

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Aniruddha Roy

W.P.A. 22948 of 2024

Smt. Parulbala Mondal

Vs.

The State of West Bengal & Ors.

For the petitioner:

**Mr. Debashis Saha, Adv.,
Mr. Avirup Roy Sanyal, Adv.,
Ms. Sucheta Pal, Adv.**

For the State/Respondents:

**Sk. Md. Galib, Sr. Govt. Adv.,
Ms. Priyamvada Singh, Adv.**

Reserved on:

10.02.2025

Judgment on:

26.03.2025

ANIRUDDHA ROY, J.:

1. This is a hearing of a writ petition upon affidavits. Respondents have filed affidavit in opposition. Petitioner has filed affidavit-in-reply thereto.

Facts:

2. The petitioner claims to be the sole **squatter** at **premises no.2/192, Neli Nagar Colony, PO. Haltu, Police Station- Garfa, Kolkata- 700078** (for short, the land). Petitioner has settled at the said land and built a temporary structure. The land is measuring about **9 cottah 1 chittak equivalent to 15 decimals**. Since 1947, the deceased husband of the petitioner and the petitioner were and is in possession of the land under

the Refugee Rehabilitation Programme of India.

3. The land was mutated in the settlement record of the State in the name of the petitioner subsequent to the demise of her husband. In the mutation record it was recorded as **15 decimals** of land against the name of the deceased husband of the petitioner. The land was described to be situated at **Mouza: Dhakuria, J.L. No. 18, Touji Nos. 230 and 233, R.S. No.15, Khatian No. 17, R.S. Dag No. 1587/1972 measuring about 15 decimals.**
4. The deceased husband of the petitioner Sudhir Kumar Mondal, since deceased died on **March 30, 1973**. The State authority had surveyed the area and measured the same in respect of each of the occupant family at the locale and then numbered the plots as **enumerated plots**. The petitioner was accordingly intimated by communication dated **July 19, 1976** that she was eligible for regularization of land being **E-192, Annexure P-2, at page 23** to the writ petition.
5. Petitioner states that she was in actual occupation of **13 decimals** of land and the balance **2 decimals** was illegally occupied by a trespasser. In order to evict the said trespassers from the said **2 decimal** of land and to recover possession of the same the petitioner filed a civil suit being T.S. No. 261 of 1996 before the Learned Civil Judge (Junior Division, Alipore). In the civil suit the Refugee Rehabilitation Commissioner of Refugee Relief Rehabilitation Directorate of the State was a party defendant. The **plaint** is available at **page 42** to the affidavit-in-opposition filed on behalf of respondent no.1 to 4.
6. The respondent authorities purported to record the measurement of the

land of the petitioner as **3 cottahs 11 chittak**. The petitioner claimed such recording was totally wrong, perverse and baseless on the face of it. The petitioner objected to the said erroneous finding through a legal notice dated **July 14, 2005, Annexure P-3** at **page 26** to the writ petition.

7. Being aggrieved by the said illegal recording of the measurement of land, the petitioner filed a writ petition **W.P. No. 16412 (W) of 2005**. A Coordinate Bench by its order dated **November 25, 2005, Annexure P-4** at **page 27** to the writ petition directed the Commissioner Refugee Relief and Rehabilitation Department to consider the claim of the petitioner for rectification of the alleged wrong recording of the measurement of the land in question on the basis of the representation submitted by the petitioner.
8. Pursuant to and in terms of the direction of the Coordinate Bench dated **November 25, 2005** the Refugee Rehabilitation Department had caused a survey.
9. By a communication dated **August 22, 2007** the Refugee Rehabilitation Department (for short, RR Department) informed that a clear picture was not available to the department, **Annexure P-6** at **page 34** to the writ petition. Other relevant connected documents are available at **Annexure P-5** at **page 31 to 33** to the writ petition.
10. The case of the petitioner for rectification with regard to the measurement of land was then ultimately considered by the RR Department and an order was passed on **February 27, 2008**, when the department found that the petitioner is in possession of only **2 cottahs and 2 chitaks 20 sq. ft.** plot of land, **Annexure P-7** at **page 35** to the writ petition.
11. Being aggrieved by the said order **dated February 27, 2008** the petitioner

second time applied before the writ jurisdiction of this Court through **W.P. No. 30528 (W) of 2008**. By an order dated **January 5, 2009** a Coordinate Bench **quashed** the said order of the RR Department dated **February 27, 2008** and directed the RR Department to consider the case of the petitioner afresh on its proper perspective, **Annexure P-8** at **page 41** to the writ petition.

12. Pursuant to the said direction of the Coordinate Bench dated January 5, 2009 the RR Department by an order dated **March 9, 2010** directed the petitioner to demarcate the land under her possession by a brick wall.
13. The petitioner states that she has not constructed the boundary wall on the plea that the pending civil suit filed by her then would have been prejudiced and jeopardized.
14. On January 13, 2010 a further communication was issued by the State authority informing that field map was made on the basis of the survey proceedings and the petitioner was directed to appear before the Principle Secretary of the respondent department for hearing scheduled on February 2, 2010 in compliance of the said order dated January 5, 2009 passed by the Coordinate Bench.
15. On **January 16, 2017** ultimately and finally the said civil suit **TS No. 261 of 1996** was decreed. Pursuant to the said decree the petitioner recovered the said two decimal of land which was trespassed by the defendant no.1 to 3 therein and since then the petitioner is in continuous possession of the entire **15 decimals** of land, after the decree was executed in title execution no.45 of 2017 by the Jurisdictional Civil Court, **Annexure P-11** at **page 53** to the writ petition.

16. Immediately thereafter the petitioner had constructed the boundary wall covering the said **15 decimals** of land and by a letter dated **September 13, 2023**, the petitioner informed the RR Department that the boundary wall was constructed and a request was made to rectify the land record with regard to the measurement thereof in favour of the petitioner, **Annexure P-12** at **page 88 and 90** to the writ petition.
17. Since no heed was paid by the RR Department, a detailed representation dated October 31, 2023 was submitted by the petitioner before the RR Department, Annexure P-13 at page 92 to the writ petition. The RR Department then by its communication dated **November 22, 2023**, **Annexure P-14** at **page 106** to the writ petition, rejected the claim for regularization of land of the petitioner in respect of **9 cottah 1 chittak**, as claimed by the petitioner, as the same did not come within the purview of consideration for issuance of freehold certificate, since as per available records area of land in favour of the petitioner was **3 cottah 11 chittak**. Accordingly the RR Department directed for issuance of **Free Hold Title Deed** in respect of **3 cottah 11 chittak** of land.
18. The respondent authority further issued a communication dated August 7, 2024 seeking information with regard to the fate of the title appeal case no. 43 of 2004 arising out of TS Case No. 137 of 2007, Annexure P-15 at page 107 to the writ petition. Alleging the inaction and illegal action on the part of the RR Department for not executing the **Free Hold Title Deed** in respect of the said **9 cottah 1 chittak** of land in favour of the petitioner, the petitioner submitted a representation dated August 22, 2024 followed by a legal notice dated **August 12, 2024**, **Annexure P-16** at **page 110** to

the writ petition.

19. Finally, the instant writ petition has been filed with the following prayers:

“(a) Leave under Rule 26;

(b) A writ of or in the nature of Mandamus commanding the Respondent Nos. 2, 3 and 4 to rectify the record in respect of land holdings Premises in 2/192, Nelinagar P.O. Haltu, No. Colony, Police Station Garfa, Kolkata 700078 to the extent of 15 decimal in favour of the petitioner, forthwith;

(c) A writ of or in the nature of Mandamus commanding the respondent Nos. 2, 3 and 4 to set aside, quash, rescind, cancel and withdraw the said letter no. 115/CDR/SQC/File no. SQC(DCR-KOL)48/23-24 dated 22.11.2023 issued by Respondent no. 4, being Annexure P-14 herein;

(d) A writ of or in the nature of certiorari respondents commanding to certify the and transmit the records of this case before this Hon'ble Court so that conscionable justice may be rendered by passing an appropriate order in favour of your petitioner;

(e) Rule NISI in terms of prayers

(a), (b), (c), and (d) above;

(f) An interim order be passed restraining the Respondent authorities from allotting and or handing over the said plot of land or any part thereof in favour of any person till the disposal of the said Rule or this Application, as the case may be;

(g) An interim order be passed restraining the Respondent authorities from giving any effect or further effect to the said letter no. 115/CDR/SQC/File no.SQC(DCR-KOL)48/23-24 dated 22.11.2023 issued by Respondent no. 4, being Annexure P-14 herein till the disposal of the said Rule or this Application, as the case may be;

(h) Ad interim order in terms of prayer (f) and (g) above.

(i) Any further order or orders, direction or directions be passed in favor of the petitioner for the ends the ends of justice.

(j) Costs and incidentals”.

Submission:

20. Mr. Debasish Saha, learned counsel appearing for the petitioner submits that the deceased husband of the petitioner since about 1947 had been residing at the land and thereafter the petitioner has been residing and her settled possession on the land was confirmed by the RR Department by its said communication dated **July 19, 1976** and was recommended for regularization bearing **plot no. E-192** at **Nelinagar Colony**. The plaint filed in the said civil suit by the petitioner where the RR Department was a party clearly shows that the petitioner claimed that she was in possession of 15 decimal of land equivalent to about **9 cottah 1 chittak** of which **2 decimal** was trespassed by defendant no. 1 to 3. Finally, the decree was passed in the said civil suit when the Jurisdictional Civil Court found and made a declaration that the writ petitioner/plaintiff was in possession of 15 decimals of land bearing Dag No. 1587/1972 and out of that 2 decimals was encroached upon by the defendant no. 1 to 3. It was also found that the plaintiff writ petitioner had proved her possession over the entire **15 decimals** of land comprised in the said Dag No. 1587/1972 but she had not been able to prove her title over the same. Finally, the suit was decreed with a declaration that the plaintiff had been in possession of the entire **“A” scheduled** property and had acquired a better possessory title in respect of the same than the defendant no. 1 to 3 therein. The decree was there in favour of the plaintiff/writ petitioner for recovery of Khas possession in respect of the land occupied by the defendant no. 1 to 3 therein and the defendant no. 1 to 3 was directed to quit and vacate the

land under their possession.

21. Learned Counsel Mr. Debasis Saha appearing for the petitioner submits that the Rehabilitation Scheme to rehabilitate the squatters is a welfare scheme propounded by the State to provide shelter. For implementation of such scheme lands had been acquired. Similarly, the land on which the petitioner has been uninterrupted possession had also been acquired by the State for the rehabilitation of the squatters. The rehabilitation scheme is under operation under the guidelines framed by the Union Government. The essential criteria to obtain a Free Hold Title on a land under the said rehabilitation scheme is that a squatter must be in uninterrupted and continuous possession of the land.
22. Referring to the communication of the State dated **July 9, 1976, Annexure P-2 at Page 23** to the writ petition, Learned Counsel submits that the State has admitted the uninterrupted and continuous possession/occupation of the petitioner in respect of the subject plot being **plot no.E-192** after the demise of her husband and recommended for execution of conveyance of title in her favour on the terms and conditions mentioned therein. Referring to the survey reports prepared by the State Authorities disclosed in the proceeding, it is submitted that the State Authorities have all along admitted her continuous possession and occupation of the petitioner in respect of **plot No.E-192** but dispute was there with regard to the measurement of land under occupation of the petitioner. Sometimes the State suggested it was **3 Cottahs** and odd and sometimes it was suggested to be **2 cottahs** and odd. However, the petitioner claims that she is in continuous possession of little more than **9 cottahs** of land mentioned

above which is equivalent to **15 decimals** of land. The Civil Court decree dated January 16, 2017 had also declared that the petitioner was in possession of 15 decimals of land mentioned in Schedule-A to the plaint which is available at **page-45** to the affidavit in opposition. In view of the said Civil Court decree the petitioner submits she is eligible to obtain Free Hold Title Deed in respect of the said entire **15 decimals** of land. Petitioner has constructed the boundary wall and surrounded the said 15 decimals of land which is in absolute possession of the petitioner.

23. Referring to the said impugned communication dated **November 22, 2023**, Learned Counsel for the petitioner submits that the decision taken by the State to convey Free Hold Title in favour of the petitioner in respect of **3 Cottah 11 Chittak** land is perverse and contrary to the finding of the Civil Court declaration.
24. Sk. Md. Galib, Learned Counsel appearing for the State referring to the communication dated **November 22, 2023** at **Page-106** to the writ petition submits that the authority is ready and willing to execute the **Free Hold Title Deed** in favour of the petitioner in respect of **3 Cottah 11 Chittak** of land. He submits that the State admits that the petitioner is in possession of the said land.
25. Referring to the Government memo dated **April 20, 1987, Annexure R-4** at **page 47** to the affidavit in opposition, Mr. Galib Learned State Counsel submits that the said policy decision was taken by the State in exercise of power under Article 166 of the Constitution of India. Under the said State Policy, it is decided that the maximum of **5 Cottah** of homestead land shall be allotted in squatters' colonies per family unit. He then places reliance to

a subsequent policy of the State dated **January 8, 1998** at **page 51** to the affidavit in opposition and submits that the State has decided with regard to the homestead land in the squatter colonies in the rural areas. It is an approved policy to grant **Free Hold Title Deed** for the lands squatted upon upto an area of **5Cottah** in both urban and rural areas. In excess of **5Cottah** of homestead land in possession of the displaced squatter families should be treated as surplus and such displaced persons' families should either surrender the excess land in favour of the RR Department or the possessor family should pay the price for the surplus portion of the plot at the market value. He then drew attention of this Court to a communication **dated August 7, 2024** issued to the petitioner at **Page 55** to the affidavit in opposition through which the State authority requested the petitioner to supply the present status of Title Appeal Case No. 43/04 filed before the Court of learned District Judge, Alipore and Title Suit No. 137 of 2007 filed before the learned First Civil Judge (Junior Division), Alipore.

26. Learned State Counsel further submits that by virtue of said policy the State cannot execute the Free Hold Title Deed in favour of the squatters for more than 5 Cottahs of land, even though it is found that the squatter is in occupation of more than **5 cottah** of land. In the instant case the survey report shows the petitioner is in possession of **3 Cottah 11 Chittak** land which is within the said limit of **5 Cottah** of land and the State is ready and willing to execute the **Free Hold Title Deed** for the same in favour of the petitioner.
27. In reply, learned counsel for the petitioner submits that the alleged policy decision referred to above by the Learned State Counsel **dated April 20,**

1987 and **January 8, 1998** do not have any legal force. Any notification issued by the State unless specifically notified in the official gazette, no binding or legal force is attached thereto. Admittedly, said two notifications have never been published in the official gazette. Therefore, there is no statutory rule prevailing restricting the measurement of land to **5 cottah** for allotment to the squatters. In support, he has referred to the following decisions of the Hon'ble Supreme Court:

(a) In the matter of:-ITC Bhadrachalam Paper Boards and another vs. Mandal Revenue Officer, AP and others reported at (1996) 6 SCC 634

and

(b) In the matter of:-J.R Raghupathy and others vs. State of AP and others reported at (1988) 4 SCC 364.

Decision:

28. After considering the rival contentions of the parties and upon perusal of the materials on record, this Court at the outset, narrates the admitted facts. The communication of the State **dated July 9, 1976** at **page 23** to the writ petition on unequivocal terms shows that **Plot No.E-192** at **Nelinagar Squatters' Colony** was under unauthorised occupation of the petitioner. The document further stipulates that the terms and conditions including price payable and mode of payment thereof are to be determined by the Government at the time of conveyance of title after giving the petitioner a hearing. This document has not been disputed or denied by the State in its affidavit in opposition. The document, therefore, establishes unequivocally that the petitioner is in occupation of **Plot No. E-192** and on the terms and conditions mentioned in the said communication the State

was prepared and willing to execute the conveyance of title in favour of the petitioner. The Record of right reflects the name of the petitioner in respect of self-same plot of land. Record of right shall not confer any title but shows the existence of the petitioner at the land, who is paying the land revenue. The survey report attached to the communication **dated June 14, 2007** issued by the RR Department at **Page 32** to the writ petition confirms the occupation of the land by the petitioner. The order **dated February 27, 2006, Annexure P-7** at **Page 35** to the writ petition passed by the RR Department has confirmed the occupation of the petitioner in respect of an area of **2 cottahs 2 chittak 20 Sq. feet** and subsequent occupation of a tank plot measuring an area **5 cottah 13 chittak 34 sq. feet**. Finding of the department shows petitioner was in possession of **2 cottahs 2 chittak and 20 sq. feet** of land. The impugned communication dated **November 11, 2023** at **Page- 106** to the writ petition shows that State is ready and willing to execute Free Hold Title Deed for **03 Cottah 11 Chittak** land.

29. All these facts would show that the possession and occupation of petitioner on **plot no. E-192** was confirmed and admitted by the State Authority with a discrepant, conflicting and incompatible finding with regard to the measurement of land in occupation of the petitioner.
30. In a writ petition filed by the petitioner WP No. 30528 (W) 2008 a coordinate bench after hearing the parties by its order dated January 5, 2009, annexure P-8 at Page 41 to the writ petition, had set aside the said order of the RR Department dated February 27, 2008 and sent the matter on remand for further consideration before the RR Department. This fact is also not disputed by the State.

31. Now, the question is to what extent of the measurement of land shall be conveyed in favour of the petitioner by the State upon execution of Free Hold Title Deed.
32. At this juncture, the decree passed by the jurisdictional Civil Court **dated January 16, 2017** would have the most relevant role to play, when there has been inconsistent and incompatible finding by the State with regard to the measurement of the land.
33. The prayers from the plaint filed by the petitioner is in Title Suit no. 261 of 1996 against the trespassers and the RR Department/State is quoted below:-

“The plaintiff therefore prays for:-

- (a) A decree for declaration that the plaintiff is the absolute owner of the suit property.*
- (b) A decree for permanent injunction restraining the defendants no. 1 to 3 from disturbing the peaceful possession of the suit property by the plaintiff in any manner whatsoever;*
- (c) Costs;*
- (d) Any other relief(s) which the plaintiff is entitled to in Law as well as in equity;*

34. The Schedule containing the description of the land shown in the plaint is also quoted below:-

“SCHEDULE

All that piece and parcel of 15 decimals of land with structures thereon within J.L. No. 18, R.S No. 15, Touzi No. 230 and 233, Khatian No. 17, Dag No. 1587/1972 at Mouza-Dhakuria, Enumeration Plot No.E-192, Calcutta Municipal Corporation Plot No.2/192, Nelinagar, premises no. 4, Tarapith within Post Office Haltu, P.S. Kasba, Calcutta-700078, District- 24 Parganas (South).”

35. The finding of the Civil Court from the decree **dated January 16, 2017** is

quoted below:-

“All these issues are accordingly decided in favour of the plaintiff and against the defendants to the above discussed extent.

Court fee paid is correct.

Accordingly, the suit succeeds.

Hence it is

ORDERED

that the suit be and the same is hereby decreed on contest in respect of defendant nos. 1 to 3 but exparte in respect of defendant Nos. 4 and 5 with cost of Rs. 1000/-.

The plaintiff does get a decree of declaration that she has been in possession of the entire A scheduled property and has acquired better possessory title in respect of the same than the defendant Nos. 1 to 3.

The plaintiff also does get a decree of recovery of khas possession in respect of the defendant nos. 1 to 3 as per the survey plan of the R.R. and R department which is part of Exhibit-20 after evicting the defendant Nos. 1 to 3 therefrom.

The defendant nos. 1 to 3 are hereby directed to quit and vacate the portions of A scheduled property under occupation within 60 days from the date of this order failing which the plaintiff may put the decree into execution.

The defendant nos. 1 to 3 are permanently restrained from distrusting the peaceful possession of the plaintiff over the A scheduled property in any manner.

The plaintiff also gets a preliminary decree of mesne profit and she may bring appropriate action for final decree.

The suit is thus disposed of on contest.”

36. The said Civil Court decree dated **January 16, 2017** has been crystalised to its finality. The petitioner in **Paragraph 15** to the writ petition has pleaded the said Civil Court decree. On the basis of the said Civil Court decree the petitioner in **Paragraph 16** in the writ petition has stated that she has constructed the boundary wall. The State in **Paragraph 9** to its affidavit in opposition have dealt with the said contentions of the petitioner and has not denied the said Civil Court decree neither has it stated that any appeal was carried out or that the decree is not in existence. The said Civil Court decree is also binding on the RR Department/State, as they were parties to the said civil suit.
37. From the communication disclosed in the proceeding issued by the RR Department, it appears to this Court that, the stand of the State is also not firm and clear as to what extent of the measurement of land the petitioner is in possession and occupation. Once the State has said the petitioner is in occupation of **3 Cottahs** and odd, further the State has said it was **2 Cottahs** and odd. The contemporaneous survey reports were also in variance. When the opinion of the State is in variance, this Court is of the considered view that, the Civil Court decree dated **January 16, 2017** shall be the guiding authority with regard to the quantum of land under possession and occupation of the petitioner. The RR Department/State being a party in the said Civil Suit, the said decree is also binding upon them which has specifically declared upon the detail adjudication that petitioner was found to be in possession and occupation of **15 decimals** of land, which is larger than the measurement decided by the State to be

transferred in favour of the petitioner by executing Free Hold Title Deed. It is also pertinent to note that, the RR Department/State at no point of time has taken any step for recovery of possession of the alleged excess land, which is still under possession and occupation of the petitioner in excess of the said estimated land found by the RR Department for executing the Free Hold Title Deed in favour of the petitioner.

38. The pendency of Title Appeal Case No. 43/2004 and the Title Suit No. 137/07 have been pleaded by the petitioner in **Paragraph 20** to the writ petition. While dealing with the same, the State in **Paragraph 10** to its opposition has not specifically dealt with the same and the State has not made any statement with regard to the relevance of those proceedings and whether those proceedings shall stand in the way for execution of Free Hold Title Deed in favour of the petitioner.
39. Now, the issue comes with regard to the application of the State Policy dated **April 20, 1987, Annexure R-4** at **Page 47** to the affidavit in opposition.
40. The solitary stand of the State in its affidavit in opposition is that beyond **5 cottahs** of Home Stead Land in a squatter colony, no land can be conveyed to a family, even if, a squatter family is in possession and occupation of a land which is more than and beyond **5 cottahs**. The relevant averments made on behalf of the State in its affidavit in opposition are, inter alia, quoted below:-

“10. With reference to paragraph Nos. 18, 19, 20 of the said petition, save and except what are matters of records and what appears therefrom, I deny and dispute each and every statements and/or allegations which are contrary

thereto and/or inconsistent with the records. It is clearly stated in Clause IX of G.O. 1240 dated 20.04.1987 that the quantum of land for issuing FHTD will be basis of occupation subject to a maximum 5 Cottah of home stead land per family unit. The refugee squatters will be regularized on the basis of their occupation of home stead land measuring not more than 5 Cottah per family before they are granted FHTD. In Memo No. 782/19-Rehab-1 dated 07.06.2007 it has been stated that, henceforth FHTD will be issued in favor of DP family only in r/o land allotted by the Department or under their occupation as mentioned in LOP of concerned colony. In clause 2 of G.O. No. 55-Rehab/RR/O/SQC-Dev-13/93-A (Pt-1) dated 08.01.1998 it has been stated that, land excess of 5 Cottah of Home Stead Land in possession of DP squatters family should be treated as surplus and should be either surrendered in favor of RR Department or the possessor family should pay the price for surplus portion of the plot at market rate. Issuance of FTTD of land owned by R.R & R. Department to eligible displaced person is a matter of Policy of State guided by several G.Os.

 *”

41. The relevant provisions relied upon by the State from the said policy dated

April 20, 1987, Annexure R-4 to the opposition are also quoted below:-

“(IX) The quantum of land to which free-hold right and title will be given will be in accordance with the existing policy of Government. In Govt. sponsored Colonies the quantum of land will be determined on the basis of allotment and in Squatters’colonies on the basis of occupation subject to a maximum of 5 Cottahs of homestead land per family unit. The refugee squatters’will be regularised on the basis of their occupation of homestead lands measuring not more than 5 Cottahs per family before they are granted free-hold right and title.

(X) Owing to divergent issues and complications arising with the passage of time, various types of disputes now

exist, specially in squatters' colonies. It is difficult to evolve a firm policy that can cover all disputes in all details. The implementing authorities should not engage themselves suo moto in settlement of disputes. The disputing parties should rather be asked to find a common accord among themselves. Unless the disputes in regard to rival claims as to right and title, sharing of land and the manner in which the plot is to be divided/sub-divided etc. are settled amicable by the parties themselves, conferment of right and title to such disputing parties should not be undertaken."

42. On a meaningful reading of the said 1987 scheme, **Annexure R-4** at **Page-47** to the affidavit in opposition, this Court is of the firm and considered view that, this was a welfare scheme propounded by the welfare State to provide shelter to the homeless squatters, who were compelled to encroach the Government land for their shelter as unauthorised occupiers. Such welfare and beneficial scheme has to be read, understood and also to be construed in a most liberal manner and as far as possible in favour of the beneficiary of the scheme. The approach of the State, who is a sovereign, should be to give the effect of the scheme in a most liberal and purposive manner, so that as much as squatters can be accommodated by providing shelter, if they otherwise qualify the terms and conditions of the scheme. The solemn obligation of the sovereign shall be to ensure that the object of the welfare policy of the State is not defeated, when the beneficiary is otherwise found to be qualified to receive the benefit thereunder. The said 1987 scheme had stipulated that those squatters who found to be in unauthorised occupation in the earmarked land, are to be allotted to have their occupation regularised by executing a Free Hold Title Deed in their favour but subject to the restriction imposed under the scheme to the

extent of **5 Cottahs** Home Stead Land to one family. The qualifying condition under the said 1987 scheme has duly been satisfied by the petitioner, as she has been in continuous and uninterrupted occupation and possession of the land, as the State has unequivocally admitted through its said communication dated **July 9, 1976, Annexure P-2** at **Page-23** to the writ petition and also under the survey reports and conrit register. When a welfare State has adopted a welfare policy which has not been challenged and is in vogue at the relevant point of time, unless the same is declared to be ultra vires to the law or to the provisions of the Constitution of India, such policy even though does not have the statutory flavor, the State is bound by it. There is no requirement of law that unless such beneficial policy is made part of any statute or any statutory rule or acquires the flavor of law, the State cannot implement or act upon it. There is no requirement that the said 1987 policy was mandatorily required to be published in the Gazette. Therefore, the ratio laid down ***In the matter of: ITC Bhadrachalam Paper Boards and another (supra) and In the matter of: J.R Raghupathy and others (supra)*** will have no application in the facts situation of this case.

43. The petitioner claims the land under the Welfare Policy of the State. Therefore, when the question of restrictions imposed under the policy is also required to be applied, the petitioner cannot challenge the application of such restrictions. The policy has to be read and applied as a whole. The petitioner, thus, shall have to accept the policy as a whole and not in a piecemeal.
44. While exercising jurisdiction under Article 226 of the Constitution of India,

this constitutional Court exercises its extraordinary and equitable jurisdiction. The litigant applies before a writ Court seeks an equitable remedy, must also show equity. Such litigant must demonstrate that he/she has acted fairly, honestly and without any wrong doing or unfair conduct. If a party fails to show equity, the Court may deny them from equitable relief. Act with good faith and honesty denotes a fair, honest and transparent act upon fulfilling all its obligations.

45. The said 1987 Scheme was propounded by the State as a welfare scheme to provide shelter to the squatters, subject to restriction on the ceiling limit of **5 Cottahs** of Home Stead Land for a family at a squatter colony. The underlying object of such welfare scheme is to accommodate as many as squatters to provide them shelter with the Home Stead Land by executing Free Hold Title Deed in their favour. The petitioner, therefore, cannot claim any further land beyond **5 Cottahs** of Home Stead Land. The entire **15 decimals** of land which is equivalent to more than **9 Cottahs** of land claimed to be in possession and occupation of the petitioner, the petitioner cannot retain or withhold it under the said welfare scheme of 1987. Admittedly, the petitioner is an **unauthorised occupant without any title** on the land. Only by virtue of execution of a Free Hold Title Deed in her favour under the said 1987 scheme, the petitioner will receive the title on the Home Stead Land as squatter. Therefore, the petitioner could and/or can and/or should not claim any right or equity over the surplus portion of the land beyond **5 Cottahs**, even though the petitioner may be in possession and occupation thereof. The petitioner seeks relief under the said 1987 scheme. The petitioner can get relief subject to the restrictions

imposed thereunder. To uphold the object of the said welfare scheme when the petitioner takes the benefit and advantage under the said scheme to the extent she is eligible on the one hand, on the other hand the petitioner cannot be permitted to act to the detriment of the other beneficiaries under the scheme beyond her eligibility.

46. This Court in its judgment dated **July 27, 2022, *In the matter of: Ujjal Mandal vs. The State of West Bengal & Ors.*** rendered in **WPA 9253/2015** had observed as under:

“42. The reliefs granted by a constitutional court in exercise of its high prerogative writ jurisdiction under Article 226 of the constitution is equitable in nature. The writ court shall exercise such equitable jurisdiction judiciously, to afford complete justice to the parties. When a valuable constitutional right or a legal right alleged to be infringed by a citizen before a constitutional court alleging any arbitrary, illegal or wrongful act of an Article 12 authority or illegal, wrongful or arbitrary exercise of any discretion by an Article 12 authority, the writ court with its plenary jurisdiction and power in exercise of its equitable jurisdiction under Article 226 of the Constitution of India intervenes.

43. Under Article 226 of the Constitution of India, writ remedy is an equitable remedy and discretionary. Writ Court exercises equity jurisdiction. Though scope of power of Writ Court to undertake judicial review of administrative actions is very wide, its exercise is subjected to self imposed restraint. It will be exercised only in furtherance of manifest justice and not merely on the making out of a legal point. It must be exercised with great caution and only in furtherance of public interest to set right grave illegality and manifest injustice. It is equally true that, writ court may refuse to grant relief in a case where justice and larger public interest require denial of such relief as compared to grievance of an individual, even assuming there is breach of natural justice/statutory prescription and decision is arbitrary.

44. The Hon'ble Supreme Court ***In the matter of: A.P. State Financial Corporation vs. M/s Gar Re-Rolling Mills and Anr., reported at (1994) 2 SCC 647,*** had

observed as follows:

“18.....

.....

.....

.....A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law”.

45.The equity and discretion must also be exercised in a judicious manner keeping in mind that, to render justice to a citizen who was a victim of a manifest injustice at the instance of the State authorities should not harm another by taking away his right already vested in the process. Equity must be balanced in such a situation. In the instant case by receiving an appointment as an Assistant Teacher a valuable right had already been created in favour of the last candidate who received the appointment. The selection process was of 2012. Thus, a right had already been vested in favour of the said last candidate who received the appointment 10 years back. Equity also does not demand such right already settled in favour of another should be taken away. Equally, this court is of the considered opinion that, the petitioner should also get justice as his right under Article 19(1)(g) of the Constitution had been infringed in view of the illegal and arbitrary exercise of discretion and power by the State authorities.”

47. The said judgment of this Court dated **July 27, 2022** has been upheld by the Hon’ble Division Bench of this Court by judgment dated **August 23, 2024*****In the matter of: the West Bengal Central School Service Commission &Ors. vs. Ujjal Mandal &Ors.rendered in MAT 1847 of 2022.***

48. In exercise of its equitable jurisdiction, this Court is also of the view that, it is the duty of the Court to see that the welfare scheme of the State to

provide Home Stead Land to the squatters shall not be defeated and shall be effected in its true spirit, purport and for the purpose it was framed. This Constitutional Court in exercise of its equitable jurisdiction under Article 226 of the Constitution of India is also armed with its jurisdiction to mould the relief, considering the facts and circumstances of the case.

49. In the event, the entire 15 decimals of land which is equivalent to about 9 Cottahs and odd land is conveyed to the petitioner by ignoring the restriction of 5 Cottahs of land per family under the said 1987 policy, then other similarly placed squatters will be deprived to receive the benefit under the said Welfare Scheme and the same shall also be opposed to their legitimate expectations. Such an act will be **iniquitous**.
50. In view of the forgoing discussions and reasons, the decision of the respondent no. 4 dated **November 22, 2023, Annexure P-14 at Page-106** and the communication dated **August 7, 2024** issued by the same authority **annexure P-15 at Page-107** to the writ petition stand **set aside** and **quashed**.
51. The respondent no. 2 and/or 3 and/or 4 and/or any other appropriate and jurisdictional authority of the RR Department/State shall forthwith in presence of the petitioner demarcate the subject land of the petitioner being plot no. **E-192 at Nelinagar Squatters' Colony** as mentioned in the said communication dated **July 9, 1976, Annexure P-2 at page-23** to the writ petition to the extent of **5 cottahs** of land in continuation of the said **3Cottah 11 Chittak** land which is already earmarked for transfer in favour of the petitioner being in her possession and occupation and shall prepare a detail report on demarcation with a proper sketch map identifying the

petitioner's land and shall furnish the same to the petitioner positively within a period of **four weeks** from the date of communication of this judgment and order.

52. After the demarcation is made properly by the respondent nos. 2 and/or 3 and/or 4 and/or any other appropriate authority of the RR Department/State, the surplus part of the land **in excess of and beyond** the said **5 Cottahs** claimed to be in possession of the petitioner shall be segregated from the said **5 Cottahs** of the land of the petitioner by the said authority/authorities positively within a period of **four weeks** from the date of demarcation and the petitioner shall immediately surrender and deliver the vacant possession thereof in favour of the RR Department upon compliance of all the necessary formalities.
53. Only upon receiving the vacant possession of the said surplus portion of land from the petitioner after demarcation as stated above, the appropriate authority of the RR Department/State shall take all necessary steps and execute the **Free Hold Title Deed** in favour of the petitioner subject to compliance of all necessary formalities and legal requirements simultaneously but positively within **two weeks** from the date of **receiving vacant possession** of the surplus land from the petitioner.
54. It is needless to mention that all incidental costs and charges for execution of the Free Hold Title Deed shall be paid and borne by the petitioner.
55. After taking possession of the said surplus land from the petitioner, the R.R. Department/State and petitioner shall be at liberty to negotiate on the same but strictly in accordance with the provisions of the scheme, if any, framed by the State but **no right or equity** shall be created in favour of the

petitioner for such purpose.

56. With the above observations and directions this writ petition **WPA 22948 of 2024** stands allowed, without any order as to costs.

(Aniruddha Roy, J.)

Later :

Stay of operation of the judgment has been prayed for by Mr. Avirup Roy Sanyal, learned Advocate for the petitioner.

Such prayer is considered and rejected.

(Aniruddha Roy, J.)