IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

(Appellate Side)

MAT 1038 of 2022

Pranab Kumar Bhattacharya & Anr.

-Versus-

Steel Authority of India Limited & Ors.

Before: The Hon'ble Justice Arijit Banerjee

&

The Hon'ble Justice Apurba Sinha Ray

For the Appellants	:	Mr. Ashit Kumar Chakraborty, Adv. Mr. Sunanda Mohan Ghosh, Adv.
For the SAIL	:	Mr. L.K. Gupta, Sr. Adv. Mr. Arjun Ray Mukherjee, Adv. Mr. Debapriya Mitra, Adv. Mr. Joyjeev Medhi, Adv.
For UOI		Mr. Bhudeb Chatterjee, Adv.
Judgment On	:	19.06.2023

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated April 7, 2022, whereby a writ petition filed by 6 Cooperative Housing Societies (***Kallol Co-operative Housing Society Limited & Ors. v. Steel Authority of India***

Limited & Ors.) was dismissed. The appellants were *eo nominee* not parties to the writ petition. They were members of the one of the writ petitioner housing societies. They have preferred the instant appeal with leave of the Court.

2. The brief facts of the case are that with a view to providing accommodation for employees/ex-employees of Steel Authority of India Limited (in short SAIL), who were employed at the Durgapur Steel Plan unit of SAIL, the State Government, at the instance of SAIL, acquired about 150 acres of un-developed land. The Government also issued 'no objection' to settle such land by executing leases in favour of the cooperative housing societies to be formed by the employees/ex-employees of SAIL at Durgapur.

3. A good number of housing societies were formed, having in all approximately 1876 members who are all employees /ex-employees of SAIL. In 1993 lease deeds were executed by SAIL in favour of the housing societies. Initially the grant was for 33 years, renewable for two similar periods of time.

4. Two of the relevant covenants of the lease deed that bound the lessee housing society are in sub-clauses 2 and 13 under clause 3 of the lease deed which read as follows:-

> "3(2).To pay all rates, taxes, charges including water and other service charges, duties, burdens, assessments, outgoings and impositions whatsoever whether parliamentary parochial local or otherwise which now are or shall at any time hereafter daring 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 erected by the Lessee thereon or on the Lessor or the Lessee or the occupier in respect thereof respectively.

13.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 or the lessee's interest of and in the said land hereby demised or any part thereof or the said buildings to be erected thereon by the 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 the 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."

5. In turn, the housing societies executed sub-leases in favour of their members. About 3 cottahs of land was allotted to each member by way of sub lease at and for "the prime cost of Rs. 1988.34/-" and payment of development costs by the sub-lease to the Sub-lessor (i.e.) by the concerned member to the concerned housing society. The sub leases were for a term of 32 years with effect from May 5, 1993. Some of the relevant clauses of a standard document of sub lease are noted below:-

"The Sub-Lessee shall, within a period of one year from the date hereof or such further time as may be allowed in writing by the Lessor/Sub-lessor erect on the demised land buildings suitable for his/her residential purpose only with necessary erections and structures, drains, boundary walls and fences in accordance with plan, elevation and specifications which are to be approved of by the Lessor and in conformity with the provisions of any statute applicable thereto and the bye laws and regulations of the local authorities and to pay all fees and charges payable to such authorities in relation thereto."

…

"To pay all rates, taxes, charges including water and other service charges, duties, burdens, assessments, outgoings and impositions whatsoever whether parliamentary parochial, local or otherwise which now are or shall at any time hereinafter during the said term be charged, rated, assessed or imposed upon in respect of the land hereby demised or the said building/quarters and other erections that may be erected by the Sub-lessee thereon or the Sub-lessor or the Sub-lessee or the occupier in respect thereof respectively."

….

"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-Lessee'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."

6. It is pertinent to note that for the purpose of computation of stamp duty a 3 Cottah plot was valued at Rs. 4.50 lakh.

7. Sometime in August 2017 an Advisory Committee was constituted by the management of SAIL for revision of rates charged for different services offered by its Town Services Department. The agenda for such Committee was:-

"(a) Revision of existing charges on the services rendered by Town Services Department to all, except to the employees of SAIL;

(b) Introduction of fresh/new charges where service is presently being rendered free of cost; and

(c) To explore new avenues for generation of additional revenue and recommend charges for the same."

8. The Advisory Committee submitted an interim report, the relevant portion whereof reads as follows:-

“As per agreement between DSP and SAIL Co-operative, the plot of land was allotted to the employee/ex-employee for his residential purpose. For services like record of transfer of ownership etc. the co-operative takes up with DSP Town Administration for needful endorsements. Erstwhile, these services were provided free of cost by DSP although the co-operatives have a transfer fees in place.

Identifying that these services can be made chargeable on onetime basis, for earning revenue, the committee explored the means for levying transfer consideration charges. The committee expressed its concern whether DSP can claim any transfer charges for the aforesaid plots of the SAIL Cooperative Member from law department was co-opted for detailed discussions on 10-11-2017 and obtaining reasoned opinion. After examining the DSP agreement with the cooperative, Sr. Manager (LAW) opined that it would not be illegal in principle if SAIL/DSP stipulates payment of an amount (to be calculated on a demonstrably reasonable basis) as a precondition for granting permission for transfer of the lease-hold interest however such amount should not be termed as Transfer Fee, administrative charges etc (observations of Sr. Manager Law placed at Annexure-III)

The land was allotted to the Co-operatives in the year 1990-91 and subsequently Co-operatives developed the land/plots by about 1993-94 before allotting to the constituent DSP employee/ex-employee members. It was felt that levy of 50% of difference amount like ADDA was not appropriate in view of the fact that initial acquisition by allottees was based on development charges only. As per SAIL Board guidelines dated 30-04-16 for leased quarters, 15% of capital gain is being collected for lease hold transfer charge (Annexure-IV). Taking a cue from this, Committee recommended one time consideration amount of 15% on capital gains against transfer of plot from one member to another when the cooperative approaches TA department for the requisite endorsements/record updation. For assessment of cost of Acquisition on reasonable basis it is decided to adopt Cost Inflation Index (CII) published by the IT department (copy of IT department's CII for each FY upto 2016-17 is placed at Annexure-V)

$$\text{Indexed Cost of acquisition} = \text{Cost of acquisition} \times \frac{\text{CII for the year 2016-17}}{\text{CII for the year 1993-94 (year in which development was done)}}$$

Thus, as cost of development of land per 3 Cottah of plot was Rs. 40500/- in the year 1993-94, the indexed cost of acquisition (present day) works out to (40500 X 1125/244)= Rs. 186731.55/-

Cost of 3 kathas of SAIL co-operative plot at City centre as per present ADDA rate is Rs. 6,00,000 X 3= Rs.1800000

The different amount =Rs. (1800000-186731.55)= Rs.1613268.45

The consideration amount for transfer = 15% of Rs. 1613268.45=Rs. 241990.27

As the consideration amount is proposed to be fixed for a maximum period of 5 years committee agreed to round it to Rs. 2,50,000.

However this consideration amount for transfer of lease hold right as above would not apply to transfers to spouse/legal heir/next of kin of the lessee. In such cases committee recommends a token amount of Rs. 5000 only during transfer."

9. The aforesaid suggestion of the Advisory Committee was approved by the Competent Authority on February 15, 2018.

10. By a letter dated March 13, 2018, the Assistant General Manager, (TS-TA), Durgapur Steel Plant, wrote to the secretaries/Chairmen of the various housing societies, to the following effect:-

> "The following charges have been made applicable on and from 15.02.2018 for the services rendered by DSP related to your Co-operative Housing Society.
>
> 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. 5,900/- (Rupees Five Thousand Nine Hundred) only for b) & c) and Rs. 2,95,000/- (Rupees Two Lakhs Ninety Five Thousand) only for a)."

11. By a letter dated April 11, 2018, addressed to the secretaries/Chairmen of the Housing Societies, SAIL intimated that GST would not be applicable for co-option of new member/substituting legal heir in place of deceased member/no objection for mortgaging lease hold plot.

12. The two letters dated March 13, 2018 and April 11, 2018 were challenged by six housing societies before the learned Single Judge. Broadly speaking their contention was that no charge/fee could be levied by SAIL for co-option of member/substitution of legal heir in place of deceased member/granting no objection for mortgaging the lease hold plot of land. The learned Judge, primarily relying on the decision of the Hon'ble Supreme Court in the case of ***Bihar Industrial Area Development Authority & Ors. v. Amit Kumar & Ors.; reported at (2019) 10 SCC 733,*** rendered in Civil Appeal No. 8219 of 2019, dismissed the writ petition. Hence this appeal by the writ petitioners.

13. The arguments that were advanced on behalf of the parties before the learned Single Judge as would appear from the impugned judgment, have been more or less repeated before us.

14. On behalf of the appellants who are 2 members of one of the housing societies, the following points were argued:-

(i) Referring to Section 92(3) of the West Bengal Cooperative Societies Act, 2006 (in short the 2006 Act), learned Counsel argued that a plot of land or a house or an apartment in a building in a cooperative housing society constitutes a heritable and transferrable immovable property within the meaning of any law for the time being in force. Hence, a member of a housing society is at liberty to deal with such property whether by way of mortgage or otherwise and no authority can impose any charge for the same. Although a plot holder cannot transfer or deal with the same without prior written consent of SAIL, no charge or fee can be levied by SAIL as a pre-condition for giving such consent.

(ii) The entire 150 acres of land was in undeveloped state. The members of the housing societies have developed the land at their own cost. They are all retired employees of SAIL. The land value has appreciated because of such development made by them and SAIL had no role to play in such development. Hence, SAIL cannot claim any portion of the enhanced value of land by imposing charges for granting 'no objection' to enable a plot holder to deal with the land.

(iii) Learned Counsel referred to Section 76 of the 2006 Act which reads as follows:-

"**76. Nomination by member.**- Subject to the by-laws of a Co-operative society, any member of such co-operative society may in accordance with the rules nominate a person in whose favour the co-operative society shall dispose of the share or interest of such member on his death."

In this connection reference was also made to rules 117, 131(3)(a) and 138 of the West Bengal Cooperative societies Rules, 2011.(in short the 2011 rules)

It was submitted that the legal heir of a deceased member of a Cooperative Housing Society has a statutory right to step into the shoes of the deceased member. SAIL cannot levy any charge in that regard.

(iv) SAIL renders no service at all. Hence, there can be no question of levy of service charge. All the Civic Services are rendered by Durgapur

Municipal Corporation against payment of applicable charges. In this connection learned Advocate referred to paragraph 6 of the affidavit in reply filed by the writ petitioners before the learned Single Judge, the material portion whereof reads as follows:-

> "It is stated that the Durgapur Steel Plant, Steel Authority of India Limited is not giving any service to the members of the petitioner Co-operative Societies. The Durgapur Steel Plant by a letter bearing No. ESTATE/LA/5/182(5)/151 dated June 6th 1998, requested the Deputy Mayor, Durgapur Municipal Corporation to impose taxes in respect of Co-operative Societies Land to be paid by individual members and co-operative Societies and in the said letter Durgapur Steel plant specially referred to Clause 3(2) of the said lease deed and the same should be borne by the Societies not like the Deed of Township Buildings/Shops etc. as such clause 3(2) of the said lease deed/sub-lease deed will not be applicable in respect of SAIL Co-operative Lands. It is further stated that from the aforesaid letter it will appear that Durgapur Steel Plant shifted the responsibilities to Durgapur Municipal Corporation and individual members regarding services such as electricity, water supply etc."

(v) Starting from 1993 till 2018, SAIL approved all transfers in case of genuine need without levying any charge. Suddenly transfer charge cannot be introduced and that to, unilaterally. In the lease deed there is no provision for imposing any charges or fees for giving consent to a plot holder to deal with the property.

(vi) There has been a breach of the principles of natural justice in as much as the members of housing societies were not granted any opportunity of hearing before SAIL introduced the so-called service charges.

15. Appearing for SAIL, Mr. L.K. Gupta, learned Senior Advocate urged the following points:-

(i) The plots of land were leased out to the members of the society for a pittance. The valuation of three cottahs of land was Rs. 4.50 Lakh and based thereon stamp duty was paid. However, the lease was granted for a consideration of Rs. 1988.34/- per plot. The land value has appreciated. The members of the society cannot reap the benefit of such enhanced value to the exclusion of SAIL. SAIL as owner of the land in question, is entitled to a share of the increased value of the land.

(ii) Asansol Durgapur Development Authority charges 50 per cent for granting no objection for transfer of Cooperative Housing Society property. SAIL has decided to charge a modest 15 per cent of the transfer value. In this connection learned Senior Counsel relied on the decision of the Hon'ble Supreme Court in ***Bihar Industrial Area Development Authority and others v. Amit Kumar and Others (supra)*** and in particular on Paragraphs 11 and 12 of the reported judgment which read as follows:-

“11 We may note that it is standard practice throughout this country, specially at the time when these leases were executed to set up industrial estates wherein lands were given at very low price and sometimes at subsidised rates to help in the setting up of industrial estates in the State. It was expected that establishment of these industrial estates with flourishing industries would generate a lot of employment and would also generate revenue both in the nature of direct and indirect taxes. The issue is whether when the allottee transfers the land for commercial reasons why should the Authority not get a reasonable portion of the unearned income earned by the allottee of the plot just by transferring the plot in question. The premium on the unearned increase is being charged only on the value of the land and not on the value of the transaction. Once an industry is set up it may have various components including the value of the immovable assets, the value of the machinery, etc. and also the value of the goodwill which the company has generated. On the other hand there are companies which are loss making units where debts and liabilities due to employees and sundry creditors will have to be factored into while calculating the value of the total assets of the unit. Those are not to be taken into consideration while assessing the unearned increase of the cost of the land.

12. 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."

(iii) Only two persons out of 1876 members of the different cooperative housing societies have filed this appeal. The remaining 1874 members are not aggrieved by the decision of SAIL to charge transfer fees. This also indicates that the decision of SAIL is a reasonable one.

(iv) Mr. Gupta relied on Clause 3(2) of the lease deeds executed by SAIL in favour of the housing societies which is to the effect that all charges will be payable by the societies.

(v) No writ petition is maintainable as the present case does not have any public law element.

(vi) SAIL is not bound by the provisions of the 2011 Rules.

(vii) In the decision of the Hon'ble Supreme Court in the case of ***Bihar Industrial (supra)***, the Hon'ble Court did not consider it relevant as to whether or not there was a clause in the lease deed permitting imposition of transfer fees or the like.

Court's view

16. The material facts of the case are not in dispute. To alleviate the problem of scarcity of quaters/accommodation for employees/ex-employees of SAIL working in Durgapur Steel Plant, about 150 acres of land was acquired by the Government with SAIL being the requiring authority. The land was leased out by SAIL to various Cooperative Housing Societies. Each society executed sub-leases in favour of its members who were employees /ex-employees of SAIL at the Durgapur Steel Plant.

17. The relevant clauses of a standard deed of sub lease have been extracted above. The plot of land sub leased to a member of a Housing Society is about 3 cottahs in measurement. The same was sub-let against payment of prime cots of Rs. 1988.34/- "and the development cost paid by the sub lessee to the sub-lessor (the receipt whereof the sub-lessor both hereby admit and acknowledge) and also in consideration of the annual rent." The sub lessee also covenanted to pay all out goings and impositions, present and future in respect of the land. The sub-lessee was also prohibited from parting with possession of the land without the previous written consent of SAIL.

18. From 1993, when the leases were executed by SAIL in favour of the Housing Societies and the sub leases were executed by each Housing Society in favour of its members, till 2018 SAIL did not charge anything from the Housing Societies or their members for according written permission for

transfer of the land in occupation of a sub-lessee. As per the report of an Advisory Committee constituted by SAIL, which was approved by the competent authority, SAIL decided to impose charges as mentioned in the letters dated March 13, 2018, the material portion whereof has been extracted in paragraph 9 above, read with the letter dated April 11, 2018. These two letters were impugned in the writ petition before the learned Single Judge.

19. We have noted above, the rival contentions of the parties.

20. In so far as impositions of charges for co-option of a member of a society in the place and stead of an outgoing member who has surrendered the plot of land in favour of the incoming member for valuable consideration, we do not find the same to be unreasonable. The plots of land were allotted to the members of the Housing Societies for a pittance, as noted above. No particulars of development costs allegedly incurred by the members of the societies have been disclosed before us. For the purpose of stamp duty a 3 cottah plot was valued at Rs. 4.50 lakh in 1993. It is common knowledge and one should take judicial notice of the fact that land value in and around Durgapur has appreciated considerably over the years. The members of the societies are sub lessees of the concerned land. SAIL remains the absolute owner of such land. If a sub lessee wishes to transfer the land that was sub let to him albeit in favour of another employee/ex-employee of SAIL at the Durgapur Steel plant, it is only fair that SAIL as the owner of the land gets a share of the benefit accruing to the concerned sub lessee by reason of increase in the value of the land over the years. This is the ratio, as we

understand, of the decision of the Hon'ble Supreme Court in the case of Bihar Industrial Area Development Authority (supra), the relevant paragraphs whereof we have set out herein before. Although in that case the leases may have been executed to set up industrial estates and lands were given at very low price, the fact that in the present case lands were given for almost nothing for residential purpose, would not make any difference. The main point is that the concerned land appreciated in value considerably with the passage of time.

21. The Advisory Committee in its interim report arrived at the figure of Rs. 2.50 lakh applying a formula which makes complete sense. We have extracted the relevant portion of that report hereinabove. It is also noteworthy that in similar cases, Asansol and Durgapur Development Authority Charges 50% instead of 15%.

22. A sub lessee who was allotted a plot of land in 1993 for a negligible sum of money i.e. less than Rs. 2,000/-, is likely to receive several lakhs of rupees by transfer of the land that he is holding. In other words, he would be making a huge profit by transfer of the land which would really be a commercial deal, and it is not unreasonable for SAIL to impose a transfer charge as a pre-condition for granting permission for such transfer.

23. In so far as the charge/fee of Rs. 5,000/- has been imposed to record the name of the legal heirs of a deceased member in the place and stead of such member and also for granting 'no objection' for mortgaging a plot for securing house building loan, the same, in our view is not unreasonable. Such levy is in the nature of a processing fee/charge. The amount is

reasonable and by no means exorbitant. Maintenance of proper records also entails some amount of cost. We are unable to find fault with the decision of SAIL to impose a token charge for substituting the names of the legal heirs of a deceased member in the relevant records or for granting 'no objection' to enable the allottee of a plot to mortgage the land for raising house building loan.

24. The various provisions of the 2011 Rules relied upon by learned Advocate for the appellants do not help the appellants. Such rules are not binding on SAIL.

25. In so far as the appellants' argument as regards SAIL not rendering any service to the members of the housing societies is concerned, in the impugned letters, SAIL may have stated that the charges were being made applicable for services rendered by Durgapur Steel plant to the housing societies, but in our view, nomenclature makes no difference. It may be that apart from maintaining records, SAIL does not render any other service to the Housing Societies. However, we have upheld the imposition of charge on account of a transfer of a plot or mortgage of a plot for securing housing loan, on other grounds discussed above.

26. The appellants have also complained that SAIL has not taken into consideration the fact that the entire cost for development of the land in question has been borne by the members of the housing societies. This is not entirely correct. In the formula applied by SAIL in arriving at the amounts of charges on various accounts, SAIL has taken into consideration the development cost.

27. The appellants also contended that in the deed of sub lease, there is no provision for imposing charges on the plot holders who wish to deal with their land. In our opinion that would not make any difference. It is a policy decision of SAIL to introduce charges for granting permission for transfer of the plots of land which are in the possession of the members of the housing societies. There is no specific bar against such imposition which have been made on considerations which we have been discussed above.

28. As regards the appellants' grievance of breach of the principles of natural justice, it may have been proper for SAIL to afford an opportunity of hearing to the representatives of the concerned Housing Societies prior to taking a final decision to impose the charges which are impugned in this proceedings. We could direct SAIL to reconsider the matter after giving an opportunity of hearing to the representatives of the housing societies. However, the same would be a futile formality. In any event, we have held that the imposition of charges for grant of approval for transfer of land and on two other accounts is justified in the facts of the case.

29. It is also significant that only 6 out of 60 odd Housing Societies approached the learned Single Judge as writ petitioners. None of the writ petitioners challenged the learned Single Judge's order. Only two gentlemen who are members of one of the Housing Societies and who are 2 out of 1876 members of the Housing Societies taken together, have come up by way of this appeal. This would also show that a vast majority of the members of the Housing Societies does not consider the decision of SAIL to introduce transfer charges etc, to be unreasonable.

30. In view of the aforesaid, we agree with the decision of the learned Single Judge. There is no reason to interfere with the judgment and order impugned before us. The appeal is accordingly dismissed. There will be no order as to costs.

31. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(ARIJIT BANERJEE, J.)

I agree.

(APURBA SINHA RAY, J.)