

Court No. 2

24.09.2021

(Sl. 41)

(S. Banerjee/BP)

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction**

WPA 988 of 2019

Chandmoni Uttorayan Welfare Society
Vs.

State of West Bengal & Ors.

With
CAN 1 of 2021
CAN 2 of 2021

(Via Video Conference)

Mr. Saptanshu Basu, Sr. Advocate
Mr. Milindo Paul
Mr. Nabankur Paul
Ms. Mrinalini Majumdar
... for the petitioner

Mr. Subir Kumar Saha
Mr. Bikramaditya Ghosh
... for the State

Mr. Ratnanko Banerjee
Mr. Ayush Jain
Mr. Deborshi Dhar
...for respondent no. 7

Mr. Sunil Kumar Sarkar
...for respondent nos.8,9,10 and 18

Mr. Aniruddha Chatterjee
Mr. Surya Prasad Chattopadhyay
Mr. Subham Ghosh
.....for respondent nos.14 ,15 and 16

Mr. Goutam Das
Mr. Momenur Rahman
....for SJDA

The writ petition has been filed challenging a modification of the original plan under the Town and Country Planning Act of 1979 creating a township called Uttorayan Township located at Matigara, Siliguri.

By a lease dated 21st November, 2003 the government of West Bengal transferred a large piece of land comprising in 393.25 acres for development of a township to the respondent no. 7 for a period of 999 years. Luxmi Township Holdings Limited, being the respondent no.7 was authorized to sell and transfer plots of land after preparation of basic plan. Plots have been sold to about 3400 people. Such persons are residing there at after having constructed residential houses. The township also contains infrastructural facilities in the nature of schools, markets, playground etc. A final conveyance was also executed in favour of the owners by respondent no. 8 on 7th December, 2006.

The writ petitioner is a society formed by the owners and registered under the West Bengal Societies Registration Act, 1961. The Objects of the society are inter alia as follows.

“3. AIM & OBJECT

The Aim and objects for which the society is established are:

- a) To protect the mutual and common interest of all the members residents of the Uttorayon, Townhship, P.O. & P.S. Matigara, District Darjeeling under the active participation of the society.
- b) To promote social and cultural activities and co-operation among the members and to provide a hygienic and secured living environment.
- c) To appraise the members of the society about their duties and responsibilities for the peaceful co-existence.
- d) To foster better relationship among the members by specifying their mutual duties and resolving difference.

- e) To help the members of the society in all their difficulties by all possible means and to improve the living conditions in the locality by the help of the local bodies.
- f) To protect the interest of the members of the society from forced collection of any type of subscriptions and unnecessary harassment from any corner.
- g) To provide a common place for the meeting of the members for discussion of common problems and to solve the same by the unified efforts.
- h) To represent the members of the society before the Government, Semi-Government, Local bodies or any other competent authority for immediate solution of the problems of the members and the local area.
- i) To establish and maintain a library and free reading room if possible, for the benefits of the local youths and the members of the society without any motive of profits.
- j) To impart and develop pollution awareness among the people by way of tree planting in different parks and road side Educational Institutions for safeguards of the society.
- k) To impart and develop pollution awareness among the people against the use of plastic bags and other plastic materials.
- l) To open charitable dispensaries, children clinics, blood donation centre etc. and to organize seminars, cultural functions, charity show for raising funds for the cause of social services, without any profit motive.
- m) To carry on social activities and functions for better and improvement of social and cultural life of the members.
- n) To help the needy members in case of sickness, accidents and death of such members.
- o) To take the maintenance/management of the Uttorayon township, matigara in the interest of the resident of the society and to perfume all acts that may be necessary for this purpose in general to do such acts, deeds, matters as may be incidental or conducive to the interest of the members of the society and the foregoing subject."

(sic.)

An agreement dated 20th June, 2017 entered into by the owners with the society. Recital Clause 'E' stipulate as follows:

"E) For the purpose of providing proper maintenance and also for the purpose of rendition of various services to the owners and/or occupiers and/or Lessees of the said township, the Society/Second Party has agreed to take over the maintenance related activities of Uttorayon Township subject to the terms and conditions hereinafter appearing. The maintenance activity handover is pursuant to the terms and conditions of the General Terms and Condition of sale provided to the plots and other property owners."

Clause (vii) under Definition clause 1.1 of such agreement reads as under:

“vii) EXCLUDED AREA shall mean ALL THAT the various areas (morefully and particularly mentioned and described in the THIRD SCHEDULE hereunder written) and the same does not form part of this agreement.”

Clause 4.1 of the same agreement (under the Clause ‘Purpose and Objects of this agreement’) reads as follows:

“The purpose of this agreement is related only with the matter of Maintenance of the Township and the parties hereof have signed this agreement without prejudice to the other rights and interest of the parties concerned.”

Objection is raised by the respondent no. 7 and some new proposed owners of the society as regards maintainability of the writ petition. It is submitted that the petitioner is only entrusted with the job of maintaining the common services in the society and cannot challenge any modification of the original plan under which the township was created in the year 2003.

Mr. Saptangsu Basu, learned Senior Advocate, has vehemently argued before this court that by reason of the fact that the petitioner is described as a “welfare society”, in addition to maintenance of common services, is also entitled to protect the interest of its members. The petitioner argues that it is entitled to maintain the writ petition challenging the action of the State to modify the original plan creating the township and

selling portions thereof inter alia to respondent Nos. 8, 9, 10, 14, 15, 16, 17 & 18.

In addition thereto Mr. Basu relies upon Section 19 of the West Bengal Societies Registration Act, 1961 which authorized the society to sue and be sued in its name, albeit based on a resolution to be adopted by the governing body.

This Court is unable to accept the submissions of learned Senior Counsel, Mr. Basu.

A plain reading of the aims and objects of the society (set out above) and the provisions of the agreement dated 20.06.20017 (also set out above) entered into by the original owners with the society would clearly indicate that the petitioner was only engaged and given the authority of maintaining the common services and areas of the society. The petitioner is required to maintain and keep running the facilities in the society to ensure that the members living thereat, receive all basic amenities. A reading of clause 4.1 would indicate in no uncertain terms the aforesaid and that it is the owners who can exercise any right title and interest in connection with their land and building and the common areas in the society.

In that view of the matter, this Court is of the view that the writ petition cannot be maintained by the petitioner.

It is made absolutely clear that this Court has not entered into any of the merits of the writ application or any of the actions challenged by the petitioner society.

In view of above, the writ application fails and is dismissed, however, without any order as to costs.

In view of the dismissal of the main writ application the connected applications, being CAN 1 of 2021 and CAN 2 of 2021 shall also stand dismissed.

Urgent Photostat certified copy of this order be supplied to the parties subject to compliance of all requisite formalities.

(Rajasekhar Mantha, J.)