

S/L 4
01.10.2024
Court. No. 551
Sourav

WPA 16619 of 2024

**Binaguri Tea Company Private Ltd.
Vs.
Nabadiganta Industrial Township
Authority & Ors.**

*Mr. Reetobroto Kr. Mitra
Ms. Madhu Priya
Ms. Debolina Dey*

...for the petitioner.

Dr. Madhu Sudan Saha Ray

...for the Authority.

*Mr. Siddhartha Banerjee
Mr. Subir Banerjee
Mr. Abhishek Baran Das
Mr. Mainak Chandra*

...for the respondent no. 5.

*Mr. Suman Sengupta
Mr. Sambuddha Dutta
Mr. Sanatan Panja*

...for the State.

1. The writ petitioner is aggrieved with the issuance of letter dated 20.06.2019 by the respondent/authorities in favour of the private respondent.
2. Learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to Page No. 63 being the copy of the letter under challenge dated June 20, 2019 vis-à-vis at Page No. 37 being a copy of the letter dated 17.04.2017 as issued by the Executive Officer of the respondent/authority. It is submitted that by issuing a letter dated June 20, 2019, the authority had given a retrospective effect of issuance of Compliance Certificate (hereinafter referred to as 'C.C.' in short) with effect from 17.04.2017 which according to the learned advocate for the writ petitioner

adversely affects the interest of the writ petitioner inasmuch as the writ petitioner shall have to pay the common area maintenance charges from 17.04.2017 instead of 20.06.2019.

3. It is thus submitted that a writ of mandamus be issued against the respondent/authorities for quashing the letter dated 20.06.2019 with a further direction that C.C. in respect of building in question may be issued with a prospective date.
4. Per contra, Mr. Banerjee, learned advocate appearing on behalf of the private respondent submits before this Court that the private respondent is the builder/developer of the property in question wherein the writ petitioner was allotted an unit, particulars of which has been mentioned in the writ petition. Mr. Banerjee, in course of his argument took me to Page No. 30 of the writ petition being a part and parcel of 'General Terms and Conditions' of the allotment as agreed upon by the self-developer and the allottee.
5. Attention of this Court is drawn to Clause 5(c) and (d) of the said 'General Terms and Conditions'. It is submitted by Mr. Banerjee that the allottee i.e., the writ petitioner is duty bound to pay the common area maintenance charges and all other outgoings related to his allotted unit on and from the deemed date of possession and from Page No. 44 of the instant writ petition, it would reveal that the possession of the said unit was given to the writ petitioner on February 21, 2017 by the private respondent. It is further submitted

by Mr. Banerjee that in a clever manner, a private dispute has been converted into a writ petition.

6. On behalf of the respondent/authorities, it is submitted that there is no illegality in issuing the letter under challenge.
7. For effective adjudication of the instant *lis*, the relevant Clauses i.e., 5 (c) and (d) of the General Terms and Conditions are required to be looked into and those are reproduced hereinbelow in verbatim:

5. POSSESSION

(a)

(b)

(c) *ARDL shall give notice to the Intending Transferee(s) regarding the date on and from which ARDL will be delivering possession of the Unit(s) ("NOTICE OF POSSESSION"). The Intending Transferee(s) shall be required to take possession in person or through agent or attorney within 30 (thirty) days from the issuance of Notice of Possession. In the event any Intending Transferee(s) fails to take over possession of the allotted unit within the time as specified in the Notice of Possession, delivery of the unit shall be deemed to have been taken by the Intending Transferee(s) on the date indicated in the Notice of Possession. Such date shall be deemed to be the deemed date of possession ("DEEMED DATE OF POSSESSION") irrespective of the date on which the Intending Transferee(s) takes physical possession of the allotted Units. After taking possession or from the Deemed Date of Possession of*

the Units, whichever is earlier, the Intending Transferee(s) shall not be entitled to put forward any claim against ARDL in respect of any item of work in the allotted Units which may be said not to have been carried out or completed.

(d) The Intending Transferee(s) shall be required to pay the common area maintenance charges and all other outgoings related to the Units on and from the Deemed Date of Possession.”

8. On perusal of the aforesaid two Clauses, it reveals to this Court that it was agreed upon by and between the writ petitioner and private respondent that the private respondent after completion of the project would give notice to the transferee regarding the date of delivery of possession of the unit. Materials have been placed before this Court that such possession was given by the private respondent to the writ petitioner on February 21, 2017. On perusal of the letter under challenge, it reveals that the authority has given effect of the C.C. on and from 17.04.2017 by issuing a letter dated 20.06.2019 which is under challenge in this writ petition.
9. In considered view of this Court, giving effect of the completion certificate retrospectively cannot hamper the interest of the writ petitioner since as per the terms of the agreement as entered into by and between the writ petitioner and the private respondent, the writ petitioner is duty bound to pay the common area maintenance charges and other incidental outgoings on

and from the date of possession i.e., with effect from February 21, 2017.

10. In view of such, this Court finds no reason to exercise its jurisdiction under Article 226 of the Constitution of India in favour of the writ petitioner.
11. Accordingly, the instant writ petition being **WPA 16619 of 2024** is hereby dismissed.
12. There shall be, however, no order as to costs.
13. Before parting with, it is, however, made clear that in the event, the writ petitioner intends to agitate his grievance against the private respondent before any Common Law Forum, this order shall not operate as *res judicata*.
14. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)