

Ram Chandra Prasad Vs. Chief Executive Officer, Kolkata Metropolitan Development Authority and ors.

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Court : Kolkata

Decided On : Feb-05-2008

Reported in : AIR2008Cal100,(2008)2CALLT197(HC)

Judge : Surinder Singh Nijjar, C.J. and ;Indira Banerjee, J.

Appeal No. : G.A. No. 433 of 2007

Appellant : Ram Chandra Prasad

Respondent : Chief Executive Officer, Kolkata Metropolitan Development Authority and ors.

Advocate for Def. : K.N. Mukherjee, ;Anil Mallick and ;Manashi Bhattacharyya, Adv.

Advocate for Pet/Ap. : Party-in-Person

Disposition : Appeal dismissed

Judgement :

Surinder Singh Nijjar, C.J.

1. In this appeal the petitioner has challenged the order dated 6th of January, 2007 passed by the Learned single Judge in G.A. No. 79 of 2007 arising out of W.P. No.

The appellant is a practicing advocate of this Court. He has been pursuing this litigation since 26th of September, 1988. The grievance* is that he ought to be allotted a residential plot in East Calcutta Area Development Project, Phase-1 (hereinafter referred to as the Project). His claim has been successively rejected by the Executive as well as this High Court in a number of proceedings to which we shall make a reference presently.

2. The pleaded case of the appellant is that in February, 1987 applications were invited from the public for an allotment of residential plots in the Project. The applicants were to be divided into 4 categories based on income. The appellant had submitted the applications for a residential plot reserved for Higher Income Group category (HUG). There were 50 plots available in the category. The applications were initially required to be submitted on 11th May, 1987. The date was further extended to 30th May, 1987. The lottery was held on 30th July, 1988. It was held in the presence of a number of notable dignitaries of Kolkata. The petitioner was not successful in the lottery. He, therefore, filed W.P. No. 4633 of '1988 on 26th September, 1988 challenging the lottery. An interim order was passed restraining the respondent No. 1 from giving any effect to the lottery. Writ applications were filed by two other applicants and similar interim order were passed therein. On 29th May, 1992 the interim orders passed in the three writ applications were modified to the extent that three plots would be set apart for the three writ petitioners but the remaining process would continue. The Advocate General was also directed to try to find out some solution for allotment of the plots to the petitioners in the meantime without prejudice to the contentions of the parties. This position was clarified on 29th July, 1992 by an order which stated that:

The whole purpose of passing that order on 29-5-1992 was that 3 plots will be kept apart and if the writ petitioners succeed then they will be allotted those 3 plots and the other plots will be allotted to the allottees as the injunction matter was pending for a long time. As such it is ordered that the respondent Calcutta Metropolitan Development Authority will be at liberty to allot the other plots keeping the other 3

plots to the different allottees, as per the lottery held by the Calcutta Metropolitan Development Authority.

This order is passed without prejudice to the rights and contentions of the parties.

Let this order be incorporated in the order dated 29-5-1992.

3. In the meantime, Advocate General was asked to try to find out some solution in the matter, if possible. The two writ petitions of the other candidates were dismissed during the pendency of this petition. Thereafter, Justice Ruma Pal dismissed the writ petition by judgment and order dated 30th of August, 1996. It is the claim of the appellant that the words 'if possible' in the order dated 29th of July, 1992 were incorporated in the order in connivance with the Court Officer. The appeal filed by the appellant was dismissed by a Division Bench consisting of Justice Altamas Kabir and Asit Kumar Bisi by judgment and order dated 20th July, 2004. However, after dismissing the appeal, the Division Bench was pleased to accept the submission of the appellant that the appeal be treated as a representation which may be considered by the State Government. The Division Bench, therefore, observed 'we accordingly disposed of the appeal leaving it to the State Government to consider the case of the petitioner, if the same is possible within its discretionary powers.' Thereafter, the appellant filed G.A. No. 535 of 2005 for clarification of the order dated 20th of July, 2004. The aforesaid application was disposed of by order dated 5th October, 2004. In the order dated 20th of July, 2004 it had been mentioned that the lottery had been held by the State Government on 30th of July, 1988 for residential flats. It was stated by the appellant that the same should read allotment of residential plots. Necessary clarification was made. Thereafter, the appellant filed W.P. No. 604 of 2006 which was also dismissed by a learned single Judge of this Court on 29th of November, 2006. Thereafter, the appellant filed Review Application seeking review of the order dated 29th of November, 2006. But the Review Application was also dismissed by an order dated 16th of January, 2007. This appeal has been filed against the order dated 16th of January, 2007. We had directed the respondents to file the affidavit-in-opposition. The appellant also filed supplementary affidavit on 30th August, 2007, A further affidavit-in-reply was filed on 17th December, 2007.

He has also filed written submissions. In the written submissions the appellant has put forth the plea that the holding of the lottery was not only against the rules and regulations but also against the brochure prescribed by the CMDA for holding the lottery. He has also pointed out that the action of the State is mala fide. He has reiterated a number of submissions which have been considered by Justice Ruma Pal in the order dated 30th August, 1996. Justice Ruma Pal has specifically noticed that the submissions of the petitioner can be classified under three broad heads viz. first is the actual holding of the lottery, the second is the mode of selection and the third arises out of the Court's orders. The final submission of the petitioner was that he was a member of the legal profession and a Senior Central Government Counsel and owing to his special status was entitled to particular consideration. It was also reiterated that the Advocate General had not considered the case as directed by the Court. It was further prayed that the three plots which had already been set aside for the three writ petitioners should in all fairness be allotted to them. Each and every submission which is sought to be made by the appellant in the present appeal have been answered by the Learned single Judge in the judgment dated 30th August, 1996 in W.P. No. 4633 of 1998. The aforesaid judgment was challenged in appeal and it was upheld. Thereafter, again by an order dated 1st July, 2005 A.P.O. No. 401 of 1996 G.A. No. 535 of 2005 was disposed of by a Division Bench of this Court by directing the KMDA to consider the representations of the appellant which had been sent to the KMDA by the State Government in terms of this Court's order dated 20th July, 2004, subsequently modified by order dated 5th October, 2004. This representation was decided against the petitioner. He, thereafter, filed contempt application C.C. No. 1 of 2006. The petitioner had also filed G.A. No. 128 of 2006 seeking review of the order dated 20th July, 2004 by which the Division Bench had disposed of the appeal by directing the State Government to consider the appeal as a representation, in its discretionary powers, if it is possible. All these applications were again dismissed by a Division Bench of this Court on 6th of April 2006. From the above it becomes apparent that the claim of the petitioners has been rejected repeatedly.

4. By order dated 15th of March, 2007 Division Bench of this Court of which one of us was a party, (Surinder Singh Nijjar, the Chief Justice) decided G.A. No. 433 of

2007 in A.P.O.T. No. 28 of 2007. In this order it was observed that in the order dated 28th of July 2004 a direction had been issued to the State Government to consider the case of the petitioner if the same is possible within its discretionary powers. The State Government ought to take a decision on the representation of the petitioner. This order was passed on 15th of March, 2007. Pursuant to the aforesaid direction the Principal Secretary, Government of West Bengal, Urban Development Department has reconsidered the entire matter and again rejected the claim of the petitioner. Before passing the aforesaid order the petitioner was duly heard. He had even placed the written submission before the Principal Secretary.

5. After anxious consideration of the entire material and the record we are of the opinion that the appellant has failed to make out a legal right for allotment of any residential plot. No direction can be issued to the State of West Bengal to exercise its discretionary powers to allot a residential plot to the appellant. No reason has been pointed out by the appellant which would tend to indicate that the order passed by the Secretary after due consideration suffers from the vice of arbitrariness or mala fide. We may notice here the concluding paragraphs of the order passed by the Secretary:

Thus matter has arisen from the application of the petitioner for land in a project developed by the KMDA. The State Govt. is in no way concerned with the allotment of plots in the said project. The mode of allotment of plots developed by KMDA is decided by KMDA itself and not by the State Government. However, the Hon'ble Division Bench has observed that the matter has to be decided by the State as it relates to the discretionary power of the State Govt. In this context it may be mentioned that the State Govt. through the Urban Development Dept. is involved in allotment and distribution of plots in Salt Lake. Previously some plots in Salt Lake were allotted under the discretionary quota of Chief Minister. However, since the allotment of land through discretionary quota was challenged in Apex Court in 1997, no plots in Salt Lake has been allotted under any discretionary quota. Moreover, Govt. framed guidelines in December, 1999, for allotment of plots in Salt Lake which stipulate that the public advertisement would be issued for allotment of plots in Salt Lake. Therefore, the State Government is not allotting any

plot under any discretionary quota at present.

The case of Shri Ram Chandra Prasad was considered at the highest level. No exceptional circumstances can be attributed to the case of Shri Ram Chandra Prasad who is a practicing advocate and possibly can afford a private accommodation. There is no specific ground and reason for which any discretion should be exercised in favour of Shri Ram Chandra Prasad for allotment for a plot of land and therefore any deviation from the policy of allotment would not be possible on the part of the State Government. However, in future if plots are offered for allotment by KMDA, Shri Prasad may participate in the same by filing necessary application.

On consideration of the whole matter and the fact that the State Government is not allotting plots under any discretionary power, that the matter exclusively relates to KMDA which has its own procedure for allotment of plots developed under its projects and also the fact that there is no exceptional circumstances for exercising discretion in this case, it is therefore ordered that it would not be possible to consider the petitioner's case for allotment of a HIG plot by the State Government by way of exercising any discretionary power.

6. These observations of the Principal Secretary make it abundantly clear that the officer was fully conversant with the entire history of the matter. The reasons stated in support of the conclusions are cogent and relevant. Therefore, the order cannot be said to be whimsical or arbitrary.

7. We notice here a submission made by the petitioner which needs to be stated only to be rejected. The petitioner submits that he should be treated as a sportsman, as he has appeared in Court in numerous important cases. Therefore, he should be considered of special status. The petitioner further claims that he should be treated as great 'sportsman' in the sense that he is senior Central Government Counsel Group-I. Moreover, he has been trying his level best to get himself elected as the President of India in 1997, 2002 and 2007 to get rid of committed judiciary and dishonest politicians. By any stretch of imagination we find it a little difficult to accept appearance of a lawyer in Court as a sport. It is true that our system of justice is often referred to as being adversarial, where the lawyers

make submissions on behalf of their clients, often diametrically opposed to each other. But this activity can hardly be described as a sport. We certainly cannot compare the lawyer of the present day India to the Gladiator of the Roman Era. In law even imagination has to be within reasonable limits. We, therefore, do not find any merit in any of the submissions of the petitioner.

8. We are of the considered opinion that there is no merit in the appeal. The appeal is, thus, dismissed.

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