



O.P.No.736 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.10.2023
Pronounced on	28.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

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M/s.A.S.Cargo Movers Private Limited,
Represented by its Managing Director
Amar Rahman,
New No.173, Old No.103,
9th Floor, Block 'B', Navin's Presidium,
Nelson Manickam Road, Aminjikarai,
Chennai – 600 029.

... Petitioner

Vs.

State Industries Promotion Corporation
of Tamil Nadu Limited (SIPCOT),
Represented by its Managing Director,
19-A, Rukumani Lakshmi pathy Road,
Egmore, Chennai – 600 008.

... Respondent

Prayer: Original Petition is filed under Section 34(1)(2) and (2A) of the Arbitration and Conciliation Act, 1996, as amended by Act 3/2016, praying to set aside the Award dated 14.08.2017 passed by Justice K.Chandru (Retd. Judge, High Court, Madras) in the matter of Arbitration between M/s.A.S.Cargo Movers Private Limited the petitioner and SIPCOT the respondent.



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For Petitioner : Mr.J.V.Niranjan

For Respondent : Mrs.Sudarshana Sundar

ORDER

This Original Petition has been filed under Section 34(1)(2) and (2A) of the Arbitration and Conciliation Act, 1996, as amended by Act 3/2016, to set aside the Award dated 14.08.2017 passed by Hon'ble Mr.Justice.K.Chandru (Retd.,) Former Judge of this Court in the matter of arbitration between the petitioner and the respondent.

2. The petitioner an allottee of an Oragadam Industrial Area was allotted an Industrial Plot in the year 2008 pursuant to an application filed by the petitioner on 15.04.2008.

3. The Industrial Plot was allotted to the petitioner vide Allotment Order dated 16.04.2008. The petitioner had also signed Registered Lease Deed on 17.07.2008. On the Industrial Plot, the petitioner developed a warehouse. The warehouse together with plot was leased out by the petitioner to M/s.Nippon Express India Private Limited under a Registered Lease Deed dated 22.11.2012.



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4. The respondent was of the view that the petitioner had sub-leased the plot together with a warehouse built by the petitioner to the said M/s.Nippon Express India Private Limited contrary to restrictive Clause 26 of the Registered Lease Deed between the petitioner and the respondent for the plot pursuant to the aforesaid Allotment Order dated 16.04.2008. According to the respondent, the Registered Lease Deed dated 22.11.2012 with M/s.Nippon Express India Private Limited was also contrary to Clause 8 of the Allotment Order dated 16.04.2008.

5. Under these circumstances, the respondent had issued a Demand Notice dated 27.06.2014 alluding to Clauses 40(b), Clause 19, Clause 14(i), Clause 26 and Clause 8 of the Allotment Order dated 16.04.2008 and Registered Lease Deed 17.07.2008.

6. Relevant portion of the Demand Notice dated 27.06.2014 reads as under:-

"Clause No.40(b) of Lease Deed and 19 of Allotment Order :

If the allottee fails to comply with any of terms and conditions of Lease Deed, SIPCOT reserves the right to cancel the allotment and resume the plot under TNPPE Act.



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Clause No.14(i) :

If the land allotted is not put to use for the purpose for which it was allotted, SIPCOT shall have the right to cancel the allotment.

Clause No.26 & 8 of Lease Deed and Allotment Order :

The allottee shall not assign, transfer or part with his interest in the allotted plot either in whole or in part except with the prior written consent of SIPCOT.

SIPCOT can initiate action to cancel the allotment as per clause 14(i) of Lease Deed, however as a lenient view, we are demanding the licence fee to regularize the sub-letting arrangement and you are requested to remit the sub-leasing charges (License fee) of Rs.1,43,33,928/- (One crore forty three lakhs thirty three thousand and nine hundred twenty eight only) for the area 1,16,536 sq.ft. sub-leased without prior approval to M/s.Nippon Express India Pvt. Ltd., with effect from 01.04.2012 at the rate of Rs.5/- per sq.ft per month with an increase of 5% every year thereon for the subsequent years. The details of amount to be remitted by you towards sub-leasing fee are as follows:

For the period from 01.04.2012 to 31.03.2013

*1,16,536 sq.ft x Rs.5/- per sq.ft.
x 12 months = Rs.69,92,160.00*

For the period from 01.04.2013 to 31.03.2014

*1,16,536 sq.ft x Rs.5.25/- per sq.ft
x 12 months = Rs.73,41,768.00*

Rs.1,43,33,928.00

Hence, you are requested to remit the above sum of Rs.1,43,33,928/- along with Service Tax @ 12.36% within 90 days from the date of this letter, failing which we may initiate legal action for cancelling the allotment under TNPPE Act."



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7. Under these circumstances, the parties decided to resolve the dispute before the learned Arbitrator pursuant to order dated 15.12.2016 in O.P.No.809 of 2016.

8. By the impugned Arbitration Award dated 14.08.2017, the learned Arbitrator has partly upheld the demand proposed in the above Demand Notice dated 27.06.2014 and partly rejected the demand. The respondent is not aggrieved by the same and therefore has not challenged the same before this Court.

9. The petitioner on the other hand has challenged the same on the ground that the Arbitration Award passed by the learned Arbitrator is contrary to the contract between the petitioner and the respondent in Registered Lease Deed dated 17.07.2008 and in Allotment Order dated 16.04.2008.

10. The learned counsel for the petitioner submits that the learned



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Arbitrator ought not have awarded the amount of Rs.84,01,148/- out of Rs.1,43,33,928/- that proposed by the respondent vide Demand Notice dated 27.06.2014.

11. The learned counsel for the petitioner has drawn attention to the Clauses in the Allotment Order dated 16.04.2008 and the Registered Lease Deed dated 17.07.2008 and the Registered Lease Deed entered with M/s.Nippon Express India Private Limited on 22.11.2012.

12. It is submitted that the learned Arbitrator has failed to note that there was no Sub-lease of the plot in favour of M/s.Nippon Express India Private Limited as there has been no transfer of interest in the Registered Lease Deed dated 17.07.2008 entered between the petitioner and M/s.Nippon Express India Private Limited. It is submitted that the petitioner has leased out only the warehouse on the plot and therefore, the award suffers from patent illegality and therefore the Arbitration Award is liable to be set aside under Section 34(2A) of the Arbitration and Conciliation Act, 1996.



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13. The learned counsel for the petitioner has placed reliance on the following decisions:-

- i. **United India Insurance Company Limited Vs. M.K.J. Corporation** in Appeal (Civil) Nos.6075 and 6076 of 1995 dated 21.08.1996;
- ii. **Polymat India Private Limited and another Vs. National Insurance Company Limited and others** in Appeal (Civil) No.4366 of 1999 dated 01.12.2004;
- iii. **Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India (NHAI)** in Civil Appeal No.4779 of 2019 dated 08.05.2019.

14. The learned counsel for the petitioner has drawn attention to a similar clause in the Registered Lease Deed dated 14.01.2004 between the petitioner and the respondent for the plot allotted to the petitioner in SIPCOT Industrial Park at Irungattukottai, Sriperumbudur. It is submitted that the petitioner vide a Letter dated 08.01.2004 with regard to Clauses 27 and 31 specifically requested the respondent for alteration and modification to which, the respondent has stated that as long as the Company does not transfer the rights or interest over the allotted plot to any other Company, the modification was unwanted.



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15. The learned counsel for the petitioner has also drawn attention to the decision of this Court rendered in W.P.No.5446 of 2016 vide its Order dated 26.08.2022 in the case of the petitioner's sister Company wherein, this Court after considering the similar clauses in the Registered Lease Deed with the respondent SIPCOT concluded as follows:-

"8. The close perusal of the lease deed make it clear that there is no clause in the lease deed authorising the respondent to demand sub-lease charges unilaterally when warehousing facilities developed by the writ petitioner is let out to the third party. As per the clarificatory letter issued by the respondent corporation dated 14.01.2004, the writ petitioner is entitled to lease out warehousing and other logistic facilities to its clients. But however the impugned order by referring to clause 15 and 27 of lease deed says lease of facilities developed by the writ petitioner to a third party would amount to violation of lease deed and hence the respondent can initiate action to cancel the allotment as per clause 42 (b) of lease deed. The impugned order further says that taking lenient view, the respondent was making a demand for sub-lease charges. Clause 15 and 27 of lease deed referred to in the impugned order only prohibits sub-lease of the plots and not the sub-lease of warehousing and other logistic facilities by the petitioner. In fact, the clarificatory letter issued by respondent referred above make it clear lease of warehousing and logistic facilities developed by the petitioner in vacant plot allotted is permissible. There is no clause in the lease deed authorising respondent to



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demand sub-lease charges unilaterally. Further the impugned demand notice was issued without hearing objection of the writ petitioner and it seeks to levy sub-lease charges unilaterally. The rational basis for fixing sub-lease charges is also not available in the impugned demand notice. As per clause 42 (b) of lease deed and even as per the impugned order, the respondent is entitled to cancel the allotment order in case of violation of the terms of lease deed. When unilateral demand for sub-lease charges is not contemplated under the lease agreement between the petitioner and the respondent, the impugned notice issued by respondent corporation is devoid of any merit and the same is liable to be quashed. However, if the respondent thinks there is violation of terms of lease by the writ petitioner, it is open to him to initiate appropriate action as per clause 42(b) of lease deed by following due process of law."

16. Defending the Arbitration Award, the learned counsel for the respondent submits that the Award is well-reasoned and requires no interference and the challenge to the same is without any merits.

17. The learned Counsel for the respondent drew attention to Clause 31 of the Registered Lease Deed dated 14.01.2004 with SIPCOT for Industrial Plot at SIPCOT Industrial Park, Irungattukottai, Sriperumbudur, which reads as under:-

"Clause No.31: The Party of the Second Part shall not sub-



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let or transfer or in any other manner permit the occupation of any other persons of the whole or part of the plot."

18. The respondent SIPCOT in its response/reply dated 14.01.2004 has stated as follows:-

"Clause No.27:

The plot has been allotted to the company for the purpose of setting up a modern warehousing and other logistic facilities for leasing/rental facilities including storage facilities to your clients. The company need not transfer its interest or right over the allotted plot to any other company. Hence, modification suggested by your company is not necessary.

Clause No.31:

This clause in our lease deed conveys lease of a vacant plot and prohibits the allottees from sub-leasing the plot itself. The modification suggested by your company relates to entering rental agreement of the building. Hence, the modification is not necessary."

19. The learned Counsel for the respondent submits that Section 34 of the Arbitration and Conciliation Act, 1996, enjoins this Court to not to re-appreciate the evidence.

20. That apart, it is submitted that the Arbitration Award cannot be set aside merely on the ground of erroneous application of law or by re-appreciating evidence as per the provisions of the Arbitration and



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Conciliation Act, 1996.

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21. That apart, the learned counsel for the respondent has drawn attention to Section 105 of the Transfer of Property Act, 1882 and submits that as per Section 108 of the Transfer of Property Act, 1882, in the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the following rules, or such of them as are applicable to the property leased:-

“(A) Rights and liabilities of the lessor

- a) *The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover;*
- b) *The lessor is bound on the lessee's request to put him in possession of the property;*
- c) *The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.*
The benefit of such contract shall be annexed



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to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(B) Rights and liabilities of the lessee

- d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease;*
- e) If by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void;
Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision;*
- f) If the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor;*
- g) If the lessor neglect to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor;*



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- h) The lessee may [even after the determination of the lease] remove, at any time [whilst he is in possession of the property leased but not afterwards] all things which he has attached to the earth; provided he leaves the property in the state in which he received it;*
- i) When a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them;*
- j) The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease;
Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee;*
- k) The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest;*
- l) The lessee is bound to pay or tender, at the proper time and place, the premium or rent to*



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- the lessor or his agent in this behalf;*
- m) The lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;*
 - n) If the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;*
 - o) The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell [or sell] timber, pull down or damage buildings [belonging to the lessor, or] work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto;*
 - p) He must not, without the lessor's consent, erect on the property any permanent structure,*



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*except for agricultural purposes;
q) On the determination of the lease, the lessee is bound to put the lessor into possession of the property.”*

22. It is submitted that although under Clause (j) to Section 108 of the Transfer of Property Act, 1882, the lessee may transfer lease absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it, the lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attached to the lease; nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee, it has to be in consonance with the contract between the parties.

23. It is further submitted that the Allotment Order dated 16.04.2008 and the Office Order dated 14.08.2012 are categorical. Attention was drawn to Clause 8 of the Allotment Order dated 16.04.2008, which reads as under:-



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"8. The plot is allotted on the specific condition that without implementing the project, the allottee shall not assign, sub-let, transfer or part with their interest in the allotted plot either in whole or in part except with the prior written consent of SIPCOT. In the event of the allottee seeking approval for change in constitution, or change in the management or control or amalgamation, with any other company or transfer of interest to any third party either in whole or in part, SIPCOT shall grant approval provided, the allottee or any person authorised by the allottee agrees to pay the cost determined by SIPCOT and the cost determined by SIPCOT shall be final and binding on the allottee or any person authorised by the allottee."

24. It is submitted that sub-lease of plots allotted can be only with the approval of the respondent in which case, the allottee has to pay the agreed cost as is determined by the respondent, which shall be final and binding. It is further submitted that similar clause was also incorporated in the Registered Lease Deed signed on 17.07.2008 for the subject 5 Acres of Industrial Plot allotted to the petitioner.

25. A specific reference was made to Clause 26 of the Registered Lease Deed dated 17.07.2008. It reads as under:-

"26. The Party of the Second Part shall not assign, sublet, transfer or part with his interest in the allotted plot either in whole or in part except with the prior written consent of the Party of First Part. In the event of the Party



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of Second part seeking approval for change in constitution, or change in the management or control or amalgamation with any other company or transfer of interest to any third party either in whole or in part, Party of First part shall grant approval provided the Party of Second Part or any person claiming under the Party of the Second Part agrees to pay the cost determined by Party of First Part and the cost determined by Party of First Part shall be final and binding on the Party of Second Part or any person claiming under the Party of Second Part and cannot be questioned in any court of law."

26. The learned counsel for the respondent further submitted that the respondent has also issued Clarification/Circular for arriving at the amounts payable in the case of Sub-lease vide Office Order dated 14.08.2012 bearing Ref.O.O.No.07/2012. It is submitted that the demand that was proposed on 27.06.2014 was in accordance with the Office Order dated 14.08.2012 bearing Ref.O.O.No.07/2012.

27. That apart, it is submitted that the Registered Lease Deed dated 22.11.2012 between the petitioner and M/s.Nippon Express India Private Limited clearly states that the petitioner is the owner of the schedule mentioned property and that the first schedule to the said Registered Lease Deed dated 22.11.2012 also indicates that the petitioner had leased out the property including the plot to the said M/s.Nippon Express India Private



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Limited in contravention of the Allotment Order dated 16.04.2008 and the Registered Lease Deed dated 17.07.2008. Hence, prays for dismissal of the original petition.

28. The learned counsel for the respondent further submitted that the Registered Lease Deed dated 17.07.2008 has not been terminated and the petitioner is still continues to be in possession of the property.

29. By way of rejoinder, the learned counsel for the petitioner has specifically drew attention to the Registered Lease Deed dated 22.11.2012 between the petitioner and M/s.Nippon Express India Private Limited wherein, it has been specifically stated that the Registered Lease Deed was only for lease of space as was required by the said M/s.Nippon Express India Private Limited as described in first schedule to the said Registered Lease Deed dated 22.11.2012.

30. Specifically, it is submitted that the lease was only for the space and not for the land *simpliciter*. It is submitted that the schedule is very clear as it reads around 85,726 sq.ft. constructed area in the part of shed



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located within the piece and parcel of plot bearing Survey Nos.24pt and 25 pt. known as A-23 in SIPCOT Industrial Growth Centre at Oragadam (within the village limits of Panrutti – A Village, Taluk of Sriperumpudur, Sub-Registration District of Chengalpattu/Kanchipuram of Kanchipuram Revenue District containing by admeasurements 5 Acres or thereabouts and marked by Green coloured boundary lines on the plan annexed hereto).

31. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondent. I have also perused the Award dated 14.08.2017 in Award No.1/2017 and the documents/exhibits that were marked on behalf of the petitioner.

32. On 14.08.2017, the Arbitral Tribunal had framed the following issues:-

“V. Issues :

- 1. Whether in the light of the Application for allotment dated 15.4.2008 (Ex.C4), the allotment order dated 16.4.2008 (Ex.C5) and the lease deed dated 17.7.2008 (Ex.C6) the claimant is entitled to sub lease the warehouse?*



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2. *Whether the sub leasing charges imposed by the Respondent vide letter dated 27.6.2014 (Ex.C9) is valid and if so whether the Claimant was obliged to pay the licence fee?*
3. *Whether the Office Order dated 14.8.2012 (Ex.C7) can have retrospective operation?*
4. *Whether the operation of the Office Order dated 14.8.2012 (Ex.C7) will apply to cases of allotment of land and building and will not apply to allotment of plot alone?*
5. *Whether the counter claim made by the Respondent is legal and valid?*
6. *Whether the Claimant has to pay a sum of Rs.1,43,33,928/- along with 12.36% as demanded under the letter dated 27.06.2014 (Ex.C9)?*
7. *Whether parties are entitled for cost of the Proceedings and if so to fix the liability to pay the same?"*

33. The petitioner has filed 11 exhibits which were marked as Ex.C1 to Ex.C11. The respondent had referred to several correspondences between the petitioner and the respondent, but did not choose to mark the same.

34. The Arbitral Tribunal has concluded that Clause 8 of the Allotment Order dated 16.04.2008 marked as Ex.C5 not only puts a specific embargo on subleasing the property but also similar clause has been incorporated in the Registered Lease Deed Ex.C6 dated 17.07.2008.



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35. Both Allotment Order Ex.C5 dated 16.04.2008 and Registered Lease Deed Ex.C6 dated 17.07.2008 have been incorporated in the above discussion.

36. A reading of Clause 8 of the Allotment Order Ex.C5 dated 16.04.2008 indicates that without implementing the project, the petitioner cannot assign, sub-let, transfer or part with its interest in the allotted plot either in whole or in part except with the prior written consent of the respondent.

37. Thus, as per Clause 8 of the Allotment Order Ex.C5 dated 16.04.2008, there is an embargo only under the above mentioned circumstances.

38. Clause 26 of the Registered Lease Deed Ex.C6 dated 17.07.2008, puts an embargo on the petitioner to not to assign, sub-let, transfer or part with its interest in the allotted plot either in whole or in part except with the prior written consent of the respondent.



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39. A reading of Registered Lease Deed Ex.C8 dated 22.11.2012 signed between the petitioner and M/s.Nippon Express India Private Limited indicates that the petitioner had leased the warehouse built on the Industrial Plot allotted to the petitioner for a initial period of ten years from 01.09.2012 with an option to renew/extend the term for another successive period of 10 years provided M/s.Nippon Express India Private Limited, gives a notice for renewal atleast six months prior to the expiry of the initial term.

40. There is merely a one year lock-in period. Relevant Clause from the Registered Lease Deed Ex.C8 dated 22.11.2012 between the petitioner and M/s.Nippon Express India Private Limited reads as under:-

“1.1.1 The lease in respect of the Property shall be for an initial Term of 10 (ten) years commencing from the date of commencement of rental. Commencement of Rental will be from 01-09-2012 with an option to renew/extend the term for another successive period of 10 (ten) years, provided the Lessee gives a notice for renewal atleast 6 (six) months prior to the expiry of the initial term.”

41. Therefore, the demand proposed in the Demand Notice Ex.C9 dated 27.06.2014 to recover the amount at the rate of Rs.5/- per sq.ft per



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month with an increase of 5% every year proposed and confirmed partly by the respondent SIPCOT vide its Office Order Ex.C7 dated 14.08.2012 is not sustainable.

42. The interpretation and conclusion placed so far by the respondent and by the Arbitral Tribunal arrived in the impugned Award dated 14.08.2017 is incapable of being arrived based on the reading of Clause 8 of the Allotment Order Ex.C5 dated 16.04.2008 and Clause 26 of the Registered Lease Deed Ex.C6 dated 17.07.2008.

43. The question of imposing amount pursuant to Demand Notice Ex.C9 dated 27.06.2014 based on Office Order Ex.C7 dated 14.08.2012 can apply only to the circumstances where there is a transfer of the allotted plot.

44. In this case, admittedly, the petitioner had not sub-let the plot as such what was sub-let in Registered Lease Deed Ex.C8 dated 22.11.2012.

45. The content of which has been extracted above is only the



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warehouse constructed by the petitioner pursuant to Allotment Order Ex.C5 dated 16.04.2008.

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46. In fact, in the context of a similar clause, allotment made by the respondent SIPCOT on the petitioner in respect of Registered Lease Deed Ex.C3 dated 14.01.2004 was signed. A response/reply Ex.C2 was also issued by the respondent on 14.01.2004. Insofar as Clauses 27 and 31, the aforesaid Registered Lease Deed clarified/modified as under:-

"Clause No.27:

The plot has been allotted to the company for the purpose of setting up a modern warehousing and other logistic facilities for leasing/rental facilities including storage facilities to your clients. The company need not transfer its interest or right over the allotted plot to any other company. Hence, modification suggested by your company is not necessary.

Clause No.31:

This clause in our lease deed conveys lease of a vacant plot and prohibits the allottees from sub-leasing the plot itself. The modification suggested by your company relates to entering rental agreement of the building. Hence, the modification is not necessary."

47. Thus, the Award passed by the Arbitral Tribunal is not only contrary to Section 28(3) of the Arbitration and Conciliation Act, 1996 but



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also contrary to the expressed terms of Allotment Order Ex.C5 dated 16.04.2008 and Registered Lease Deed Ex.C6 dated 17.07.2008.

48. There is indeed patent illegality in the light of the decision of the Hon'ble Supreme Court in **Ssangyong Engineering & Construction Co. Ltd., Vs. National Highways Authority of India (NHAI)** in Civil Appeal No.4779 of 2019 [SLP(C).No.10933 of 2017] dated 08.05.2019. Therefore, I am inclined to set aside the impugned Award dated 14.08.2017 leaving open the parties to workout their remedy in accordance with law.

49. Accordingly, the impugned Award stands set aside and the Original Petition is allowed with the above observations. No costs.

28.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No



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