

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

W.P.A. 10632 of 2018

Jagran Prakashan Limited & Anr.

v/s.

State of West Bengal & Ors.

For the Petitioners:

Mr. Abhrajit Mitra
Mr. Arindam Banerjee
Mr. Chayan Gupta
Mr. Saaqib Siddique

For the KMDA:

Mr. Satyajit Talukdar
Mr. Arindam Chatterjee

Judgment delivered on:

09.09.2025

SUVRA GHOSH, J. :-

1. The petitioners have prayed for issuance of writ of certiorari quashing/setting aside the penal charges and interest imposed by the respondents/KMDA for delay in construction and delay in payment of penal charges. The petitioners have also sought a direction upon the respondents to refund the amount deposited by them on protest.
2. The factual matrix of the case is as hereunder:-

The first petitioner applied before the KMDA for lease of a plot of land for expanding the printing infrastructure of his company in West Bengal. Since process of acquisition of the land comprising the property was not completed by the State of West Bengal, the KMDA was not in a position to grant lease of the land and agreed to grant permissive possession of

30.037 cottahs in plot no. I-V/III/Zone-1 of the EKADP in anticipation of grant of future lease of the said land. Possession certificate was issued in favour of the petitioners on November 8, 2006 and deed of license was executed by the KMDA in favour of the first petitioner on August 21, 2007. The first petitioner applied for mutation of the plot on August 22, 2008 and mutation certificate was issued in his favour on November 17, 2008 recording his name as the licensee and the KMDA as the licensor. On November 22, 2009 the first petitioner informed the respondents about taking necessary steps for the purpose of applying for sanction of building plan. The first petitioner sought extension of the period of commencement of work till December, 2010 which was allowed by the KMDA on June 23, 2010 subject to payment of penal charges @ 10% of the then land value. Since sanctioned plan was not granted to the petitioners on the ground that they were mere licensees, the petitioners informed the same to the KMDA and requested them to advise the KMC to sanction building plan in favour of the petitioners. The building plan was sanctioned by the KMC on November 27, 2010 and the petitioners commenced construction on December 31, 2010 upon serving notice of commencement of work upon the KMC. The petitioners were directed to deposit a sum of Rs. 63,11,473/- as penal charges for delayed construction alongwith a sum of Rs. 38,17,790/- as penal interest for delay in payment of the penal charges. The petitioners' request for waiver of such charges was turned down by the respondents for which the petitioners were compelled to deposit such charges on protest. The deed of

lease was executed by the KMDA in favour of the first petitioner on May 3, 2016.

3. Learned counsel for the petitioners has submitted that though clause-4 (iii) of the deed of license stipulated that the licensee would start construction within two years from the date of execution of the deed, such construction could not have been commenced without obtaining the sanctioned plan. The delay in obtaining the sanctioned plan cannot be attributed to the petitioners. The petitioners were refused sanction since they were mere licensees and they had to request the respondents to take up the issue with the KMC. The respondents wrote to the KMC only on July 14, 2010 after which the building plan was sanctioned on November 27, 2010. The petitioners commenced construction soon thereafter. The petitioners' request for extension of time to complete the construction was granted and despite their being no provision in the license deed for levy of penalty by the respondents, they levied penal charges on the petitioners and also withheld execution and registration of the deed of lease till the petitioners cleared the said charges. The petitioners had no option but to pay the charges under protest. Only upon payment of such charges was the deed of lease executed and registered in their favour. The respondents were entitled to determine the licence and re-enter upon the land in the event of any breach of covenant by the petitioners in terms of clause 6 (i) of the deed and could, under no circumstances, have imposed penalty.
4. Learned counsel has placed reliance on the following authorities in support of his contention.

- i. Prasanta Kumar Pahari v/s. Sri Goutam Ghosh reported in 2014 SCC OnLine Cal 90.
- ii. Andhra Pradesh Industrial Infrastructure Corporation Limited and Others v/s. S.N. Raj Kumar and Another reported in (2018) 6 Supreme Court Cases 410.
- iii. KMDA v/s. Jalan Intercontinental Hotels Pvt. Ltd reported in Manu/WB/1917/2019.
- iv. Judgment dated 31st March, 2011 in W.P. No. 449(W) of 2010 {Austin Distributors (P) Ltd. & Anr. v/s. State of West Bengal & Ors}.
- v. Iron & Hardware (India) Co. v/s. Firm Shamlal Bros, reported in AIR 1954 Bom 423.
- vi. Kailash Nath Associates v/s. Delhi Development Authority and Anr. reported in (2015) 4 SCC 136.
- vii. MBL Infrastructure Limited v/s. Rites Limited reported in Air 2020 Cal 155.
- viii. Judgment dated 10th February, 2022 in WPA No. 3443 of 2019 (Damodar Prasad Agarwal v/s. State of WB & Ors).
- ix. Judgment dated 12th September, 2022 in MAT No. 309 of 2022 (Damodar Prasad Agarwal v/s. State of WB & Ors).
- x. Rupa & Co. v/s. State of West Bengal reported in 2020 (2) Cal LT 383.
- xi. Delhi Development Authority v/s. Joint Action Committee, Allottee of SFS Flats & Ors. reported in (2008) 2 SCC 672.

- xii. Cube Construction Engineering Limited v/s. State of Gujarat reported in MANU/GJ/1760/2021.
 - xiii. Shree Bhagwati Steels Rolling Mills v/s. Commissioner of Central Excise and Anr. reported in (2016) 3 SCC 643.
 - xiv. Starcity Entertainment Pvt. Ltd. v/s. Commissioner of Service Tax, Mumbai reported in MANU/CM/0390/2019.
 - xv. Subodh Kumar Singh Rathour v/s. Chief Executive Officer & Ors. reported in 2024 SCC OnLine SC 1682.
5. Refuting the contention of the petitioners, learned counsel for the KMDA has submitted that despite specific covenant in the license deed, the petitioners did not get the land mutated in their favour within the stipulated time and took steps for sanction of building plan much later than the time fixed for commencement of construction. Though they were supposed to commence construction within two years from the date of execution of the license deed, they neither commenced construction within the said period of time, nor applied for extension of such time before the authority, thereby violating the terms of the deed. The KMDA called upon the petitioners to justify the reasons for such delay but no cogent ground could be assigned by them. The petitioners' prayer for extension of time to commence the work till December, 2010 was made to the KMDA on May 3, 2010 and was allowed by the latter subject to payment of penal charges @ 10% of the current land value in terms of the prevailing policy of the KMDA. As the penal charges were not paid by the petitioners within the prescribed time, they were requested to pay penal interest for delay in payment of penal charges, which was also not paid

within time. By a memo dated November 19, 2015, the KMDA raised a composite demand of Rs. 1,18,49,143/- which included penal charges, penal interest and service tax and the petitioners were requested to pay the said amount on or before November 30, 2015. The petitioners agreed to pay the said amount though under protest and deposited the sum on November 27, 2015. Further service tax @ 14.5% on the provisional lease premium was demanded and paid following which the deed of lease was executed and registered.

6. The demands of penal charges were in consonance with the policy decision of the authority which was also accepted by the petitioners. Although the petitioners claimed to have paid such amount under protest, there is no averment in the deed of lease to that effect. Upon execution of the deed of lease, the protest raised by the petitioners does not survive and the parties are governed by the said deed and not by any earlier document. The conduct of the petitioners amounts to waiver and acquiescence of their earlier demand. The policy decision of the KMDA regarding imposition of penal charges and penal interest is not under challenge in the present writ application. There being a concluded contract between the parties, both the parties are governed by the terms of the contract which determine the rights and obligations of the parties inter se. The issues raised in the present application are no longer res integra and the money claim raised by the petitioners herein cannot be entertained.
7. Learned counsel has relied upon the following authorities in support of his contention.

- i. Ekta Shakti Foundation v/s. Govt. of NCT of Delhi reported in (2006) 10 SCC 337.
- ii. Punjab State Power Corporation Ltd & Anr. v/s. Emta Coal Limited, reported in (2022) 2 SCC 1.
- iii. B.L. Sreedhar & Ors. v/s. K.M. Munnireddy (Dead) & Ors. reported in (2003) 2 SCC 355.
- iv. Rajasthan State Industrial Development and Investment Corporation & Anr. v/s. Diamond & Gem Development Corporation Limited & Anr. reported in (2013) 5 SCC 470.
- v. Vishnu Bhagwan Agarwal & Anr. v/s. National Insurance Co. Ltd. reported in (2018) 12 SCC 210.
- vi. Galda Power & Telecommunication Ltd. v/s. United India Assurance Co. Ltd. reported in (2016) 14 SCC 161.
- vii. Radhakrishna Agarwal & Ors. v/s. State of Bihar & Ors. reported in (1977) 3 SCC 457.
- viii. Bareilly Development Authority & Anr. v/s. Ajay Pal Singh & Ors. reported in (1989) 2 SCC 116.
- ix. Judgment dated 10th February, 2022 in WPA 3443 of 2019 (Damodar Prasad Agarwal v/s. State of West Bengal & Ors).
- x. Judgment dated 12th September, 2022 in MAT 309 of 2022 (Damodar Prasad Agarwal v/s. State of West Bengal & Ors).
- xi. Order dated 21st March, 2023 passed by the Hon'ble Supreme Court in SLP No. 40499/2022.

- xii. Judgment dated 2nd April, 2025 in WPA 5343 of 2012 (Scorpion Co-operative Housing Society Limited & Anr. v/s. Kolkata Metropolitan Development Authority & Ors).
 - xiii. Judgment dated 20th May, 2025 in MAT 871 of 2025 (Scorpion Co-operative Housing Society Limited & Anr. v/s. Kolkata Metropolitan Development Authority & Ors).
 - xiv. Judgment dated 13th June, 2025 in WPA 1432 of 2016 (New Parijat Co-operative Housing Society Limited & Anr. v/s. Kolkata Metropolitan Development Authority & Ors).
 - xv. Joshi Technologies International INC v/s. Union of India & Ors. reported in (2015) 7 SCC 728.
 - xvi. Bharat Singh & Ors. v/s. State of Haryana & Ors. reported in (1998) 4 SCC 534.
 - xvii. Bharat Amritlal Kothari & Anr. v/s. Dosukhan Samadkhan Sindhi & Ors. reported in (2010) 1 SCC 234.
 - xviii. Commissioner, Bangalore Development Authority v/s. S. Vasudeva & Ors. reported in (2000) 2 SCC 439.
8. I have considered the rival contention of the parties and material on record.
 9. The issue which falls for consideration in the present matter is whether the respondents/KMDA erred in imposing penal charges and penal interest upon the petitioner for delay in commencement of construction on the land in question. The fulcrum of the dispute is clause 4(iii) of the deed of licence. The said clause is set out:-

“ At the own cost of the Licensee, within 2 years from the date of getting license deed executed or within such further time as the Authority may as its option allow in writing on sufficient and reasonable grounds, to start construction for purpose of setting-up a State of the Art Newspaper Printing Plant, with boundary walls sewers and drains in accordance with plans, sanctions and specifications as shall be approved by the appropriate authorities on payment of such fees as required, in accordance with the Building Rules of the Kolkata Municipal Corporation, with the requirement of any land use and Development Control Regulations of the Authority of the requirements of any other statutory rules and regulations of local or statutory body framed for the purpose.”

10. It is not in dispute that the petitioners failed to commence construction in terms of the said clause. Since the said clause stipulated providing of further time by the KMDA, the petitioners, by a letter dated May 3, 2010, sought extension of the period to commence construction till December, 2010. Learned counsel for the petitioners has submitted that in view of such provision for extension of time frame, time cannot be said to be the essence of the contract. The KMDA ought to have extended the time without levying any penalty upon the petitioners.
11. It appears that the deed of license was executed by the KMDA on August 21, 2007 and possession certificate issued on November 8, 2006. Mutation certificate was issued in favour of the petitioners on November 17, 2008 and they started taking steps for sanction of building plan only on October 22, 2009, i.e, after expiry of the stipulated time frame for commencement of construction. Extension of such time was sought only

on May 3, 2010 i.e., far beyond the time allotted for commencement of construction. The construction finally commenced on December 31, 2010.

12. Clause 6(i) of the deed envisages that “if there be any breach of any covenant on the Licensee’s part herein contained and to be performed or observed by the Licensee, it shall be lawful for the authority at any time thereafter to re-enter upon the land after determining this license.” Despite such clause enabling the KMDA to determine the licence and re-enter upon the land, the authority showed indulgence to the petitioners in accepting their request subject to payment of penal charges. The authority could have directly determined the license without offering such leverage to the petitioners which, it is needless to say, would not have enured to the benefit of the petitioners. The relationship between the parties is purely contractual and the petitioners were admittedly in breach of contractual term. The Hon’ble Supreme Court, in the authority in Barelli Development Authority and another (supra), has observed that once the parties after voluntarily accepting the conditions of the contract enter into such contract they can only claim the right conferred upon them by the said contract and are bound by the terms of the contract. The said proposition of law has been echoed by the Hon’ble Court in the authority in M/s. Radhakrishna Agarwal and Others (supra), wherein the Hon’ble Court has added that in such a case, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional

provision when the State or its agents, purporting to act within this field, perform any act.

13. True, the deed of license does not specifically speak about imposition of penalty. However, clause 4(ii) of the deed refers to “other impositions” in respect of the land and structures to be erected thereon which are or may be assessed to be payable by the owner or the occupier in respect thereof during the term of the license. In allowing the extension sought by the petitioners, the policy of the KMDA in imposing penal charges has been referred to. The petitioners have only asked for waiver of the penalty and have not challenged the legality or validity of the said demand before the authority. It appears that the said amount was paid by the petitioners under protest. In fact, the deed of lease was executed by and between the parties after such payment was made. Clause 6(a) of the deed contemplates that on failure of the lessee to comply with such covenant to commence and /or complete construction within the time originally fixed, the authority may at its discretion on an application being made to it by the lessee and on payment of such fees or penalty by whatsoever name called as may be fixed by the authority from time to time, grant the lessee such extension of time. Therefore, though the deed of license was silent with regard to the imposition of penalty, the deed of lease clearly indicates the entitlement of the KMDA to impose such penalty. The deed of lease or the clause referred to above has not been challenged by the petitioners who appear to have accepted/agreed with the terms laid down in the said deed. The deed of license having merged with the deed of lease, the terms laid down in both the deeds ought to be considered as a whole.

14. The KMDA has referred to its policy with regard to imposition of penal charges and penal interest for extension of time to commence construction. Since there was no provision for charging penal interest for such extension of time, it was introduced by way of the policy in order to ensure more seriousness and sincerity among the lessees. It is trite law that policy decision must be left to the Government as it alone can adopt/decide which policy should be adopted after considering all the points from different angles. Such decisions ought not to be interfered with so long as infringement of fundamental rights is not shown. The principal of substantive legitimate expectation is not applicable unless the Government acts in an arbitrary or unreasonable manner. [Ekta Shakti Foundation (supra) and Punjab State Power Corporation Limited and another (supra)].
15. Since the policy of the KMDA is not under challenge in the writ petition, there is no scope to deal with the same. The policy permits imposition of penal charges and penal interest and in terms thereof, it was imposed upon the petitioners. The authority, in exercising administrative power, has laid down the policy which is not challenged as unreasonable or arbitrary. The petitioners having admittedly accepted the terms of the lease could not have been allowed to be doubly benefitted by retaining the land and not paying any penalty for breach of contract. Despite their being no specific clause in the deed of license for imposition of penalty, the term “other impositions” has a wide connotation and can be interpreted to include any other charge that may be assessed to be paid by the lessee. Such interpretation cannot, in the facts and circumstances

of the case, be construed as re-writing the terms of the contract. The deed of lease includes the clause of imposition of penalty and has been agreed upon by the petitioners. The said deed obviously dates back to the execution of the deed of license and as such, it cannot be said that the clause is alien to the deed of license. Though the petitioners paid the amount under protest, their subsequent conduct of accepting the deed of lease without a demur amounts to waiver and acquiescence.

16. The authority in Andhra Pradesh Industrial Infrastructure Corporation Limited and others (supra) deals with a situation where the stipulation in the allotment letter issued earlier was not found in the sale agreement or sale deed executed subsequently. The fact situation in the present case is distinguishable for the reason that the deed of lease executed subsequently contains the penalty clause and the earlier deed can be said to have merged with the deed of lease.
17. The authority in Subodh Kumar Singh Rathour (supra) deals in contractual relationship wherein the Hon'ble Court observes that merely because the final terms of a contract are less favourable over a period of time does not justify its termination. Such decision must be based on a careful consideration of all relevant factors, including the potential harm to the integrity and sanctity of contractual relationships.
18. Herein, the KMDA has in fact taken care of the integrity and sanctity of the contractual relationship between the parties in allowing the petitioners to remedy the breach upon payment of penalty and to continue with the construction. The policy decision having found place in the deed of lease executed by the KMDA, it can no longer be said to be an

arbitrary and unilateral decision of the authority, not binding upon the lessee. Therefore the ratio decidendi of the authority in KMDA and others (supra) can be distinguished from the present case. The decision of the KMDA for imposing penalty was not only restricted to the meeting of the pricing committee of the KMDA but was approved/ratified by the authority, being the Minister-in-charge of the Department. In view of the same, the ratio laid down in the judgment in Austin Distributors (supra) is not applicable in the fact situation of the present case.

19. The authority in Rupa & Company Limited (supra) deals with a situation where after execution of the deed of conveyance in respect of a land in favour of a person, the Government altered its attitude and decided that only leasehold rights subject to stringent conditions would be granted. The facts of the present case can be distinguished.
20. The authority in Kailash Nath Associates (supra) deals with the issue whether actual damages or loss is proved to have been caused by the breach of contract. In the present case, the KMDA intended to extend the time for commencement of construction on prayer of the allottee to ensure greater sincerity in the work. The penalty was not demanded as damages. Therefore the question of actual damage or loss does not arise.
21. The KMDA has imposed service tax upon the petitioners on the penal charges and interest. The authority in Starcity Entertainment Private Limited (supra) observes that service tax is chargeable on the rent of immovable property and cannot be charged on transfer of interest in property from lessor to lessee. The ratio is not applicable in the facts and circumstances of the present case.

22. In fine, the KMDA has demonstrated their magnanimity in allowing the petitioners to continue with the construction upon payment of penal charges and penal interest and not determining the licence on the ground of breach of covenant by the petitioners. The petitioners having accepted the terms of the deed of lease which contains imposition of such penalty, are debarred from disputing the same subsequently. The protest raised by them while depositing the penal charges and penal interest falls into oblivion by their subsequent acceptance of the terms of the lease.
23. In the light of the aforementioned discussion, this Court is of the considered view that the decision of the KMDA/respondents does not suffer from any illegality or infirmity. The writ petition being devoid of merits, is liable to be dismissed.
24. Accordingly, the writ petition being WPA 10632 of 2018 is dismissed.
25. There shall however be no order as to costs.
26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)