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**(2018) 06 CAL CK 0168**  
**In the Calcutta High Court**  
**Case No : Writ Petition2051 (W) of 2016**

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| Dinabandu Andrews Institute Of Technology & Management | APPELLANT  |
| Vs                                                     |            |
| Kolkata Metropolitan Development Authority & Ors.      | RESPONDENT |

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**Date of Decision :** 19-06-2018

**Acts Referred:**

**Citation :** (2018) 06 CAL CK 0168

**Hon'ble Judges :** ARINDAM SINHA, J

**Bench :** Single Bench

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

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## Judgement

This writ petition has been listed under the heading "To Be Mentioned" at the instance of petitioner citing urgency. It is taken up for hearing.

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

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 Bhatler 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. Basu, 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. Paucity of time intervenes. List on 26th June, 2018.