

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 19212 of 2021

Smt. Mahashweta Halder

Versus

State of West Bengal & Others

For the Petitioner : Mr. Bidhayak Lahiri, Adv.
Mr. Pradip Kumar Ghosh, Adv.
Ms. Bhaswati Lahiri, Adv.

For the KMDA/Respondent Nos. 2, 3 & 4 : Mr. Satyajit Talukder, Adv.
Mr. Arindam Chatterjee, Adv.

For the State : Mr. Supratim Dhar, Adv.
Mr. Amartya Pal, Adv.

Heard on : 10.12.2025

Judgment on : 14.01.2026

Ajay Kumar Gupta, J:

- 1.** This instant writ petition has been filed by the petitioner seeking direction upon the respondents and/or their agents, servants, assigns and/or representatives to rescind and/or cancel and/or withdraw the memo no. 1689/KMDA/MM/Purba/Ph-II/05/P-62 dated 23.03.2018 as Annexure P-8 of the writ petition and further prays for direction upon the respondents and/or representatives to execute the deed of sale of the apartment in favour of the petitioner forthwith.
- 2.** The brief facts, leading to filing of this writ petition, are as under: -
 - a.** The KMDA envisaged a scheme to build a housing complex, namely, Purba Housing, at 1582/2, Rajdanga Main Road, Police Station - Kasba, Kolkata - 700 107 consisting of 361 residential apartments in 5 nos. of 8-storied buildings, 4 nos. of 6-storied buildings, 5 nos. of 5-storied buildings and 2 nos. of 4-storied buildings in different blocks to sell among the aspiring applicants, outright, after payment of final consideration amount in full.
 - b.** The petitioner's parents (former petitioner no. 1 and her husband, now deceased) having been satisfied with the booklet/brochure issued by the KMDA applied for the flat after submission of application to the KMDA within the prescribed time to buy a

residential apartment within the project area and they deposited application money in terms of the brochure.

- c.** After being satisfied, the respondent authority in terms of paragraph no. 5 of the brochure, allotted an apartment of saleable area of 1307 sq. ft. bearing No. D-4/1 at 6D-I Block provisional premium of apartment amounting to Rs. 20,91,200/- in the name of the petitioner's parents by an office memo vide number 1735/KMDA/MM/PURBA/PH-II/05/P-62 dated November 30, 2005. The aforesaid provisional amount, as per the letter of allotment, would have to be paid in 3 instalments.
- d.** After allotment of the said apartment in the joint names of the petitioner's parents, the father of the petitioner, namely, Manoj Kumar Mondal died on September 30, 2007 leaving behind his wife, and daughter, the petitioner herein as his legal heirs and successors. During pendency of this case, petitioner's mother, namely, Nira Mondal also died and her name has been directed to be expunged since the other legal heir i.e. the present petitioner/daughter is already on record, namely Smt. Mahashweta Halder.
- e.** The petitioner's parents paid consideration amount in full within the specified time and, thereafter, by the memo no. 1296/KMDA/MM/Purba/Ph-II/05/P-62 dated 01.11.2008, the

respondent no. 4 issued Possession Advice, as the petitioner's parents deposited the entire price of the apartment, and as such they were entitled to take possession of the allotted flat. Accordingly, the petitioner's parents were advised to receive the possession advice.

- f.** By the memo no. 297/ECPO-1/KMDA/645/AD dated 27.11.2008 the respondent no. 4, handed over the possession certificate to the petitioner's parents of the flat/apartment no. D-4/1 Block GD Building No. 1 Type II of Purba Housing Complex at East Kolkata Township, as the petitioner's parents deposited the entire price of the apartment.
- g.** In the said possession certificate, in paragraph no. 5, it was clearly stated that the apartment will be transferred by KMDA on free hold basis. However, sale deed will be executed within the allottees after the allottees get membership of the co-operative Housing society or apartment owner's Association duly approved by the competent authority.
- h.** The deed of transfer shall be executed and registered in the format prescribed by the KMDA. The stamp duty, registration charges and other charges as may be levied by the Government from time to time for registration and/or execution of the deed of transfer shall be payable by the allottee. The petitioner's parents, after

possession of the apartment, have been depositing the municipal property taxes.

- i. The petitioner's mother, by a letter dated November 12, 2008, requested the authority concerned to put the name of the petitioner in the allotment letter of the aforesaid apartment, in view of the death of the said Manoj Kumar Mondal, father of the petitioner. However, no step had been taken, as such the petitioner's mother again submitted a representation dated January 11, 2012 to incorporate the name of the petitioner.
- j. The respondents by the memo no. 1104/KMDA/MM/Purba/Ph-II/05/P-62 dated 03.01.2014, asked the petitioner's mother to submit a legal heir's certificate along with other documents. Accordingly, the petitioner's mother submitted all the documents, as directed. Thereafter, the respondent having been satisfied with the aforesaid, included the name of the petitioner as co-sharer of the said apartment, by the memo dated 26.05.2014.
- k. The then petitioners made an application on 30.01.2015 by addressing the Marketing and Management Unit (Estate Manager) KMDA, Salt Lake Unnyan Bhavan, and by requesting to execute a Sale Deed concerning the aforesaid apartment, as per the clause 11 of the booklet/Brochure issued by the authority concerned and they also attached in the said application the original sale

deed, as prepared as per the proforma, issued by the KMDA concerned. However, the concerned authority has not taken any step to execute the sale deed of the aforesaid apartment as allotted in their favour.

- l.** Without taking any step for execution and registration of the sale deed of the aforesaid apartment as per the clause 11 of the Brochure and the clause 5 of the possession certificate, rather the respondents issued illegally the memo no. 1689/KMDA/MM/Purba/Ph-II/05/P-62 dated 23.03.2018 asking them to collect the draft deed of lease.
- m.** The then petitioners, for in action of the concerned KMDA, submitted a detailed representation dated December 04, 2018 with a request to execute the sale deed as submitted on January 30, 2015, concerning the aforesaid apartment. However, the respondent authority concerned did not execute the sale deed of the then petitioners as per the clause 11 of the booklet/brochure and also as per the clause 5 of possession certificate. Although, concerned respondent executed sale deeds in favour of other apartment owners/allotees.
- n.** The respondent concerned, without executing the sale deed for the aforesaid apartment in their favour, illegally, arbitrarily and on an unequitious consideration issued the memo no.

1689/KMDA/MM/Purba/Ph-II/05/P-62 dated 23.03.2018 asking them to collect the deed of lease instead of sale deed.

o. The legality and the validity of the said memo is under challenge in this writ petition and a further direction to be passed to execute and register the sale deed in their favour for the aforesaid apartment as per the circulated brochure in clause 11, the transfer/conveyance deed of the units shall be executed and registered in favour of the allottees by way of outright sale. However, by the impugned memo, the respondent authority refused to execute the sale deed of the apartment of the then petitioners and the authority illegally insisted for lease deed and as such, the act of the respondents is bad and is not sustainable in law. Hence, this Writ Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. Learned counsel appearing on behalf of the petitioner submitted that despite payment of the entire consideration amount and giving possession to the then petitioners, the respondent, particularly KMDA, is not executing the transfer or conveyance deed of the units in their favour. Peaceful possession was already handed over to them long ago, and they were peacefully enjoying the same by paying municipal taxes. The actions on the part of the respondent authorities are illegal, malafide, vindictive, discriminatory, arbitrary,

and only to harass and further violate Articles 14 and 21 of the Constitution. Though the impugned policy raised by the KMDA was not in existence at the time of receiving the consideration amount or issuance of the brochure by the respondent authority, it is unclear whether the same applies to the present petitioner's case retrospectively.

4. It was further submitted that the other sale deeds, registered in favour of the other allottees, depriving the writ petitioner, are wholly discriminatory, illegal and not sustainable in law, on the plea that, after issuance of the Govt. policy, concerned authorities have no right to execute the sale deed.
5. Learned counsel for the writ petitioner has placed reliance on an unreported judgment of the Co-ordinate Bench passed in **WP No. 14359 (W) of 2013 (Santanu Sengupta & Anr. v. The State of West Bengal & Ors.)**. In the said judgment, the Hon'ble Single Bench directed registration of the sale deed in favour of the writ petitioners. The order of the Hon'ble Single Bench travelled up to the Division Bench of this court, but the concerned authority did not succeed, and finally, the concerned authority executed the sale deed in favour of the writ petitioners since there is no restriction to execute a sale deed.

6. It is further argued that the Govt. policy issued, being no. 6686-LP/1A-18/2012 dated 26th December, 2012, does not apply to the apartments situated at 1582/2, Rajdanga Main Road, Police Station - Kasba, Kolkata - 700 107. The concerned respondent is adamant about not executing the sale deed in favour of the Petitioner. Therefore, the writ petitioner is praying for direction upon the respondent concerned to register the sale deed immediately because all legal formalities or payment of the consideration amount were made long back. Even possession has been given long back, and the petitioner's parents had been enjoying peacefully by paying the taxes thereof.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

7. On the contrary, the learned counsel appearing on behalf of respondent nos. 2, 3 and 4 vehemently opposed the prayer of the learned counsel appearing on behalf of the writ petitioner and further submitted that pursuant to the land policy of the Government of West Bengal, 2012, the KMDA can only execute a deed of lease. The Government of West Bengal Vide Notification No. 91-UDMA-22012(11)/1/2023- ESTT-TCP-SEC-Dept. of UDMA dated 17.01.2023 has introduced a scheme, namely, West Bengal Land Conversion (Leasehold land to Freehold) Scheme, 2022, whereby the State

Government has allowed individual flat/shop owners to apply for conversion of their respective share from leasehold to freehold.

- 8.** Learned counsel further submitted that the petitioner, in the instant case, may also apply under this scheme for conversion of her leasehold rights to freehold rights after getting the lease deed executed first. The respondent authorities have an obligation to follow the Government land policy, being a parastatal.
- 9.** Finally, it was submitted that the KMDA has no right to sell the property in question as per Govt. policy, although the respondent authorities are admitting that the total consideration amount has been received by them from the petitioner's parents, and peaceful and vacant possession of the apartment had already been handed over to them long back. It is also admitted that some of the apartments have been sold to the allottees prior to and even after introduction of the land policy, but it is not possible to execute the sale deed in favour of the petitioner as no such right remains with the KMDA in pursuance of the Land Policy issued by the Government of West Bengal, 2012.
- 10.** Alternatively, it was submitted that the answering respondent, being KMDA, is ready and willing to execute the lease deed in favour of the allottees in the standard format followed in KMDA instead of a sale deed, if permitted by this Hon'ble Court, in order to resolve the issue once and for all.

11. Learned counsel for the respondents has placed their stand based on the three deeds dated May 24, 1995, October 14, 2004 and December 21, 2004 and unreported judgments in the case W.P.C.R.C 172 (W) of 2014 in W.P. No. 4752 (W) of 2013 (M/s Indo Power Projects Ltd. & Anr. vs. KMDA & Another), F.M.A No. 3350 of 2016 (KMDA & Ors. vs. Mfar Constructions Private Limited & Ors.) and WP 21905 (W) of 2017 (Usha Biswas & Anr. Vs. The State of West Bengal & Ors.) passed by the Co-ordinate Bench as well as Division Bench of this Court in support of his aforesaid contention.

12. The learned counsel appearing on behalf of the State has supported the contentions of the KMDA.

FINDINGS AND ANALYSIS OF THIS COURT:

13. I have heard the rival contentions and submissions made by the learned counsels appearing on behalf of the respective parties. It appears that a notification dated 10th November, 2016 [Annexure P-8: Letter dated 8th March, 2020] issued by KMDA was also forwarded along with the aforesaid letter. In the said notification, KMDA, for the first time, disclosed to the allottees that, as per the decision taken by the competent authority at KMDA, only the lease right can be transferred in favour of the allottees of the flat/apartment no. D-4/1 Block GD Building No. 1 Type II of Purba Housing Complex at East Kolkata Township in view of the order dated 26th December, 2012

issued by the Government of West Bengal, Land and Land Reforms Department, Land Policy Branch. The petitioner has made a specific prayer in the writ petition for execution of the Sale deed in her favour and a further declaration that the notification dated 10th November, 2016 and the order dated 26th December, 2012, do not have any manner of application in case of the petitioner. The prayer of execution of the sale deed becomes consequential only if the aforesaid prayers of the petitioner are allowed.

- 14.** Admittedly, KMDA published a brochure, inviting applications for the outright sale of flat/apartment no. D-4/1 Block GD Building No. 1 Type II of Purba Housing Complex at East Kolkata Township. The brochure claimed that the complex would have various facilities.
- 15.** The petitioner's parents, satisfied with the location and the amenities provided by KMDA, made an application for allotment of a residential apartment in their favour in the year 2005. A provisional allotment letter was issued in their favour in Memo no. 1735/KMDA/MM/PURBA/PH-II/05/P-62, dated November 30, 2005. The petitioner's parents are stated to have paid the entire sale price of the apartment within the specified time. The KMDA also issued the possession advice in favour of the petitioner's parents after taking into consideration that the payment of the entire consideration money of the apartment had been made by the petitioner's parents.

- 16.** By the memo no. 297/ECPO-1/KMDA/645/AD dated 27.11.2008, the respondent no. 4, handed over the possession certificate to the petitioner's parents of the flat/apartment no. D-4/1 Block GD Building No. 1 Type II of Purba Housing Complex at East Kolkata Township, as they deposited the entire consideration amount for the apartment.
- 17.** In the said possession certificate, in paragraph no. 5, it was clearly stated that the apartment will be transferred by KMDA on freehold basis. However, sale deed will be executed within the allottees after the allottees get membership of the co-operative Housing society or apartment owners' association, duly approved by the competent authority.
- 18.** The deed of transfer shall be executed and registered in the format prescribed by the KMDA. The stamp duty, registration charges and other charges as may be levied by the Government from time to time for registration and/or execution of the deed of transfer shall be payable by the allottee. The petitioner's parents, after having possession of the apartment, started depositing the municipal property taxes.
- 19.** However, the concerned authority has not taken any step to execute the sale deed of the aforesaid apartment as allotted in favour of the petitioner's parents.

- 20.** As per the petitioner, her parents paid the entire consideration amount as per the brochure issued by the concerned authority. The present petitioner is highly interested in the execution of the deed of sale as she is eligible for the same as per the brochure, and there is no bar to execute the sale deed in favour of the Petitioner. The land policy issued by the Government of West Bengal is not applicable to the project, where petitioners have shown interest and finally paid the whole consideration amount. However, the KMDA remain silent over the issue of execution of the deed of sale. Finding no other alternative, the then Petitioners approached this court.
- 21.** The KMDA was all along willing to execute the deed of sale in favour of the then Petitioners but suddenly changed its view after issuance of the land policy though the land policy is not applicable in the present case because all along the KMDA represented itself as the lawful owner of the land in question and it was indicated that the deed of sale would be executed immediately on completion of all formalities.
- 22.** It is only for the first time in the year 2018 that the KMDA insisted on the execution of a deed of lease instead of a deed of sale. KMDA relied upon an order dated 26th December, 2012 issued by the Government of West Bengal, Land and Land Reforms Department, Land Policy Branch in their support.

23. In the order no. 6686-LP/1/A-18/2012 dated 26th December, 2012 of the Land and Land Reforms Department, Government of West Bengal the following was mentioned:

1. *Whereas the State Government, its parastatals (Corporations, Development Authorities) and urban local bodies etc. have been allotting and pricing land/other assets in line with various Departmental and other norms which often vary in their content and their applicability.*
2. *And whereas there is need to introduce uniformity, reduce discretion and avoid case by case decision-making to ensure transparency while dealing with public assets.*

Para 3 of the said order mentions that the Governor after careful consideration of the matter is pleased hereby to make the following Land Allotment Policy which will be applicable to land owned or held by any department of State Government or Agency funded by the State Government in any manner.

Clause I of para 3 read as follows:

- (i) *The land allotted to any individual/company/institution etc. under the policy would be transferred to them by the Government and its parastatals by way of long-term lease for a period not exceeding 99 years, with the option of renewal of such lease for the like period on*

the same terms and conditions and to such other terms and conditions as may be imposed and included in such renewal lease deed.

- 24.** The Deputy Secretary, KMDA, affirmed an affidavit-in-opposition wherein it has been mentioned that the authority is not in a position to execute any sale deed for conveying the right of outright sale as the authority itself is lacking such right over the land in question. Owing to such a lack of title and freehold right, KMDA began to execute lease deeds in favour of the allottees.
- 25.** Three deeds, dated May 24, 1995, October 14, 2004 and December 21, 2004 as well as further relied upon an unreported judgment in the case W.P.C.R.C 172 (W) of 2014 in W.P. No. 4752 (W) of 2013 (M/s Indo Power Projects Ltd. & Anr. vs. KMDA & Another), F.M.A No. 3350 of 2016 (KMDA & Ors. vs. Mfar Constructions Private Limited & Ors.) and WP 21905 (W) of 2017 (Usha Biswas & Anr. Vs. The State of West Bengal & Ors.) passed by the Co-ordinate Bench as well as Division Bench of this Court in support of his aforesaid contention.
- 26.** Upon careful perusal of the aforesaid deeds, it is revealed that the said deeds had been executed between the Governor of the State of West Bengal (The Governor) and Kolkata Metropolitan Development Authority (The Authority), in respect of a piece or portion of land or ground in the township of Kalyani, District Nadia, wherein, at paragraph 13 it is clearly stated as follows: -

“Provided further that the Authority shall not be entitled to transfer the land described in the Schedule, or any part thereof, by sale, mortgages, gift, lease or otherwise except with previous sanction of the Urban Development Department. However, KMDA may grant a lease to any person or organization on certain terms to be fixed, in general, by the Urban Development Department.”

27. Accordingly, it is clear that the authorities not only attempted to mislead the petitioner but have also attempted to mislead the Court by claiming that the KMDA has no authority to sell the flat/apartment. On the contrary, KMDA published the brochure and invited applications for allotment of apartments in Type II of the Purba Housing Complex at East Kolkata Township with the offer to sell apartments in favour of the allottees who would be selected by draw of lots. From 2008 onwards till 21st November, 2016 KMDA represented themselves as owners of the land in question and even executed several sale deeds in favour of many of the allottees, who had paid their entire consideration amount.

28. The order dated 26th December, 2012, which the KMDA relies upon, clearly mentions that to introduce uniformity, reduce discretion and case-by-case decision-making, to ensure transparency while dealing with public assets, the land allotment policy was being made, and any land allotted under the policy would be transferred by long-term lease. The order under reference did not have any retrospective effect. The land allotment policy came into effect on and from 26th

December, 2012 and not prior to that. In the instant case, the petitioner's parents applied for allotment of an apartment prior to the existence of the aforesaid policy. The apartment that had been allotted in favour of the petitioner's parents was not covered by any policy. The order of 2012 cannot be made applicable in the case of the petitioner.

- 29.** The petitioner contended that in Type II of the Purba Housing Complex at East Kolkata Township, the KMDA had executed number of deeds of sale in favour of the respective allottees. KMDA ought to have executed similar deeds in favour of the then petitioners since they have paid entire amount long back and completed all formalities in view of the brochure issued by the KMDA in the year 2005.
- 30.** The plea taken by the KMDA for not executing the deed of sale in favour of the allottees of Type II of Purba Housing Complex at East Kolkata Township appears to be highly dubious and contrary to their own brochure. Since 2006, KMDA has presented to the general public that they were the owners of the land in question, and the apartments constructed on the said land would be available to the general public by outright sale. It is only in the year 2016 that KMDA took recourse to an order passed by the Land and Land Reforms Department in December 2012. Curiously, from 2012 to 2016. In the affidavit-in-opposition filed in connection with the instant writ

petition, KMDA raised their stand of lack of ownership right, title and annexed a purported deed in their favour.

- 31.** Upon perusal of the deeds annexed with the affidavit-in-opposition, this court is not convinced that the KMDA does not have the right to outright sell a flat/apartment in favour of the petitioner. There is no specific bar but same may be done with previous sanction of the Urban Development Department. The same is a departmental formality, in which the writ petitioner has no role to play.
- 32.** The judgment relied upon by the learned Advocate appearing for KMDA is not at all applicable in the instant case inasmuch as KMDA has not come up with any scrap of document to disclose that the KMDA has no right, title and interest in respect of the land in question rather from the deeds it appears the KMDA has the right to sell subject to previous sanction of the Urban Development Department.
- 33.** Furthermore, the judgment relied upon by the KMDA in the case of ***Usha Biswas & Anr. v. State of West Bengal & Ors. (WP 21905 (W) of 2017)*** is in connection with a case, where the writ petitioners had themselves agreed to the terms of KMDA for executing the deed of lease. However, in the instant case, the writ petitioner is aggrieved by the deed of lease to be executed in her favour. Hence, the said

judgment and order is not at all applicable in the facts and circumstances of the instant case.

34. On the contrary, even though the judgment relied upon by the petitioner in support of their case, applies to the facts and circumstances herein, this Court is not convinced enough that the KMDA is not the lawful owner of the property then it will not have the right and/or authority to execute the deed of sale.

35. Sale of immovable property is governed by the provisions of the Transfer of Property Act (TP Act in short). Section 54 of TP Act defines “Sales” as follows:

“Sale is a transfer of ownership in exchange for a price paid or promised or part paid and part promised.”

36. In the instant case, the offer to sell the apartment was made by the respondent at a specified rate. The petitioner's parents accepted the offer made by KMDA in the year 2006 and acted in accordance with the same. They paid the entire consideration money in respect of the said apartment in the year 2009. The moment they accepted the offer and acted in furtherance of the same, the parties entered into a contract. KMDA never alleged non-payment of the consideration amount by them.

37. As per Section 54 of TP Act, the transfer of immovable property has to be made by way of a registered instrument or by delivery of the

property. In the present case, the possession of the property was delivered in the year 2009 upon full payment of the consideration amount, and the petitioner's parents have been in possession since then. It is only after continuous persistence by them for executing the formal deed of transfer that the respondents came up with the plea of not executing and registering the same on the ground of lack of ownership.

- 38.** Section 55 of the T.P. Act specifies the rights and liabilities of the buyers and sellers of immovable property. Omission to make any disclosure as mentioned in the section under reference is fraudulent. The respondent, being the seller of the property, was bound to disclose any defect in the seller's title to the property, which the seller in the instant case has failed to do.
- 39.** A mere perusal of the aforesaid provision will show that it was incumbent upon KMDA to disclose to the allottees their true status and title over the property. The petitioner was dealing with an instrumentality of the State. They were entitled to legitimately proceed on the assertion that the respondents, a statutory body, an instrumentality of the State, were the owners of the land and shall act fairly. The petitioner's parents had paid the entire amount of consideration long back on the expressed promise by KMDA that as the owner it will execute and register the deed of sale on payment of

the full consideration price. The petitioner will be deprived of owning the apartment in the absence of a deed of sale in her favour. In law it is the obligation of the vendor to convey an encumbrance-free, good and marketable title, subject to contract to the contrary.

- 40.** The present stand of KMDA to execute a lease deed in favour of the petitioner means that she can never be absolute owner of the apartment. The lease deed will be subject to renewal by KMDA. The rights and privileges of an owner are quite different from those of a lessee. KMDA has undoubtedly failed to perform their part of the contract.
- 41.** It is not in dispute that the policy decision of the Government of West Bengal, relied upon by the respondents, clarifies that the Kolkata Metropolitan Development Authority shall, henceforth, allot immovable property only by way of deed of lease and not by outright sale. The question, however, is not the validity of the said policy, but whether such policy can be applied retrospectively so as to unsettle rights and obligations that had crystallised prior to its issuance.
- 42.** It is a settled principle of administrative law that executive policies operate prospectively, unless a clear intention to the contrary is expressly stated or necessarily implied. In the absence of an explicit stipulation giving retrospective effect, an executive instruction or policy cannot be construed so as to divest accrued or vested rights,

nor can it be applied to transactions, decisions, or representations made prior to its coming into force.

- 43.** In the present case, the record does not disclose any indication that the said policy was intended to operate retrospectively. On the contrary, the language and tenor of the policy demonstrate that it is meant to regulate future allotments by KMDA. To apply such a policy retrospectively would not only be contrary to settled legal principles but would also result in manifest arbitrariness by altering the legal consequences of actions taken when a different regime was in force.
- 44.** This Court is also mindful of the fact that KMDA, being a statutory authority, is bound by the legal framework and policies applicable at the relevant point of time. Once a course of action was lawfully initiated or concluded in accordance with the prevailing rules and policy, the same cannot be invalidated by a subsequent executive decision, unless the statute expressly so permits.
- 45.** Therefore, while this Court does not find any illegality in the State Government prescribing, as a matter of policy, that KMDA shall henceforth grant property only by way of lease and not by outright sale, it is held that such policy cannot be applied retrospectively so as to affect transactions, entitlements, or legitimate expectations that had arisen prior to its issuance.

- 46.** Any interpretation to the contrary would offend the principles of legal certainty, fairness, and non-arbitrariness, which form an integral part of Article 14 of the Constitution of India. The impugned action, insofar as it seeks to give retrospective operation to the said policy in respect of the petitioners herein, is therefore unsustainable in law.
- 47.** Every breach of contract gives rise to an action for damages. It is settled law that where a party suffers by reason of a breach of contract, damages are to be granted so as to place the suffering party in the same position as if the contract had been performed.
- 48.** In view of the discussions made herein above, it is held that the order of the Land and Land Reforms Department dated 26th December, 2012 and the subject notification dated 10th November, 2016 are not applicable to the petitioner's case. KMDA is directed to execute the necessary deed of transfer of the subject flat/apartment in favour of the petitioner within a period of twelve weeks from the date of receipt of a copy of this order. Furthermore, the petitioner will be at liberty to initiate appropriate proceedings for compensation and damages against the respondents for delay, unnecessary expenses and harassment, if so advised.
- 49.** **WPA 19212 of 2021** is, thus, **allowed** without any order as to costs.
- 50.** Interim order, if any, stands vacated.

- 51.** All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.
- 52.** Urgent photostat certified copy of this judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P.A.