

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA 6764 of 2010

Maruti Suzuki India Ltd.

-Vs-

Kolkata Metropolitan Development Authority & Anr.

For the Petitioner: Mr. Jaydeep Kar, Sr. Adv.,
 Mr. Souradeep Banerjee, Adv.,
 Mr. S.K Banerjee, Adv.

For the K.M.D.A: Mr. Satyajit Talukdar, Adv.,
 Ms. Piu Karmakar, Adv.

Hearing concluded on: 12 June, 2023.

Judgment on: 15 June, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioner Maruti Suzuki India Limited is a public limited company, previously the above named company was incorporated as Maruti Udyog Limited and subsequently the name of the company was changed from Maruti Udyog Limited to Maruti Suzuki India Limited. In or about 2003 when the company was named as Maruti Udyog Limited, the company approached the Kolkata Metropolitan Development Authority (hereinafter referred to as KMDA), respondent No.1 herein for allotment of a plot of land for the establishment of Regional Training Centre at Kolkata. By a letter dated 16th /17th May, 2005 the Deputy Secretary, Works Cell, KMDA wrote a letter to the Regional Manager of Maruti Udyog

Limited that a plot of land measuring about 10.04 katha was offered for allotment of land in favour of the said company. Subsequently, the company found the said land to be unsuitable and finally an alternate plot measuring about 11.44 katha in EKADP was proposed to be allotted by the KMDA. Accordingly, Officer Documents were executed by KMDA MUL for allotment of the land on certain terms and conditions mentioned in the letter dated 24th August, 2005. The terms and conditions for allotment of land are delineated below:-

“Terms and Conditions for allotment of lands to M/s Maruti Udyog Ltd.

1. Area of land offered is more or less 11.44 cuttahs.
2. The land shall be allotted on lease-hold basis for 99 (Ninety Nine) years solely for the purpose of construction of Regional Training Centre and not for any commercial exploitation. In case of any violation of this direction the land shall be resumed by KMDA without any compensation to SAIL.
3. A nominal ground rent of Re.1/-(one) per cottah or part thereof per annum shall be payable by the leasee under the terms of lease. Pending execution of the deed of lease the allottee shall be liable to pay license fee @ Re.1/- (one) per cottah or part thereof per annum from the date of delivery of possession of the land.
4. The sum of Rs.68,64,000/- lakhs already paid to KMDA as price of 11.44 cuttahs of land at Plot No.I-5/A under EKADP shall be treated as premium payable by M/s. Maruti Udyog for the land hereby offered for allotment.”

2. On 28th November, 2005 the Regional Service Manager –East- 1 of MUL informed KMDA that the company did not get the land and the title deed from KMDA which are necessary for commencement of construction

work of the training institute. Again on 20th February, 2007 it was mentioned in a letter written to the KMDA by the Regional Service Manager, East-1 of MUL that on their request KMDA allotted land for construction of regional training center at Kolkata. MUL paid Rs.68 lakhs as premium. However, KMDA failed to execute the lease deed and proposed to accept an alternate site as a licensee with licence fees. MUL again requested KMDA to deliver possession of the land in question. Finally on 18th December, 2008 the KMDA handed over permissive possession of bulk land under East Kolkata Area Development Project at plot No.I-28/3, Mouza Nonadanga at Sector 'K' free from all encumbrance measuring about 11.35 cottahs.

3. Further case of the petitioner is that in the year 2009 M/s Maruti Udyog Limited changed its name to M/s Maruti Suzuki India Limited and the new name was also incorporated with the register of companies under Section 21 of the Companies Act, 1956. Subsequently, the KMDA was asked to change the name of the licensee from M/s Maruti Udyog Limited to M/s Maruti Suzuki India Limited. On 30th June, 2009 the Regional Manager (East-1), MSIL wrote a letter to the Administrative Officer and Estate Manager, KMDA, Kolkata that as per the agreement construction of building is to be completed within 24 months from the date of taking possession of the plot. In order to apply for the approval of the building plans etc MSIL wanted to execute two license deeds between them and KMDA. On 21st July 2009 the Administrative Officer and Estate Manager, KMDA informed MSIL that the competent authority in KMDA has decided

to change the name from M/s Maruti Udyog Limited to M/s Maruti Suzuki India Limited, subject to payment of 10% of current land value at the rate of Rs.15 lakhs per cottah as service charge. Thus, MSIL was advised to contact the concerned department of KMDA to collect the payment advice. The petitioner made a representation before the KMDA stating, inter alia, that change of name of company from MUL to MSIL does not create any new interest in favour of MSIL and MSIL was not obliged to pay Rs.17,02,500/- towards the service charge for change of name in favour of KMDA. The said representation was rejected by the appropriate authority and MSIL was informed following the payment, execution of license deed will be taken up by them.

4. The respondent No.1 filed affidavit-in-opposition against the above mentioned writ petition. It is the specific defence of the KMDA that the writ petition is not maintainable as MSIL was not the allottee/licensee in whose favour the subject allotment was made. There is no privity of contract between MSIL and KMDA in regard to the special plot of land. It is further submitted on behalf of the KMDA that as per the prevailing policy of KMDA regarding his change of name of the allottee, the competent authority in KMDA decided to allow such prayer of the petitioner for change of name of the allottee in respect of the said plot of land from MUL to MSIL subject to payment of 10% of current market value at the rate of Rs.15 lakhs per cottah as service charge.

5. By filing an affidavit-in-reply, the petitioner submits that till 11th February, 2020, the petitioner could not take physical possession of the

allotted land due to pendency of the instant writ petition. The said fact was admitted by the KMDA by a letter dated 6th August, 2020.

6. Referring to the above pleadings of the petitioner and the respondents, it is submitted by Mr. Jaydeep Kar, Senior Counsel on behalf of the petitioner that the specific defence of the KMDA is that the petitioner allegedly want to change the name of the allottee by deleting the name of the original allottee and introducing a new allottee in respect of the plot of land which was allotted in favour of MUL in the year 2004-05. It is contended by the learned Senior Counsel that as per the policy decision of KMDA such transfer of land in the name of MSIL would incur 10% service charge as per the policy of KMDA.

7. Mr. Kar next takes me to the proceedings of the 155th Authority Meeting of the KMDA held on 26th March, 2008 and the policy decision in relation to the resolution adopted in 155th Authority Meeting on agenda item No.9.2. The said policy decision is as follows:-

“Sub: Change of name of the different allottees of bulkland service charge thereof.

The issue of sub-leasing, sub-letting, assigning or otherwise alienating a portion of the constructed area on bulkland allotted by KMDA to different allottees charging 10% at the current land value as service charge was approved in the 15th Executive Committee meeting held on 2nd July, 2002 and subsequently ratified by the 139th Authority meeting held on 30th July, 2002. Depending on the spirit of the decision any change in allotment by the allottee, be it lease, alienation, assigning by any means etc. 10% service charge is being levied by KMDA. Since the decision this principle has been followed in all cases of change of name. It is now proposed that to make the decision crystal clear and put to rest any ambiguity regarding its interpretation, a clarification to the

above is proposed. It may be specified that a fee of 10% of the current land value will be charged for any change in name by the allottee subsequent to allotment as this amounts to alienation of the land. Similarly any change made by the allottee through lease, sub-lease, alienation, assignment will be permitted only on reasonable ground on payment of 10% on current land value as service charge and subject to reasonable conditions imposed by KMDA.”

8. It is submitted by Mr. Kar that under Section 21 of the Companies Act, a company may, by special resolution and with the approval of the Central Government the signified in writing change its name. Section 23 of the Companies Act speaks about registration of name and effect thereof. Section 23 runs thus:-

“Registration of change of name and effect thereof.-

(1) Where a company changes its name in pursuance of section 21 or 22, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a fresh certificate of incorporation with the necessary alterations embodied therein; and the change of name shall be complete and effective only on the issue of such certificate.

(2) The Registrar shall also make the necessary alteration in the memorandum of association of the company.

(3) The change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name.”

9. It is specifically submitted by Mr. Kar that the name of the M/s MUL was changed to M/s MSIL Sub-section (3) of Section 23 clearly

states that the change of name shall not effect any rights or obligations of the company, or render defective any legal proceedings by or against it; and any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by or against the company by its new name. Thus, the rights and liabilities of M/s MUL did not change in any way with the change of name to M/s MSIL.

10. Mr. Kar further submits that the policy adopted by KMDA in its 155th Authority Meeting relates to sub-leasing, sub-letting, assigning or otherwise alienating a portion of the constructed area on a bulkland allotted by KMDA to different allottees charging 10% at the current land value as service charge. In the said meeting it was proposed that to make the decision crystal clear and put to rest any ambiguity regarding its interpretation, a clarification to the above is proposed. It may be specified that a fee of 10% of the current land value will be charged for any change in name by the allottee subsequent to allotment as this amounts to alienation of the land. Thus, the KMDA adopted a policy of levying charge of 10% on current land value in case of alienation of land in any way by the original allottee in favour of another. It is clarified that such alienation can be made by sub-leasing, assigning or otherwise alienating a portion of constructed area. The petitioner was not granted any leasehold right over the subject property in question; it is not a tenant and no case is made out in defence by the respondent alleging creation of sub-tenancy by MUL in favour of MSIL. On the question as to whether due to the change of the

name of the company is required to pay stamp duty on total amount of the original lease deed came up for consideration before the Hon'ble Supreme Court.

11. Referring to a decision of the Hon'ble Supreme Court in **Prasad Technology Park (P) Limited vs. Sub-Registrar & Ors.** reported in **(2006) 1 SCC 473** it is submitted by Mr. Kar that by change of name of the petitioner company its entity cannot be said to be totally different. The name of M/s MUL was changed to M/s MSIL. This change of name of the same company and an application for recording the new name in the record of KMDA in respect of subject land which was handed over to M/s MUL on licence with licence fees does not amount to sub-leasing, sub-letting, assigning or otherwise alienating the subject land or any portion thereof. In support of his contention Mr. Kar also refers to another decision of the Division Bench of this Court in the case of **State of West Bengal vs. Gopi Vallabh Solutions Private Limited** reported in **(2019) 1 CHN 501**.

12. Thus, it is submitted by Mr. Kar that the respondent acted illegally and arbitrarily while claiming 10% of the service charge for change of name of M/s MUL to M/s MSIL in respect of the subject land.

13. Learned Advocate on behalf of the KMDA, on the other hand submits that indisputably some portion of land was allotted to M/s MUL. M/s MUL also disputed a sum of Rs.68 lakhs in favour of KMDA. Subsequently, M/s MUL wanted to change his name of the licensee to M/s MSIL. The policy decision in respect of change of name of different

allottees of bulkland is clear enough that a fee of 10% of the current land value will be charged for any change in name by the allottee subsequent to allotment as these amounts to alienation of the land. Similarly, any change made by the allottee through lease, sub-lease, alienation, assignment will be permitted only on reasonable ground on payment of 10% on current land value as service charge and subsequent to reasonable conditions imposed by KMDA .

14. It is submitted by the learned Advocate for the respondent that this Court cannot give a different meaning of a policy decision of a government authority. The decision makers freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. So long as the government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of legitimate expectation of an individual or a group of individuals being defeated. Only when a policy decision violates any of the fundamental rights enshrined in part-III of the Constitution or is formulated in violation of statutory provision judicial review of such decision is permissible. In support of his contention the learned Advocate for the respondent relies on a decision of the Hon'ble Supreme Court in the case of **Punjab State Power Corporation Limited & Anr. vs. EMTA Coal Limited & Ors.** reported in **(2022) 2 SCC 1**. He also refers to another decision of the Hon'ble Supreme Court in **Ekta Shakti Foundation vs. Government of NCT of**

Delhi reported in **(2006) 10 SCC 337**. He principally refers to paragraph

11 of the above mentioned report which is reproduced below:-

“11.5 While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power.

The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or [is violative of] the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

6. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

7. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.

8. The Court should constantly remind itself of what the Supreme Court of the United States said in *Metropolis Theatre Company v. City of Chicago*.

“The problems of Government are practical ones and may justify, if they do not require, rough accommodations, illogical it may be, and unscientific. But even such criticism should not be hastily expressed. What is the best is not always discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review.”

15. The short issue involved in the instant writ petition is as to whether the petitioner is liable to pay 10% service charge in order to change its name in the allotment letter of the leave and licence in respect of subject land on the ground that the name of M/s MUL in the original allotment letter is sought to be changed to M/s MSIL. It is needless to say that KMDA gave licence to M/s MUL. Indisputably the name of M/s MUL has been changed to M/s MSIL. The petitioner wants to introduce the name of M/s MSIL in the record of KMDA. Such prayer made by the M/s MSIL to the respondent does not amount to sub-leasing, sub-letting, assigning or alienation by M/s MUL in favour of M/s MSIL. In case of sub-leasing, sub-letting and assignment there is always transfer of interest by one person in favour of another. In case of sub-leasing, sub-letting, property may be leased out by the lessee to a third party. In case of sub-tenancy there is transfer of interest of tenancy in favour of subject tenant. Assignment occurs when the assignor transfer his interest in favour of assignee. In case of alienation there is also transfer of interest by one person in favour of the other. The policy decision which has been relied upon by the KMDA relates to an incident when interest in the property is transferred in favour of sub-leasing or sub-tenant or assignee. The KMDA rightly adopted the said policy in its 155th Authority Meeting imposing

10% service charge for change in the name of the allottee because of the fact that by virtue of sub-leasing, sub-tenancy or assignment interest of the original allottee is transferred in favour of sub-leasing, sub-tenant or assignee. In the instant case there was no transfer by way of sub-letting or assignment or alienation in favour of M/s MSIL. So the petitioner is not under obligation to pay the service charge of 10% of the premium in favour of KMDA.

16. Since this court does not rescind the policy decision taken by KMDA in its 155th Authority Meeting I do not feel it necessary to embargo upon a discussion on the question as to whether a policy decision of a government department is amenable to judicial review or not. However I am tempted to state that in **D.D.A vs. Joint Action Committee, Allottee of SFS Flats** reported in **AIR 2008 SC 1343**, it was held by the Hon'ble Supreme Court:-

“An executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that the court shall lay its judicial hands off, when a plea is raised that the impugned decision is a policy decision. Interference therewith on the part of the superior court would not be without jurisdiction as it is subject to judicial review.”

17. A policy decision is subject to judicial review on the following grounds:

- (a) if it is unconstitutional;
- (b) if it is dehors the provisions of the Act and the regulations;
- (c) if the delegatee has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy.

18. In the instant case I have not gone into the question as to whether the aforesaid policy decision is of the KMDA is subjected to judicial review or not. I have come to the decision that even if the policy decision is accepted as a whole, the said policy is not applicable in respect of the petitioner as the petitioner never credited any interest in favour of any third party by way of sub-leasing, sub-tenancy, assignment or alienation.

19. In view of the above discussion, the writ petition is allowed. Impugned decision of the competent authority as manifest in the letter of the respondent No.2 dated 21st July, 2009 and 23rd March, 2010 to realize as service charges from the petitioner an amount of Rs.17,02,500/- being 10% of the premium amount is quashed.

20. The respondent authority is further directed to incorporate the name of M/S Maruti Suzuki India Limited in place of M/s Maruti Udyog Limited within 30 days from the date of communication of this order.

(Bibek Chaudhuri, J.)