

(2018) 07 CAL CK 0107
In the Calcutta High Court
Case No : W.P. 2051 (W) of 2016

Dinabandu Andrews Institute of Technology & Management	APPELLANT
Vs	
Kolkata Metropolitan development Authority & Ors.	RESPONDENT

Date of Decision : 16-07-2018

Acts Referred:

Transfer of Property Act, 1882 — Section 55

Citation : (2018) 07 CAL CK 0107

Hon'ble Judges : ARINDAM SINHA, J

Bench : Single Bench

Advocate : B.R. Bhattacharjee, R.N. Chakraborty, M. Ahmed, Partha Sarathi Basu, S. Talukdar

Final Decision : Disposed Off

Judgement

This writ petition on being moved resulted in record of submissions in order dated 19th June, 2018 as are reproduced below:

â??KMDA granted licence on 28th September, 2008 to the Institute. Clauses 2 and 4(iii) are set out below:

â??2. The License under this deed shall be deemed to commence on the date of these presents and possession shall continue to be operative till the

execution and registration of a deed of lease in respect of the above mentioned land between the Authority and the licensee or till the expiry of the

period of 99 (Ninety Nine) years from the date of its commencement, whichever event occurs earlier.

4(iii) At the own cost of the Licensee, within 24 months from the date of issue of allotment letter or within such further time as the Authority may as

its option allow in writing on sufficient and reasonable grounds, to start Construction for the purpose of setting up an Institution for opening MBA

Baishnabghata Patuli Area Development Project with boundary walls boundary walls, sewers and drains in accordance with plans, sanctions and specifications as shall be approved by the appropriate authorities on payment of such fees as required, in accordance with the Building Rules of the Kolkata Municipal Corporation, with the requirement of any Land Use and Development Control Regulations of the Authority or the requirements of any other statutory rules and regulations of local or statutory body framed for the purpose and licensee shall complete the construction works of the project within 36 months from the date of issue of allotment letter.â??

Failure on the part of the Licensee to start construction within two years or within the time as extended by the AUTHORITY and/or complete the construction works of the project within three years from the date of issue of allotment letter of the plot of land, the License shall be terminated by the AUTHORITY, with deduction of 20% of premium as paid by the Licensee as service charge and remaining amount shall be refunded without any interest thereon.

Mr. Bhattacharjee, learned senior advocate appears on behalf of petitioner and submits, it is a deemed sale. Provisions of Transfer of Property Act, 1882 would apply to the parties. He submits, the authority may at its option allow, in writing on sufficient and reasonable grounds, further time to start construction for setting up the Institute. On failure on the part of his client to start construction within time as extended or completed within three years from the date of issue of allotment letter on the plot of land, the licence can be terminated by the authority with deduction of 20% of premium as service charge. It cannot do anything else.

He refers to impugned demand dated 14th January, 2010 which is a demand for penalty amount at the rate of current rate on value of the land, which, according to him, cannot be sustained as issued on the basis of either the licence or statutes. He relies on judgment of Supreme Court in

Andhra Pradesh Industrial Infrastructure Corporation Limited and others v. S.N. Raj Kumar and another reported in AIR 2018 SC 1981, in particular to paragraph 16 which is set out below:

â??16. Section 55 of the Act deals with rights and liabilities of buyer and seller. As per this provision, when the buyer discharges obligations and seller passes/conveys the ownership of the property, the contract is concluded.

Thereafter, the liabilities, obligations and rights, if any, between the buyer and seller would be governed by other provisions of the Contract Act and the Specific Relief Act, on the execution of the sale deed. The seller cannot unilaterally cancel the conveyance or sale.â??

He also relies on judgment of a Division bench of this Court in Kolkata Municipal Corporation vs. Gopal Lal Bhatte reported in 2011(3) CHN (CAL) 589, to paragraph 24 therein which is set out below:

â??24. The learned Single Judge, in our opinion, has rightly disallowed the imposition of penal rates by application of penal multiplier in calculating the retention charges for sanction of the unauthorized construction of the building in question as there is no provision whatsoever in the Kolkata Municipal Corporation Act and/or Rules framed thereunder for imposition of such penal rate for the purpose of allowing the retention of unauthorized construction.â??

Mr. Talukdar, learned advocate appears on behalf of KMDA and relies on judgment dated 8th May, 2018 of another Division Bench of this Court in, inter alia, FMA 59 of 2018 (Kolkata Metropolitan Development Authority & Anr. South City Projects (Kolkata) Limited & Anr.) to submit, the said judgment is one on similar facts. It binds this Court and thus there should be no interference. Mr. Bhattacharjee points out the views expressed therein are prima facie.â??

Today Mr. Talukdar refers to impugned demand and points out, the institute had not only sought instalments to pay part of it but also applied for

further time to pay and waiver. As such the institute is estopped from challenging the demand. He relies on three judgments of Supreme Court. They

are in Galada Power and Telecommunication Limited vs. United India Insurance Company Limited and Another reported in (2016)14 SCC 161,

paragraphs 14 to 17; B.L. Sreedhar and others vs. K.M. Munireddy (Dead) and Others reported in (2003)2 SCC 355; and Sunderabai W/o Devrao

Deshpande and Another vs. Devaji Who Calls Himself as the Adopted Son of Shankar Deshpande reported in AIR 1954 SC 82. Reliance on Galada

Power and Telecommunication Ltd. (supra) is on the point of waiver. Mr. Talukdar submits, even if petitioner had any right, it by accepting the

demand in as much as by seeking instalment and making part payment etc., has waived its such right. Relying on other two judgments, he submits,

petitioners are estopped by conduct. There should be no interference. He seeks to distinguish S.N. Raj Kumar (supra) by submitting, in this case there

has not been a transfer. Petitioner is in permissive possession. Lease deed has not yet been executed nor registered. Hence, reliance on paragraph 16

of the judgment for application of section 55 in Transfer of Property Act, 1882 is misconceived.

In reply Mr. Bhattacharjee relies on judgment of a Division Bench of this Court in Asian Leather Limited & Arn. Vs. The Kolkata Municipal

Corporation & Ors. reported in (2007) 3 WBLR (Cal) 195 to paragraphs 7, 18, 44, 45 and 48. He submits, his client made the payment under mistake

of law. There can be no estoppel against law and there has been no waiver on the part of his client.

The rights of parties are governed by the licence. There is no dispute regarding that. Under clause 4(iii), the authority reserved to itself right of

exercise of option to allow in writing, on sufficient and reasonable grounds for delay, for the licensee to start construction for purpose of setting up an

institute for opening MBA course study. Such construction is to be made in accordance with plans, sanctions and specifications and thereafter

approved by the appropriate authorities on payment of such fees as required, in accordance with the building rules of, inter alia, Kolkata Municipal

Corporation. Impugned demand however has no reference to this clause in the licence. On approval by competent authority, petitioner was requested

to deposit Rs. 59,69,880/- as penal charge for extension of time in the period from 23rd March, 2009 to 30th June, 2010.

Reserving option to extend time is a right conferred upon the authority under the licence. Question of waiver on the part of petitioner does not arise.

Approval of competent authority to authorise request to pay penalty for extension of time sought by the institute must flow from said or some other

clause in the licence. Such authority is to be derived from the contract between parties. The contract by licence does not provide for liquidated

damages for exercise of this option by the authority. S.N. Raj Kumar (supra) was for the purpose of reliance on proposition that liabilities, obligations

and rights, if any, would be governed by other provisions of Contract and Specific Relief Acts upon execution of deed. If the authority contends since

there is no deed, contract law will not apply, it has failed to demonstrate before this Court that the licence has been revoked.

The authority's right to claim to impose penalty does not find basis in the licence. As such petitioner having paid a part of the demand cannot

thereby give sanctity to the demand. Mr. Bhattacharjee's contention is accepted that payments were made under mistake of law.

The authority having proceeded to grant the extension, challenge of petitioner is only against the imposition. For reasons aforesaid writ petition

succeeds. There will be an order in terms of prayer (a) of writ petition. Writ petition is disposed of accordingly.