

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

Reserved on: November 16, 2012
Pronounced on: November 22, 2012

+ W.P.(C) 6693/2011

PARSVNATH DEVELOPERS LIMITED Petitioner
Through: Mr. Neeraj Kishan Kaul, Senior
Advocate with Mr. Vijay Nair, Mr.
Rajat Joneja, Ms. Mitteli Kaushal
and Mr. Mukesh Kumar,
Advocates.

versus

RAIL LAND DEVELOPMENT
AUTHORITY Respondent
Through: Mr.A.S.Chandhiok, Additional
Solicitor General with Mr.Amit
Kumar, Mr.Ritesh Kumar,
Mr.Sidharth Tyagi and Mr.Ankit
Rajgaria, Advocates.

+ W.P.(C) 5089/2012 & CM No.10421/2012 (u/S 151 CPC)

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CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

1. The entire controversy in the above captioned two writ petitions centers around floating of '*Special Purpose Vehicle*' (SPV) for implementation of the project, i.e., *GRANT OF LEASE FOR DEVELOPMENT OF PLOT (INCLUDING RE-DEVELOPMENT OF EXISTING RAILWAY COLONY) AT SARAI ROHILLA-KISHAN GANJ, DELHI*. With the consent of learned senior counsel for the parties, the above captioned writ petitions were heard together on the question of their maintainability and are being dealt with by this common order, as the parties in the above captioned two writ petitions are the same and because subject matter of these two petitions is identical.
2. In November, 2010, petitioner's bid being the highest in respect of aforesaid project was accepted by the respondent. As per *Request for Proposal* (RFP) of 18th October, 2010, petitioner as highest bidder had to incorporate a *Special Purpose Vehicle* under the *Companies Act, 1956* for implementation of the project in question. On 7th February, 2011, respondent had accepted petitioner's request to accord consent to use an existing company, i.e, *M/s. Parsvnath Promoters & Developers Pvt. Ltd.* (PPDPL) as *Special Purpose Vehicle* for entering into a Development Agreement to implement the project in question.
3. Petitioner vide Communication of 11th May, 2011 had raised

certain issues regarding the conditions imposed by respondent to accept existing company, i.e., M/s. PPDPL as *Special Purpose Vehicle* and respondent had also sought certain clarifications regarding investment by a foreign company i.e., *Crimsonstar Venture Ltd., Cyprus* in M/s. PPDPL. Respondent maintains that after due consideration of all the aspects, vide Communication of 13th July, 2011 the permission granted to petitioner to execute the project in question through existing company i.e., M/s. PPDPL was reviewed, which is under challenge in the above captioned first writ petition.

4. Petitioner asserts that to mitigate the arduous situation and in the interest of the project, but without prejudice to its stand in the above captioned first writ petition, a new company namely, *M/s. Parsvnath Rail Land Project Pvt. Ltd.* (henceforth referred to as 'PRLPPL') was offered as *Special Purpose Vehicle* seeking extension of timelines by treating the period of delay in signing the Development Agreement as 'zero period' in the above captioned second writ petition.

5. For the respondent, this is the second round of litigation in respect of the project in question. In the first round of litigation, in May, 2008 *M/s ABW Infrastructure Ltd.* being the highest bidder for the project in question had sought amendment in the *Development Agreement*, which was not acceded to by respondent. In W.P. (C) No.13590/2009 filed by *M/s ABW Infrastructure Ltd.*, a mandamus was sought to respondent to accept the proposed amendments in the draft *Development Agreement* but the said writ was not entertained by a Single Bench of this Court in view of the commercial nature of the project in question, while relegating *M/s. ABW Infrastructure Ltd.* to avail of the civil remedy. Aforesaid

decision of 10th December, 2009 of coordinate Bench of this Court was affirmed in L.P.A. No.264 of 2010 on 18th October, 2010, which has attained finality.

6. In the above captioned writ petitions, both the sides had desired that the objection on maintainability of these writ petitions raised by respondent, be first adverted to.

7. To seek interference in contractual matters by writ Court, learned senior counsel for the petitioner had relied upon three legal principles as enunciated in *ABL International Ltd. And Anr. Vs. Export Credit Guarantee Corporation of India Ltd. And Ors.*, (2004) 3 SCC 553, which are as under:-

- (a) *In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*
- (b) *Merely because some disputed questions of facts arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.*
- (c) *A writ petition involving a consequential relief of monetary claim is also maintainable.*

8. Reliance was placed upon a Single Bench decision in *Kishan Freight Forwarders vs. Union of India & Ors.*, 181 (2011) DLT 547 and also upon a Division Bench decision in *VHCPL-ADCC Pingalai Infrastructure Pvt. Ltd. & Anr. Vs. Union of India & Ors.*, 171 (2010) DLT 370 (DB) by learned senior counsel for petitioner to assert that petitioner's challenge is not based upon matter arising out of contractual

obligations alone but is on assertion of violation of the constitutional provisions and so, it is urged that these writ petitions are very much maintainable.

9. To stress the objection on non-maintainability of these two writ petitions, learned Additional Solicitor General urges that the issues raised regarding not accepting existing company as *Special Purpose Vehicle* and of not extending the timelines for payment of lease premium in installments, are purely of commercial nature arising out of contractual obligations between the parties, which are not required to be deliberated upon in writ proceedings. It is urged on behalf of respondent that in a similar matter in respect of the project in question a Coordinate Bench of this Court in *M/s. ABW Infrastructure* (Supra), has already refused to entertain the writ petition while relegating the parties to avail the civil remedy and so, the fate of these two petitions can be no different.

10. To assert that a contract would not become statutory simply because it is for construction of a public utility and has been awarded by statutory body, reliance was placed by learned Additional Solicitor General upon Apex Court decision in *Pimpri Chinchwad Municipal Corporation and Ors. Vs. Gayatri Construction Company and Anr.*, (2008) 8 SCC 172. Attention of this Court was also drawn by learned Additional Solicitor General to Apex Court decision in *Puravankara Projects Ltd. Vs. Hotel Venus International and Ors.*, (2007) 10 SCC 33, to emphasize that doctrine of fairness cannot be applied to invoke, amend or alter the express terms of contract between the parties, as sought by petitioner in these two writ petitions.

11. The submissions advanced by both sides on the maintainability of

the above captioned two writ petitions and the material on record have been accorded due consideration and thereupon it transpires that this Court while exercising writ jurisdiction would interfere in contractual matters, only if it is shown that some public law character is attached to the contract in respect of which writ jurisdiction is invoked and if element of discharge of public duty is attached to such contracts. In *ABL International* (supra), relied upon by petitioner it was found that contractual obligations sought to be imposed had a touch of public function and the three legal principles as noted herein above, highlighted in afore-noted decision, were qualified with the following rider:-

“However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (see Whirlpool Corpn. Vs. Registrar of Trade Marks) and this plenary right of the High Court to issue a prerogative writ will not normally exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

12. Even the Single Bench decision of this Court in *Kishan Freight*

(supra), relied upon by petitioner, takes note of settled legal position that a writ petition pertaining to contractual matters will be entertained only when it involves public law character or involves a question arising out of public law function on the part of respondent. A Division Bench of this Court in *VHCPL* (supra), while dealing with awarding of a contract of providing a major bridge over Pingalai river, involving public interest had taken note of the principles governing intervention of the writ courts in contractual matters. It stands reiterated by Apex Court in '*Master Marine Services Pvt. Ltd. Vs. Metcalfe & Hodgkinson (P) Ltd.*' (2005) 6 SCC 138 that while keeping in view the larger public interest in mind, a decision should be taken as to whether a writ court would intervene in contractual matters and in *VHCPL* (supra), the writ petition was entertained, as apart from contractual issues violation of constitutional provisions was also alleged but finding no substance, the writ petition was dismissed.

13. In *Puravankara* (supra), Apex Court has declared in no uncertain terms that there is a vital distinction between administrative and contractual law decisions and the concept of administrative law and fairness should not be mixed up with fair or unfair terms of the contract while setting at naught order extending time to furnish bank guarantee as it was passed by a writ court in a purely contractual matter.

14. In *Pimpri* (supra), interference by a writ Court in contractual matter of widening of road was negated by the Apex Court with liberty to writ petitioner to seek such remedy as is available in law.

15. In respect of project in question, a Division Bench of this Court in LPA No. 264/2010, *ABW Infrastructure* (supra), has already affirmed the Single Bench decision holding that the project in question is a

commercial contract and had refused to entertain writ petition of a third party while relegating it to avail of the civil remedy.

16. Having thoughtfully deliberated upon submissions advanced, material on record and the decisions cited, this Court is of the considered view that there is no basis or justification to take a different view than the one already taken in respect of the project in question, by a Single Bench as well by a Division Bench of this Court in *ABW Infrastructure* (supra), which has attained finality, as the project in question of respondent is a commercial venture having no public character nor *Railway Land Development Authority* i.e. the respondent is discharging any public duty in undertaking the project in question.

17. In view of the aforesaid, while refusing to entertain the above captioned writ petitions, as they relate to purely commercial venture involving no public law character, petitioner is relegated to avail of the civil remedy as available in law.

18. With the above observations, both the writ petitions and the pending application, if any, are disposed of while leaving the parties to bear their own costs. Needless to say any observation made herein shall not be construed as expression on merits if petitioner chooses to avail of the civil remedy.

(SUNIL GAUR)
Judge

NOVEMBER 22, 2012
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