

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

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

WPA 19210 of 2021

Sanghamitra Ghosh and Anr.

Versus

State of West Bengal & Others

For the Petitioners : 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 Petitioners 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. 191/KMDA/Estate (MM)/Purba/Ph-II/06/FCFS dated 08.03.2020 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 petitioners forthwith.

FACTS OF THE CASE

2. The brief facts, leading to the 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, on outright after payment of full and final consideration amount.
 - b. The petitioners, having been satisfied with the booklet/brochure issued by the KMDA in the year 2005, made an application within the prescribed time to buy a residential apartment within the

project area, and they deposited the application money in terms of the brochure.

- c.** After being satisfied by the respondent authority in terms of paragraph no. 5 of the brochure allotted an apartment of saleable area of 1113 sq. ft. bearing No. E-5/1 at 6D-II Block provisional premium of apartment amounting to Rs. 17,80,800/- in the name of the petitioners by an office memo vide number 2189/KMDA/MM/PURBA/PH-II/06/FCFZ dated June 26, 2006. The aforesaid provisional amount as per the letter of allotment would have to be paid in 3 instalments.
- d.** The petitioners paid the consideration amount in full within the specified time and, thereafter, by the memo no. 1408/KMDA/MM/Purba/Ph-II/06/FCFS dated 04.12.2008, the respondent no. 4 issued a Possession Advice. As such, the petitioners are entitled to take possession of the allotted flat. Accordingly, the petitioners were advised to receive the possession advice.
- e.** By the memo no. 387/ECPO-1/KMDA/645/AD dated 12.12.2008, respondent no. 4, handed over the possession certificate to the petitioners of the flat/apartment no. E-5/1 Block GD Building No. 1 Type II of the Purba Housing Complex at East Kolkata Township,

as the petitioners deposited the entire consideration amount of the apartment.

- f.** In the said possession certificate, in paragraph no. 5, it was clearly stated that KMDA will transfer the apartment on a freehold basis. However, the sale deed will be executed within the allottees after they have obtained membership in the co-operative Housing society or apartment owners' association, duly approved by the competent authority.
- g.** 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 petitioners, after possession of the apartment, have been depositing the municipal property taxes.
- h.** The respondent authority also provisionally allotted semi-covered garage space, with the conditions mentioned in the Brochure for a consideration price of Rs. 1,75,000/- by the memo No. 1812/1/KMDA/MM/Purba/PH-II/06/FCFS dated 05.10.2010. In this respect, the petitioners paid the consideration price in full for the aforementioned garage space, and the respondent authority handed over possession of the garage space to the petitioners.

- i.** The petitioners made an application on February 20, 2020 by addressing the Marketing and Management Unit (Estate Manager) KMDA, Salt Lake Unnayan Bhavan, and by requesting to execute a Sale Deed concerning the aforesaid apartment along with the garage space as per the clause 11 of the booklet/Brochure issued by the authority concerned and the petitioners 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 and the garage space as allotted in favour of the petitioners.
- j.** Instead of taking any step for execution and registration of the sale deed of the aforesaid apartment and garage space as per clause 11 of the Brochure and clause 5 of the possession certificate, the respondents issued the memo illegally vide no. 191/KMDA/Estate (MM)/Purba/Ph-II/06/FCFS dated 08th March, 2020, asking the petitioners to collect the draft deed of lease.
- k.** The petitioners, against the inaction of the concerned KMDA, submitted a detailed representation dated May 05, 2020, with a request to execute the sale deed, concerning the aforesaid apartment and the garage space. However, the respondent authority concerned did not execute the sale deed of the petitioners

as per clause 11 of the booklet/brochure and also as per clause 5 of the possession certificate. Although the concerned respondent executed number of sale deeds in favour of other apartment owners/allotees.

1. The legality and validity of the said memo is under challenge in this writ petition along with a prayer for further direction to be passed to execute and register the sale deed in favour of the petitioners for their aforesaid apartment and garage space 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, in the case of the petitioners, by the impugned memo, the respondent authority refused to execute the sale deed of the apartment and the garage space of the petitioners, and the authority illegally insisting on a lease deed although consideration amount has already received for transfer of the unit for outright sale. As such, the act of the respondents is bad and is not sustainable in law. Hence, this Writ Petition.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the petitioners submitted that despite payment of the entire consideration amount and giving possession to the petitioners, the respondent, particularly KMDA, is

not executing the transfer or conveyance deed of the units in favour of the petitioners. The peaceful possession was already handed over to the petitioners long ago, and they are 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 were registered in favour of the other allottees, depriving the writ petitioners, is 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 petitioners 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 Petitioners. Therefore, the writ petitioners are 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 petitioners are 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 petitioners 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 petitioners in the instant case may also apply under this scheme for conversion of their 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 Petitioners, and peaceful and vacant possession of the apartment has already been handed over to the petitioners long back. It is also admitted that some of the apartments have been sold to the allottees prior to and even after introducing the land policy, but it is not possible to execute the sale deed in favour of the petitioners 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 petitioners/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 petitioners 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. E-5/1

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 petitioners have made a specific prayer in the writ petition for execution of the Sale deed in favour of the petitioners 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 petitioners. The prayer of execution of the sale deed becomes consequential only if the aforesaid prayers of the petitioners are allowed.

- 14.** Admittedly, KMDA published a brochure, inviting applications for the outright sale of flat/apartment no. E-5/1 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, including garage space.
- 15.** The petitioners, 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 2006. A provisional allotment letter was issued in their favour in Memo no. 2189/KMDA/MM/Purba/Ph-II/06/FCFS, dated 26th June, 2006. The petitioners 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 petitioners after taking into consideration that the payment of the entire consideration money of the apartment had been made by the Petitioners.

- 16.** By the memo no. 387/ECPO-1/KMDA/645/AD dated 12.12.2008, the respondent no. 4, handed over the possession certificate to the petitioners of the flat/apartment no. E-5/1 Block GD Building No. 1 Type II of Purba Housing Complex at East Kolkata Township, as the petitioners deposited the entire consideration amount of 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 petitioners, after having possession of the apartment, started depositing the municipal property taxes.

- 19.** The respondent authority also provisionally allotted semi covered garage space with the conditions mentioned in the Brochure for a consideration price of Rs. 1,75,000/- by the memo No. 1812/1/KMDA/MM/Purba/PH-II/06/FCFS dated 05.10.2010. in this respect, the petitioners paid the consideration price in full for the garage space and the respondent authority handed over the possession of the garage space also to the petitioners.
- 20.** However, the concerned authority has not taken any step to execute the sale deed of the aforesaid apartment and the garage space as allotted in favour of the petitioners.
- 21.** Without taking any step for execution and registration of the sale deed of the aforesaid apartment and garage space as per the clause 11 of the Brochure and the clause 5 of the possession certificate, would rather the respondents issued a memo vide no. 191/KMDA/Estate (MM)/Purba/Ph-II/06/FCFS dated 08.03.2020 asking the petitioners to collect the draft deed of lease instead of a sale deed, stating that the KMDA cannot outright sell the apartment due to the Government land policy. Although the concerned respondent executed a sale deed in favour of other apartment owners/allotees after the issuance of the Government land policy.
- 22.** As the petitioners paid the entire consideration amount as per the brochure issued by the concerned authority, they are highly

interested in the execution of the deed of sale because the petitioners would have been eligible for that as per the brochure, and there is no bar to execute the sale deed in favour of the Petitioners. 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 Petitioners approached this court.

- 23.** The KMDA was all along willing to execute the deed of sale in favour of the 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 before the petitioners as well as the general public that KMDA was the lawful owner of the land in question and the deed of sale would be executed immediately on completion of all formalities.
- 24.** It is only for the first time in the year 2020 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.

25. 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.

- 26.** 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.
- 27.** 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.
- 28.** 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.”

- 29.** Accordingly, it is clear that the authorities not only attempt to mislead the petitioners but have also attempted to mislead the Court by claiming that the KMDA has no authority of sale 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.
- 30.** 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 petitioners applied for allotment of an apartment in 2008 when there was no existence of the aforesaid policy. The apartment that had been allotted in favour of the petitioners was not covered by any policy. The order of 2012 cannot be made applicable in the case of the petitioners.

- 31.** The petitioners 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 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.
- 32.** 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.

- 33.** 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 petitioners. There is no specific bar but same may be done with previous sanction of the Urban Development Department. The same is departmental formalities, in which the writ petitioners have no role to play.
- 34.** The judgment relied 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.
- 35.** 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. But, in the instant case, the writ petitioners are aggrieved by the deed of lease to be executed in their favour. Hence, the said

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

36. On the contrary, even though the judgment relied upon by the petitioners 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.

37. 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."

38. In the instant case, the offer to sell the apartment was made by the respondent at a specified rate. The petitioners herein accepted the offer made by KMDA in the year 2006 and acted in accordance with the same. The petitioners paid the entire consideration money in respect of the said apartment in the year 2009. The moment the petitioners 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 the petitioners.

39. 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 petitioners have been in possession since then. It is only after continuous persistence by the petitioners 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.

- 40.** 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.
- 41.** 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 petitioners were 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 petitioners had paid 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 petitioners will be deprived of owning the apartment in the absence of a deed of sale in their 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.

- 42.** The present stand of KMDA to execute a lease deed in favour of the petitioners means that the petitioners can never be absolute owners 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.
- 43.** 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.
- 44.** 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.

- 45.** 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.
- 46.** 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.
- 47.** 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.

- 48.** 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.
- 49.** 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.
- 50.** 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 petitioners. KMDA is directed to execute the necessary deed of transfer of the subject flat/apartment including garage in favour of the petitioners within a period of twelve weeks from the date of receipt of a copy of this order. Furthermore, the petitioners will be at liberty to initiate appropriate proceedings for compensation and damages against the respondents for delay, unnecessary expenses and harassment, if so advised.
- 51. WPA 19210 of 2021** is, thus, **allowed** without any order as to costs.
- 52.** Interim order, if any, stands vacated.

- 53.** All parties shall act on a server copy of this judgment uploaded from the official website of High Court at Calcutta.
- 54.** 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.