

IN THE HIGH COURT AT CALCUTTA

(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 11485 of 2018

Kallol Co-operative Housing Society Limited & Ors.

Versus

Steel Authority of India Limited & Ors.

Mr. Ashit Kumar Chakraborty

Mr. Sunanda Mohan Ghosh

.....For the Petitioners

Mr. L.K. Gupta, Sr. Adv.

Mr. Arjun Ray Mukherjee

Mr. Saheli Mukherjee

.....For the Resps./SAIL

Heard on : 23.02.2022

Judgment on : 07.04.2022

Krishna Rao, J.: The petitioners have challenged two notices issued by the General Manager (T.S.-T.A), Steel Authority of India Limited, Durgapur vide no. Estate/LA/5/384(3)/44 dt. 13th March, 2018 and Estate/LA/5/384(3)/83 dt.11th April, 2018.

1. Due to acute shortage of quarters/accommodations in an around Durgapur Steel Plant various problems were cropped up for which the production was badly suffered and the same was discussed in the meeting of National Joint Committee for steel held on 09.06.1979 and it was resolved that in addition to the company quarters, efforts will be made to get clearance from the State Government for allotment of land in an around Steel Plant Township for private Housing by the employees preferably through Co-operative Societies. The steel Authority of India in its 100th and 111th meeting of the Board of Directors held on 24th January, 1984 and 7th June, 1985 have decided to relinquish of more than 150 acres of undeveloped land "as and where basis" in favour of Government of West Bengal upon payment of Rs.25,000/- per acres for subsequent settlement with Housing Co-operative Societies formed by the employees of Steel Authority of India Limited, posted at Durgapur. The Government of West Bengal provided No Objection to the Steel Authority of India, Durgapur Steel Plant for settling the said land through the Co-operative Societies formed by Steel Authority of India Employees posted at Durgapur according to existing policy of the State Government.
2. On 15.05.1993 lease deeds were executed between Steel Authority of India Ltd. and the Societies for a period of 33 years from the date of execution of the Lease Deed with the provisions for further renewable for

two like periods on payment of such consideration by the lessee and on such terms and conditions as may be fixed and decided by the lessor.

Clause 3 (2) of the Lease Deed stipulates that:

“(2) To pay all rates, taxes, charges including water and other service charges, duties, burdens, assessments, outgoing and impositions whatsoever whether parliamentary parochial local or otherwise which now are or shall it any time hereafter during the said term be charged rated assessed or imposed upon or in respect of the land hereby demised or the said building/quarters and other erection that may be accepted by the Lessee thereon or on the Lessor or the Lessee or the occupier in respect thereof respectively.”

3. Subsequently, the respective societies have also executed sub leases with their respective members and sub lease of plot of land measuring an area of about 3 cotthas (2160 sq.fts) each members for a period of 33 years with the provisions for further extension at a consideration of Rs. 1988.34/-. The lease deed executed between the societies and its members reveals that the valuation of 3 cotthas of the land was Rs. 4,50,000/- and based thereon stamp duty was paid though the lease was granted on a consideration of Rs. 1988.34/-. Clause 3 (b) of the lease deed executed between the societies and its members having the same contents as mentioned above.

Clause 3 (m) of the lease deed executed between the Societies and its members stipulates that:

“(m) Not to use the land for any purpose other than that for which it has been demised and not to assign, transfer, mortgage or sublet or otherwise deal with or part with possession of the SUB-Lesses’s interest of and in the said land hereby demised or any part thereof or the said buildings to be erected thereon by the Sub-Lessee as aforesaid and all other buildings and erections that may at any time be in or upon the said land or part thereof without previous consent in writing of Steel Authority of India Limited i.e. the Lessor/Sub-Lessor and in case of any such transfer or other dealings with the prior approval of the Lessor as aforesaid or in case of devolution of interest by operation of the law furnish the Lessor with a certified true copy of the relative document or other evidence in respect of such transaction or devolution as aforesaid within one month from the date thereof.”

4. An advisory committee was constituted under the chairmanship of the General Manager (TS) with 5 other members for the purpose of revision of existing charges, introduction of fresh/new charges and explores with new avenues for Generation of Additional Revenue and recommended charges for the same. On the basis of the recommendation of the advisory committee and approved by the competent authority on 15.02.2018, the same was intimated to the members vide communication dt. 13.03.2018 and 11th April 2018.
5. Mr. Ashit Kumar Chakraborty, Ld. Counsel representing the petitioners submitted that in the property of the Co-operative Housing Society the members have a transferable and heritable right and if any member applies for written consent to transfer the plot of land including the structure made thereon in favour of the person who is otherwise eligible to become a member and has a genuine need of accommodation from the cooperative society, the society has no other alternative but to accord

written consent in favour of the member who intends to transfer the plot with the structure standing there on and the said provision is mandatory in nature.

6. It is further argued that before issuance of the impugned communications the respondents have never claim for any charges of nomination, induction of a new member in place of outgoing member i.e. in case of transfer and also providing no objection for mortgaging the lease hold plot for securing house building loan.
7. It is further argued that the members of the societies are all retired employees of the Steel Authority of India, Durgapur and with their hard earn money they have constructed a building in the plot allotted to them by the respective co-operative society and due to the impugned communications the members of the societies will suffer immense hardship.
8. The counsel for the petitioners further submitted that as per section 76 of the West Bengal Co-operative Societies Act, 2006 read with Rule 2011 it is obligatory on the part of the Co-operative Societies to admit to nominee of the deceased member as the member of the society and to transfer the share and interest of the of the deceased member in favour of the nominee.
9. *Per contra*, Shri L.K. Gupta, Ld. Senior Counsel representing the Steel Authority of India submitted that by a Lease Deed dt. 15.05.1993 executed between Steel Authority of India and Vivekananda Co-operative

Society Ltd. for lease of 2.57 acres of land for a period of 33 years with the provisions for further extension at a consideration price of Rs. 1,01,405.34/- and identical Lease Deeds were executed with other 61 Housing Co-operative Societies. After execution of the Lease Deeds with different Co-operative Societies, the Co-operative Societies have entered into sub lease with its members with respect of plot of land measuring about 3 cotthas each members for a period of 33 years with the provision of further extension.

10. Ld. Sr. Counsel relied upon Clause 3 (2) of the Lease Deed executed between the Steel Authority of India and the Societies and submitted that Lease Deed stipulates the society will pay all rates, taxes, charges including water and other service charges, duties, burdens, assessments, outgoing and impositions whatsoever whether parliamentary parochial local or otherwise which now are or shall at any time hereafter during the said term be charged rate assessed or imposed upon or in respect of the land hereby demised or the said building and other erection that may be erected by the Lessee thereupon or on the lessor or the lessee or the occupier in respect thereof.

11. Ld. Senior Counsel further relied upon Clause 3 (b) and 3 (m) of the Lease Deed executed between the Societies and their members and submitted that they are liable to pay the charges. He further submitted that in the year 1998, Durgapur Steel Plant issued letter to all the

Housing Co-operative Societies informing that as per the terms and conditions of allotment of land by the Board of the Steel Authority of India, transfer of plots of land by the members would be recognized by Durgapur Steel Plant only if such transfers were made in favour of serving employee.

12. It is further argued that as per the terms and conditions of the lease Deeds the Durgapur Steel Plant is also entitle to impose and receive charges whatsoever which includes its legitimate share on the profit benefit to be earned by the transfer or by the transferring at higher market rate much above the subsidized rate on which the land was leased out by the Durgapur Steel Plant. The Durgapur Steel Plant felt necessary to introduce charges in certain situation and an Advisory Committee consisting of six members under the Chairmanship of General Manager (TS) was constituted for examining the issues and the committee considering the guidelines contained in the Notification dt. 30.04.2016, the rates charged by the Asansol Durgapur Development Authority (ADDA), the cost of acquisition and cost of inflation index as notified by the Central Government, the present cost of acquisition based on rate of ADDA and arrived to the conclusion that Rs. 2,50,000/- should be the charge against Co-option of new member in place of existing member but the same would not be applicable to transfer to spouse/legal heirs/next kin of the Lessee. The committee recommended

a token amount of Rs. 5000/- being the charge for transfer in the name of spouse/legal heirs/ next kin of the existing member.

13. Ld. Sr. Counsel relied upon the judgment passed by the Hon'ble Supreme Court in Civil Appeal No. 8219 of 2019 (Bihar Industrial Area Development Authority & Ors. – versus – Amit Kumar & Ors.) and in the said judgment the Hon'ble Supreme Court held that :

“The land was given to the original allottee at a price fixed by BIADA. When the allottee transfers and gets something more for the land or the market value as reflected in the circle rate is much more than the price at which the land was allotted to the allottee, we see no reason why the allottee should pocket all this unearned increase and BIADA, which was the original owner of the land should be deprived of a reasonable portion of the unearned increase from the value of the land. Therefore we are not in agreement with the High Court that the unearned increase can be charged only on the basis of the BIADA value plus development charges and in our opinion the policy of the BIADA fixing the cost of the land on the basis of the circle rate applicable is legal and valid.”

14. Considered the rival submissions of the parties, documents available on records and the judgment relied by the respondents.

15. As there was acute shortage of quarters/ accommodations of the employees in an around Durgapur Steel Plant due to which several problems were cropped up and accordingly, the Steel Authority of India had decided to relinquish about 150 acres of undeveloped land in favour of the Government upon payment of Rs. 25000/- per acres for settlement of Co-operative societies formed by the employees not the Steel Authority of India post at Durgapur Plant. The Government of West Bengal issued No

Objection to the Steel Authority of India for settling the said land through Co-operative Societies formed by its employees posted at Durgapur according to the existing policy of the State Government. The Steel Authority of India had executed Lease Deeds on 15.05.1993 in favour of Co-operative Societies formed by the employees of the Durgapur Steel Plant initially for 33 years with renewable for two like period on payment of such consideration and on payment on such terms and conditions as may be fixed and decided by the Lessor. After execution of the lease deed the societies have allotted more than 3 Cottahs of land to its members for their residential purpose by entering into a sub lease with the members. As per the terms and conditions of the Lease Deeds, Durgapur Steel Plant is entitle to impose and receive charges which includes its legitimates share on the profit or benefit to be earned by transferor by transferring at higher market rate much above the subsidized rate on which the land was leased out by the Durgapur Steel Plant. An advisory committee was formed for revision of existing charges for co-option of new member in place of outgoing member, legal heirs in place of deceased member and No Objection for mortgaging lease hold plot for securing House Building Loan the following rates have been fixed :

- “a) Co-option of new member in place of outgoing member – Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) Only.
- b) Legal heir in place of deceased member – Rs. 5,000/- (Rupees Five Thousand) Only

- c) No objection for mortgaging lease hold plot for securing House Building Loan – Rs. 5,000/- (Rupees Five Thousand) Only

GST @ 18 % or as applicable extra.

Total inclusive of GST @ 18 % Rs. 5,9000/- (Rupees Five Thousand Nine Hundred) Only for b) & c) and Rs. 2,95,000/- (Rupees Two Lakhs Ninety Five Thousand Only).”

16. The Judgment relied by the respondent in the case of Bihar Industrial Area Development Authority & Ors. – versus- Amit Kumar and Ors. (Supra) is squarely applicable in the instant case.

17. The societies have entered into Lease Deeds with the Steel Authority of India and in the said deed specific condition for payment of all rates, taxes, charges including other service charges are stipulated and the same conditions are stipulated in the Lease Deed executed between the Society and its members.

18. In view of the above, this Court is of the view that the respondent authorities have rightly fixed the charges for transfer of the property. The impugned notices dt. 13th March, 2018 and 11th April, 2018 does not require any interference.

WPA 11485 of 2018 is thus dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)