

\$~2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 5588/2015**

M/S SDB INFRASTRUCTURE PVT. LTD. Petitioner

Through Mr. Rajesh Bhardwaj, Mr. Ajay Tejpal and
Ms. Anumeha Verma, Advocates.

versus

CENTRAL INFORMATION COMMISSIONER & ORS

..... Respondents

Through Mr. Vikram Jetly, CGSC for R 2 and 3 with
Mr. Mukesh Tinna, UDC with official records.
Mr. Riju Raj Jamwal, Advocates for R 4 and 5.
Mr. Vedanta Varma, Adv. for Mr. Amit Bhagat,
Advocate for R7.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **13.09.2017**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning the order dated 02.03.2015 (hereafter 'the impugned order'), passed by the Central Information Commission (hereafter 'the CIC') rejecting the second appeal preferred by Mr AK Kaul (who is stated to be an employee - designated as vice president - of the petitioner) under Section 19(3) of the Right to Information Act, 2005 (hereafter 'the act'). The present petition is also filed through Mr A.K Kaul.

2. Mr Kaul filed an application dated 09.04.2014, seeking information relating to the conversion of the property bearing No.5, Jantar Mantar, New Delhi (hereafter 'the property') from leasehold to freehold. The relevant extracts of the said application indicating the information sought by the petitioner is set out below:

"The information sought is with respect to the Property bearing No. 5, Jantar Mantar Road, New Delhi and you are requested to provide the same:

- a) All documents submitted for conversion of above stated property from leasehold to freehold
- b) Order of conversion of above stated property from leasehold to freehold
- c) Departmental/ official notings regarding conversion of above stated property from leasehold to freehold."

3. The Central Public Officer (CPIO) of the Land & Development Office - being the Deputy Land & Development Officer, forwarded the request for information to the recorded co-owners of the property and sought their consent for disclosure of the same under Section 11 of the Act. In response to the aforesaid request, Ms. Deepak Kaur Mann (who is stated to be the co-owner of the property) sent a letter dated 06.06.2014 calling upon the CPIO not to disclose the information as sought by Mr Kaul; and, on the basis of the same, the CPIO - by his letter dated 10.06.2014 - denied the information sought on the ground that the same was exempt from disclosure under Section 8 (1) (j) of the Act.

4. Aggrieved by the same, Mr Kaul filed an appeal before the First Appellate Authority (hereafter 'FAA'), which was rejected by an order dated 30.07.2014. This led him to file the second appeal under Section 19 (3) of the Act, which was also rejected by the impugned order dated 02.03.2015.

5. The petitioner claims that a Development Agreement dated 04.08.1989 was executed between the petitioner and S. Daya Singh & Sons (HUF); Sardar Harisimran Singh; and Smt. Amarjit Kaur with regard to the property. The said Agreement was terminated and the petitioner commenced arbitration proceedings captioned M/s SomDutt Builders Pvt. Ltd. v. Daya Singh & Sons (HUF); Sardar Harisimran Singh and Smt. Amarjit Kaur. This arbitral proceeding culminated in an Award dated 30.03.2010, for a sum of ₹34,68,50,000/- in favour of the petitioner.

6. The petitioner filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (OMP No.207/2010) on 04.04.2010, seeking an interim order restraining S. Daya Singh (HUF) from dealing with the property. It was the petitioner's contention that alienation of the property would effectively frustrate the enforcement of the Award.

7. It is stated that by an order dated 16.04.2010, passed in OMP No. 207/2010, this Court directed that *status quo* be maintained regarding the said property.

8. In the meanwhile, S. Daya Singh & Sons (HUF) challenged the arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996 (OMP No.327/2010). On 16.02.2012, learned counsel for S. Daya Singh & Sons (HUF) made a statement in pending proceedings under

Section 9 of the Arbitration and Conciliation Act, 1996 (OMP No.207/2010) that the respondents will not sell, alienate, transfer or part with possession of the property without prior permission of the Court.

9. Thereafter, on 12.04.2013, Ms. Deepak Kaur Mann, daughter of S. Daya Singh, filed an impleadment application in the pending petition under Section 34 of the Arbitration and Conciliation Act, 1996 claiming that a decree had been passed on 23.12.2011 in a partition suit involving S. Daya Singh & Sons (HUF), whereby Ms. Deepak Kaur Mann was declared 20% owner of the property. The said application was subsequently dismissed.

10. Ms. Deepak Kaur Mann also filed an application seeking clarification of the order passed under Section 9 of the Arbitration and Conciliation Act, 1996 and *inter alia*, contending that the said order does not extend to her share. The said application was also dismissed on 13.09.2013. Aggrieved by the same Ms. Deepak Kaur Mann preferred an appeal before the Division Bench of this Court, which was also dismissed on 23.10.2013.

11. The petitioner claims that it became aware in January 2014 that co-owners of the property in question had applied for conversion from leasehold to freehold and, it is in this context that Mr. A. K. Kaul (who is stated to be an officer of the petitioner) filed the application under Act.

12. The Learned counsel appearing for respondent nos.2 and 3 submitted that the petitioner is not recorded as co-owner and is a third party and, thus, the information sought for by Mr Kaul/the petitioner could not be provided. In this regard, he placed reliance on a decision of the Supreme Court in ***Girish Ramchandra Deshpandey v. Central Information Commission &***

Ors.; 2013 1 SCC 212 and on the strength of the said decision, submitted that the information sought for by the petitioner was personal information and, therefore, could not be provided to the petitioner.

13. Learned counsel appearing for the other respondents supported the aforesaid contention.

14. Section 8(1)(j) of the Act (which is relied upon by the petitioner) reads under:

“Section 8 Exemption from disclosure of information.— (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

XXXX

XXXX

XXXX

XXXX

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.”

15. It is apparent from the above that three principal conditions must be met for the said clause to be applicable: first, that the information sought must qualify as personal information; second, that disclosure of such information has no relationship to any public activity or interest; and third,

that it would cause unwarranted invasion of the privacy of the individual. All the above conditions are cumulative.

16. Even if the aforesaid conditions are met, such information can be disclosed if the CPIO is satisfied that larger public interest justifies the disclosure of such information.

17. In this case, it is apparent that the petitioner had satisfied this Court, in the petition under section 9 of the Arbitration and Conciliation Act, 1996 (OMP 207/2019), that it was necessary to pass an *ad interim* order of *status quo* regarding the property in question as it was the petitioner's case that alienation of the said property would frustrate the enforcement of the arbitral award secured by the petitioner. It is noticed that immediately thereafter, action had been instituted for asserting interest in the property; immediately after the award was rendered, Ms. Deepak Kaur Mann filed a suit for partition and permanent injunction on 19.04.2010 (Civil Suit No.738/2010). The said suit was compromised in terms of a Memorandum of Settlement that was executed between Ms. Deepak Kaur Mann; Mr. Harisimran Singh, son of S. Daya Singh; Jorawar Singh, son of Harisimran Singh; Jagir Singh, son of Harisimran Singh; and Smt. Manjit Kaur, wife of Late S. Daya Singh and an application under Order 23 Rule 3 CPC was filed on 23.12.2011. The suit was decreed in terms of the said application. Undisputedly, while the order of *status quo* was pending, the parties claiming to be entitled to the shares of S. Daya Singh filed an application for conversion of the property from leasehold to freehold and, thus, changed the status of the said property.

18. In view of the above, this Court had called upon the respondent nos. 2

and 3 to produce the file and has perused the same. Apart from the application for conversion, the files also contained a copy of the order passed by this Court allowing the application under Order 23 Rule 3 CPC and decreeing the suit (CS (OS) No.738/2010) and a copy of that Memorandum of Settlement entered into by persons claiming to be the co-owners of the property. In addition, the application for conversion of the property was also accompanied with proof of identity of the persons claiming to be co-owners (by way of I-cards and photocopies of passports).

19. The matter clearly relates to conversion of the property from leasehold to freehold and, thus, amounts to the State disposing of its residuary interest in the property. There is thus sufficient public interest in ensuring that such disposition is in accordance with law and is not occasioned by extraneous reasons. A Public Authority dealing in public property is enjoined to maintain transparency and, if called upon, to disclose as to why and to whom public properties have been transferred.

20. In the present case, the petitioner alleges that such conversion is contrary to the *status quo* order passed by this Court and apprehends that such conversion was sought to frustrate the enforcement of the award. In the given context, the question to be addressed is whether disclosure of information would result in an unwarranted invasion of privacy of co-owners.

21. As noticed above, parties are also in litigation and the information relates to a property in respect of which, the petitioner has secured an *ad interim* order. The information as to how the property has been dealt with

cannot, by any stretch, be claimed as making an unwarranted invasion on the privacy of the concerned recorded owners.

22. Having stated the above, this Court is of the view that it is not necessary for respondent nos.2 and 3 to disclose the passport details; Identity cards and copies of the cheques (which may disclose bank accounts) submitted by the persons applying for conversion of the property. There is no justification for disclosure of such information and, therefore, the disclosure of the same is unwarranted.

23. The decision of the Supreme Court in ***Girish Ramchandra Deshpandey*** (*supra*) is clearly not applicable in the facts of the present case. In that case, the petitioner had sought copies of memos and Show Cause Notice and orders of *censure* of punishment issued, which were plainly personal information and there was no justification warranting its disclosure.

24. Before concluding, it would be necessary to refer to Section 11 of the Act which was resorted to by the CPIO. Section 11(1) of the Act clearly enjoins the CPIO to inform a third party in cases where any information in possession of the Public Authority relating to a third party, is intended to be disclosed. In such cases the CPIO has to take an informed decision after hearing submissions of the third party. Thus, in the present case, CPIO was required to examine the entire context in which information was sought and then take an informed decision.

25. In view of the above, the petition is disposed of by directing the CPIO to hand over the relevant information demanded by the petitioner. However, personal details relating to I-cards, cheques, identity proofs and passports

would be redacted/removed. The CPIO may also redact office notings. The balance information sought would be disclosed on payment of applicable fees.

VIBHU BAKHRU, J

SEPTEMBER 13, 2017

dr

