

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

Judgment delivered on: 25.02.2019

W.P.(C) 4030/2017 & CM No. 52443/2018

INDIAN COMPRESSORS LIMITED

..... Petitioner

versus

THE GOVERNMENT OF NCT OF DELHI
& ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner

:Mr Sukumar Pattjoshi, Sr. Advocate
with Mr Pratap Shanker, Mr Swetank
Shantanu, Ms A. Shivani and Ms
Surabhi, Advocates.

For the Respondents

:MsSwaty Singh Malik, Ms
YaashnaJhaaran and Mr Mushan
Gupta, Advocates for R-1.
Mr Vikrant Narayan Vasudeva,
Advocates for R-2 & R-3.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued against the respondents to refund the sub-letting charges paid by the petitioner, along with interest and further seeking conversion of the property (Shed No. 33, Okhla Industrial Estate, Phase-III, New Delhi – hereafter ‘the Property’) from leasehold to freehold.

2. The petitioner is a public limited corporation and claims to be the owner of the Property. The petitioner seeks refund of a sum of ₹7,45,597/-

demand on account of subletting charges. This was disputed by the petitioner; nonetheless, the said amount was deposited pending adjudication of the dispute in this regard. That having been decided in its favour, the petitioner claims refund of the amount of ₹7,45,597/- so deposited. The petitioner is also aggrieved by failure on the part of the respondents to convert the Property from leasehold to freehold.

Factual Background

3. The petitioner (known as M/s Didwania Brothers Pvt. Ltd at the relevant time) was granted perpetual lease of the Property and the Sale Deed was also executed in favour of the petitioner on 30.01.1984.

4. In 1987, a company – M/s Cryo Pump Asia Ltd. – was incorporated, in which the shareholders of the petitioner company held the entire share capital (100% of the shareholding).

5. The petitioner states that in the year 1988, the petitioner company was deemed to be a public company by virtue of Section 43A of the Companies Act, 1956 and, accordingly, the word ‘private’ was deleted from its corporate name. A certificate indicating the petitioner’s changed name – Didwania Brothers Ltd. – was issued by the Registrar of Companies. Subsequently, the petitioner changed its corporate name from Didwania Brothers Ltd. to its current name, that is, M/s Indian Compressors Ltd.

6. During 1988-1989, the petitioner sent several communications informing the respondent about the issue of change in name of the petitioner company. In response, the respondent put up a demand of unearned

increased charges from the petitioner company. On 28.07.1990, a conveyance deed was executed by the respondent from M/s Didwania Brothers Ltd. along with an undertaking to pay such charges.

7. Thereafter, the petitioner sent a communication dated 23.07.1999 to the respondent seeking permission to sublet the Property to M/s Cryo Pump Asia Pvt. Ltd. In response to the aforesaid request, on 10.09.1999, the respondent raised a demand towards the subletting charges for an amount of Rs. 7,81,308/-. Thereafter, by a communication dated 18.11.1999, the respondent raised a further claim of ₹27,69,144/- towards its share of unearned increase. This demand was founded on the premise that the petitioner had transferred the Property.

8. It is stated in the petition that in the year 2000, the petitioner sent several letters requesting the respondent to grant permission to mortgage the Plot to a bank – Bank of India, Nehru Place, New Delhi – but the respondent denied such requests made by the petitioner.

9. Thereafter, the petitioner filed a writ petition (W.P. (C) 2618/2000), *inter alia*, praying for quashing of the demands raised by the respondent on account of unearned increase and subletting charges. The petitioner further prayed that the letters issued by the respondent be construed as granting the petitioner permission to mortgage the Property without depositing the impugned charges.

10. On 27.11.2000, the Court issued notice and directed the petitioner to deposit ₹7,45,597/- towards the subletting charges, without prejudice to its contentions. Pursuant to the said order, the petitioner deposited the aforesaid

amount with the respondent. The Court, by an order dated 01.03.2001, directed the petitioner to deposit a further sum of ₹68,016/- towards the grant of permission of mortgage of the Property. The said amount was duly deposited by the petitioner.

11. The petitioner had filed another petition with respect to another property – shed No. 35, Okhla Industrial Estate, Phase-III – being W.P. (C) 5546/2004, which was taken up along with the aforementioned writ petition and both the said petitions were disposed of by an order dated 09.05.2006. In its order, the Court noted that two questions arose in the petition (W.P.(C) 2618/2000). First, whether the petitioner was liable to pay 50% unearned increase on account of change in its name from M/s Didwani Brothers Pvt. Ltd. to M/s Compressors Pvt. Ltd. and thereafter to M/s Indian Compressors Ltd; and second, whether there was any subletting of the Property warranting levy of subletting charges. The said disputes were referred to arbitration and were to be adjudicated by the Arbitrator appointed by the Court. The Court further observed that if the petitioner desired of availing the extant scheme for conversion of the Property from leasehold to freehold, the pendency of the proceedings before the Arbitrator would not be alluded to for refusing the permission to the petitioner to avail the said conversion scheme.

12. It is apparent that there is also an issue with regard to encroachment on public land. In this regard, the Court directed that a joint inspection be conducted and further directed that the petitioner would abide by the findings of the respondents. However, the Court also directed that pendency of the inspection to determine whether there is any encroachment, shall also

not be alluded to by the respondents for refusing the petitioner permission to avail of the conversion scheme. The said order is set out below:-

“WP(C) No.2618/2000

Two questions that arise in this Petition are whether any sub-letting has taken place and whether the Petitioner is liable to pay fifty per cent unearned increase consequent upon the change of the Petitioner concern from Didwania Brothers Private Limited to Didwania Brothers Limited and thereafter Indian Compressor Ltd. These questions are also referred to the Arbitration of Justice(Retired) O.P. Dwivedi. His Fee shall be paid by the Petitioner.

Keeping the circumstances of the case in view, it is further directed that if the Petitioner is desirous of availing of the extant Scheme for conversion of the property from Leasehold to Freehold, the pendency of proceedings either in Arbitration or Inspection to determine encroachment shall not be alluded to by the Respondents for refusing to permit the Petitioner to avail of the said Conversion Scheme.

Petition stands disposed of. Parties to bear their respective costs.

Interim Orders shall continue until the passing of the Award.

A copy of this Order be given DASTI to learned counsel for the parties.”

13. Pursuant to the aforesaid order dated 09.05.2006, the petitioner paid an amount of ₹9,72,726/- towards the conversion charges as per the policy of the respondents. Thereafter, the petitioner submitted an application (being no. 00691 dated 01.09.2006) to the respondent for the conversion of the Property from leasehold to freehold.

14. In the meanwhile, the Arbitrator decided the disputes and rendered an arbitral award dated 20.05.2009, wherein it was held that the respondent was not entitled to any subletting charges as the petitioner had not sublet the Property.

15. Consequently, the petitioner sent a letter dated 05.10.2009 seeking the refund of the amount of ₹7,45,597/- from the respondents in terms of the aforesaid arbitral award. Thereafter, the petitioner sent several letters and sought the status of its application for the conversion of the Plot from leasehold to freehold, but received no intimation from the respondents.

16. On 01.08.2013, the petitioner filed an application under the Right to Information Act, 2005 (hereafter 'the RTI Act') seeking the status of the aforesaid application. The respondent, by a reply dated 28.10.2013, stated that the conversion of the Property from leasehold to freehold is pending due to non-removal of the encroachment done by the lessee on the Government Land. Thereafter, the petitioner filed a second appeal under the RTI Act but received no information.

17. Thereafter, the petitioner moved yet another application dated 03.06.2014 under the RTI Act. In response, the petitioner received a letter dated 25.06.2014, wherein it was stated that the requisite information had already been provided to the petitioner. The petitioner preferred a first appeal under the RTI Act against the said reply. The first appeal was disposed of by an order dated 28.08.2014 disallowing the appeal on technical grounds and further directing the petitioner to file a fresh

application with the concerned PIO or file a second appeal under the RTI Act.

18. Pursuant to the aforesaid order, the petitioner filed a fresh RTI application dated 30.08.2014 seeking the required information. By a reply dated 12.12.2014, the respondent reiterated that the conversion of the Property was not allowed due to non-removal of the encroachment done by the lessee on the Government land.

19. Aggrieved, the petitioner filed the present petition.

20. The present petition was moved on 12.05.2017. On that date, notice was issued to the respondents which was accepted by the learned counsel appearing on their behalf, who also sought time to take instructions. The learned counsel sought repeated opportunities to seek instructions but no satisfactory response was received from them. On 10.07.2017, a final opportunity was granted to the respondents to file the reply within a period of four weeks. However, despite the same, the respondents did not file any counter affidavit and the averments made in the petition remained uncontroverted. The averments made in the petition did indicate whether an inspection had taken place as directed by the Court. Subsequently, this Court was informed that an inspection was not conducted at the material time but an inspection had been carried out recently, and the same indicated that there were certain encroachments made by the petitioner. It was also contended on behalf of the respondents that the petitioner's application for conversion of the Property from leasehold to freehold had not been processed on account of encroachment on public land.

21. A perusal of the arbitral award rendered on 20.05.2009 indicates that the arbitral tribunal had returned an unambiguous finding that the petitioner did not sublet the Property to someone else or assigned to some other company. It was further held that respondents were not entitled to take any action against the petitioner and the charges levied were unjustified.

22. The said arbitral award has not been challenged by the respondents and has become final. Notwithstanding the same, the respondents have failed and neglected to refund the sub-letting charges as deposited by the petitioner pursuant to orders of this Court.

23. The action of the respondents in not processing the petitioner's request for conversion of the Property from leasehold to freehold on account of any alleged encroachment is also unjustified. This Court, by the order dated 09.05.2006 passed in W.P.(C) 5546/2004 and W.P.(C) 2618/2000, had clearly directed the respondents not to refuse the petitioner's request for conversion on that ground.

24. On 20.02.2019, the Managing Director of DSIIDC was present in Court and had assured this Court that the petitioner's application for conversion would be processed notwithstanding any allegation of encroachment.

25. In view of the above, the respondents are directed to refund the subletting charges of ₹7,45,597/- as deposited by the petitioner pursuant to the orders of this Court. The respondents shall also forthwith process the petitioner's application for conversion of the Property from leasehold to freehold.

26. It is clarified that if there is any encroachment on public land by the petitioner, the respondents are at liberty to institute appropriate proceedings for removal of the same and the petitioner is also bound to ensure that the encroachment found by the respondents is removed.

27. The petition is disposed of in the aforesaid terms. The pending application is disposed of.

FEBRUARY 25, 2019
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VIBHU BAKHRU, J



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