly, the State Government sent a proposal by communication dated October 4, 1982, signifying to the petitioner the willingness to allot a plot at Salt Lake in his favour with a view to obtaining the assent of the petitioner on the basis of the terms and conditions contained therein. It was an offer to be bound by a promise.

12. The terms of the above offer with regard to payment of salami for allotment of a plot of land at Salt Lake and the cancellation of such allotment without notice to the petitioner as a consequence of failure on his part to pay the salami in terms thereof were certain. So, in accordance with the provisions of sub-section (a) of section 2 of the Indian Contract Act, 1972, the aforesaid offer was capable of being accepted and to give rise to a legal relationship. A Division Bench of Mysore High Court observed in *Coffee Board, Bangalore v. Janab Dada Haji Ibrahim Halari* reported in AIR 1966 Mys 118 as follows:

20. It is a firmly established rule that, as in the case of a contract the terms of an offer must be certain, and, the offer should be such as in law is capable of being accepted and gives rise to a legal relationship if the terms of an offer are unsettled or indefinite, its acceptance cannot create any contractual relationship and the vagueness of the offer would not carry any contractual force. Nothing is more firmly settled than that the parties must make their own contract, which means that they must agree as to its terms and that if they do not make any such contract in that way, the Court cannot make a contract for them.

13. As soon as the above offer was accepted by the petitioner by way of paying fifty percent amount of salami within the period mentioned in the offer letter, a concluded contract between parties came into existence in accordance with the

provisions of sub-section (b) of section 2 of the Indian Contract Act, 1872, and the State Government stood precluded from revoking the same except in accordance with the terms and conditions provided in the offer letter dated October 4, 1982.

14. It is revealed from the materials on record that the petitioner could collect a Xerox copy of the challan dated February 16, 1984, on May 14, 1986 for payment of balance amount of salami together with interest and cost of boundary pillars. It is also revealed from the materials on record that the petitioner approached the respondent authority for the first time by his communication dated September 3, 1986, for furnishing challan afresh calculating the balance amount of salami together with up to date interest as also for extension of time for enabling him to perform the promise held by him.

15. The contract in the instant case consisted of reciprocal promises to simultaneously performed. The maximum time limit prescribed in sub-clause(b) of Clause 3(i) of the offer letter dated October 4, 1982, expired after three years from the date of that offer letter. The performance of the petitioner during the aforesaid period can be ascertained from the statements made by him in paragraph 4 at page 6 of the writ petition which is quoted below:

4 Your petitioner's mother was suffering from "cancer". For treatment of a cancer patient your petitioner exhausted all his resources and became almost penniless. It, therefore, became difficult for him to make payment of various sums including the balance sum payable for this plot of land shortly. As your petitioner could not make payment of the balance sum he had been to the office of the respondent time and again and explained his difficulties who are hearing your petitioner's fate condoned with the assurance that time for depositing the balance sum would be extended. No formal letter of extension of time for depositing the balance sum was received by your petitioner in spite of his repeated attendance to the respondents. In this state of affairs your petitioner felt that formal application for extension of time to deposit the balance sum should be made by him and as such he made a formal representation to the office of the respondent No. 5 on 3rd September 1986 and 8th April 1987 requesting to accept the balance premium or salami of Rs. 10,010.62 along with Rs. 3% towards cost for fixing boundary pillars. Copies of petitioner's such formal representation and/or letters dated 3rd September 1986 and 8th April 1987 are annexed hereto and collectively marked with letter "P3". Though both the said letters were received by the respondent No. 4 no reply to any of the said letters was received.

16. From the above statements it could easily be ascertained that the petitioner was not ready to perform his reciprocal promise to pay the balance amount of salami together with interest thereon within the maximum period of paying the same due to siphoning out of his fund for the treatment of his mother. Nor he approached the authority within the maximum allowable time expressing willingness to pay that money.

17. The provisions of section 51 of the Indian Contract Act, 1872, are relevant for dealing with the above contingency and those are quoted below:

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform. When a contract consists of reciprocal promises to be simultaneously performed no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

18. Taking into consideration the statements made by the petitioner in the writ application as mentioned hereinabove, I find that the petitioner was not entitled to insist upon the respondent authority to perform the promise without himself performing what he had agreed to do. Consequent thereon the allotment of the said plot in favour of the petitioner stood cancelled without further notice to him in terms of the provisions of Clause 15 of the offer letter.

19. Since it was not condition precedent in terms of the offer letter to refund the part payment on or before the date of expiry of maximum time limit for payment of balance salami, it was open for the respondent authority to refund the part payment to the petitioner subsequently.

20. The fact of dealing with the extraneous considerations by the Principle Secretary to the Government of West Bengal, Urban Development Department while passing the order dated July 17, 2007, does not improve the case of the petitioner. Even in the event of setting aside the above order, the cancellation of the allotment of the said plot by operation of the provisions of Clause 15 of the offer letter remains unchanged. The propriety of the order dated May 19/20, 2005, remains valid in the eye of law.

21. In view of the above discussions and observations, this writ application is dismissed.

22. There will be, however, no order as to costs.

Urgent xerox certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Later:

A prayer is made on behalf of the petitioner for stay of operation of this order. Since the writ petition has been dismissed there is no scope for staying of operation of this order in this writ application.