IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Rai Chattopadhyay

WPA 1432 of 2016

New Parijat Cooperative Housing Society Ltd. & Anr.
Vs.
Kolkata Metropolitan Development Authority & Ors.

For the Petitioners : Mr. Saptangsu Basu
: Mr. Sumitava Chakraborty
: Mr. Abhishek Mukherjee

For the KMDA : Mr. Satyajit Talukdar

Judgment on **: 13.06.2025**

Rai Chattopadhyay, J. :-

(1) An order of the Assistant Controller of Finance & Accounts, Estate (M&M) Unit, Kolkata Metropolitan Development Authority (in short Asstt. Controller, KMDA)/the 6th respondent, dated ***December 15, 2015,*** thereby demanding from the petitioner No.1 a sum of Rs. 42,94,981/-, on account of penal charges for delay in completion of construction and service tax thereon, is under challenge in this writ petition.

(2) Before the grounds of challenge as to the said order dated ***December 15, 2015***, are dealt with, it is necessary to mention

the factual background of this case in a nut shell, which is as follows:

(3) The 1st petitioner is a co-operative housing society registered under the Societies Registration Act 1983 and the 2nd petitioner is the Chairperson of the said co-operative housing society. The 1st petitioner/society is established with the objective to provide settlement of housing schemes for the members by affording it facilities for having a house or tenement and to develop ultimately the settlement into a self-sufficient community.

(4) With this objective the 1st petitioner responded to and made an application in connection with an advertisement published in various newspapers including "The Statesman", dated ***December 26, 1997***, which was published by the 1st respondent/Kolkata Metropolitan Development Authority (in short KMDA), inviting applications for allotment of plots of land for cooperative housing in planned township at Baishanabghata-Patuli Project under Area Development Group Housing Scheme, Phase-II. Vide a letter dated ***September 14, 1998***, the KMDA has offered the 1st petitioner a plot of land No. F/145, measuring more or less 6.17 Cottahs and at a consideration price of Rs.80,000/- per Cottah. The 1st petitioner has obtained the possession thereof in lieu of full consideration amount on ***April 24, 2000***. The lease agreement as regards the said plot of land was executed between the 1st petitioner/cooperative housing society and the 1st respondent/KMDA, on ***August 21, 2000***. On ***January 4, 2010***, on behalf of the 1st petitioner a representation has been made before the 7th respondent/office of KMDA praying for mutation of the land in favour of the 1st petitioner and issuance

of 'No Objection Certificate' to enable the same to get the building plan sanctioned. Vide a letter dated ***January 14, 2010,*** the 7th respondent/office of KMDA writes to the Deputy Assessor, Borough - XII, Kolkata Municipal Corporation informing about allotment of the plot of land to the petitioners, handing over the possession thereof and execution of the lease deed. Also informing that tax and other charges would be leviable against the petitioners and mutation of the land to be done in their favour. Due to some typographical error apparent thereon, a fresh letter has again been issued on ***May 31, 2010***. The petitioner had made an application dated ***March 29, 2010,*** before the Kolkata Municipal Corporation, for mutation of the said land and on ***August 16, 2010***, the said land was mutated in the name of the 1st petitioner. The building plan was submitted for sanction on ***February 19, 2011*** and same was ultimately sanctioned on ***April 19, 2011***. Immediately thereafter the construction of the building was started. ***March 4, 2014,*** is the date of completion certificate of the said building, issued by the competent authority.

(5) In and around this time, there has been some activity in this regard in the office of the KMDA. A letter dated ***November 11, 2014*** was issued by the same seeking submission of the 'completion certificate' by the petitioners, photographs of the building. It has been written that a written undertaking on a non-judicial stamp paper was required to be submitted by the writ petitioner that construction of the building would be completed within 6 month's time though not submitted by it with the 1st respondent. Hence, vide the said letter the petitioners were instructed to pay the penalty as per existing rate, up to the date of completion of the construction. The

petitioners have however denied that they were required to submit any undertaking whatsoever and also the receipt of any earlier letter dated February 17, 2014, from the office of the respondent.

(6) Since thereafter there have been various written communications made between the parties, mainly containing the prayer not to impose the penalty amount – on the part of the writ petitioners and containing instructions on the part of the respondent authority, to the petitioners to submit undertaking in the non-judicial stamp paper that the petitioners are agreeable to pay penalty for the delayed construction of the building, as per the existing rate. Vide a letter dated ***August 19, 2015***, the respondent/KMDA has turned down the petitioner's representation for waiver of the penalty charges and has directed it to pay the penalty for delayed construction of the society building, as per the existing rate and from the scheduled date of completion of the building as enumerated in the lease deed executed between the parties. It has been stipulated in the said letter that otherwise allotment in favour of the 1st petitioner would be treated as cancelled. The protest letter by the petitioner dated ***September 21, 2015***, was not considered by the respondent. After exchange of all these communications, finally on ***December 15, 2015***, the 6th respondent/ Asstt. Controller, KMDA, has issued the impugned letter imposing penal charges and the service tax upon the petitioners, due to delayed construction of building, allegedly in contradiction to the agreed clauses of the lease agreement. Hence, this writ petition is filed.

(7) Mr. Basu learned senior counsel has represented the petitioners in this case. He has stated that imposition of the penalty and its rate are both arbitrary and illegal, in so far as neither the provision of penalty for delayed construction of the building nor the rate at which any penal charges would be applicable are within the four corners of any statutory provision. He says that the 1st respondent being a statutory authority has to act within the four corners of the statutory provisions only, though in the present case, it has acted beyond it by imposing the penal charges. That, such unilateral and whimsical decision of the 1st respondent, has rendered its action as arbitrary, unreasonable illegal and not maintainable. Also, that the 1st respondent is not authorized under the law, to confer any jurisdiction upon itself beyond what the law has provided for and that the petitioners having been subjected to such illegal terms and conditions, their rights guaranteed under Articles 14 and 300A of the Constitution of India have been jeopardized.

(8) Mr. Basu says that the petitioners cannot also be said to have contributed in the delay if any, in construction of the building for the reason that the building plan could not have been placed for sanction by the authorities, before mutation of the petitioner's name with respect to the property allotted. He says that only on ***January 14, 2010***, the Kolkata Municipal Corporation has informed the 7th respondent/KMDA that mutation and separation with respect to the said plot of land may be completed in favour of the 1st petitioner. Typographical mistake in the said letter has been corrected at a much later dated, that is on ***May 31, 2010***. Be that as it may, thereafter, after receiving the 'no objection certificate' from the respondent authority the 1st petitioner has made an application for

mutation of the land, on ***March 29, 2010***. That, a clearance from the respondent authority being the precondition for the petitioners to apply for the mutation of the land, without which no building plan could have been placed for sanction, the delay is not attributable to the petitioners, he says. Thereafter, ***August 16, 2010***, is the date of mutation of the land in the name of the 1st respondent, he says. On ***February 19, 2011***, after resolution of the dispute with the adjacent land owner, the petitioners could submit the plan of the building for sanction by the Kolkata Municipal Corporation, which has been ultimately sanctioned only on ***April 19, 2011***. Therefore, according to the writ petitioners there has not been any delay or laches as alleged on the part of the petitioners, for which they could have been subjected to any penal measure.

(9) What the petitioners have tried to put forth is that, after hand over of possession of the land allotted in the ***year 2000***, pursuant to the agreement entered into by the parties on ***August 21, 2000***, there have been procedural jolts involving the various departments which have ultimately lingered the process of initiation and completion of construction of the building over there, for which, the petitioners cannot be found responsible alone and made subjected to penal charges, that too unauthorizedly and illegally.

(10) Mr. Basu has stated that it is only a farce that the petitioners have been subjected to a penalty amount of Rs. 42,94,981/-, for a piece of land which has been allotted for a consideration amount of Rs. 4,00,000/- only. He has stated further that neither in the advertisement brochure nor in the lease agreement, any stipulation has been made and published,

as to imposition of any penal charges, in case of delay in construction. Therefore, unilateral imposition of the same by the respondent authority is without jurisdiction and misuse of power by the respondent KMDA as it has acted unreasonably, unfairly and improperly.

(11) Mr. Basu, learned senior counsel has referred to the decision of this Court in the case ***Siddhartha Co-operative Housing Society Limited vs The State of West Bengal & Others [2017 SCC Online Cal 9419]***, to say that the Court while deciding identical issues, has held therein the authority has been bestowed with the general powers to acquire and manage properties under its control and is not authorised to impose any tax or penal charges. Before the Division Bench of this Court this order was set aside, when challenged ***[in MAT No. 1320 of 2017 The Secretary, Kolkata Metropolitan Development Authority & Another vs Siddharth Co-opreative Housing Society Limited & Another vide order dated August 31, 2017]***. It is stated further that when the said decision has been tested before the Hon'ble Supreme Court ***[in SLP (C) No. 29506 of 2017, Siddharth Co Operative Housing Society Limited vs Kolkata Metropolitan Development Authority & Others vide order dated February 10, 2022]*** the Supreme Court has come to a decision on the consensus between the learned counsels appearing for the respective parties and the larger questions of law involved in the case were left open. Thus, he states that the legal issue as held by the Single Bench that the authority has been bestowed with the general powers to acquire and manage properties under its control and is not authorised to impose any tax or penal

charges, has remained untouched by any contrary decision of the upper Court and is applicable in the present case too.

(12) He has also referred to the other decision of this Court on ***Austin Distributors (P) limited & Another vs The State of West Bengal & Others [judgment dated March 31, 2011, in W.P.No.449 (W) of 2010]***, to say the Court has held there that in absence of any cluse being stipulated in the lease deed for payment of penalty, the demand thereof would be de-hors the lease and not in exercise of power that flowed from the lease agreement. Mr. Basu has further cited the judgment in ***Giridharilal Soni vs Municipal Commission, Calcutta Municipal Corporation & Others [(2000) 2 CHN 578]***, in support of his submission that policy decision if any of the statutory authority is not a legislation by a competent legislature and would not be binding, unless emanates from exercise of power under the statute itself.

(13) The other Division Bench judgement of this Court has been relied on by Mr. Basu that is, ***Asian Leathers Limited & Another vs Kolkata Municipal Corporation & Others reported in (2007) 3 CHN 476***. The Court has held the Single Bench's decision to be correct that the Kolkata Municipal Corporation had no right to realise the Drainage Development Fees as no such right has been conferred upon the Corporation by virtue of the provisions of the Kolkata Municipal Corporation Act or the Rules and regulations framed thereunder. Mr.Basu has indicated that the Court has iterated therein the well settled principle of law that a statutory Corporation has no power to do anything unless those powers are conferred on it by the statutes which creates it. Mr. Basu has stated that the ratio

of the said judgment squarely applies to the present case in hand.

(14) Hence, the petitioners have sought for in this writ petition that the impugned order dated ***December 15, 2015,*** of the respondent/KMDA, thereby demanding the penal charges as above, be set aside.

(15) The respondent/KMDA has put forth a strong contest to the case made out by the writ petitioner. Their objection is principally on the basis of the lease agreement entered into between the parties dated ***August 21, 2000***, precisely *clause 2(b)* thereof. Mr. Talukdar, learned advocate for the said respondent has put much emphasis on the *clause 2(b)(iii)* of the said lease agreement dated ***August 21, 2000*** to say that the petitioner being the lessee is obliged to duly comply with the same which speaks that the lessee shall within three years from the date of formal allotment or within such further time as the Authority may as per its option allow in writing on sufficient and reasonable grounds and at its own cost, erect/construct and complete house/building and other structures upon the demised land as may be necessary for the said land to be used for the purpose as settled. Within the said stipulated period the boundary walls, sewers and drains shall also be constructed in accordance with the sanctioned plan and specifications as may be approved by the appropriate authority and according to the rules and regulations of the Kolkata municipal Corporation or according to the requirements of any statute or of any land use and development control plan and/ or development control regulations of the authority.

(16) *Clause 4(i)* of the said lease deed as also been resorted to by the said respondent. The same has provided that whenever any part of the rent shall be in arrears for a considerable period of 3 years and after the due date there shall be a breach of any covenants in the lessee the authority shall have the right to re-enter upon the demised premises and to determine the lease.

(17) The other clause referred to by the respondent/KMDA is *clause 4(iii)* of the said lease agreement, state that any relaxation or indulgence granted by the Authority to the lessee or by the lessee to the Authority shall not in any way prejudice the rights of the parties under the deed. According to the said respondent despite such specific stipulations made in the said lease deed, admittedly the petitioners have not taken any steps for construction on the land allotted to them for more than 10 years, from the date of such allotment of land. That, they have applied for the mutation of the land only in January 2010. Thereby there has been a gross violation of the stipulated conditions in the lease deed particularly that of *clause 2(b)(iii)* thereof, by the writ petitioner. It has stated further that as per prayer of the petitioners, they have been granted extension of time to complete the construction works though the latter was also sent dated ***November 11, 2014***, requesting the petitioners to submit an undertaking or nonjudicial Stamp paper stating that the petitioners will complete the construction work within a period of 6 months and pay penalty therefor as per the existing rate of KMDA, to the date of completion of the construction work, though the petitioners have not submitted any such undertaking. The respondent/ KMDA has admitted the fact of receipt of the petitioner's letters dated May 4, 2015 and May 5, 2015 but it says that the prayer therein for waiver of the

penalty charges, has not been considered by it. Hence the resultant effect has been issuance of the demand notice to the petitioners dated ***December 15, 2015,*** which the petitioners have challenged in the present case.

(18) Mr Talukdar, learned advocate for the respondent/KMDA, though has accepted the fact that the provision of imposition of penalty for late completion of construction or seeking an extension of time to complete the construction by the lessee, has not been incorporated in the lease deed entered into by it with the writ petitioners. He says that imposition of penalty is a policy decision of Land and Flat Allotment Committee in its meeting dated January 20, 2009 with the recommendation to make suitable modification in the Land and Flat Allotment Policy and for placing the entire matter before the Pricing Committee for fixation of rate of penal interests, which has been ratified and the rate is fixed by the Pricing Committee and the respondent/KMDA has duly accepted it as a policy. Hence the same is binding on all parties. In case of the cooperative allotment the rate of penal charges has been determined to be 8% per annum by the Pricing Committee, which decision has been ratified by the Authority in its 173rd meeting (agenda item No.13) held on June 1, 2013.

(19) Hence, according to the respondent/KMDA, the policy decision as above empowers and authorises adequately and lawfully to impose penalty, in case of delay in completion of construction by the lessee and in the event of extension of time limit for it to complete the construction over the allotted land. Hence, it is argued, that by imposing penalty charges, by dint of the impugned letter dated ***December 15, 2015,*** no illegality or

unauthorised action has been committed by the respondent/KMDA, though in spite no similar provision having been incorporated in the lease agreement entered into between the parties. Mr. Talukdar has emphasised that administrative policy decision is the prerogative of the Authority and is not amenable to judicial review unless manifestly arbitrary. It is for administrative exigency and not always and mandatorily subject to the provisions of the statute only. He has stated that the scope of judicial review of an administrative policy decision of the respondent/Authority, would be very limited and only in case there is gross and apparent arbitrariness and unreasonableness in the process of bringing changes in the policy. The Authority of the State in exercise of its administrative discretion to decide matters cannot generally be interfered with, unless there appears to be gross impropriety and arbitrariness in the same. He says, in the present case, there would not be any such hampered process undertaken by the said respondent/Authority, to call for any interference by this Court in judicial review of the said policy decision of the State Authority. To further elaborate his argument as above, he has referred to a decision of the Supreme Court in ***Punjab State Power Corporation Limited and Another vs Emta Coal Limited [(2022) 2 SCC 1].***

(20) The other point argued by Mr. Talukdar, learned dvocate is that like arbitrariness in the process, a discriminatory one is also not maintainable in the eye of law. However, absence of any material to show inequal treatment being mated out, shall not bound due disposition of the executive function of a State instrumentality, by making a law or without making a law. By referring to a judgment of the Supreme Court of ***M/s***

Radhakrishna Agarwal and Others vs State of Bihar and Others [(1977) 3 SCC 457], he has stated further that after the State have entered into the field of ordinary contract the relations between the parties are since governed by the legally valid contract, which determines the rights of the parties inter se, no question arises for violation of Article 14 or any other provision of the Constitution, when the State purporting to act within its scope, performs any act. That in this sphere, only the terms of or rights conferred by the contract are binding but no statute, unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from the statute.

(21) Mr. Talukdar has referred to another decision of the Supreme Court in the case of ***Barielly Development Authority and Another vs Ajai Pal Singh and Others [(1989) 2 SCC 116]***, in support of his contention and seeking that ratio thereof should be applied in the instant case too, that in case of a non-statutory contract entered into by the State and the persons aggrieved in which the rights of the parties are governed only by the terms of the contact, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the Authorities to remedy a breach of non-statutory contract. According to the respondent the contract entered between the petitioners and the respondent is a non-statutory and concluded contract. Therefore, the parties shall be governed by the terms of the contract only and the petitioner's grievance, if any, cannot be cloaked with the alleged violation of any statutory right of the petitioners, which would not be there in view of the fact that the petitioner and the respondent would be

governed by the terms of the agreement and not by any statutory provision.

(22) Mr. Talukdar has further emphasised that changing pricing policy is within domain of the executive function of the State instrumentality, like the present respondent, who is functioning under the realm of a private non-statutory inter se contract between the parties. He has stated further that judicial review in a policy matter would not be permissible under the law, to assess correctness of reasons for adopting certain policy by the executive. A breach of fundamental rights may attract and justify intervention of the writ Court in a policy decision of the State and not otherwise even if a second view was possible from that of the Government. He says that imposition of penalty is a well formulated executive policy, in case of breach of the terms of agreement entered in to between the parties. Since, admittedly there is a breach, that construction of building could not have been completed by the petitioners within the stipulated period of time, the respondent in furtherance of its policy is authorised under the law to impose penalty or other charges, which would not be amenable to judicial review. In this regard he has referred to a judgment of Supreme Court in ***Ekta Shakti Foundation vs Government of NCT of Delhi*** reported in ***(2006) 10 SCC 337***.

(23) The respondents have also relied on the judgment of the Single Bench of this Court dated ***February 10, 2022 in WPA No. 3443 of 2019*** [Damodar Prasad Agarwal vs State of West Bengal & Others], the order in Appeal by the Division Bench challenging the same dated ***September 12, 2022 in MAT 309 of 2022*** [Damodar Prasad Agarwal vs State of West Bengal] and

the order of the Supreme Court dated March 21, 2023, dismissing the Special Leave Petition (Civil) 40499/2022, in which the said order of the Division Bench of this Court was challenged. It is stated that in the cases as mentioned above, on the similar factual background the petitioner's prayer have been rejected by the Courts on all occasions. Hence, Mr. Talukdar has sought for dismissal of the instant writ petition.

(24) Admittedly, the 1st petitioner which is a co-operative housing society has entered into a contract, with the 1st respondent on August 21, 2000. The said contract which was entered in a form of a lease agreement contains certain conditions to be fulfilled by the parties thereto and the necessary fallout in case any violation happens. The purpose for which the said contract was entered into by the parties has been described in Clause 1 thereof, that "for the creation of a building for residential accommodation of its members and for using the same for the said purpose only." The contract was entered into in lieu of rent payable by the 1st petitioner during continuance of the lease (as per Clause 2 (I) (a)) and the charges as may be imposed by the Authority from time to time, in respect of the demised land (as per Clause 2 (I) (b)). As per Clause-2(II) thereof, the lessee that is the 1st petitioner shall also be obliged to pay all rents, taxes, charges and other impositions of every description in respect of the demised land and building erected or to be erected thereon, which are or may be assessed to be payable by the owner or occupier thereof, during the term of contract.

(25) These clauses in the agreement has enumerated the future charges payable by the owner or occupier of the land

and/or building erected thereupon. Therefore neither the contract price appears to be the firm price which might have been unalterable unilaterally by the lessor, nor any subsequent imposition appears to have altered or changed the nature and character of the contract, which already consisted the general clauses relating to possible future changes, imposition of charges etc. In such view of the fact, imposition of penalty does not appear to be something supplemented de-hors the scope of the contract, altering or changing the contract but to be in the nature of species emanating from the terms of contract as mentioned above.

(26) Mr. Basu has contended that power of the 1st respondent to impose penalty, should emanate from a statutory provision and that except within the bounds of a statutory provision, the 1st respondent would not be authorised to act. According to the petitioner, hence, the act of imposition of penalty by the 1st respondent is an extra-statutory step taken by the same whereas it is an instrumentality of the State, the said respondent is to act only in terms of what has been provided in a statute. In this regard Mr. Basu has also submitted that the legal issue upheld by the Hon'ble Single Bench in the case of ***Siddharth Cooperative (supra)***, that the Authority has been bestowed with general power to acquire and manage properties and not to impose any tax or penal charges has remained un-interfered with and holds the field.

(27) In the instant case, the Court is however, not confronted with the question, whether penalty charges imposed are in the nature of tax or fees or not, but whether the penalty imposed by the 1st respondent is extra-contractual, which changes the

nature and character of the contract itself. The parties are acting within the realm of a non-statutory contract wherein, there has not been any public law element involved. The purpose of execution of the agreement between parties is extracted above. The same relates to and benefits the petitioners only and the execution of agreement facilitates due distribution of state largesse. It does not ipso-facto, bestow a public law element in the contract itself or bring it into the reach of public law as otherwise, every contract to which the State or its instrumentality is a party, would automatically involve a public law element.

(28) In the case of ***LIC of India vs Escorts Ltd*** reported in ***(1986) 1 SCC 264*** the Supreme Court has held that the action of the State related to the contractual obligations was not to be ordinarily examined by the Court unless such action had some public law character attached to it. There the Court has further expressed the difficulty involved in demarcating the public law domain and private law field and has further ordered that the question must be decided in each case with reference to the particular action. It has further held therein that where the State assumes itself the ordinary role, its rights and liability should be tested as an ordinary contracting party. It has been similarly held in ***Bareilly Development Authority (supra)*** and many other cases by the said Court.

(29) Whether any public law element is involved in the contract entered into between the parties in this case or not, can be seen from itself, from the purpose of the lease as stated therein, that the lease agreement is being executed for the purpose of erecting a building for residential accommodation of

members of the lessee only. Therefore, any benefit under the contract would not reach to the public in general or public at large but be confined within the members of the first petitioner only. Therefore, the contract between the parties never appears to prevail on public law domain but governing the private rights and obligations of the parties. Hence, the first respondent adorning here an ordinary role, its rights and liabilities should be tested as an ordinary contracting party.

(30) In ***Orissa Agro Industries vs Bharati Industries*** reported in ***(2005) 12 SCC 725*** the Supreme Court has similarly held that the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of contract and in exercise of executive power of the State.

> ***"11. In Radhakrishna Agarwal v. State of Bihar [(1977) 3 SCC 457 : AIR 1977 SC 1496] the types of cases in which breaches of alleged obligation by the State or its agents can be set up were enumerated. The third category, indicated is where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and in exercise of executive power of the State. The present case is covered by the said category. No writ order can be issued under Article 226 to compel the authorities to remedy a breach of contract; pure and simple. It is more so when factual disputes are involved."***

(31) Therefore, in case of a non-statutory contract, where the first respondent undertakes only an ordinary role, is an ordinary contracting party, in possession of executive power. An act of it, if not changes the very nature and purpose of the contract or have an effect of unilaterally change in the terms thereof, cannot be tested by the Court, in exercise of the power under Article 226 of the Constitution, in terms of the law

settled, as discussed above. Therefore, the submission of the petitioner that the first respondent could only act in terms of any statute and by virtue of the power only emanating from the statute is not acceptable. But when the same is not acting within the realm of public law but is an executive body acting as an ordinary contracting party, would be bound by the laws of contract in general and should be acting within the terms of contract.

(32) The agreement for lease between the parties, dated August 21, 2000 has provided in clause (2) (III), as follows :-

> ***"III. The LESSEE shall, within three years from the date of formal allotment or within such further time as the Authority may at its option allow in writing on sufficient and reasonable grounds, and, at its own cost, erect, construct and complete house, buildings or other structures upon the demised land as may be necessary for the said land to be used for the purpose as settled along with boundary walls, sewers and drains in accordance with plans, section, specification as may be approved by the appropriate Authority according to the rules and regulations of the Calcutta Municipal Corporation or according to the requirements of any statute or of any land use and Development control plan and/or Development control Regulations of the Authority."***

(33) Therefore, according to the said agreement three years is the time limit for the lease to complete construction of building over the demised land, unless such time limit is extended by the lessor. In this regard also pertinent is to note clause 4 (i) of the said lease agreement dated August 21, 2000. It has provided for three eventualities, when the Authority shall have the right to re-enter the demised premises and to determine the lease. Those are, (i) in case of rent being unpaid for consecutive three years period of time by the lessee, (ii) there is a breach of any covenant by the lessee contained in the agreement and (iii) the lessee enters into liquidation, voluntary or compulsory. It can be seen that payment of any penalty, due to the alleged

breach of covenant by the lessee, has not been a term or condition, initially incorporated in the contract. Let the records be looked into first, to see if breach of covenant in contract can be said to have taken place at the instance of the lessee in this case. Admittedly, the possession of the land was handed over to the petitioners, in the year 2000, pursuant to execution of lease agreement.

(34) The petitioners have stated that due to delay in getting the land mutated by the competent authority, neither the petitioners could approach for sanction of building plan nor start the construction of the building. Record has further revealed that the petitioners have applied for mutation on January 4, 2010. The delay from the date of receipt of possession of the land, that is, April 24, 2000, till the date of applying for mutation thereof that January 4, 2010, has remained unexplained in this case. According to records, there has never been any prayer by the petitioners before the respondents, seeking extension of the stipulated time period for completing the construction, not to speak of any sufficient or reasonable ground being shown for that, by the writ petitioners. Therefore, this would have been sufficient for the respondent to invoke clause 4 (i) of the agreement to determine the lease by the re-entering to the land. But instead, the respondent has taken recourse to a decision of the 'Pricing Committee', to impose penalty against the petitioners for violation of the contractual term of the stipulated time limit to conclude the construction. It is undeniable that within the stipulated time limit of three years, neither the petitioners have started or concluded construction of building nor they have prayed for extension of time to do the same. The question is if in that case

the respondent would be authorised or eligible to make the petitioner subject to some other method, which is not stipulated in so many words in the agreement. That is, in doing so, if the State is acting within the scope of the contract or not. As it is held in the case of ***Radhakrishna Agarwal (supra)*** that in case of an ordinary contractual relation between the parties, the terms of contract would govern their inter se rights and liabilities unless a statute specifically steps in to confer some special statutory power or obligation on the State, in case of ordinary contract. The ratio applies in this case too. There is no such special statutory power or obligation to govern the respondent in this case, than the terms of contract itself.

(35) So far as the agreement dated August 21, 2000 is concerned, the price as determined therein is not the firm price and subject to the clauses of agreement of imposition of future changes (cl. 2 (I) (b)). The petitioners/lessee has acknowledged and accepted this provision in agreement from the date of execution thereof, that is, August 21, 2000. Determination of the same, if necessary, and the rate thereof, would be subject to exercise of the executive powers of the Authority, of course, in a fair and proper and reasonable manner. In this case, the respondent has adopted a process for an exercise to have been done by the 'Pricing Committee' to arrive at a decision for levy of penal charges at a specified rate. Which otherwise would have been viable cause for determination of the agreement and re-entering into the land by the lessor/respondent might have been retained by the petitioners, upon compliance with the order of imposition of penalty, in spite of there being breach of covenants in contract, by the petitioners. This is an administrative policy decision by the Authority, which is its

prerogative. It does not violate the petitioner's rights under Article 14 of the Constitution, in so far as their amenability to such an administrative order of the Authority due to the specific facts and circumstances of the instant case and their respective duties and responsibilities within the bounds of that non-statutory ordinary contract, bereft of any public law element therein, would not involve any such rights of the petitioners. Consideration and response to any administrative exigency, is the duty of administrative body and as it is held by the Supreme Court, in the case of Punjab State Power Corporation (supra), not always and mandatorily subject to the provisions of the statute only. It is the settled law, that unless there is gross and apparent arbitrariness and unreasonableness in the process of bringing change in the policy, the scope of judicial review of an administrative policy decision of the respondent/Authority would be very limited or not available at all. Also that the manner, the method or motive of the decision of the respondent, does not appear to be against rule of reason or rule against arbitrariness. The petitioners may agitate that as it is in the agreement, they are not the parties to the Authorities decision of imposition of penalty. Firstly, in case of an administrative decision of the Authority, the petitioners may not be a party, and since such administrative decision of respondent is within the four corners of the agreement and having served the purpose only in favour of the other contracting party/the petitioners, as discussed before, would not be tainted with unreasonableness or arbitrariness, in any way.

(36) Therefore, the way the petitioners would say imposition of penalty, to be not maintainable in their case, there being no

statutory source of power available to the respondent to do so, is not a watertight or full proof proposition, applicable in this case when the parties are covered by a non-statutory lease agreement between themselves and their inter se liabilities and duties being determined under the said contract itself. It is so also, when the agreement which governs the parties, bears no public law element and respondent acts in terms of the same, in exercise of its administrative power by following the procedure step after step, without indulging into any unreasonableness, unfairness or arbitrariness. The writ petitioners cannot be allowed to doubly benefitted to retain the land in spite of there being violation of stipulations in agreement by them, as discussed above and not to be subjected to any consequences therefor. If that be not in accordance with what has been stipulated in the agreement, such exigency may be tackled with the administrative policy made by the Authority, which would be reasonable, fair and proper action against the violators.

(37) On the discussion as made above, the Court is unable to find merit in this writ petition.

(38) Hence, WPA 1432 of 2016 is dismissed.

(39) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)