
(2002) 12 DEL CK 0036

In the Delhi High Court

Case No : CW No. 5696 and CM. 9687 of 2002

Vikas Pharma (I) Pvt. Ltd.

APPELLANT

Vs

Lt. Governor of Delhi and Others

RESPONDENT

Date of Decision : 09-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2003) 66 DRJ 590

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : J.K. Das, for the Appellant; Ansuya Salwan, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Sarin, J.—Rule. With the consent of the parties, writ petition is taken up for disposal.

2. Petitioner, by this writ petition, seeks a writ of mandamus to the respondent to issue the letter of possession to it in the interest of justice in relation to plot No.2170, Narela Industrial Complex, New Delhi.

3. Petitioner's case is that petitioner company, Vikas Pharma (India) Pvt. Ltd., which was earlier a partnership concern, came to be incorporated as private Limited Company w.e.f. 1.10.1993. Petitioner company is engaged in the business of manufacturing import and export of pharmaceutical products etc. Petitioner had its manufacturing activities located at 1/3848, Bhagwanpur Khera, Loni Road, Shahdara, Delhi. Pursuant to the directions given by the Supreme Court in M.C. Mehta Vs. Union of India, petitioner company, like many others, was required to relocate its activities and shift from the non-conforming areas.

4. Petitioner applied for allotment of an industrial plot. Petitioner company claims that it was eligible for allotment of alternate plot. It arranged for necessary funds by transfer from other concerns for securing the allotment. It is the petitioner's own case that it had inducted new Directors for the company on 22.12.2000,

who got the money transferred from their other business concerns. Learned counsel for the petitioner submits that the new management, having satisfied the conditions for allotment was permitted to participate in the draw of lots held by the respondents. Petitioner was allotted alternative plot No. 2170, Narela Industrial Complex vide letter dated 15.12.2000. Petitioner claims to have deposited Rs.10,50,000/- vide its letter dated 5.1.2001.

5. Petitioner was dismayed to notice a press release issued by the Government of NCT. The said public notice communicated the decisions that had been taken by the Government of NCT w.e.f. 14.9.2001. It would be relevant to reproduce the decisions, as published, which is as under:

"1. Substitution/addition/deletion of names of family members in the lease deed shall be allowed without any charge.

2. Deletion of one or more partner (s) from partnership firm shall be allowed on payment of 50% of unearned increase in the market value of the plot calculated on the basis of proportionate share in profit of outgoing partner(s), however, the levy of charges shall not be applicable in case of leaving/retiring partner is a family member of the remaining partner(s). However, addition/inclusion of outsiders shall not be allowed in the partnership firm(s).

3. Conversion of proprietorship/partnership firm into Pvt. Ltd. or public Ltd. Co. is not permitted as well as pvt.Ltd. co to Public Ltd. Co. or vice versa is also not permitted.

The substitution/addition or deletion in the names of Directors of a Ltd. or Pvt.Ltd. Co. May be allowed only from among the family members without the levy of any charge.

NOTE: As per Land Management Guidelines the family includes Husband or Wife, Father, Brother, Adult Son, Unmarried Daughter/Sister and minor Children."

6. Petitioner vide its letter of 19.1.2001, duly notified the DSIDC of the directors, forming the Board of Directors of the company, their date of joining etc. Petitioner impugns the letter at Annexure P-4 dated 14.12.2001, whereby respondent communicated that the change in constitution by inducting new Directors and changes in the Board of Directors, pursuant to the resignation by some was not acceptable to the respondent under the Rules.

7. In response to a Court query, counsel for the petitioner candidly admits that there has been change in the equity holding with the induction of the new directors. In other words, a new management has taken over the company and it may be regarded as an incidence of change in ownership of the company. In these circumstances, learned counsel for the petitioner submits that petitioner company is willing to pay the unearned increase payable due to change in the constitution and ownership of the company.

8. Petitioner assails the action of the respondent in not permitting the change in

constitution of the petitioner company. Learned counsel submits that while the respondent under the policy permits such a change in the case of leases where substitution of family members are required and in the case of change in partnerships upon payment of 50% of unearned increase. However, similar benefits has not been extended to Public Limited Companies or Private Limited Companies if there is a change in the constitution or equity holding. In other words, the transfer of allotment is not being permitted in the case of public or private Limited Company, even if the said companies are willing to pay the unearned increase.

9. A perusal of Annexure P-3, the decisions taken by the NCT of Delhi on 14th September, 2001 and reproduced in para 5 hereinbefore would show that decisions deal with substitution, addition or deletion of the members of the family in a lease deed, deletion of one or more partners from partnership upon payment of 50% increase. Serial no. 3 of the said decisions prohibits the conversion of proprietorship and partnership into Private Limited and Public Limited Companies. We are not concerned with these situations.

10. The relevant extract from the decision notified under the public notice for the present case is "Substitution, addition or deletion in the names of directors of Limited or Private Limited Company may be allowed only among the family members without the levy of any charge". This decision, to my mind, only provides that change in the constitution of the Directors of a Limited or Private Limited Company among the family members can be allowed without any charge. However, it cannot be read as prohibiting substitution/addition or deletion of Directors in a Company with the levy or payment of unearned increase/charges. In fact, I find no rational basis for allowing substitution/deletion in the case of partnership concern upon payment of unearned increase and prohibiting a change in the constitution of the directors, even if the Company is willing to pay the unearned increase. It has no rational basis or nexus with the object sought to be achieved. The said action is wholly arbitrary and is hit by Article 14 of the Constitution of India and cannot be sustained.

11. In these circumstances, the decision of the respondent dated 14.12.2001 is quashed. Respondent/DSIDC is directed to take on record the change in the constitution of the petitioner, subject to payment of unearned increase, as applicable. Respondent shall also take consequential action in terms of allotment and hand over possession upon payment of unearned increase.

12. Let the respondent convey to the petitioner the amount of unearned increase within a week from today. Upon petitioner depositing the unearned increase with the respondent possession would be handed over.

The writ petition stands allowed in the above terms.