



2025:DHC:6901-DB



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

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Judgment reserved on:08.08.2025

Judgment pronounced on:18.08.2025

+ LPA 633/2019 and CM APPL. 43007/2019

M/S NIMITAYA PROPERTIES LTD & ANRAppellant

Through: Mr. Sanjiv Sen, Sr. Adv. with
Mr. Rohit Gandhi, Mr. Adhish
Srivasthva, Mr. Vidur Marwar,
Mr. Gaurve Chouhan , Mr.
Varun Trivedi, Ms. Anjali
Singh, Adv. Mr. Prahalad
Balaji, Mr. Hargun Singh
Kalra, Ms. Akshita Nigam and
Mr. Sidharth Kaushik, Advs.

versus

INDIAN OIL CORPORATION LTD & ORSRespondents

Through: Mr. Jayant K. Sud, Sr. Adv.
with Mrs. Priya Puri, Ms.
Shayal Anand, Mr. Sahib
Kochhar, Mr. Sai Manik Sud,
Mr. Sachin Dubey and Mr.
Aryan Mishra, Advs. for R-1.
Ms. Sonia A. Menon and Ms.
Varsha Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

ANIL KSHETARPAL, J.

1. The present Intra Court Appeal has been filed by the Appellants (Writ Petitioners) under Clause 10 of the Letter Patent Appeal of the Lahore High Court, assailing the correctness of the Judgment/Order



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passed on 02.08.2019 by the Learned Single Judge, while disposing of the Writ Petition.

2. The relevant facts in brief are required to be noticed, to comprehend the issues involved in the present Appeal.

3. The Indian Oil Corporation Ltd. [hereinafter referred to as 'IOCL'] purchased a plot [hereinafter referred to as 'suit property'], located in Village Pehar Khurad, Rajpura, Patiala (Punjab), from Mr. Shabeg Singh S/o Mr. Narain Singh, on 31.12.1990. The suit property measures 13467.6 square yards, which is equivalent to 13 bigha and 6 biswa.

4. Subsequently, bids were invited by IOCL to sell the suit property. The Appellants/Petitioners therein (M/s. Nimitaya Properties Ltd. & its Director) offered the highest bid of Rs. 2,11,00,000/- (Rupees Two Crores and Eleven Lakhs Only) for the suit property and, thereafter, the Sale Deed dated 27.03.2006 was registered in favour of the Appellants.

5. On 08.08.2007, IOCL informed the Appellants that there is a pipeline going underneath one corner of the suit property and no construction is permissible in that portion as the Right to Use [hereinafter referred to as 'RTU'] of 55ft width of Mathura-Jalandhar Pipeline is required to be left out. This RTU is in accordance with the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962.



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6. Correspondence ensued between the Appellants and the IOCL. At one stage, IOCL offered to purchase the portion of the suit property that had RTU. *Vide* letter dated 23.02.2008, IOCL offered to refund the amount paid by the Appellants along with the interest, however, the Appellants filed a Writ Petition under Article 226 of the Constitution of India, while praying for the following reliefs:

“a. issue a writ, order, or direction to respondent no. 1 to remove the oil pipeline trespassing on the land of petitioner.

b. issue a writ, order or direction to respondent no.1 to compensate the petitioner for the loss caused to them.

c. Pass any such order as the petitioner may be entitled to including the cost the petitioner.”

7. It be noted here that M/s Avinash Khosla & Associates *vide* their Valuation Report dated 05.08.2008, assessed the value of the suit property along with the building at Rs. 43,56,18,910/- (Rupees Forty Three Crores Fifty Six Lakhs Eighteen Thousand and Nine Hundred Ten Only), which was not acceptable to IOCL.

8. During the proceedings in the Writ Petition, the Court on 02.02.2018 passed the following order:

“3. After some arguments, the parties have arrived at a resolution.

4. Ms Meenakshi Arora, the learned senior counsel appearing for respondent no. 1 (IOCL) states that the IOCL shall provide a list of four Government approved valuers and leave it for the Court to select one out of them. The valuer so appointed shall value the land in question (Tehsil Rajpura, Village Pehar Khurad, Distt: Patiala (Punjab), admeasuring 13467.6 sq. yards) considering the same to be unencumbered and ignoring that an oil pipeline is running underneath a part of the land in question. Both the parties are at liberty to provide copies of sale deeds relating to other properties in the vicinity of the area as well as other relevant material for the valuer to arrive at a fair valuation of the land in question. However, the parties are precluded from approaching the valuer in any other manner.



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5. The valuer shall submit his report to the parties. The valuation of the land in question as estimated by the valuer shall be binding on both the parties. The petitioners and the IOCL agree that neither party shall raise objection to the valuation report.

6. The respondent shall make a payment of the fair value as ascertained by the valuer within a period of eight weeks from receipt of the valuation report and on the petitioners executing all necessary documents as desired by the respondents including the necessary sale deeds. The stamp duty for the same will be borne by the IOCL.

7. The interim order is vacated and the respondents are at liberty to enter the land in question forthwith.

8. List on 07.02.2018 for the limited purpose of considering the appointment of the valuer.

9. Order dasti.”

9. Accordingly, a list of four Government approved Valuers was provided by the IOCL, out of whom, M/s Mohan & Associates were nominated by the Court *vide* order dated 24.04.2018 to assess the market value of the suit property, however, subsequently, IOCL came up with an application alleging that M/s Mohan & Associates are under the influence of the Appellants/Petitioners.

10. Thereupon, on 21.08.2018, M/s Mohan & Associates were discharged, and the Court appointed Mr. Rakesh Kapoor (Kapoor & Associates Architect Engineer Valuers), an empanelled valuer with the Official Liquidator of the High Court, to assess the market value of the suit property.

11. Mr. Rakesh Kapoor submitted the Valuation Report dated 16.10.2018, as directed by the Ld. Single Judge, while assessing the market value of Rs. 5,43,19,123/- (Rupees Five Crores Forty Three Lakhs Nineteen Thousand and One Hundred Twenty Three Only)



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which was opposed by the Appellants/Petitioners by filing an application to set aside the said report.

12. Learned Single Judge *vide* order dated 02.08.2019, held that both the parties have agreed on 02.02.2018 to be bound by the Valuation Report, hence, the Valuation Report is accepted.

13. Consequently, while disposing of the Petition, the Appellants/Petitioners were directed to execute the documents in relation to transferring the suit property in favour of IOCL on receipt of the Valuation Report from the Court-appointed Valuer.

14. Heard learned counsel representing the parties and, with their able assistance, perused the paper book.

15. Learned senior counsel representing the Appellants, while drawing the attention of the Court to the various alleged fraud in the Valuation Report, submits that the Appellants cannot be forced to accept the Valuation Report because an expert opinion does not enjoy absolute immunity, and ultimately it is for the Court to assess the fair value of the suit property.

16. Learned senior counsel representing the Appellants further submits that Mr. Rakesh Kapoor has assessed the market value of the suit property, considering it to be an agricultural land, whereas it is a commercial land, as it is located near Rajpura town (Patiala, Punjab) on NH-7 (Chandigarh-Bathinda National Highway).

17. *Per contra*, learned counsel representing the Respondents submits that the Appellants, after having agreed to the Valuation



Report of the Court-appointed Valuer, cannot be permitted to resile from the same.

18. It is evident that the sale of the suit property by IOCL in favour of the Appellants was a result of a mistake of fact, either by both the parties to the transaction or the Respondent IOCL, which can be decided only after the parties are permitted to produce evidence.

19. At this juncture, a bare perusal of Sections 20 and 22 of the Indian Contract Act, 1872, would be appropriate, which is reproduced hereunder:

“20. Agreement void where both parties are under mistake as to matter of fact.—

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

Explanation.—

An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact.

Illustrations

(a) A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of these facts. The agreement is void.

(b) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(c) A, being entitled to an estate for the life of B, agrees to sell it to C, B was dead at the time of agreement, but both parties were ignorant of the fact. The agreement is void.

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22. Contract caused by mistake of one party as to matter of fact.—

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.”



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20. It is to be noted here that the Writ Court is not expected to decide disputed questions of fact which are required to be proved by leading evidence. Moreover, the Appellants cannot be forced to remain bound by the opinion of an expert which was yet to come. The experts can only give an opinion which is not binding upon the Court. Ultimately, it is for the Court to decide whether the valuation is correct or not. In the present case, the dispute between the parties arises from a Contract of Sale. The Constitutional Court has already made sufficient efforts to resolve the controversy in an equitable manner.

21. Keeping in view the abovementioned circumstances, the direction issued directing the Appellants to execute the Sale Deed upon receipt of the amount assessed by the Court-appointed Valuer, namely, Mr. Rakesh Kapoor, is not warranted.

22. However, as already noticed, the Writ Petition was filed in the year 2008. IOCL *vide* communication dated 23.02.2008 offered to refund the amount of the sale consideration plus the expenses incurred by the Appellants towards registration of the Sale Deed, along with the prime lending rate of State Bank of India as applicable to Long Term Loans from the date of sale by IOCL to the Appellants to the date of resale in favour of IOCL.

23. Consequently, this Court makes the following observations:

- i. The Impugned Order dated 02.08.2019 by the learned Single Judge, directing the Appellants to transfer the suit



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property in favour of IOCL at the value assessed by Mr. Rakesh Kapoor (Kapoor & Associates Architect Engineer Valuers) is set aside.

ii. The Appellants shall have the liberty to return the suit property by executing a Sale Deed in favour of IOCL as per the offer made vide communication dated 23.02.2008. Thereupon, the Respondent IOCL shall return the amount to the Appellants.

iii. It shall be open to the Appellants to approach the Civil Court for further relief in accordance with law. If the Appellants decide not to accept the offer made by the IOCL *vide* letter dated 23.02.2008, they will have the liberty to file a civil suit.

24. With these observations, the appeal is disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

AUGUST 18, 2025/sg/sh