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Date of Decision :

HARJIT SINGH

SON OF LATE SHRI HARBANS SINGH

RESIDENT OF D-3/169, RAJOURI GARDEN

NEW DELHI-110027

.... Petitioner

Through: Mr. B.L. Chawla, Adv.

Versus

DELHI DEVELOPMENT AUTHORITY

VIKAS SADAN, I.N.A. MARKET

NEW DELHI

THROUGH ITS VICE-CHAIRMAN.

.... Respondent

Through:

Mr. Deepak Khadaria, Adv.

With Ms. Sangeeta Chandra,

Adv.

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CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? YES.

YES.

2. To be referred to the Reporter or not?

YES.

3. Whether the judgment should be reported in

the Digest?

YES.

JUDGMENT

SIDDHARTH MRIDUL, J.

1. The present writ petition has been filed by the Petitioner against the impugned order dated 18th July, 2008 in Arbitration Petition No.242/2007, whereby the petition of the Petitioner under Section 11 of the Arbitration and Conciliation Act, 1996 has been dismissed, and seeking the appointment of an Arbitrator to adjudicate upon the

dispute and controversy between the parties.

2. The facts as are necessary for the adjudication of the present petition are that the Petitioner's father was granted a piece of industrial plot bearing No.213/5, Rewari Line, Industrial Area, Phase-II, Mayapuri measuring 145.33 square yards by the Respondent-Delhi Development Authority (DDA) vide a Perpetual Lease Deed dated 22nd June, 1982.

3. The Petitioner is the Legal Representative of late Sh. Harbans Singh in whose favour the Perpetual Lease Deed was executed. The Petitioner's father applied for sanction of building plans which were accordingly sanctioned on 6th May, 1988 and thereafter, building was constructed on the said plot.

4. The said plot was leased out to the Petitioner's father by the DDA for manufacturing process or running the industry of service-repair of motor cars.

5. The Petitioner's father had changed business activities being unsuccessful in their business and, therefore, had made certain deviations in the structure of buildings and was desirous of making the compounding fees as per the policy of the DDA.

6. The Petitioner states that instead of acceding to the request of the Petitioner, the Respondent gave notice to the father of the Petitioner, highlighting the breaches of the terms of the Perpetual Lease regarding deviations in the structure of the building and for change of user.

7. The Petitioner's father gave a reply to the said notice requesting for condoning the said breaches in consideration of the compounding fees but the DDA did not accede to such request and instead

determined the Lease Deed of the Petitioner's father and referred the matter to the Estate Officer under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 for eviction.

8. It is the case of the Petitioner that, Clause VI of the Perpetual Lease Deed relates to Arbitration clause, and that such dispute which would arise between the parties was required to be referred to arbitration, and that the Petitioner had written to the Respondent to appoint the Arbitrator, but the Respondent refused by letter dated 25th May, 2006 stating therein that no dispute about cancellation of Lease Deed for violation of its terms and conditions existed and as such there was no need for appointment of an arbitrator to resolve the dispute.

9. The Petitioner, therefore, filed a petition under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator.

10. The learned Single Judge while rendering the impugned judgment and order dated 18th July, 2008 held that the dispute between the parties is not covered by the Arbitration clause in Perpetual Lease Deed dated 22nd June, 1982 and it is excepted matter and cannot be referred to the Arbitral Tribunal. Learned Single Judge, therefore, dismissed the petition being devoid of substance.

11. The Petitioner is aggrieved by the said order dated 18th July, 2008.

12. Mr. B.L. Chawla, learned counsel appearing on behalf of the Petitioner urged that the learned Single Judge fell into error and failed to appreciate the provisions of Section 16 of the Arbitration and Conciliation Act, 1996 which empowers the Arbitral Tribunal to rule

on its own jurisdiction, including ruling of any objection with respect to the existence or validity of the Arbitration Agreement, and further provides that for the purpose an arbitration clause, which forms part of the contract, shall be treated as an agreement independent of the other terms of the contract.

13. Per contra Mr. Deepak Khadaria, learned counsel appearing on behalf of the DDA supported the impugned judgment and submitted that in terms of Clause VI of the Lease Deed dated 22nd June, 1982 matters such as the present one the decision of which is specifically provided by the said Lease Deed could not be referred to arbitration. In this behalf learned counsel relied on the provisions of Clause III of the said Lease Deed.

14. Before dealing with the respective submissions made on behalf of the counsel it would be relevant to extract the provisions of Clause II sub-clauses 12 and 13, Clauses III and VI of the said Lease Deed dated 22nd June, 1982:

“II. (1) to (11) xxxxxxxxxx

(12) The Lessee shall not without sanction or permission in writing of the proper municipal or other authority erect any building or make any alteration or addition to such building on the Industrial plot.

(13) The Lessee shall not without the written consent of the Lessor use, or permit to be used, the industrial plot or in any building thereon for residence or for carried on any trade or business whatsoever or use the same or permit the same to be used for any purpose other than that of carrying on the manufacturing process or running the industry of service/repair of motor car or such other manufacturing processor industry as any approved from time to time by the Lt. Governor or do or suffer to be done therein any act or thing whatsoever

which in the Lessor may be a nuisance, annoyance or disturbance to the Lessor or any person living in the neighbourhood.

PROVIDED that, if the Lessee is desirous of using the said Industrial lot or the building thereon for a purpose other than that of the manufacturing process or industry as may be approved from time to time, the Lessor may allow such charge of user on such terms and conditions, including payment of additional premium and additional rent, as the Lessor may in his absolute discretion determine."

"**III.** If the sum or sums payable towards the premium of the yearly rent hereby reserved or any part thereof shall at any time be in arrears and unpaid for one calendar month next after any of the days whereon the same shall have become due, whether the same shall have been demanded or not, or if it is discovered that this Lease has been obtained by suppression of any fact or any mis-statement, mis-representation or fraud or if there shall have been in the opinion of the Lessor, whose decision shall be final any breach by the Lessee or by any person claiming through or under him of any of the covenants or conditions contained herein and on his part to be observed, or performed, then and in any such case, it shall be lawful for the Lessor, notwithstanding the waiver of any previous cause or right of re-entry upon and take possession of the industrial plot and the buildings and fixtures and there-upon this Lease and every thing herein contained shall cease and determine and the Lessee shall not be entitled to any compensation whatsoever not to the return of any premium paid him.

Provided that, notwithstanding anything contained herein to the contrary, the Lessor may without prejudice to his right of re-entry as aforesaid; and in his absolute discretion, waive or condone breaches, temporarily or otherwise, on receipt of such amount and on such terms and conditions as may be determined by him and may also accept the payment of the said sum or sums of the rent which shall be in arrear as aforesaid together with interest at the rate of ten per cent per annum.

IV and V xxxxxxxx

VI. In the event of any question, dispute or difference, arising under these presents, or in connection therewith [except as to any matters the decision of which is specially provided by these

presents], the same shall be referred to be sole arbitration of the Lieutenant Governor or any other person appointed by him. It will be no objection that the arbitration is a Government servant and that he has to deal with the matters to which the Lease relates or that in the course of his duties as a Government servant he has expressed views on all or any of the matters in dispute or differences. The award of the arbitrator shall be final and binding on the parties.

The arbitrator may, with the consent of the parties, enlarge the time, from time to time, for making any publishing the award.

Subject as aforesaid, the Arbitration Act, 1940 and the Rules there under and any modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this Clause."

15. A reading of the provisions extracted above makes it clear that, the re-entry and taking over of possession of an industrial plot and the buildings and fixtures thereupon can be resorted to by the DDA, if there shall have been in the opinion of the DDA, whose decision shall be final, a breach by the lessee or by any person claiming through or under him of any of the covenant or conditions contained therein.

16. It is further clear from the reading of the above provisions that, re-entry upon the premises is a decision which is specifically provided for in the Lease Deed, in the event the lessee makes any alteration or addition to such building on the industrial plot without the written sanction or permission in writing of the proper authority or uses or permits to be used the industrial plot or any building thereon for residence or for carrying on any trade or business other than that of carrying on the manufacturing process or running the industry of service-repair of motor cars as was approved by the DDA in the present case.

17. A plain reading of Section 16 of Arbitration and Conciliation Act, 1996 makes it evident that the said statute enable the Arbitral Tribunal to rule on its own jurisdiction. The Act, however, does not exclude the Court from returning a finding on this issue. The decision of the Supreme Court in ***S.B.P. and Co. v. Patel Engineering Ltd. and Anr.; AIR 2006 SC 450*** provided that the function of the Court in an application under Section 11 is adjudicatory and not merely ministerial, and as such the Court can determine whether a particular dispute is an excepted matter or not.

18. Coming to the rival submissions made on behalf of the counsel it is seen that Clause VI of the said Lease Deed dated 22nd June, 1982 clearly indicated that all disputes excepting as to any matter, the decision of which is specifically provided by the said Lease Deed was to be referred to the sole arbitration of the Lieutenant Governor or any person appointed by him. Emphasis is made on the words “except as to any matters the decision of which is specifically provided by these presents”.

19. When Clause III of the said Lease Deed is read in conjunction with Clause II(13), it clearly and unequivocally demonstrates that the lessee was not to use the industrial plot for residence or for any trade or business whatsoever or permit the same to be used by any person other than that of carrying on the running of service-repair of motor cars or such other manufacturing process industries as may be approved from time to time. It is, therefore, unambiguous that if any such violation were made by the lessee the matter was required to be referred to the Lieutenant Governor whose decision was to be final as stipulated in Clause III of the Lease Deed. This provides that the

matters regarding such decisions was specifically provided in the Lease Deed and these kind of breaches of violations were especially excluded from the arbitration clause.

20. We, therefore, agree that the learned Single Judge who observed that Clause VI which relates to arbitration clause was not absolute in nature but restrictive as only particular kind of disputes were required to be referred to the Arbitrator and not the one violated by the Petitioner, as for that kind of dispute the sole authority vested with the Lieutenant Governor which he had exercised whereby he found that there were breaches and thereafter determined the Lease Deed consequently moving the Estate Officer for the eviction of the lessee under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

21. In view of the foregoing discussion and for the reasons given therein, we find no infirmity in the impugned order dated 18th July, 2008.

22. The petition is, therefore, devoid of any substance and is accordingly dismissed, however without any order as to costs.

SIDDHARTH MRIDUL, J.

MADAN B. LOKUR, J.

May 01, 2009
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