2025 INSC 245

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2025
(Arising out of SLP(C) Nos. 5517-5519 of 2024)

RUPA AND CO. LIMITED AND ANOTHER
...APPELLANT(S)

VERSUS

FIRHAD HAKIM AND OTHERS ...RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.

2. Heard Shri Nalin Kohli, learned Senior Counsel for the appellants, Ms. Madhumita Bhattacharjee, learned counsel for respondent No.7 and Shri Kartikeya Bhatt, learned counsel appearing for the officers of the West Bengal Housing Infrastructure Development Corporation Limited (for short, 'HIDCO').

3. At the outset, Ms. Bhattacharjee submits that the Chief Secretary, West Bengal has since changed and cause title may be amended accordingly.

4. We permit the appellants to forthwith amend the cause title so as to change the name of Respondent No.7 (Chief Secretary, West Bengal).

5. These appeals raise a very serious question about maintaining the dignity and authority of the High Court. The issue raised is as to whether the High Court should act leniently in matters where an issue with regard to the obedience of its mandamus is concerned.

6. Ms. Bhattacharjee, learned counsel for respondent No.7 vehemently opposes the petition. She submits that the appeals are against an interlocutory order and the contempt petitions are still pending before the High Court and as such, this Court should not interfere in the present proceedings. Ms. Bhattacharjee further submits that the State Government is willing to abide by the orders of the High Court. However, the only decision is to direct the appellants to pay the market rate so as to balance the equities.

7. Shri Kartikey Bhatt, learned counsel appearing on behalf of respondent Nos.1, 3, 4 and 5 submits that insofar as the said respondents are concerned, they are officers of HIDCO. It is submitted that they could not have conveyed the

land unless there was a permission from the State Government. It is therefore submitted that there is no cause of action to proceed against the said respondents. It is lastly submitted that if the State Government directs the said respondents to comply with the orders of the Court, they are bound to do so.

8. The facts, in brief, giving rise to the present appeals are as under:

8.1 In a response to an offer made by the appellants herein, the respondent(s)/HIDCO by its letter dated 6th April 2011 promised to convey to them on freehold basis a piece of land bearing Plot No.IIE/17 in Jyoti Basu Nagar also known as New Town, Kolkata. By the said letter dated 6th April 2011, HIDCO had agreed to convey the land to the appellants on freehold basis @ Rs.13.364 lakhs per cottah aggregating to Rs.4,00,92,000/-. According to the said letter, the earnest money of 25% aggregating to Rs.1,00,23,000/- was to be paid within 30 days from the said letter followed by the payment of the balance amount of Rs.3,00,69,000/- within a period of 60 days thereafter. Accordingly, the appellants had deposited the entire amount of Rs.4,00,92,000/-.

8.2 On 24th August 2012, HIDCO addressed a letter to the appellants stating that the earlier allotment was done during the period when Model Code of Conduct was in place on account of West Bengal Assembly General Elections, 2011. The said letter stated that due to those circumstances, the decision of allotment was reviewed. It was decided that the allotment would not be on a freehold basis but on leasehold basis for 99 years and the sale price was to be treated as a lease premium.

8.3 The said letter was responded by the appellants on 16th November 2012 on various grounds. It was submitted that the Model Code of Conduct did not forbid transfer of land by HIDCO or any other Government company. It was also stated that the effect of the grant of lease for 99 years and the sale was the same, inasmuch as both were transfers under the Transfer of Property Act, 1882. The appellants therefore requested HIDCO to revoke their letter dated 24th August 2012.

8.4 On 12th October 2012, HIDCO forwarded a draft deed of lease to the appellants asking them to execute the same. It appears that there were certain correspondences between the

appellants and HIDCO, which took place thereafter. After some time, the Government came up with a land allotment policy on 26th December 2012. On coming into effect of the said policy, a letter was addressed by HIDCO to the appellants on 14th January 2013 stating that in view of the change in policy, there would be certain changes in the proposed lease deed.

8.5 Aggrieved thereby, the appellants filed a writ petition before the learned Single Judge of the Calcutta High Court challenging the said cancellation of allotment. The learned Single Judge of the Calcutta High Court dismissed the said petition. Being aggrieved thereby, the appellants approached the Division Bench of the High Court by way of First Miscellaneous Appeal No.299 of 2019. The said appeal was decided on 10th February 2020. In the appeal, a specific objection was taken by the respondent/State as well as HIDCO that the writ petition as well as the appeal were not tenable on account of the availability of an alternate remedy. However, the Division Bench of the High Court found that if an action was vitiated by arbitrariness, unreasonableness and/or *mala fides*, the High Court was very well entitled to

consider the issue in exercise of its jurisdiction under Article 226 of the Constitution of India and decide the same on the basis of evidence given in affidavits. The Division Bench of the High Court therefore found that the case of the appellants fit into that criteria, inasmuch as the action of the respondents smacks of violation of Article 14 of the Constitution of India. The Division Bench of the High Court therefore in unequivocal terms held that the action was arbitrary and therefore set aside the same. The appeal was allowed in terms of prayer clause (g), which reads thus:

> "(g) A Writ of or in the nature of Mandamus and/or order or orders and/or direction or directions of like nature commanding the respondents to forthwith execute and register the deed of sale/conveyance for sale of 30 cottahs of land bearing Plot No. 11E/17 within sub-CBD of AA-IID of New Town, Kolkata in favour of the petitioner No. 1 on freehold basis in terms of the letter of allotment being No. M-1343/2010 dated 6 th April, 2011 being annexure "P-1" hereto;"

8.6 It is relevant to note that a special leave petition was filed by HIDCO before this Court challenging the judgment and order of the Division Bench, which came to be rejected by this Court vide order dated 19th July 2021.

8.7 Alleging non-compliance thereof, the appellants filed contempt petition being CPAN No.384 of 2021 before the

Division Bench of the High Court. In the said contempt petition, vide order dated 6th May 2022, the Division Bench of the High Court specifically recorded the submission of the counsel for the State whereby he submitted that the order passed by the High Court has to be complied with. The Division Bench of the High Court therefore made it clear that if a compliance report was not forthcoming on the returnable date, the Court will initiate contempt proceedings against the alleged contemnors by issuance of a formal rule. When the matter was listed before the Division Bench of the High Court on 17th June 2022, the High Court was informed that the matter was referred to the Cabinet on 31st August 2022 and unless a formal approval is received thereon, the earlier order could not be complied with. The High Court, after recording that, directed the Registrar General of the High Court to send a copy of the order dated 17th June 2022 to the Chief Secretary so as to enable him to resolve the issue before the adjourned date of the contempt petition.

8.8 It appears that thereafter on 12th December 2022, the General Manager, Commercial of HIDCO informed the appellants that in compliance with the directions issued by

the Division Bench of the High Court, the Cabinet, in its meeting held on 25th November 2022, has decided to convey the said plot to the appellants at the then market value, i.e. Rs.12,51,47,722/-. Since the appellants had already paid a sum of Rs. 4,00,92,000/-, they were directed to pay the balance amount of Rs.8,50,55,722/-. Aggrieved thereby, the appellants filed another contempt petition being CPAN No.88 of 2023 before the High Court. On 6th December 2023, the High Court was informed by the learned Additional Government Pleader that expeditious steps have been initiated to comply with the order of the High Court. It will be relevant to refer to the following paragraph of the order dated 6th December 2023 passed by the Division Bench of the High Court, which reads thus:-

> "We make it absolutely clear that in the absence of compliance, in addition to any other order that the court may pass in exercise of its contempt jurisdiction, the court may consider appointing a Receiver or Special Officer to execute the necessary conveyance to comply with its order."

8.9 An interesting turn takes place thereafter. When the very same contempt petition was listed before the High Court on 9th February 2024, the High Court vide impugned order observed that, considering the submission of the parties it

would be appropriate that the matter is settled through mediation. It, accordingly, appointed a former Judge of the High Court as a Mediator. It will be relevant to note that the said proposal for mediation was specifically opposed by the learned counsel for the appellants. Aggrieved by the same, the appellants have filed the present appeals by way of special leave.

9. We find that the approach of the High Court in passing the impugned order is totally untenable. When the High Court itself, on more than one occasions in the contempt proceedings, had found that the State was bound to comply with the writ of mandamus issued by it vide judgment and order dared 10th February 2020 and had also issued notice to the Chief Secretary of the State for complying with the directions issued by it, it could not have referred the matter for mediation. It is further to be noted that mediation has to be by the consent of both the parties. Mediation cannot be thrusted upon either of the parties. The learned Division Bench of the High Court in the present case, in spite of the resistance of the learned counsel for the appellants herein, only on the basis of the statement of the learned Advocate

General appearing in the matter whereby it was submitted that the State was willing to offer the appellants an alternative piece of land, has referred the matter to mediation.

10. We have no hesitation to say that the said approach of the Division Bench was totally untenable in law.

11. We further find that the approach of the State Government in the present matter can be said to be one of committing aggravated contempt. The High Court having allowed the appeal on 10th February 2020, and which was not interfered with by this Court on 19th July 2021, the State ought to have conveyed the land in question to the appellants on the basis of the offer made initially on 6th April 2011. Asking the appellants to pay according to the current market rate after the appellants have succeeded before the High Court and this Court, in our view, is an attempt to disobey and defeat the mandamus of the High Court.

12. Under the constitutional scheme, a writ issued by the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India which has not been interfered with by this Court has to be followed in letter and spirit, by all the

authorities who are bound by such a writ. The majesty of law requires that due obedience has to be given to the command of the High Court under Article 226 of the Constitution of India, particularly when it is not interfered with by this Court.

13. In that view of the matter, we find that the impugned order, which has the effect of undermining the dignity and authority of the High Court, is not sustainable in law. The High Court has totally erred in diluting its earlier orders by passing the impugned order. The High Court having, on earlier occasions, emphasized the necessity to abide by the command of its directions and also issuing notice to the Chief Secretary to comply with the order, ought not to have directed the parties to mediation.

14. Therefore, in our considered view, the impugned order is not sustainable in law and the appeals deserve to be allowed.

15. In the result, the appeals are allowed. The impugned order dated 9th February 2024 in CPAN No. 88 of 2023 along with CPAN No.384 of 2021 and CPAN No.1453 of 2022 arising out of FMA No.299 of 2019 passed by the High Court of Calcutta is quashed and set aside.

16. Having quashed and set aside the order of the High Court, in ordinary course, we would have remanded the matter to the High Court to proceed with the contempt petition. However, in the present case, we are not inclined to do so. The appellants, having succeeded before the Division Bench of the High Court as early as on 10th February 2020 and before this Court on 19th July 2021, have been running from pillar to post for a period of almost 12 years. In our view, relegating the matter to the High Court and asking it to decide the same afresh would lead to further delay.

17. In that view of the matter, while allowing the appeals, we deem it appropriate to keep the matters pending so as to ensure compliance of the writ of mandamus issued by the High Court.

18. We are of the considered view that, as already observed hereinabove, the majesty of law should not be compromised with.

19. In that view of the matter, we direct the Chief Secretary of the State of West Bengal to ensure that the order passed by the High Court dated 10th February 2020 is complied with in letter and spirit. For the sake of clarity, we have already

reproduced hereinabove the prayer clause (g), which is part of the order of the High Court dated 24th March 2023.

20. We, therefore, direct Respondent No.7 to comply with the directions of the High Court dated 10th February 2020.

21. It is made clear that in case the directions so issued by the High Court and reiterated by this Court are not complied with by Respondent No.7, the Respondent No.7 shall personally remain present in this Court at 10:30 a.m. on 3rd March 2025 and show cause as to why an action for committing contempt be not taken against him.

22. We further make it clear that if the better counsel prevails upon Respondent No.7 and the order is complied with by the next date of hearing, he need not remain present before this Court.

23. List the matter on 3rd March 2025 for reporting compliance.

.....J.
(B.R. GAVAI)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
FEBRUARY 12, 2025.