

SUPREME COURT OF INDIA

Joydeep Mukharjee

Vs.

State of West Bengal & Ors.

W.P.(Civil)No.43 of 2006

(S.H. Kapadia,CJI., K.S. Panicker Radhakrishnan and Swatanter Kumar,JJ.,)

03.02.2011

ORDER

1. Petitioner, who claims to be a public spirited person from the State of West Bengal and a member of the All India Legal Aid Forum, which is an organisation stated to be working for upliftment of the downtrodden, has filed the present Public Interest Litigation claiming the following relief:

- ” a) allow this writ petition and appoint a committee functioning under direct supervision of the court to scrutinize all the cases of discretionary allotments after due notice to the allottees and based upon this committee's report issue a writ of and/or direction in the nature of mandamus quashing all the allotments of Government lands in Salt Lake City made unconstitutionally, illegally, arbitrarily, whimsically, capriciously with mala fide motive and in clandestine manner in colourable and arrogant exercise of so-called "Discretionary Power" by the respondent; and
- b) pass an order directing the Calcutta High Court to send the case record of CO No.7553(W) of 1986, Bidhannagar (Salt Lake) Welfare Association vs. State of West Bengal to furnish the same to this Hon'ble Court with notice to the petitioner therein and to hear and dispose of the said CO No.7553(W) of 1986 on its merit after setting aside the order dated 2.9.2003.
- c) direct the respondents herein to produce the Master Plan as originally framed from the original records of the Salt Lake City.
- d) impose exemplary damages of substantially high amount on the respondent No.2 to 6 to set a deterrent example and also to compensate the public exchequer for the loss caused to the general public for reasons of discretionary allotment of valuable plots by the Respondents to suit their personal, political, nepotistic and financial ends; and
- e) pass any other order further order/s as this Hon'ble Court may deem fit and proper."

2. Above prayers are claimed on the averment that even after pronouncement of judgment of this Court in *Dipak K. Ghosh v. State of West Bengal*¹ there has been violation of the original Master Plan of the Salt Lake City against which several demonstrations were taken out. The petitioner also submits that the issues raised in Writ Petition No. 7553 filed in the Calcutta High Court have not been settled by that Court or even by this Court. In his submissions, these issues require consideration being questions of great importance. According to the petitioner, the Salt Lake City was the result of dream of the late Chief Minister Dr. B.C. Roy of establishing a new township for the lower and middle income groups on the eastern side of Calcutta (now Kolkata) and the land to be used for that purpose was the reclaimed land of the Salt Lake. In the year 1967, a Master Plan was prepared under the Government instructions and the Government was expected to develop the area in accordance with that Master Plan which had, inter alia, made the following provisions:

- "a) 60% plots are earmarked as residential plots.
- b) Separate drainage and sewerage system.
- c) Open space to the tune of 12%
- d) Location of commercial plots in one zone.
- e) Location of few shop allowable plots meant to cater to the local needs of each residential plots.
- f) Roads on different types.
- g) Open space and other amenities such as Park.
- h) Separate area to reserve for co-operative or different organisations like CMDA Union Government Departments, Administrative building local centres, play ground, education institutions and also suitable allocation of Parks in each block."

3. The development scheme contained various restrictions regarding user of plots, construction of buildings, transfer and/or partition of plots and buildings. The West Bengal Government Township (Extension of Civic Amenities) Ordinance, 1975, was promulgated to provide for an extension of civic amenities of Government Township in West Bengal and for the matters connected therewith and incidental thereto. This Ordinance was replaced by the West Bengal Government Township (Extension of Civic Amenities) Act, 1975 (hereinafter referred to as 'the Act'). Section 2(b) of the Act enumerated different civic amenities like drainage, sewerage, sanitation, roads, maintenance, public health, parks etc. Till about 1977, according to the petitioner, there was great transparency in functioning of the Administrator, appointed under Section 4 of the Act, who was responsible for implementation of the provisions of the Act and except 500 plots, out of nearly 6000 plots, rest have been distributed.

4. It is alleged that the Chief Minister's discretionary quota was created by unlawful and confidential executive orders without even informing the Cabinet and illegally usurping the statutory powers of the Administrator. Further that the State Government formed a Salt Lake Advisory Committee which started distributing the plots clandestinely. Certain deviations were also made from the Master Plan. The Government started carving out new residential plots from the land originally earmarked for civic amenities, ecological balance, maintenance, public facilities etc. in violation of the approved Master Plan. Sometime in the year 1985, in view of the serious public protest, the Government dissolved the Salt Lake Advisory Committee and amended the Act by West Bengal Government Township (Extension of Civic Amenities) (Amendment) Act, 1985 (for short, the '1985 Amendment Act'). The amendment also validated the allotments which had been made since October 1, 1976.

5. As already noticed, Writ Petition No.7553 of 1986 was filed before the Calcutta High Court praying for issuance of an appropriate direction to the authorities not to deviate from the Master Plan and to declare the 1985 Amendment Act as ultra vires. Still another writ petition being Writ Petition No.17306 of 1997 was filed before that Court challenging the exercise of discretionary powers by the Chief Minister in regard to allotment of plots in the Salt Lake City. Challenge was also raised against the deviation from the Master Plan and various instances of the same were given in that writ petition. The writ petition, particularly, referred to Sectors 1, 2 and 3 of the City. As alleged by the petitioner herein, Writ Petition No. 7553 of 1986 came to be dismissed for default without deciding the case on merits vide order dated September 2, 2003.

6. Writ Petition No. 17306 of 1997 also came to be dismissed by the judgment of the Calcutta High Court dated February 5, 1999, primarily, on the ground that there was non-joinder of necessary parties, i.e. the persons to whom the allotments have been made under the discretionary quota and whose names had been disclosed in the reply affidavit filed in those proceedings have not been made parties in that petition. The learned Single Judge further observed that an interim order dated June 11, 1987 passed by another Bench of that Court in Writ Petition No.7553 of 1986 had allowed the Chief Minister to make allotment of plots from his discretionary quota and that order was still subsisting. As that order was passed in independent proceedings no directions in that regard were issued. But, however, the Court cautioned the Chief Minister that discretion in allotment of plots should be exercised in accordance with the criteria stated by the Supreme Court in the case of Common Cause, *A Registered Society v. Union of India*²

7. The petitioner in that case filed a Special Leave Petition before this Court wherein leave was granted and it came to be registered as Civil Appeal No.6707 of 1999. This Court, vide its judgment dated November 19, 2004 titled as *Tarak Singh v. Jyoti Basu*³ dismissed this Civil Appeal along with one writ petition, being Writ Petition No. 216 of 1999 titled as Dipak K. Ghosh v. State of West Bengal, which was directly filed as a Public Interest Litigation before this Court raising similar challenges. In these proceedings, vide order dated November 13, 2003, this Court allowed the impleadment of Respondent No. 24 (to be read as

Respondent No. 8 vide order of that Bench dated December 17, 2004), Mr. B.P. Banerjee, former Judge of the Calcutta High Court and passed the final order/judgment dated November 19, 2004 quashing the allotment made in favour of that Respondent despite the fact that he had raised construction on that plot. This writ petition was dismissed qua all the respondents except against Respondent No. 24. The writ petition was allowed qua that Respondent on the ground that the learned Judge had compromised his divine duty with his personal interest during the hearing of Writ Petition No.7553 of 1986. It is further the allegation of the petitioner that the plots from the discretionary quota were allotted on political and financial consideration and in lieu of favourable services rendered and that there was a complete abuse of the discretionary quota by the authorities concerned and even the change in land use from commercial to residential and vice-versa on the will of the allottees was in arbitrary manner.

8. Petitioner further prays that this Court should appoint a Committee to scrutinize all those cases where allotments have been made from the discretionary quota and quash all the allotments made thereunder. The challenge of the petitioner is primarily based upon the ground that discretionary quota for distribution of plots in the Salt Lake City was arbitrary, illegal and in violation of the Master Plan. Resultantly, it was in violation of equality and right to life as enshrined in Articles 14 and 21 of the Constitution of India. Further, by allotting lands earmarked for civic amenities, the State has violated its promise extended in the Master Plan on the basis of which people have purchased plots in the scheme and, as such, these allotments tantamount to undue enrichment of the State at the cost of the allottees and, therefore, such allotments are in violation of the law stated by the Supreme Court in the case of Common Cause, A Registered Society (supra).

9. Before we proceed to discuss the merits of the challenge made by the petitioner to the discretionary allotment, we would like to complete the factual matrix of the case by referring to the facts which appeared from the record and/or the reported judgments dealing with the same subject matter. As already noticed, Civil Appeal No. 6707 of 1999 was heard along with Writ Petition No. 216 of 1999 by this Court. During the pendency of these proceedings, Mr. B.P. Banerjee was ordered to be impleaded as Respondent No. 24 and thereafter he appeared before this Court and contested the matter. The direction with regard to cancellation of the plot in his favour was finally passed by this Court. While allowing the appeal limited to that extent, the writ petition as well as the appeal was dismissed against all other respondents and the Court held as under:

"20. It is also contended by Mr Ganguli that a large number of Judges of the High Court and the Supreme Court have also been allotted plots in Salt Lake City under the discretionary quota of the Chief Minister and it will be unfair to single out Respondent 24 for meting out a different treatment. At the time of hearing of this writ petition, we requested the learned Senior Counsel to inform us whether any other Judge or Judges obtained the allotment order from the discretionary quota of the Chief Minister by compromising his judicial duties, we would also proceed against such allottee. He, however, was unable to receive any instructions in this behalf. It is trite, unequals cannot be treated equally.

24. In the backdrop of the facts and circumstances, as recited above, we are of the view that the conduct of the learned Judge is beyond condonable limits. We are aware that the order, we propose to pass, no doubt is painful, but we have to perform a painful duty to instil public confidence in the judiciary. It is a case where a private interest is pitted against the public interest. It is now a well-settled principle of law that in such cases the latter must prevail over the former. Consequently, the order dated 24-7- 1987 passed by the Chief Minister and the formal allotment order dated 16-10-1987 allotting Plot No. FD-429 measuring 4 cottahs in Salt Lake City in favour of Respondent 24 Justice B.P. Banerjee are hereby quashed and cancelled. The plot shall stand vested with the Government.

27. The net result is that Writ Petition No. 216 of 1999 against Respondent 24 is allowed and is dismissed qua other respondents. CA No. 6707 of 1999 is dismissed. Rule is discharged.

28. We clarify that dismissal of the writ petition against other respondents should not be misunderstood as approval of the policy decision of the Government with regard to the allotment of land by the Chief Minister from his discretionary quota."

10. As the directions contained in the case of Tarak Singh (Supra) were not being properly implemented by the State Government and the concerned authorities, Mr. Dipak Ghosh, the petitioner in Writ Petition No. 216 of 1999, filed another application for strict implementation and compliance of the above order passed by this Court. In those proceedings, applications were also filed by Mr. B.P. Banerjee stating that the order of the Supreme Court in Tarak Singh's case (supra) is a nullity, void and non est against him. In its judgment in the case of Dipak Ghosh (supra), this Court dismissed the applications filed by Mr. B.P. Banerjee and directed that the order of the Court in Tarak Singh's case (supra) be complied with. The Court also specifically directed that no application filed by either of the parties in this case shall be accepted by the Registry without leave of the Court. Since then, no application appears to have been filed in either of these proceedings.

11. The above prolonged history of this case clearly shows that in proceedings before the Calcutta High Court, the merit or otherwise of the discretionary allotments made by the Chief Minister was not decided in accordance with law. One writ petition, being W.P. No. 7553 of 1986, came to be dismissed for default vide order dated September 2, 2003 which order attained finality as no further proceedings were taken by the petitioners therein. Thereafter, WP No. 17306 of 1997 came to be dismissed, primarily, on the ground of non-joinder of necessary parties and the allotments under the discretionary quota of the Chief Minister were not set aside. On the contrary, while referring to the order dated June 11, 1987 of the other Bench in Writ Petition No. 7553 of 1986 that was still subsisting, it was observed that the Chief Minister was permitted to make allotments from the discretionary quota, however, in accordance with the judgment of the Supreme Court in the case of Common Cause, A Registered Society (supra). A Civil Appeal No. 6707 of 1999 against that judgment also came to be dismissed by this Court along with Writ Petition No.216 of 1999 which had also questioned the discretionary allotments. In other words, the allotment of large

number of plots in Salt Lake City, Kolkata had been the subject matter of different writ petitions and/or appeal before the Calcutta High Court as well as this Court and for one reason or the other the allotments in favour of the private parties had not been set aside, though there were doubts raised by the Calcutta High Court as well as this Court regarding allotments under the discretionary quota of Chief Minister and the manner in which they were made. However, as all these judgments have attained finality, they cannot be permitted to be agitated over and over again including in the present writ petition. The principles of finality as well as fairness demand that there should be an end to the litigation and it is in the interest of public that the issues settled by the judgments of courts, including this Court, which have attained finality should not be permitted to be re-agitated all over again, interest rei publicae ut sit finis litium.

12. We are unable to appreciate that para 28 of the judgment of this Court in the case of Tarak Singh (supra) leaves the questions open for a fresh adjudication. All that the Bench has said in that case was that the Court had not approved the policy decision of the Government with regard to allotment of land by the Chief Minister from his discretionary quota, but at the same time what is of significance is that none of the allotments made except that in favour of Respondent No. 24, was set aside by the Court. The Court then clarified that it had not granted approval to the action of the State Government of making discretionary allotments in the manner in which they had been made. This is further substantiated by the fact that allotment in favour of Respondent No. 24 was specifically set aside. Thus, the arguments advanced on behalf of the petitioner that para 28 of that judgment leaves all issues open for future determination in this proceeding or like cases, is legally unsustainable and misconceived.

13. The jurisdiction of this Court, in a Public Interest Litigation, cannot be pressed into service where the matters have already been completely and effectively adjudicated upon not only in the individual petitions but even in the writ petitions raising larger question as was raised in Writ Petition No. 216 of 1999 before this Court.

14. Another important aspect of this case which has persuaded us not to interfere with settled rights and grant the prayers in this Public Interest Litigation is that an affidavit on behalf of the State of West Bengal has been filed recently on December 3, 2010 revealing certain pertinent facts for proper adjudication of this case. The affidavit, sworn by Mr. Abanindranath Palodhi, Joint Secretary, Urban Development Department, Government of West Bengal, has stated that guidelines for allotment of both individual and co-operative residential plots in Salt Lake were issued by a Government order on December 7, 1999 on the strength of the Cabinet decision taken on November 10, 1999. The then Chief Minister, Late Mr. Jyoti Basu, had already allotted 276 plots out of 290 plots from his discretionary quota which were available at that point of time and presently only 14 plots are left in that discretionary quota. This affidavit further states as under:

"Subsequently, on 7th December, 1999 four orders were issued with regard to allotment of residential plots, non-residential plots for educational institutions and for allotment of plots for cultural, institutional, industrial, commercial etc. purposes at

Salt Lake. All these notifications required advertisement in newspapers and invitation of application. But what is significant is that no guidelines had in fact been framed for allotment of plots from the discretionary quota of the Chief Minister, as a result of which all the 14 plots belonging to the discretionary quota, which were in existence in February, 1999, still continue to remain unallotted. As a result, these 14 plots will no more be treated as part of the discretionary quota.

(Emphasis supplied by us)

15. From the above specific averments made in the affidavit, it is clear that there are very few plots presently left for allotment under the discretionary quota. The State Government has taken a conscious decision not to make further allotments under the discretionary quota even qua those plots. As far as already allotted plots are concerned, the rights of the parties appear to have been settled and attained finality, as in none of the writ petitions/appeals referred above any of these allotments was set aside by the Courts of competent jurisdiction. The petitioners in those cases, in fact, did not even care to take further proceedings to have the matters adjudicated before the higher Courts and in accordance with law. In these circumstances it will be a futile exercise of jurisdiction of this Court to reopen the whole controversy once again. The questions raised in the present petition have become merely academic as the rights of the parties have been finally settled and further the parties have acted thereupon to their respective prejudices. Without intending to state any law in the peculiar facts and circumstances of the present case we find no merit in this Public Interest Litigation which is dismissed. However, there will be no order as to costs.

Judgment Referred.

¹(2006) 3 SCC 0765

²(1996) 6 SCC 0530

³(2005) 1 SCC 0201