

**B.P.DAS, J & B.K.NAYAK, J.**

W.P.(C) NO.882 OF 2009 (Decided on 30.11.2011)

**BIMAVIHAR DUPLEX HOUSE OWNERS'  
WELFARE SOCIETY**

.....Petitioner.

.Vrs.

**CHAIRMAN, L.I.C. LTD. & ORS.**

.....Opp.Parties.

For petitioner - M/s. B.Pradhan, O.P.Mohanty,  
M/s. S.Pradhan, Mrs. D.Mishra &  
S.Mohapatra.

For Opp.Parties 1 to 4 - M/s. S.Sain & S.C.Panda.  
For O.P.5 - M/s. D.Mohapatra, M.Mohapatra &  
G.R.Mohapatra

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***B.P.DAS, J.***

The petitioner-Bimavihar Duplex House Owners Welfare Society, which is a Society registered under the Society Registration Act, 1960, represented by its Secretary, Sri Nalini Ranjan Pandit, has filed this writ petition challenging the action of the Life Insurance Corporation of India (in short, L.I.C.) and the Cuttack Development Authority (in short, C.D.A.) forcing its members, who are the purchasers-allottees of residential Duplex Houses situated at Bimavihar, Sector-6, Markatnagar, C.D.A., Cuttack, for registration of Sub-Lease Deed in respect of Duplex Houses, which according to the petitioner, is in restraint of the provisions of the Transfer of Property Act and certain arbitrary clauses have been incorporated in Sub-Lease Deed (Draft) under Annexure-4.

2. The brief facts, as delineated in this writ petition, tend to reveal that the L.I.C. made an advertisement and published brochure for sale of 100 units of Duplex Houses at Bimavihar, Sector-6, Markatnagar, C.D.A., Cuttack, near river Kathajodi under open counter scheme. The L.I.C. declared to hand over possession of the Duplex Houses immediately after execution of the sale deed. The eligibility of the applicants and the rules and procedure of the allotment have been specified in the brochure under Annexure-2. The cost of three bedroom Duplex Houses was fixed at Rs.8,37,237/-.

Being lured by the aforesaid advertisement, the members of the petitioner's Society applied for the said Duplex Houses, which were fully constructed in the year 1996. The advertisement was made in the year 1996. In the year 2000 the members of the petitioner's Society applied for purchase of those Duplex Houses lying vacant and paid the full cost of the same but as the sale deed could not be executed in their favour in time, they approached the L.I.C. authorities, who offered them to execute the Sub-Lease Deed, the draft format of which is Annexure-4.

3. According to Mr.B.Pradhan, learned counsel for the petitioner, when the Duplex Houses were meant for sale and advertisement was made to that effect, it was not open for the L.I.C. requiring the members of the petitioner's Society to execute the Sub-Lease Deed.

But fact remains, the land, over which the Duplex Houses have been constructed, belongs to the Government in Revenue Department. The Revenue Department leased out the land in favour of C.D.A. and the C.D.A. in turn leased out the said land in favour of the L.I.C. for the purpose of construction of Duplex Houses in the name and style of "L.I.C. Policy Holders' Housing Scheme".

Mr.Pradhan referring to Clause-6 of the Sub-Lease Deed (Draft) (Annexure-4) submits that there is a restraint to sublet the houses subject to prior permission from C.D.A. Clause-6 reads thus :-

"6. The *sub-lessee* will not be entitled to further transfer, mortgage, sublet, sub-lease or otherwise part with the possession of the property without prior consent of the Cuttack Development Authority in writing and the latter reserves the right to give such consent in its absolute discretion subject to the terms and conditions as would be fixed by it."

The petitioner objects to the aforesaid Clause of the deed being arbitrary, as there cannot be any restriction for subletting the houses purchased by the members of the petitioner's Society and in this regard, the C.D.A. cannot have absolute discretion of granting such permission. According to the learned counsel for the petitioner, if one of the members of the Petitioner's Society leaves the town, he cannot wait for permission from the C.D.A. to sublet the house.

It is further submitted that as per the Sub-Lease Deed conditions, the allottees also cannot mortgage the house with any nationalized bank for any purpose other than construction because they having purchased the Duplex Houses, which have already been constructed by the L.I.C., there is no necessity of loan for the purpose of construction but there may be necessity to mortgage for the purpose of repair or any other exigencies such as medical treatment, higher study of their children or any other legal necessity. The petitioner objects to Clause-20 of the Sub-Lease Deed (Draft) on the ground that this Clause is not clear as to what amount is to be paid at the time of renewal of sub-lease and whether again the allottees are to pay the cost of land and building or only nominal renewal charges, for which it requires to be clarified.

The petitioner further objects Clause-21 of the Sub-Lease Deed that it is arbitrary, as it would not be possible to hand over the building and the land in good condition after expiry of the lease period in case the further period of lease is not extended to them as stipulated in Clause-20 of Annexure-4. The said Clauses read thus :-

“20. On expiry of the terms of the sub-lease, the sub-lessee shall if he has duly observed all the terms and conditions, at the discretion of the sub-lessor be eligible for renewal for a further period of 70 years on the same terms and conditions except as to rent which shall be liable to such renewal to enhancement of such as should be justified according to the circumstances then prevailing. The sub-lessee shall have the first option of renewal if the same is applied for before expiry of sub-lease, after executing and registering a fresh sub-lease deed on renewal.

21. The sub-lessee agrees that after expiry of the said period of sub-lease to deliver to the sub-lessor the property hereby leased out in good conditions.”

4. According to Mr.S.Sen, learned counsel for the L.I.C., the lease conditions incorporated in the lease deed have been borrowed from the lease deed executed by the C.D.A. allotting the land in favour of the L.I.C. for the purpose of construction. Mr.D.Mohapatra, learned counsel for the C.D.A., submits that the same condition, i.e., return of the property, is there in the lease deed executed by the Government when the Government land was transferred to the C.D.A. for the purpose of housing schemes.

The substantial case is that the land belongs to the State Government, which was leased out to the C.D.A. and the C.D.A. in turn leased it out to the L.I.C. for construction of the project for the benefit of the policy holders. Ultimately, the houses were meant for the policy holders. The policy holders as per the brochure are to purchase the houses constructed over the land held by the L.I.C. under a sub-lease. So the question arises whether Clauses-20 & 21 so incorporated for surrender of the property are arbitrary. Fact remains that after purchasing the houses constructed over the land, which is under sub-lease, the respective purchasers of the building become the absolute owners of the houses, as they have paid the total consideration towards the cost of the buildings in pursuance of the advertisement and terms and conditions laid down in the brochure. The property may have been sub-leased to L.I.C. but the L.I.C. constructed the buildings over it and sold it to individual purchasers. The C.D.A. however after taking the land on lease from the Government, sub-leases the plots and sells it to the individuals for construction by them. In both the cases, the purchasers of the buildings or allottees of the plots become the ultimate individual allottees and they acquire a heritable and transferable right.

6. Law is well settled that rights of a lessee to use the land are in no way different from those which they would have in their own private land. But the lessees cannot create a permanent right over the same by way of sale and mortgage without due permission from the C.D.A. or cannot create a permanent right of tenancy over the said land. In other words, the individual allottee of the land and/or allottees of the building directly made by the C.D.A. or through the L.I.C. can mortgage or transfer their property subject to permission of the C.D.A. Right of renewal of the property always remains with the allottee and the lease holder, but the lessees have to pay the fees/charges as applicable to them for the land only.

So far as resumption of the property is concerned, that can only be done in public interest or for violation of the lease conditions after giving due notice to the allottees and allowing adequate time for rectifying the violation, if any. It is also open for the Government to consider to convert the leasehold rights of the C.D.A., the lease holders, sub-lease holders and sub-sub-lease holders of the land to free hold.

But, however, we make it very clear that there shall not be any restriction to let out the building in question on rent for the purpose for which it is constructed and lease has been granted.

7. A further question was raised that in the meantime, the L.I.C. was collecting Rs.250/- towards ground rent and depositing the same with the C.D.A. It is submitted by the learned counsel for the parties that it would be better if the ground rent is paid directly to the C.D.A.

8. The further allegation of the petitioner is that L.I.C. is not taking any step for the purpose of community development, such as electricity, water supply and street lighting, which it has undertaken to provide to the allottees.

Considering the submission, we direct the L.I.C. to submit a list of allottees to the C.D.A. for facilitating payment of ground rent by the allottees to the C.D.A. directly. If any building still remains unsold that will be under the control of the L.I.C. and L.I.C. shall pay the ground rent for those houses. Accordingly, the L.I.C., C.D.A. and the State Government are directed to carve out the modalities. The construction and maintenance of road and street-lighting shall be transferred to the Municipal Corporation and water supply to P.H.D. by the L.I.C. complying with the formalities required by them. The L.I.C. is directed to modify the Sub-Lease Deed (Draft) under Annexure-4 in terms of this judgment.

Writ petition allowed.