

HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
AND
THE HON'BLE JUSTICE SANDIP KUMAR DE

FMA 318 OF 2024

Tai Industries Ltd. and Anr
Vs
State of West Bengal and Ors.

For the appellants: Mr. Suman Kumar Dutt, Sr. Adv.,
 Mr. Sarosij Dasgupta, Adv.,
 Ms. Subhra Das, Adv.,
 Mr. Sourath Nath Dutt, Adv.

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For the KMDA: Mr. Debanik Banerjee , Adv.

Last heard on: 03.09.2026

Judgement on: 10.09.2026

SANDIP KUMAR DE, J.:

1. The present intra-court appeal arises out of a judgement and order dated November 2, 2023 passed by a Learned Single Judge of this Court in

WPA 1429 of 2008 wherein the Learned Single Judge of this Court was pleased to dismiss the writ petition on contest.

2. The writ petitioners in the writ petition, had prayed for direction upon the respondents not to dispossess the writ petitioners from the land in question being plot no. IND-8/1, Mouza Nonadanga measuring about 6 acres of land ('the said plot of land' for short), along with a prayer for cancellation and setting aside of the letter of cancellation of allotment dated December 14, 2007.
3. The case of the writ petitioners is that the Kolkata Metropolitan Development Authority('KMDA' for short), the then known as Calcutta Metropolitan Development Authority ('CMDA' for short) offered allotment of land in favour of the petitioners to set up an industrial unit at the land situated in the said plot, as stated hereinabove. Subsequently, the said plot of land was allotted in favour of the petitioners and CMDA received full payment of premium against such allotment. Later on, CMDA again received a sum of money for the purpose of changing the name of the allottee, i.e., the writ petitioners, and possession of the said plot of land was also given to the writ petitioners. Time limit to submit the Detailed Project Report('DPR' for short) and the sanctioned building plan to start construction was stipulated by CMDA and the same was extended from time to time. However, the writ petitioners intimated the CMDA that unless the lease deed is executed and registered in their favour, the writ petitioners cannot obtain sanctioned building plan from the municipal authorities. However, the CMDA went on insisting that the petitioners should submit the sanctioned building plan first. The writ petitioners submitted the DPR and admittedly, the same was received by the authorities of KMDA. However, the allotment of land was cancelled

by the KMDA which was granted to the writ petitioners by citing the promulgation of land and plot allotment policy, which was communicated to the writ petitioners on December 14, 2007. Such policy, according to the petitioners, is prospective in nature and could not have been applied in the case of an existing allotment already granted in favour of the writ petitioners. Challenging the cancellation of allotment of the aid plot of land and threat of dispossession, the writ petition was filed.

4. The parties exchanged affidavits in the matter. The matter was finally heard by a learned Single Judge of this Court. By judgment and order impugned herein, the writ petition was dismissed.
5. The learned senior counsel appearing for the writ petitioners placed the initial offer of allotment of bulk land by CMDA in favour of the writ petitioners dated July 4, 2001 wherein it was recorded that the land shall be allotted on a leasehold basis for a period of 99 years. the premium in respect of the allotment of the land has to be paid according to the schedule mentioned in the said offer letter. It was further mentioned in the said offer letter that delivery of possession of land will be given only after full payment of the premium, and the allotment shall stand automatically cancelled if the premium is not paid in full within the time mentioned in the offer letter, amongst other clauses. The learned senior counsel next referred to the letter dated January 31, 2002 by which the CMDA, in partial modification of the earlier initial offer dated July 4, 2001, allotted the said plot of land in favour of the writ petitioners, subject to payment of the full premium of Rs. 8,75,17,360/- to be paid in the instalments as per the schedule stated above. It was further mentioned in the letter of allotment that a nominal rent of Rs. 1/- per

Cottah or part thereof shall be payable by the lessee under the terms of the lease. Pending execution of the deed of lease, the allottee shall be liable to pay a license fee of Rs.1/- per Cottah or part thereof per annum from the date of delivery of possession of land till the execution of the deed of lease. It was further mentioned in the allotment letter that the allotment shall stand automatically cancelled if the premium is not paid in full within the time frame mentioned above. The learned senior counsel next referred to the letter dated March 20, 2002 by which the writ petitioners requested the KMDA for change of name of the allottee for the said allocated land from 'Tai Industries Limited' to "Tai Projects Pvt. Ltd.". The learned senior counsel for the writ petitioners further referred to the letter dated February 17, 2003 by which the KMDA acknowledged the payment of the entire premium of the land paid by the writ petitioners and in the said letter, the KMDA requested the writ petitioners to take over the physical possession of the said plot of land. The learned senior counsel for the writ petitioners next referred to the letter dated March 20, 2003 issued by the KMDA in favour of the writ petitioners, wherein the KMDA informed the writ petitioners that the permissive possession of the said plot of land would be handed over in favour of the writ petitioners' authorized representatives on April 04, 2003 and, he submits, that the physical possession was accordingly handed over by the KMDA in favour of the writ petitioners. The learned senior counsel for the writ petitioners next referred to the letter dated August 21, 2003 by which the KMDA acknowledged the handing over the possession of the allotted land in favour of the writ petitioners.

6. By the letter dated December 12/13, 2006 the KMDA informed about the approval of the change of name of the writ petitioners in respect of

the said allotment on payment of the requisite charges. Subsequently, by a letter dated January 10, 2007, the writ petitioners requested KMDA to execute and register the lease in favour of the writ petitioners, as the writ petitioners were ready to launch the project in the said plot of land. By letter dated February 13, 2007, the KMDA, granted a final extension up to March 23, 2007 by which, the petitioners were directed to submit the Detailed Project Report (DPR) and the building plan for examination by the authority. It was further mentioned in the said letter that it shall be the responsibility of the writ petitioners to simultaneously submit their building plan to KMC for approval, peruse their case at KMC level and to get the plan approved to start the actual construction activities within 90 days from the date of approval and to complete the construction activities within 36 months from the date of approval of the plan by KMC. The petitioners would have to give a written undertaking with regard to the aforesaid timeline and accept in writing the termination clause of allotment in case of failure to comply with the indicated timeline. The writ petitioners acted promptly, as submitted by the learned senior counsel for the writ petitioners, and submitted the detailed project report (DPR) along with a letter dated March 21, 2007. The learned senior counsel for the writ petitioners further submitted that by letter dated April 2, 2007 the Joint Secretary of KMDA wrote to the Chief Engineer, AD Sector KMDA with reference to the letter of the writ petitioners dated February 19, 2007 requesting the addressee of the letter to inform/provide the allottee with the data covering points 1,2 and 3 of the said letter in order to facilitate in undertaking construction work. Copy of the said letter was also forwarded to the writ petitioners. The learned senior counsel for the writ petitioners next referred to the letter

dated January 18, 2007 wherein the writ petitioners requested the Chief Executive Officer of the KMDA to execute and register the lease in respect of the said plot of land in favour of the writ petitioners so that the writ petitioners can mutate their name in respect of the said plot of land and may be able to approach the KMC for sanction of the building plan. By letter dated November 30, 2007 a similar request was made by the writ petitioners addressed to the KMDA wherein it was specifically mentioned that till date the writ petitioners did not get any information about the execution and registration of the lease without which the writ petitioners are unable to complete the final plan and also are unable to adhere to the stipulated timeline set by KMDA. It was specifically mentioned that this situation has not arisen due to fault on the part of the writ petitioners.

7. The learned senior counsel for the writ petitioners next pointed out the land and Plot Allotment Policy for KMDA and KIT Plots and Flats, 2007 ('the said policy' for short). It was pointed out that the said policy has been approved by the authority of the KMDA in its meeting held on August 21, 2007 and the same has come into force with immediate effect. It was further mentioned that henceforth, in the matter of eligibility, allotment and transfer of different categories of flats and plots of both KMDA and KIT the relevant provisions of the said policy shall be applicable. The learned senior counsel further referred to Clause 2(v) of the said policy, wherein it was mentioned that the allottees will have to start construction of the proposed project within two years from the date of allotment, failing which the allotment will stand cancelled. The learned senior counsel then referred to the letter dated December 14, 2007 by which the KMDA cancelled the allotment of

the said plot of land in favour of the writ petitioners intimating that as per the terms of allotment as communicated to the writ petitioners in the land allotment letter dated July 4, 2001 the writ petitioners were supposed to start the execution of the building works, as has approved DPR for the purpose for which land was allotted within three years from the date of allotment, i.e., from July 4, 2001. However, even after a lapse of 6 years, the writ petitioners have failed to execute the project. Therefore, as per the terms of allotment of the competent authority of KMDA has decided to cancel the allotment of the said plot of land to the petitioners without immediate effect. Accordingly, the physical possession of the plot of land allotted to the petitioners shall not be delivered to the writ petitioners and execution of the lease deed or license deed in favour of the writ petitioners shall not happen. By letter dated December 20, 2007 the writ petitioners requested for withdrawal of the cancellation of the allotment indicating that the failure of execution and registration of lease deed took place on the part of KMDA as the primary reason for the alleged delay. Subsequently, a detailed representation dated December 31, 2007 was given to the Chief Executive Officer, KMDA requesting him for withdrawal of cancellation, considering the facts and sequence of events and further requesting him to execute and register the lease in favour of the writ petitioners in respect of the said plot of land.

8. The learned senior counsel, in this conspectus of events as evident from the documents mentioned above, submitted that the writ petitioners were not at fault at any point of time as they complied with the conditions like payment of premium and the submission of DPR absolutely on time. The writ petitioners repeatedly requested the KMDA to execute and register

the lease deed in respect of the said plot of land without which the writ petitioners were unable to approach the KMC for mutation and sanction of the building plan. However, the KMDA insisted that the writ petitioners should first obtain the sanctioned building plan and then only, the execution and registration of the lease deed shall take place. The learned senior counsel, referring to the letter dated February 13, 2007 of the KMDA, submitted that the stand of the KMDA is clear from the said letter that the building plan has to be obtained first and then only the lease deed shall be executed and registered in favour of the writ petitioners.

9. The learned senior counsel for the writ petitioners further submitted that the cancellation of the plot of land already allotted to the writ petitioners was cancelled on the basis of the said policy, which came into effect in on or after August 21, 2007 is not retrospective in operation, as it appears from the said policy itself, and could not have been applied in the case of the allotment of land already made in favour of the writ petitioners with retrospective effect. Pointing out the relevant clause of the said policy, the learned senior counsel further submitted that the said policy provides for an extension of time in certain cases. He further submitted that even if the time limit stipulated in the policy is applied, the same would continue for a period of two years from the date of effect of the said policy but in the instant case, immediately after the said policy came into effect on August 21, 2007, on December 14, 2007, the allotment of land in favour of the writ petitioners was cancelled. Referring to the aforesaid documents, the learned senior counsel for the writ petitioners further submitted that in the instant case, Section 55 of the Contract Act, 1872 shall not be applicable as the KMDA itself

granted extension of time and the writ petitioners paid premium and submitted DPR on time. Therefore, he submits, time is not the essence of contract in the instant case. The learned senior counsel prayed for setting aside of the judgment and order impugned and allowing the appeal.

10. The learned counsel for the KMDA placed sole reliance on said policy of 2007 itself as the basis for the cancellation of allotment of said plot of land. He placed strong reliance on clause 2(iii) of the said policy, wherein it was mentioned that the allottees will have to start construction of the proposed project within 2 years from the date of allotment, failing which the allotment will stand cancelled. There will be 2% deduction of the amount deposited by the allottee towards the plot as service charge and remaining amount shall be refunded to the allottee without any interest thereupon. In certain genuine cases, the extension of the 2 years to an additional one year will be permitted with prior approval of the Chairman of the KMDA. Referring to Clause 2 (iii) of the said policy, the learned counsel for KMDA submitted that the word or expression 'allottee' was used in the said Clause and not 'lessee'. Therefore, the said clause very well applies in the case of the writ petitioners, and the cancellation made by the KMDA based on the said policy is absolutely correct.

11. Heard learned counsel for the respective parties.

12. From the series of communications referred to by the learned senior counsel for the writ petitioners and the sequence of events emerging therefrom, the facts of the case are clear that on January 31, 2002 the said plot of land was allotted in favour of the writ petitioners by the KMDA and upon payment of premium by the writ petitioners on time, the KMDA handed over the physical possession of the said plot of land in

favour of the writ petitioners, acknowledgment whereof is evident from the letter dated August 21, 2003. By letter dated February 13, 2007, the final extension or submission of DPR or building plan was granted by the KMDA along with an extension of 36 months from the date of approval of plan by the KMC for completion of constructional activities, etc. But it further appears that the petitioners submitted DPR immediately thereafter i.e., on March 21, 2007 and subsequent reminders were given to the effect that until the KMDA executes and registers lease in respect of the said plot of land in favour of the writ petitioners, the writ petitioners cannot mutate their name in respect of the said plot of land and obtain a sanctioned building plan. However, the KMDA did not consider the same and went on continuing with their stand. Ultimately, by a letter dated December 14, 2007, the KMDA cancelled the said allotment of land in favour of the writ petitioners, applying the said policy of 2007 as basis thereof.

13. It is clear from the sequence of facts and events that the writ petitioners were not at fault and the delay took place due to the non-execution and non-registration of lease by KMDA in favour of the writ petitioners in respect of the said plot of land.
14. In the judgement and order impugned, the learned Single Judge has recorded that the said policy is the imposition of further conditions and the same would not amount to retrospective operation of the same. The learned Single Judge has further recorded that the extension of time granted on February 13, 2007 was the acceptance by the writ petitioners with regard to the extension of time and the writ petitioners cannot turn back later on and question of imposition of further stipulations as being bad for being retrospective. The learned Single Judge has further

recorded that the availability of land, especially in the State, is very limited. The State, or for that matter any statutory authorities, cannot allow such land to lie vacant and unused. Therefore, the necessary stipulations for user of such land may not be contained in a letter of allotment. In fact, as clearly mentioned in the letter, exhaustive terms would follow in the lease deed. The writ petitioners cannot take advantage of their own wrong for not having such lease deed executed in time and avoid being bound by any such stipulation regarding user of land. The aforesaid reasons have been assigned by the learned Single Judge in favour of the decision of dismissing the writ petition.

15. Firstly, the said policy of 2007 came into effect on August 21, 2007 and, from the language of the said policy itself, it is evident that the said policy is prospective in nature and shall apply in cases of allotments, etc., “henceforth”. Therefore, such policy could not have been applied in the case of the writ petitioners at all. The law is trite that the rules of the game cannot be changed when the game is on. Therefore, the finding of the learned Single Judge that the applicability of the policy of 2007 is not retrospective in operation, but imposition of further condition, is contrary to the materials on record and settled law and, therefore, cannot be sustained.
16. Secondly, the extension of time granted on February 13, 2007 by the KMDA in favour of the writ petitioners cannot be related to the said policy of 2007 at all, which was applied as a whole and as the sole basis of cancellation of allotment. It is clear that the policy is an independent document and is not an imposition of further conditions in respect of the extension letter, as found by the learned Single Judge. It is clear from the contents and materials of the said policy of 2007 that the same is a

guideline for allotment of land, etc., belonging to KMDA and KIT on and from August 21, 2007. Therefore, the letter of extension and the policy cannot be related or connected in any manner whatsoever. As such, the finding of the learned Single Judge that the petitioners, after accepting the terms of extension of time, cannot question the policy is contrary to the materials on record and, therefore, cannot be sustained. The introduction of a further condition in the extension letter after the contract was entered into and acted upon, even independent of the 2007 policy, was unlawful and such clause cannot be deemed to be a condition of the original allotment and the terms thereof.

17. Thirdly, the reasons assigned by the learned Single Judge with regard to the limited availability of land and the implied stipulation of such condition in the letter of allotment were nobody's case. The limited availability of land in the State was neither argued by the KMDA nor the same appears from the careful scrutiny of the materials on record. Therefore, such a finding of the learned Single Judge being neither based on the case placed by the parties nor based on the materials on record, is not sustainable.
18. Fourthly, the finding of the learned Single Judge that the petitioner cannot take advantage of their own wrong in not having the lease deed executed in time and avoid being bound by any stipulation regarding use of land is not corroborated on facts on a careful scrutiny of the materials on record. The writ petitioners took all such steps which were required to be taken by them on time, and the same were acknowledged by the KMDA. In fact, the KMDA was duty-bound to execute and register the lease deed in favour of the writ petitioners so as to enable them to proceed with construction and set up the industrial unit on the said plot

of land. It appears that the KMDA has indulged in complete non-application of mind to the problem and acted with arbitrary and mala fide intent, only in order to create hindrance in setting up the industrial unit by the writ petitioners. Therefore, such finding of the learned Single Judge is also not sustainable.

19. In the fitness of things, the judgement and order impugned dated November 2, 2023 passed by the learned Single Judge of this Court in WPA 1429 of 2008 is set aside. Consequently, The cancellation of allotment dated December 14, 2007 by the KMDA in respect of the plot of land being Annexure P7 to the writ petition is also set aside.
20. The Appeal being FMA 318 of 2024 is allowed on contest without any order as to costs.
21. The KMDA and its men, agents and subordinates shall not dispossess the writ petitioners from the land in question being plot No.IND-8/1, Mouza Nonadanga and shall not give any effect or further effect to the letter of cancellation of allotment dated December 14,2007 being Annexure P7 of the writ petition any further.
23. Urgent Photostat certified copy of this order/judgment if applied for, be supplied to the parties upon compliance with all requisite formalities.

I Agree.

(SANDIP KUMAR DE, J.)

(SABYASACHI BHATTACHARYYA, J.)