

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5236 OF 2021

Niraj Kumar Dubey & Anr. ...Petitioners

Versus

Engg. Export Promotion Council
Now known as EEPC India
through its Regional Chairman ...Respondent

WITH

INTERIM APPLICATION NO.11311 OF 2024

IN

WRIT PETITION NO.5236 OF 2021

Niraj Kumar Dubey & Anr. ...Applicants

Versus

Engg. Export Promotion Council
Now known as EEPC India
through its Regional Chairman ...Respondent

Mr. A. P. Wachasundar, for the Petitioners/Applicants.
Mr. Malcolm Siganporia a/w. Mr. Sourasubha Ghosh and Mr.
Samarth Chowdhary i/b. M/s. Indus Law, for the Respondent.

CORAM: MADHAV J. JAMDAR, J.

DATED : 5th MAY 2025

P. C.:

1. Mr. Wachasundar, learned Counsel appearing for the Petitioners and Mr. Siganporia, learned Counsel appearing for the Respondent state that the parties have settled the dispute and tender the Consent Terms.

2. The Consent Terms are signed by the Petitioner No.1 and the Petitioner No.2. The Consent Terms are also signed by the Authorized Signatory of the Respondent. He has been authorized by the Respondent by Resolution dated 3rd September 2024. The extract of the said Resolution is also annexed to the Consent Terms. The Resolution of Respondent-Company resolving to settle the dispute is also annexed to the Consent Terms. Both the learned Advocates have also signed the Consent Terms. They identify the respective signatures of the parties on the Consent Terms.

3. The Petitioner No.1, Petitioner No.2 as well as Mr. Adhip Mitra, Authorized Representative of the Respondent-Company are personally present in Court. All of them state that the parties have settled the dispute in terms of the Consent Terms and the Consent Terms are signed by them.

4. Accordingly, the Consent Terms are taken on record and marked 'X' for identification. The said Consent Terms read as under:

“CONSENT TERMS

1. Smt. Savitri Chandulal Dubey was holding Flat No. 5 admeasuring 621 square feet or thereabouts

of carpet area, situated on the ground floor of the building known as 'Shiv Sagar' of the Society 'Shree Shiv Sagar Co-operative Housing Society Limited', situated at Block No. 19, Worli Sea Face, Worli, Mumbai – 400 018 (“Worli Flat”). On execution of the registered Leave and License Agreement dated 21st April, 2001, effective from 1st April, 2000 for a period of 5 (five) years, between Smt. Savitri Chandulal Dubey and the Respondent herein (“Leave and License Agreement”), Smt. Savitri Chandulal Dubey granted the Worli Flat on leave and license basis to the Respondent herein on the terms and conditions mentioned therein. Upon completion of 5 (five) Years of the license period, on 31st March, 2005, Smt. Savitri Chandulal Dubey vide her notice dated 1st March, 2005 terminated the Leave and License Agreement demanding vacant and peaceful possession of the Worli Flat from the Respondent. The Respondent refused to vacate the Worli Flat in favour of Smt. Savitri Chandulal Dubey and initiated legal proceedings under the Presidency Small Causes Courts Act against Smt. Savitri Chandulal Dubey claiming deemed tenancy, which was opposed by Smt. Savitri Chandulal Dubey. Smt. Savitri Chandulal Dubey died intestate on 29th June, 2016, leaving behind her daughter, Petitioner No. 2 herein and her two sons viz., Petitioner No. 1 and Mr. Nilabhkumar Chandulal Dubey being her only heirs and legal representatives as per the Hindu Succession Act, 1956, by which she was governed at the time of her demise. Pursuant to the registered Deed of Release dated 8th January, 2025, registered in the office of the Sub-Registrar of Assurances at Mumbai bearing registration no. BBE-2/640/2025, Nirajkumar Chandulal Dubey, Petitioner No. 1 herein and Mr. Nilabhkumar Chandulal Dubey released, relinquished and renounced all their rights, title and interest in the Worli Flat in favour of Petitioner No. 2 and accordingly Petitioner No. 1 and Nilabhkumar Chandulal Dubey have ceased to have any claim,

share, right, title or interest in the Worli Flat or any part thereof. Petitioner No. 1 viz. Nirajkumar Chandulal Dubey has joined the execution of this Consent Terms merely as a formal party as now he does not have any claim, demand, share, right, title or interest in the Worli Flat, Dadar Flat (as defined below) and/or any claim against EEPC.

2. Petitioner No. 2 was an employee with the Respondent. Petitioner No. 2 is residing at Flat No. E-4, in the building known as New Shiv Kutir, situated at SVS Road, Dadar West, Mumbai – 400 028 (“**Dadar Flat**”). By dismissal order dated 25th March, 2009, (effective 2 weeks thereafter i.e. from 8th April 2009), which was confirmed by the Appellate Authority of the Respondent vide its Order dated 26th February, 2010, the Respondent terminated Petitioner No. 2’s services with the Respondent and called for the return of the Dadar Flat. Petitioner No. 2 challenged the said dismissal order dated 25th March 2009 by filing Writ Petition against the Respondent before this Hon’ble Court being Writ Petition No. 719 of 2010 and prayed for reinstatement with the Respondent with other attendant benefits. Since Petitioner No. 2 continued to remain in possession of the Dadar Flat, the Respondent filed Criminal Application under Section 630 of the Companies Act, 1956 being SS Case No. 500565 of 2010 before the Additional Chief Metropolitan Magistrate, 5th Court at Dadar, Bhoiwada, Mumbai. By Order dated 14th January, 2025, the Hon’ble Ld. Magistrate was pleased to reject the Application u/s 630 (2) of the Companies Act, 1956 submitted by the Respondent Complainant for grant of directions to Petitioner No. 2 to vacate the Dadar Flat, pending trial on merits in the said Complaint Case. Thus, Petitioner No. 2 continues to be in use and occupation of the said Dadar Flat.

3. Both the parties have filed proceedings against each other in various Courts and they are pending for disposal.

4. The Petitioners and the Respondent hereby declare and confirm to this Hon'ble Court that they have not created any third party right, title or interest in respect of Dadar Flat and Worli Flat respectively.

5. The Petitioners and the Respondent have now amicably arrived at a full and final settlement of all the disputes amongst themselves and as agreed between them, as part of the full and final settlement, the Petitioners and the Respondent shall do and perform as under and give an undertaking to that effect to this Hon'ble Court:

(i) Petitioner No.2 shall and do hand over quiet, peaceful, unencumbered, and vacant possession of the Dadar Flat to the Respondent herein within 10 (Ten) days of passing of the Order by this Hon'ble Court in terms of these Consent Terms, time being of essence. Petitioner No. 2 and Respondent shall execute a possession receipt recording Petitioner No. 2 handing over quiet, peaceful, unencumbered and vacant possession of the Dadar Flat to the Respondent;

(ii) Simultaneously upon Petitioner No.2 handing over quiet, peaceful, unencumbered and vacant possession of the Dadar Flat to the Respondent as set out in clause 5(i) above, time being of essence, the Respondent shall immediately hand over quiet, peaceful, unencumbered and vacant possession of the Worli Flat to Petitioner No. 2. The Respondent and Petitioner No. 2 shall execute a possession receipt recording the Respondent handing over quiet, peaceful, unencumbered and vacant possession of the Worli Flat to Petitioner No. 2.

6. Simultaneously upon Petitioner No. 2 handing over quiet, peaceful, unencumbered and vacant possession of the Dadar Flat to the Respondent and

the Respondent handing over quiet, vacant, peaceful and unencumbered possession of the Worli Flat to Petitioner No. 2 as mentioned in clause 5 above, the Petitioners and the Respondent shall take steps as under and hereby give an undertaking to that effect to this Hon'ble Court:

(i) Petitioner No.2 herein shall unconditionally withdraw the Writ Petition No. 719 of 2010 (OOCJ) pending in this Hon'ble Court;

(ii) Petitioner No. 1 shall unconditionally withdraw I.A. (L) No. 5856 of 2024 in Writ Petition No. 7931 of 2019;

(iii) The Respondent shall unconditionally withdraw the Criminal Complaint being SS Case No. 500565 of 2010, pending before the Ld. Metropolitan Magistrate, Bhoiwada Court, Camp Sewri Mumbai;

(iv) The Respondent shall unconditionally withdraw the R.A.D. Suit No. 600 of 2005, pending before the Ld. Small Causes Court, Mumbai;

(v) Petitioner No. 2 shall not take any steps to restore SC Suit No. 103345 of 2013 which has been dismissed by the Bombay City Civil Court for non-prosecution.

7. The Petitioners and Respondent hereby unconditionally undertake to this Hon'ble Court to withdraw all other legal proceedings including incidental proceedings, pending therein, if any, filed by or against each other in respect of the Worli Flat and the Dadar Flat and /or otherwise.

8. The Petitioner No. 2 shall have no claim, demand for compensation from the Respondent, nor shall the Respondent have any right to claim rentals, occupation charges or such incidental charges including damages, etc. in respect of use and occupation of the Dadar Flat by the Petitioner No. 2 till the date of Petitioner No. 2 handing over quiet and peaceful possession of the Dadar Flat to the Respondent. Similarly, the Respondent shall have no

claim, demand for compensation from Petitioner No. 2, nor shall Petitioner No. 2 have any right to claim rentals, occupation charges or such incidental charges including damages, etc. in respect of use and occupation of the Worli Flat by the Respondent till the date of Respondent handing over quiet and peaceful possession of the Worli Flat to Petitioner No. 2.

9. The Petitioners and the Respondent hereby unconditionally undertake to this Hon'ble Court to file withdraw memos/applications for withdrawal of the respective proceedings filed by them as mentioned in Clause 6 hereinabove, within a period of 30 (thirty) days from the date on which this Hon'ble Court takes on record these consent terms and pass orders in terms thereof.

10. The Petitioner No. 2 hereby confirms that her claims against the Respondent towards all her alleged dues towards leave encashment, salary, compensation, etc. now stand fully and irrevocably stand settled/ withdrawn, except settlement of her Pension under the two Pension Schemes, which were and are in operation with the Respondent herein. The Respondent shall expeditiously forward her Pension Applications with the relevant authorities and also undertakes to provide all necessary and incidental support and assistance to the Petitioner No.2 for settlement of the Pension Accounts.

11. Simultaneously with (a) Petitioner No. 2 handing over quiet, peaceful, unencumbered and vacant possession of the Dadar Flat to the Respondent and (b) the Respondent handing over quiet, vacant, peaceful and unencumbered possession of the Worli Flat to Petitioner No. 2 as mentioned above:

(i) all the claims, demands, rights, title, interest, entitlement or privileges, present and future of the Petitioners in respect of Dadar Flat and of the

Respondent in respect of Worli Flat shall stand fully and irrevocably extinguished and the Petitioners and the Respondent shall not have any claims, rights, title or privileges in respect of the Dadar Flat and the Worli Flat respectively, and

(ii) the Petitioners undertake not to create any obstruction or impediment or hindrance in respect of the Dadar Flat and/ or challenge the title of the Respondent or their successors, or assigns in respect of the Dadar Flat, in any manner whatsoever.

(iii) the Respondent undertakes not to create any obstruction or impediment or hindrance in respect of the Worli Flat and/ or challenge the title of the Petitioner No. 2 and/or or her assigns in respect of the Worli Flat, in any manner whatsoever.

12. Notwithstanding the aforesaid, it is agreed, confirmed, and undertaken by the Petitioners and the Respondent herein that in the event of default by any of the Parties herein on any of their obligations contained hereinabove; the present Consent Terms will forthwith be executable as a Decree of this Hon'ble Court for the aforesaid obligations to be performed by the respective Parties.

*13. Agreed, confirmed and undertaken that the stamp duty, registration charges, GST or any taxes including TDS, if any, and any other costs ("**Liability**") in relation to these Consent Terms including for Agreements or further Agreements or Deeds or any incidental writings hereto arising out of or in connection with these Consent Terms shall be borne and paid by Petitioner No. 2 in relation to the Worli Flat and the Respondent in respect of the Dadar Flat immediately as and when such expenses accrue.*

14. The undertakings given by the Petitioners and the Respondent hereinabove are accepted.

15. All cost and charges incurred, if any, shall be borne by the respective parties. ”

5. Various statements made in the Consent Terms are accepted as undertakings given to this Court.

6. Accordingly, the Writ Petition is disposed of in terms of the Consent Terms with no order as to costs.

7. As the Writ Petition itself is disposed of, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]