

IN THE HIGH COURT OF DELHI AT NEW DELHI

(Reportable)

**O.M.P.133 of 2009, I.A. No.5004 of 2010 (u/O XXIII Rules 1 and 3
CPC read with Section 151) and I.A. No.5013 of 2010**

SUBHASH CHANDER SACHDEVA & ANR Petitioners
Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Prateek Jalan, Mr. Siddharth
Bhatnagar, Ms. Sonia Dubey, Mr.
Anuragj Mishra and Mr. S.
Chakraborty, Advocates.

Versus

GULAB SINGH & ANR. Respondents
Through: Mr. P. Chaudhary and Mr. P.C.
Dhingra, Advocates.
Mr. Arun Bhardwaj, Senior Advocate
with Mr. P.C. Dhingra, Advocate for
Applicant in IA No. 5013 of 2010.

AND

**I.A. Nos.4723-4724 of 2009, 4948 and 5018 of 2010 in O.M.P.412
of 2006**

GULAB SINGH & ANR Petitioners
Through: Mr. P. Chaudhary and Mr. P.C.
Dhingra, Advocates.

Versus

MATWAL CHAND Respondent
Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Prateek Jalan, Mr. Siddharth

Bhatnagar, Ms. Sonia Dubey, Mr. Anuragj Mishra and Mr. S. Chakraborty, Advocates.

Mr. Arun Bhardwaj, Senior Advocate with Mr. P.C. Dhingra, Advocate for Applicant in IA No. 5018 of 2010.

CORAM: JUSTICE S. MURALIDHAR

ORDER
27.09.2012

1. The two Petitioners in OMP No. 133 of 2009, Mr. Subhash Chander Sachdeva and Mr. Bharat Bhushan Sachdeva, are the sons of late Mr. Matwal Chand. They have filed the said petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') challenging the impugned Award dated 14th July 2006 passed by the learned sole Arbitrator (originally Respondent No. 9) Mr. Umesh Chandra.

1.2 Earlier the same impugned Award was challenged by Mr. Gulab Singh and others in O.M.P. No. 412 of 2006 in which an order was passed by this Court on 26th March 2007 modifying the rate of interest awarded on the amounts payable to the said Petitioners in terms thereof. Subsequently applications have been filed in the said O.M.P. No. 412 of 2006, which are proposed to be disposed of by this Order.

Background facts

2. The background facts are that late Mr. Matwal Chand purchased the land measuring 31 bighas falling in Khasra No. 206/2, 207/2, 208/2, 209, 210/2

and 211/2 situated in the revenue estate of Village Basaidarapur (adjoining Jaidev Park), New Delhi (hereinafter referred to as 'the land in question') by a registered sale deed dated 16th May 1962 in his own name from the erstwhile joint owners, Mr. Amir Chand and Mr. Brij Lal who had purchased it in an auction from the Ministry of Rehabilitation on 6th August 1958. The Petitioners in O.M.P. No. 133 of 2009, i.e. the sons of late Mr. Matwal Chand, state that Mr. Matwal Chand as exclusive owner was in cultivatory possession, occupation and enjoyment of the land in question. They further state that after the death of Mr. Matwal Chand on 21st October 2006 they became the owners of the land in question and have continued to be in exclusive cultivatory possession, occupation and enjoyment of the land in question throughout. It is stated that in the revenue records the land is shown as being in the name of Mr. Matwal Chand.

3. A notification dated 13th November 1959 was issued under Section 4 of the Land Acquisition Act, 1894 ('LA Act') followed by a declaration under Section 6 of the LA Act on 6th January 1969 whereby the land in question was made the subject matter of acquisition proceedings. An Award was passed on 7th January 1981. Mr. Matwal Chand filed W.P. (C) 2677 of 1981 on 20th November 1981 and W.P. (C) 697 of 1983 on 8th April 1983 in this Court challenging the acquisition proceedings. It is stated that the further proceedings arising out of the said challenge are still pending in Special Leave Petition ('SLP') Nos. 10516-17 of 2005 in the Supreme Court.

4. An agreement was entered into on 8th January 1996 between Mr. Matwal Chand (referred to as 'First Party') and Mr. Gulab Singh, (original

Respondent No.1), Mr. Vipin Sharma (original Respondent No. 5), Mr. Triveni Parshad Mishra (original Respondent No. 6) and Mr. S.N. Ojha (the predecessor-in-interest of the original Respondents 2, 3 and 4) [collectively referred to as the 'Second Party']. In terms of the said agreement Mr. Matwal Chand agreed to extend cooperation to the Second Party in preparation of lay out plan and other formalities for obtaining the approvals of the proposed lay out plan from the statutory authorities. Clause 3 of the said agreement reads as under:

“3. That it has been agreed by and between the parties that the First Party after the approval of the layout plan by the authorities concerned shall sell or dispose off to the third party(s) the plots/land directly in consultation with or through the Second Party on the rates prevailing in the market at the relevant time and thereafter the sale proceeds received or receivable from such buyer(s) shall be distributed amongst the parties as follows:

- | | |
|------------------|----------------------------|
| (a) First Party | 75% (Seventy five percent) |
| (b) Second Party | 10% (Ten percent) |

And the amount received or receivable by the Second Party shall be distributed at the rate of 8.5% each amongst the Second Party.”

5. Under Clause 6 it was provided that after meeting the development charges/expenses, if some amount out of the balance 15% is left out, it could be divided and distributed amongst the First Party on the one hand and the Second Party on the other hand in equal proportion. It was agreed that the Second Party would obtain the layout plan approved from the authorities concerned “within a short period not exceeding one and a half years” from

the date of the agreement and during that period, the Second Party will do their best for completing the requisite formalities for obtaining the sanctioned plan. Clause 13 stated as under:

“13. That it has also been agreed that the Second Party after 18 months but before the completion of two years, is unable to succeed to get the layout plan sanctioned in all respects, then in that case the land can be sold directly to third party(s) with the mutual consent of the parties within the said period of two years and thereafter this Agreement shall come to an end and in that eventuality, the Second Party will be left with no lien or right or claim in the lands or any part thereof in any manner whatsoever.”

6. Clause 15 stated that if during the subsistence of the agreement there was any offer for direct sale, the First Party would not give consent to it “unless and until the land in question is denotified or the High Court proceedings are disposed of in favour of the first party and further there is no obstacle under the law to sell the same in its existing form.” According to the Petitioners, the aforementioned agreement came to an end by efflux of time as it was not acted upon by the parties and therefore, the Second Party has no enforceable right.

7. Later it transpired that on 31st January 1997 a Memorandum of Agreement (‘MOA’) was executed by Mr. Gulab Chand, Mr. Vipin Kumar Sharma, Mr. S.N. Ojha and Mr. Triveni Parshad Mishra in favour of Mr. Vijay Prakash (original Respondent No. 7) and Ex. Subedar Ram Pratap Mishra (original Respondent No. 8) in which the first four persons, describing themselves as First Party, claimed to have been “duly authorised vide deed of agreement dated 8th January 1996” agreed to sell the land in

question to original Respondents 7 and 8 at Rs. 10,000 per sq. yd. The said MOA further stated that Rs. 15 lakhs would be paid to the First Party in the MOA i.e original Respondents 1,5, 6 and Mr. S.N.Ojha) by the Second Party in the MOA i.e. original Respondents 7 and 8 in lieu of which vacant and peaceful possession of the land in question would be handed over to original Respondents 7 and 8 “subject to the outcome of the final decision of the Hon’ble High Court of Delhi or the Apex Court as the case may be.” In the event that the Court failed to decide in favour of the said absolute owner of the land in question, then the Second Party to the MOA was to refund the money paid by them in addition to damages @ 2% per month thereon.

8. Although the agreement dated 8th January 1996 did not contain an arbitration clause, the MOA dated 31st January 1997 provided for one which read as under:

“5. That any dispute or difference arising at any time whatsoever whether in relation to, or in connection with, this agreement or any other matter incidental to or connected with this agreement shall be decided by sole arbitrator, Shri Umesh Chand, or his nominee who is an officer under the Government of India, and posted at New Delhi in the Ministry of Commerce as Assistant Director and his decision shall be binding on both the parties.”

9. It transpires that on the basis of the MOA dated 31st January 1997 original Respondent Nos. 7 and 8 purported to file a statement of claims on 20th May 2006 before the learned sole Arbitrator (original Respondent No. 9). In the said statement of claims the agreement dated 8th January 1996 was described as an agreement to sell the land in question. Mr. Matwal Chand was arrayed as Respondent No. 4. A photocopy of the statement of claims filed as

Annexure P-11 to the petition shows that Mr. Vipin Kumar Sharma was originally arrayed as Respondent No. 4 and the “No.4” with overwritten as “No. 5”. The name of Mr. Matwal Chand was inserted above as Respondent No. 4. In the statement of claims it was asserted in para 3 that Mr. Matwal Chand had given consent to the execution of the MOA dated 31st January 1997, “along with Respondent No. 2 by way of a resolution dated 14th January 1997”, a copy of which resolution was enclosed as Annexure C-3. It was further claimed that Rs. 15 lakhs had been spent on the construction of boundary wall, security and litigation expenses. In para 5 it was asserted that Mr. Matwal Chand “is now demanding the lands back in collusion with other Respondents by offering to pay to the claimants the double amount but the claimants did not oblige them.” It was alleged that Mr. Matwal Chand had “threatened the claimants with dire consequences if they did not give their claims under the said agreement dated 31st January 1997.”

10. The case of the Petitioners is that their father Mr. Matwal Chand had been kept completely in dark either about the MOA dated 31st January 1997 or filing of the statement of claims by original Respondent Nos. 7 and 8 before the learned Arbitrator (original Respondent No. 9).

11. One of the grounds urged by the Petitioners to challenge the impugned Award is that although Mr. Matwal Chand was arrayed as Respondent No.4 in the arbitration proceedings, he was never served with the notice of the proceedings. On this aspect it is noted in the impugned Award in paras 2.0, 2.1 and 2.2 as under:

“2.0 The undersigned as the sole arbitrator issued notice dated

20th May 2006 (vide Annexure -2) to the Respondents on 20th May 2006 itself, thereby fixing date of hearing on 28th May 2006.

2.1 All the Respondents received the said notices and acknowledged the receipt thereof except Shri Matwal Chand (Respondent No. 4) who firstly acknowledged the receipt thereof on 25th May 2006 by putting his signature but later on, he refused to give and acknowledge the receipt of the said notice by unusually snatching the same from the hands of notice server Sh. P.C.S. Kanoujia who has filed an affidavit (vide Annexure 3) to that effect.

2.2 That, however, the said notice was also sent earlier through U.P.C. (vide Annexures 4, 5 and 6) to all the Respondents and all the notices appear to have been served as the postal agency has not returned the same to the undersigned till date.”

12. In the impugned Award it was further stated in para 3.0 that on 28th May 2006 Mr. T.P. Mishra appeared on behalf of himself and other Respondents except Mr. Matwal Chand “who did not appear despite but notice. Hence he is being proceeded against ex-parte.” It was further stated in para 3.1 of the Award that a fresh notice dated 28th May 2006 for hearing on 11th June 2006 was sent to all the Respondents “through process server Sh. Kamla Shankar but Mr. Matwal Chand refused to receive the said notice” and “no notice should be sent to him in future as he does not like to appear before the Arbitrator.” The purported affidavit of Mr. Kamla Shankar was taken on record. Mr. Matwal Chand was accordingly proceeded *ex-parte*.

13. From the impugned Award it is evident that other Respondents who appeared before the learned Arbitrator through Mr. T.P. Mishra filed a reply

wherein they ‘admitted’ the claims of the Claimants and endorsed their ‘no objection’ to the Award being passed in favour of the Claimants. Consequently in paras 4.1 to 4.9 of the impugned Award the learned Arbitrator proceeded to issue series of directions *inter alia* restraining the Respondents (including Mr. Matwal Chand) from disposing of or interfering with the peaceful possession of the land in question. The impugned Award directed transfer of the land in question to the Claimants or their assigns or successors-in-interest “through a sale deed duly executed and registered by the Respondent No. 4 or other Respondents concerned in due course” after the final disposal of SLP (C) Nos. 10516-10517 of 2005 by the Supreme Court. Further in para 4.2 of the Award, all other terms and conditions were to be “as per the original deed of agreement dated 8th January 1996 but the time of two years for execution and registration of transfer deed shall run after the case before the Apex Court is finally disposed of.” Mr. Matwal Chand was to return Rs. 15 lakhs together with interest @ 12% per annum from the date of execution of the agreement to sell dated 31st January 1997 in case the SLP was decided against him. Mr. Matwal Chand was, in terms of para 4.4 of the Award, held entitled to simple interest @ 6% per annum on the amount payable to him from 8th January 1998 onwards till the execution of the sale deed in favour of the Claimants.

14. A strange aspect of the impugned Award is that the original thereof appeared to have been lost. This is evident from para 8.0 of the impugned Award which reads as under:

“8.0 This award is given and signed by me at New Delhi on 14th July 2006 and duplicate copy of award is given to second

claimant on 24th July 2006. The original award has been lost, hence the duplicate award is being issued to the parties on the basis of office record.”

15. Subsequent to the passing of the above Award, on 22nd August 2006 notice was issued by the learned Arbitrator to Mr. Matwal Chand asking him to show cause on the complaint of Mr. P.C.S. Kanaujia alleging misconduct by Mr. Matwal Chand. Interestingly the said notice did not refer to any Award having been passed by the learned Arbitrator on 14th July 2006. The Petitioners acknowledge the receipt of the show-cause notice by Mr. Matwal Chand which was replied through an Advocate on 7th September 2006 denying that any agreement had been entered into by Mr. Matwal Chand to refer any disputes to the arbitration of Respondent No. 9. Further in the said reply it was stated as under:

“Since you are in hand in glove with Vijay Prakash and T.P. Mishra and others, and in collusion and connivance with each other, you people have perpetuated a fraud and it appears that a fake, concocted and dishonest arbitration proceedings are initiated in order to circumvent the valuable rights of my client, in a clandestine manner and as such you have no authority in law or otherwise to act as an arbitrator or to issue any show cause notice.”

16. The learned Arbitrator responded to the aforementioned letter on 16th September 2006 denying the allegations and granted another opportunity to Mr. Matwal Chand to explain his position in regard to the notice dated 22nd August 2006. Interestingly, even in the letter dated 16th September 2006 there was no reference to the impugned Award having been passed on 14th July 2006. The aforementioned letter was responded to by a further notice

dated 29th September 2006 on behalf of Mr. Matwal Chand reiterating that no agreement had been entered into by him for referring the disputes to the original Respondent No. 9 for arbitration. He also denied receiving any notice either by UPC or otherwise. The authority of Respondent No. 9 and of Mr. P.C.S. Kanaujia were challenged in the said letter.

17. The records show that in the meanwhile an application dated 24th August 2006 was filed by Mr. T.P. Mishra before the learned Arbitrator praying that 12% simple interest should be allowed to the Respondents on the principle of equal treatment. Interestingly, the learned Arbitrator appears to have rejected the said application by an order dated 22nd August 2006, i.e., two days prior to the said application, maintaining the rate of interest awarded by him in the impugned Award dated 14th July 2006.

18. On 23rd August 2006 a caveat was purportedly filed in this Court by one Mr. Pradeep Shukla, Advocate on behalf of the Respondents, including Mr. Matwal Chand. Mr. Shukla, however, did not file his vakalatnama on behalf of Mr. Matwal Chand.

19. On 31st August 2006 OMP No. 412 of 2006 was filed on behalf of the Respondents under Section 34 of the Act seeking modification of the Award as regards the interest. Although in the caveat filed by Mr. Pradeep Shukla the address of Mr. Matwal Chand was shown correctly as 4/25, Jai Dev Park, East Punjabi Bagh, New Delhi, in OMP No. 412 of 2006 his address was wrongly shown as 4/45, Jai Dev Park, East Punjabi Bagh, New Delhi. On the very next day, i.e., 1st September 2006 Respondents 7 and 8 (the

Claimants in the arbitral proceedings) appeared in OMP No. 412 of 2006 and filed counter-affidavit through the same lawyer Mr. Pradeep Shukla who had filed caveat on behalf of the Respondents in the arbitral proceedings. The said affidavit on behalf of the Respondents 7 and 8 was verified by a clerk of Mr. Shukla. In the said affidavit it was stated that originally Respondents 7 and 8 did not have any objection to the enhancement of the rate of interest awarded to the Respondents from 6% to 12% per annum. One day later, i.e., on 2nd September 2006 the Respondents before the Arbitrator (except Mr. Matwal Chand) filed IA No. 9839 of 2006 in OMP No. 412 of 2006 stating that they had no objection to the Award being made rule of the Court. It was stated therein that since Mr. Matwal Chand was a proforma Respondent, he was not required to be served. As already noted, Mr. Matwal Chand expired on 21st October 2006.

20. On 26th March 2007 this Court passed the following order in OMP No. 412 of 2006:

“Notice of this petition was issued to the Respondents. Respondent Nos. 1 and 2 have filed their counter-affidavit wherein they have stated that they have no objection to the enhancement of the rate of interest from 6% to 12% per annum, provided the total sum payable to the Petitioner and performa Respondent, does not exceed the rate of land in question prescribed by the DDA in the zone.

Based on this counter-affidavit, the Award of August 2006 is modified. The objections are disposed of accordingly.”

21. The Petitioners state that a property dealer contacted them on 24th January 2009 enquiring whether the land in question had been sold to one

Mr. Gulab Singh. On further enquiry, the Petitioners learnt through him that Mr. Gulab Singh had approached the said property dealer in connection with sale of the land in question stating that he had become the owner thereof pursuant to the orders of this Court. Thereafter, the Petitioners learnt of the filing of OMP No. 412 of 2006 in this Court. On 5th March 2009 the Petitioners filed IA No. 4723 of 2009 seeking recall of the order dated 26th March 2007. The Petitioners also filed IA No. 4724 of 2009 seeking stay of the aforesaid order dated 26th March 2007. While directing notice to issue on 13th April 2009 on both applications, this Court stayed the operation of the order dated 26th March 2007. The Petitioners also separately filed OMP No. 133 of 2009 under Section 34 of the Act challenging the impugned Award.

22. On 14th April 2010 IA. No. 4948 of 2010 was filed jointly by the Petitioners and Respondent Nos. 1 and 2 stating that they had resolved their disputes in terms of a memorandum of agreement dated 6th April 2010 and they had no objection to the impugned Award dated 14th July 2006 being set aside and IA No. 4723 of 2009 being allowed. The said application was supported by the affidavit of Mr. Gulab Singh, Mr. Vipin Kumar Sharma, Mr. Triveni Parshad Mishra (as attorney of Respondents 1 and 2) as well as the Petitioners. The enclosed memorandum of agreement dated 6th April 2010 was signed by the parties including original Respondents 2 to 4 who were the legal representatives of late Mr. S.N. Ojha. It was stated therein that Mr. Matwal Chand had not entered into any kind of agreement nor was a party to the MOA dated 31st January 1997. It was categorically stated that Mr. Matwal Chand had never agreed to the reference of the disputes to the sole arbitration of original Respondent No. 9. It was further stated in para 7

of the memorandum of agreement dated 6th April 2010, that “letter dated 14th January 1997 and a resolution dated 14th January 1997 were not at all prepared and signed by the signatories mentioned therein and thus, the power of attorney dated 28th January 1997 as well as the Memo of Agreement dated 31st January 1997 are not valid and that the same were/are not at all binding upon Shri Matwal Chand and/or the First Party herein.”

23. A fresh application IA No. 5004 of 2010 was filed by the Petitioners and the Respondents in OMP No. 133 of 2009 stating that a memorandum of agreement had been entered into on 6th April 2010 and that compromise so recorded be taken on record by the Court. On 15th April 2010 this Court passed the following order:

“Both counsel for the parties state that the matter has been amicably resolved. They state that an application for recording settlement has already been filed in OMP No. 133 of 2009 and the same is likely to be listed on 20th April 2010. Accordingly, list the matter on 20th April 2010. Parties are directed to be personally present in Court on the said date of hearing for recording of their statements and for collection of the pay orders.”

24. IA Nos. 5018 of 2010 and 5013 of 2010 under Order I Rule 10 of the Code of Civil Procedure, 1908 (‘CPC’) in OMP Nos. 412 of 2006 and 133 of 2009, respectively were filed on behalf of Jhang Biradari Housing Resident Society (‘Society’) in which *inter alia* it was stated that Mr. Matwal Chand was never the owner of the property in his individual right. The only prayer in the applications was that the Society should be added as a party Petitioner in OMP No. 412 of 2006 and as a party Respondent in OMP

No. 133 of 2009 and further that it (Society) should be permitted to file a detailed reply.

25. On 18th May 2010 the Court passed the following order in the applications filed in O.M.P. No. 133 of 2009:

“IA. 6769/2010

Present application has been filed under Order 23 Rule 1 CPC. In this application, it has been stated that Petitioners have executed an out of Court Memorandum of Settlement dated 30th April 2010 by virtue of which Petitioners and Respondent Nos. 2 to 4, 6, 7 and 8 have amicably resolved their disputes.

Keeping in view the aforesaid Memorandum of Settlement dated 30th April 2010 Respondent Nos. 2 to 4, 6, 7 and 8 are deleted from the array of parties. Let an amended memo of parties be filed within two days from today.

With the aforesaid observation, present application stands disposed of.

IA. 5013/2010

Issue notice.

Learned counsel for the parties accept notice.

Mr. Rajiv Nayar, learned Senior counsel for Respondents/non-applicants states that he does not wish to file a reply affidavit to the present application.

List on 8th July 2010 for consideration and disposal.

OMP No. 133/2009

List on 8th July 2010.”

26. The position that emerges as of today is that the Petitioners in OMP No. 133 of 2009 have settled all their disputes with the original Claimants in the arbitral proceedings, i.e., Respondents 7 and 8 Mr. Vijay Prakash and Ex. Subedar Ram Pratap Mishra. Further, the Petitioners have also settled their disputes with the legal heirs of late Mr. S.N. Ojha (original Respondents 2 to 4). The said settlement has been recorded by the Court on 18th May 2010. To a large extent therefore the order dated 26th March 2007 passed by the Court stands superseded. Although Mr. Gulab Chand was a party to IA No. 5004 of 2010 and had filed an affidavit in support thereof, he and Mr. V.P. Sharma are still contesting the petition as Respondents.

27. This Court has heard the submissions of Mr. Rajiv Nayar, learned Senior Counsel and Mr. Prateek Jalan, learned counsel for the Petitioners in OMP No. 133 of 2009, Mr. Arun Bhardwaj, learned Senior counsel for the Society/Applicant in IA Nos. 5018 of 2010 and 5013 of 2010 under Order I Rule 10 CPC in OMP Nos. 412 of 2006 and 133 of 2009, respectively and Mr. P.C. Dhingra, learned counsel on behalf of the contesting Respondents in OMP No. 133 of 2009, i.e., Mr. Gulab Chand and Mr. V.P. Sharma.

28. In the first place it requires to be observed that the agreement dated 8th January 1996 to which alone Mr. Matwal Chand was a party did not contain any arbitration clause. It was admittedly only a development agreement and definitely not an 'agreement to sell' as erroneously described in the subsequent MOA dated 31st January 1997 entered into by original Respondents 1, 5 and 6 and Mr. S.N. Ojha, predecessor-in-interest of the original Respondents 2 to 4 on the one hand and original Respondents 7 and

8 on the other. The said agreement dated 8th January 1996 was erroneously described as an agreement to sell in the Resolution dated 14th January 1997 of the Society. The agreement dated 8th January 1996 was valid only for a period of 18 months. Further, Clause 13 made it clear that if before the completion of two years, the Second Party was unable to get the lay out plan sanctioned then “this agreement shall come to an end and in that eventuality the second party will be left with no lien or right or claim in the lands or any part thereof in any manner whatsoever.” It is nobody’s case that the said agreement was ever extended by the parties to the agreement.

29. What is significant is that the agreement dated 8th January 1996 did not constitute Mr. Gulab Chand, Mr. S.N. Ojha, Mr. Vipin Kumar Sharma and Mr. T.P. Mishra as Special or General Powers of Attorney to act on behalf of Mr. Matwal Chand. By no stretch of imagination can the agreement dated 8th January 1996 be construed as an agreement to sell or a document authorising the aforementioned persons to act on behalf of Mr. Matwal Chand as his attorney to sell the land in question to any third party.

30. Mr. Matwal Chand was not a party to the MOA dated 31st January 1997. The MOA stated that the First Party i.e., Mr. Gulab Chand, Mr. S.N. Ojha, Mr. Vipin Kumar Sharma and Mr. Triveni Parshad Mishra, all represented by Mr. T.P. Mishra who produced a copy of a special power of attorney (‘SPA’) dated 28th January 1997. They claimed to be ‘duly authorized vide deed of agreement dated 8th January 1996 (copy enclosed herewith) to sell out the land measuring, more or less, 31 (thirty one) bighas as described in the deed of agreement dated 8th January 1996.” This was a false statement

since admittedly even according to the Respondents the agreement dated 8th January 1996 was only a development agreement and not an agreement to sell. There was no authorization of these persons by Mr. Matwal Chand or by any general power of attorney ('GPA') or SPA. There is nothing to show that consent of Mr. Matwal Chand was ever taken for the MOA dated 31st January 1997 which alone contained the arbitration clause. Since Mr. Matwal Chand was not a party to the said agreement, he could not have been arrayed as a Respondent in the arbitral proceedings arising out of the said MOA dated 31st January 1997.

31. Consequently, the claims of the original Respondent Nos. 7 and 8 before the learned Arbitrator were not maintainable as far as Mr. Matwal Chand was concerned and yet all the reliefs sought for in the arbitral proceedings were against Mr. Matwal Chand. There are no documents placed on record to show that original Respondents 7 and 8 had made part payment of Rs. 15 lakhs in favour of Mr. Matwal Chand. Consequently, this Court finds merit in the contention of the Petitioners that the arbitral proceedings before the learned Arbitrator (original Respondent No. 9) were without jurisdiction in the absence of any arbitration agreement to which Mr. Matwal Chand was a party. Therefore, Respondent No. 9 ought not to have proceeded with the arbitral proceedings as far as Mr. Matwal Chand was concerned. Considering that all the reliefs as prayed for were directed against Mr. Matwal Chand, the arbitration is vitiated in law.

32. A perusal of the extracted passages of the impugned Award shows that no serious efforts were made to have Mr. Matwal Chand served in the

arbitral proceedings. The despatch of notices by UPC was hardly sufficient for this purpose. The so-called ‘process server’ was Mr. P.C.S. Kanaujia. This was not a procedure known to law. The Court has recently in ***K.S. Forge Metal Pvt. Ltd. v. Sachin Gupta*** (in OMP 49 of 2008 – decision dated 4th September 2012) disapproved of the practice of serving notice in process on the Respondents in the arbitral proceedings through private actors doubling up as ‘process servers’. The allegation of the Arbitrator in his letter dated 22nd August 2006 about Mr. Matwal Chand behaving badly with Mr. Kanaujia and refusing to accept notice has been vehemently denied by Mr. Matwal Chand by letters dated 7th and 29th September 2006. However, what is strange is that fact of the passing of the impugned Award on 14th July 2006 was not mentioned by the learned Arbitrator either in the letter dated 22nd August 2006 or in the subsequent letter dated 16th September 2006.

33. The other problem with the impugned Award is that its original is stated to be not traceable. If that was the case, the learned Arbitrator could not have tampered with the Award as originally passed by inserting into it para 8.0. The procedure adopted by the learned Arbitrator and the manner of conduct of the arbitral proceedings was unsatisfactory. Considering that the operative directions in the impugned Award were against Mr. Matwal Chand it was imperative for him to be served with notice of the arbitral proceedings in a manner known to law. In the circumstances, this Court holds that the impugned Award is violative of the principles of natural justice and is therefore opposed to the public policy of India for the purposes of Section 34 (2) (b) (ii) of the Act. Also there is nothing on record to show that a

signed copy of the Award was actually delivered to Mr. Matwal Chand. This is a mandatory requirement under Section 31 (5) of the Act.

34. For the above reasons, this Court is satisfied that the impugned Award suffers from patent illegality and cannot be sustained in law.

35. The claim of the Society in IA Nos. 5018 of 2010 in OMP No. 412 of 2006 and 5013 of 2010 in OMP No. 133 of 2009 is examined next. The Society challenges the title of Mr. Matwal Chand to the land in question stating that he “was never owner of the property” and that “any proceeding which arises due to Agreement dated 8th January 1996 is a nullity because Shri Matwal Chand (deceased) made this Agreement on the basis of false premises that Matwal Chand (deceased) is the absolute owner of the said property.” The Society also contests the title of Mr. Amir Chand and Mr. Brij Lal who had sold the property to Mr. Matwal Chand. According to the Society Mr. Amir Chand and Mr. Brij Lal were only its office bearers.

36. In addition Mr. Arun Bhardwaj, learned Senior counsel for the Society, referred to the Resolution dated 14th January 1997 of the Society. The Petitioners have doubted the genuineness of the said Resolution which reads as under:

“It has been unanimously decided by the Governing Body that the 31st bighas of land situated at Basai Darapur, Delhi, belonging to Shri Matwal Chand (undersigned). He used to raise fund of Rs. 15,00,000 (Rupees fifteen lakhs only) by way of advance through an agreement to sell in favour of prospective buyers subject to agreement to sell dated 8th January 1996 executed by abovenamed land owner in favour of M/s. Gulab Singh (In chair), Shri S.N. Ojha, Vipin Kumar

Sharma, and T.P. Mishra, and for that purpose, the possession of the said land may be handed over to the vendees but the sale deed shall not be executed and registered during the period of litigation before the Hon'ble Court and Hon'ble Supreme Court of India as the case may be. It is clarified that the said amount shall be spent only for the purpose of expenses towards approval of layout, security of the land by gunmen and construction of boundary wall in the Eastern side of the square.”

37. The above resolution was purportedly signed by Mr. Gulab Singh as President of the Society, Mr. Subhash Chander as Vice President and Mr. Matwal Chand as Secretary General. The resolution acknowledges that the land in question belongs to Mr. Matwal Chand. However, it erroneously refers to the agreement dated 8th January 1996 as an ‘agreement to sell’. While it acknowledges Mr. Matwal Chand as ‘land owner’, it refers to ‘vendees’ but does not indicate who the vendees are. Significantly, the MOA dated 31st January 1997 which forms the basis of the arbitral proceedings does not make any reference to the aforementioned Resolution dated 14th January 1997 of the Society. This Court finds it difficult to accept the *locus standi* of the Society, on the basis of the above Resolution and to intervene in the present proceedings.

38. Mr. Bhardwaj adverted to the fact that there is a suit filed by the Society questioning the title of the Petitioners to the land in question. He apprehends that any observation by the Court in the present order might prejudice the case of the Society in the suit. The Court would only like to observe that since the Society has filed an application seeking impleadment, and in support of such plea has relied on certain documents, it is necessary for the

Court to deal with those averments on merits. It is for the Court before which the suit is pending to take a final view on whether the Society has been able to make out a case in support of its claim that it has the right, title and interest in the land in question.

39. For the foregoing reasons, this Court does not find any merit in IA Nos. 5013 of 2010 in OMP No. 133 of 2009 and 5018 of 2010 in OMP No. 412 of 2006 and they are dismissed as such. The impugned Award dated 14th July 2006 is set aside with costs of Rs. 20,000 which will be paid by the contesting Respondent Nos. 1 and 2 in O.M.P. No. 133 of 2009 to the Petitioners within a period of four weeks. IA No. 4948 of 2010 is disposed of by clarifying that the memorandum of agreement dated 6th April 2010, *qua* the Respondents Mr. Gulab Singh and Mr. Vipin Kumar Sharma, is not taken on record since in any event the impugned Award is set aside on merits.

40. As far as IA Nos. 4723 and 4724 of 2009 in OMP No. 412 of 2006 are concerned, with the impugned Award itself being set aside by the Court, and with the original Claimants in the arbitral proceedings having settled their disputes, the order dated 26th March 2007 passed by the Court is rendered infructuous and accordingly is recalled. IA No. 4723 of 2009 is allowed and IA No. 4724 of 2009 is disposed of in the above terms.

S. MURALIDHAR, J.

SEPTEMBER 27, 2012

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