

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

Judgment reserved on: 03.10.2013

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Judgment delivered on: 07.11.2013

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OMP 64/2013

HERMAN PROPERTIES LTD.

..... PETITIONER

Versus

RUPALI SINGLA AND ORS.

..... RESPONDENTS

Advocates who appeared in this case:

For the Petitioner: Mr. Ajit Singh, Mr. Samdarshi and Mr. Shashi
Ranjan, Advocates

For the Respondents: Mr. Akhilesh Jha and Mr. Animesh Kr. Sham,
Advocates

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short the Act), to seek an injunction against the respondents, so as to prevent them from creating third party interest and / or executing any agreement or to proceed with grant of license or permission for development qua the land located in the revenue estate of Village Shahpur H.B. 125 and Village Buhava H.B. 162, Ambala Cantt. in the State of Haryana (hereinafter referred to as the land in issue).

2. The said relief is claimed in the background of a purported collaboration agreement dated 06.05.2011 (in short the parent agreement), entered into amongst the petitioner and the three (3) respondents and six (6)

other persons. In all there are ten (10) entities, which are party to parent agreement. Curiously though, nine (9) persons referred to in the parent agreement, stand identified. The particulars of the tenth (10th) entity are not recorded in the said agreement.

2.1 In addition to the above, a supplementary agreement of even date i.e., 06.05.2011, was also executed amongst the parties herein. The supplementary agreement also adverted to, apart from the petitioner and the respondents herein, six (6) other persons. In the supplementary, as in the case of the parent agreement, a reference is made to an entity, whose particulars were not referred to therein.

2.2 Importantly, apart from the three (3) respondents arrayed as parties, the other six (6) persons are not arrayed as parties to the present petition.

3. This petition was filed, apparently on, 22.01.2013. It was moved in court on 28.01.2013, when notice was issued to the respondents herein.

4. The petitioner has claimed the relief referred to hereinabove in the background of the following broad facts.

4.1 It appears that the petitioner entered into the aforementioned parent agreement with the three (3) respondents referred to herein apart from seven (7) other persons, including an entity, whose particulars are not adverted to in the said agreement. The said agreement apparently was executed for construction of an integrated township on the land in issue. The proposal, apparently, was to construct a township on contiguous land admeasuring 55 acres.

4.2 The petitioner avers, that it was given to believe that the respondents herein, amongst themselves, were owners of 35 acres of land, and that, they would, obtain rights to the balance 20 acres or thereabouts from other persons and the unknown entity referred to in the said agreement.

4.3 For this purpose, evidently, the petitioner paid a sum of Rs.1.76 Crores by way of two cheques in the sum of Rs.1.11 Crores and Rs.65 Lakhs. The cheque in the sum of Rs.1.11 Crores was issued in favour of respondent no.2 i.e., Mrs. Rashmi Bansal w/o. one Mr. Satish Bansal, while the cheque in the sum of Rs.65 Lakhs was drawn in favour of respondent no.1 i.e., Mrs. Rupali Singla w/o. one Mr. Pawan Singla. The cheque favouring respondent no.2, in the sum of Rs.1.11 Crores, was apparently, dated 06.05.2011, while the cheque favouring respondent no.1, in the sum of Rs.65 Lakhs, was dated 11.05.2011. To be noted, respondent no.3 is a company incorporated under the Companies Act, 1956 which is sued through its Director and authorised signatory i.e., Mr. Satish Bansal, who as indicated above, is the husband of respondent no.2.

4.4 The petitioner avers, that in terms of clause 17 (a) of the agreement, the respondents were required to deliver possession of vacant contiguous land alongwith title deeds to it, within 45 days of the execution of the said agreement. It is averred, that since, respondents failed to discharge their obligations, a legal notice dated 21.12.2012 was issued by the petitioner through its advocate, in which, the failure, on the part of the respondents to discharge their obligations, under the agreement, was brought to fore. The respondents were given ten days to hand over contiguous land admeasuring 55 acres, failing which, legal action was threatened. The said notice, concluded by triggering clause 20(a) of the parent agreement, which contains the arbitration agreement entered into, between the parties referred to in the said agreement.

4.5 The said notice was responded to, by each of the three (3) respondents through their advocate. On behalf of respondent no.3, a reply was sent on

06.01.2013, while on behalf of respondent nos.2 and 1, replies dated 07.01.2013 and 08.01.2013 respectively, were issued.

4.6 While, all three (3) respondents refuted the assertions made on behalf of the petitioner, each one of them took the stand that the parent agreement on which reliance was placed by the petitioner was not a concluded contract in view of the fact that other six (6) persons, from whom the petitioner was required to acquire land, so that a contiguous expanse of land admeasuring at least 50 to 55 acres was available, had not been brought on board. In other words, the stand taken was there were at least six (6) persons who had not signed the said parent agreement, though their names were mentioned therein, while the particulars of the tenth (10th) entity were not even adverted to, in the said agreement.

4.7 In particular, on behalf of respondent no.1, it was stated that the petitioner was aware of the fact that she was an owner of only 53 kanals and two marlas of land; which was available in three (3) parcels. Similarly, on behalf of respondent no.2, it was asserted that she was the owner of 77 kanals and 13 marlas, available in, four (4) parcels.

4.8 It was also asserted on behalf of respondent nos.1 and 2 that a sum of Rs.65 Lakhs and Rs.1.11 Crores paid to them respectively was sought to be remitted by the said respondents vide separate cheques dated 26.12.2012, by having the cheques deposited in the account of the petitioner from which the aforesaid amounts had been transferred to them in the first instance by the petitioner, and since, that account, of the petitioner, stood closed, as per the information given by the concerned bank, the aforementioned amounts were credited to the petitioner's account bearing no.00918630000388, maintained with the HDFC Bank, New Delhi.

4.9 In so far as respondent no.3 is concerned, a reply dated 06.01.2013, was issued wherein, apart from denying the assertions made by the petitioner in its legal notice, it was stated that the said respondent, was an owner of only 36 kanals and 3 marlas of land. It was further stated that in order to attain contiguity, respondent no.3 had to enter into agreement(s) with adjoining land owners, whereby it ended up purchasing land admeasuring 104 kanals and one marla; a transaction which resulted in financial detriment, as the petitioner, was unable to acquire/purchase land of other land owners to make the development project, viable. All three (3) respondents stated that the agreement to develop the land was unviable as under the then subsisting development rules, the developers, had to acquire a minim of 50 to 55 acres of contiguous land. The respondents, took the stand that since other parties to the agreement did not execute the agreement, the project was a non-starter both on facts and in law.

5. It appears that, the petitioner, being aggrieved by the stand taken by the respondents in response to its legal notice, decided to institute the present petition.

5.1 In the interregnum, it appears, that the respondents, had executed a fresh collaboration agreement dated 17.08.2012, with another entity, by the name of, Pan Infratech Pvt. Ltd.

6. Notice in the present petition was issued, as indicated above, on 28.01.2013, whereupon, the respondents, filed a common reply. In the reply, the respondents, have taken a stand, broadly in line with what was stated, in their response, to the legal notice issued by the petitioner.

6.1 The petitioner, has refuted the contentions of the respondents in its rejoinder and, amongst other things, has stated that vide e-mail dated

30.05.2011, the respondents had given the land details of other persons, who are referred to in the parent agreement.

6.2 The parties had been directed vide order dated 27.05.2013 by my predecessor, to file their respective written submissions. While the respondents, filed their written submissions, the petitioner chose not to file its written submissions.

7. On behalf of the petitioner, the arguments were advanced by Mr. Ajit Singh, Advocate. The respondents were represented by Mr. Akhilesh Jha.

8. Mr. Singh, has submitted that respondents had been sued in view of the fact that they had represented to the petitioner that they were owners of 35 acres of land, for which purpose, they were paid a sum of Rs.1.76 Crores in the manner averred to in the petition. He submitted that the receipt of the money was not in dispute. Therefore, the failure on the part of the respondents to discharge their obligation to hand over a contiguous stretch of land admeasuring 55 acres was, a breach of the provisions of clause 17(a) of the parent agreement.

8.1 He further submitted that, the return of the sum of Rs.1.76 Crores was made after the respondents had already executed a fresh collaboration agreement with Pan Infratech Pvt. Ltd., on 17.08.2012. For this purpose, he not only relied upon the collaboration agreement dated 17.08.2012, but also, the applications filed by respondent nos.1 and 2 with the Director General, Town and Country Planning, Haryana, Chandigarh.

8.2 He further relied upon various e-mails exchanged between the parties herein, in particular, e-mail dated 30.05.2011, apparently issued on behalf of the respondents, to demonstrate that the respondents were aware of the particulars of the land held by other persons referred to in the parent agreement.

8.3 Mr. Singh, thus submitted that the return of money could not cure the breach, and that, having regard to the fact that the petitioner had fulfilled its obligation, it was entitled to an interim injunction pending disposal of the arbitration action which, it proposed to initiate against the respondents. It was Mr. Singh's contention that, as a matter of fact, as per the terms of the supplementary agreement, the amount paid as an advance could not have been refunded, and that, the sale deeds had to be executed in favour of the petitioner, by calculating the consideration, at the rate of Rs.50 Lakhs per acre.

9. On the other hand, Mr. Jha reiterated his line of defence, which was that, the parent agreement was executed with the petitioner on the premise that, it would be able to obtain a contiguous stretch of land admeasuring 50 to 55 acres of land, which was the minimum requirement under the then subsisting rules and regulations, for development of an integrated township. Mr. Jha submitted that the petitioner gave them to believe that the needful will be done, and since, the said eventuality did not occur, the receipt of the legal notice dated 21.12.2012, propelled them, to refund the amounts paid to them by the petitioner.

9.1 Mr. Jha, submitted that a bare perusal of the agreements would show that there are, apart from the petitioner, ten (10) parties to the said agreements. Out of the ten (10) parties, the three (3) persons i.e., the respondents have signed the agreements whereas others have not signed the agreements. Out of the remaining seven parties, the particulars of one party have not even been adverted to in the parent agreement. The agreement therefore, was not concluded.

9.2 Mr. Jha also contended that this court had no jurisdiction to deal with the matter in view of the fact that : the respondents were residents of

Ambala; the integrated township had to be developed at Ambala in the State of Haryana; the respondents had appended their signatures on the agreement at Ambala; and that, the refundable security amount, was deposited by the petitioner with respondent no.1 and 2 in their bank accounts, maintained at Ambala.

9.3 Therefore, it was Mr. Jha's contention that notwithstanding the fact that the parent agreement provided in clause 21, that the jurisdiction would be of the courts at Delhi only, this court, would have no jurisdiction, in view of the fact that no part of the cause of action arose in Delhi.

9.4 He further contended that, merely because, clause 20 of the parent agreement, which contained the arbitration agreement provided that the venue of arbitration will be at New Delhi, the said clause would not further the case of the petitioner. It was submitted that in this behalf, petitioner's reliance on the judgment of the Supreme Court in the case of *Bharat Aluminium Company vs. Kaiser Aluminium Technical Services Inc., (2012) 9 SCC 552* would not help its cause, as the judgment itself says that the law declared, would apply prospectively. Since, the judgment was delivered on 06.09.2012, it could not apply to the agreements in issue, which are dated 06.05.2011.

9.5 The petitioner, according to Mr. Jha, was not entitled to the injunction as prayed for as it would be contrary to the provisions of Section 41 sub-clause (e), (h) and (i) of the Specific Relief Act, 1963.

10. I have heard the learned counsels for the parties and perused the record. For grant of an interim injunction, the petitioner would have to show not only that it has a prima facie case in its favour but also that the balance of convenience is in its favour. The petitioner would also have to

demonstrate that refusal of relief in the form of an interim injunction would lead to irreparable harm and / or injury.

11. After hearing counsels for the parties and perusing the record, what does emerge is, as follows :-

11.1 The parties herein entered into an agreement for development of an integrated township, at Ambala. The development of an integrated township, required acquisition of contiguous land admeasuring 50 to 55 acres, as per the then, subsisting rules. This aspect emerges from the pleadings, as the petitioner, has not refuted this aspect of the matter in its pleadings.

11.2 The respondents have taken the stand that, amongst themselves, they had approximately 20 acres of land, and that, to attain contiguity in respect of their land, respondent no.3 bought 104 kanals and one marla from adjoining owners. As a matter of fact, this stand of the respondents is reflected in paragraphs 4 and 7 of their reply at pages 31 and 38 of the paper book respectively. The respondents, in paragraph 4 of their reply, have given the exact area of land owned by each one of them. It is indicated therein that respondent no.1 was owner of 6.63 acres, respondent no.2 was owner of 9.7 acres and respondent no.3 was owner of 4.52 acres.

11.3 Undoubtedly, both the parent agreement as well as the supplementary agreement in all, apart from the petitioner, refers to ten (10) parties. Out of the ten (10) parties, three (3) signed the parent agreement as also the supplementary agreement. As is noticed from the perusal of the agreements that, the land owners comprise principally of three (3) families : the Singla family, the Bansal family and the Choudhary family. Respondent no.3, which is a company, is represented by the Bansal Family i.e., its Director – Mr. Satish Bansal, who is the husband of respondent no.2 i.e., Mrs. Rashmi

Bansal. The representatives of the Choudhary family, which comprises of four brothers, namely, Mr. Satish Choudhary, Mr. Rohtash Choudhary, Mr. Bhupinder Choudhary and Mr. Baljinder Choudhary alongwith Mr. Aditya Choudhary, son of Mr. Satish Choudhary and the wife of Mr. Rohtash Choudhary (whose name is not set out in the two agreements, referred to above) - did not sign either the parent agreement or the supplementary agreement. As a matter of fact, as indicated above, the particulars of one entity / person have been left out completely.

11.4 Given the fact that both the parent agreement and the supplementary agreement defines owners to include all ten (10) persons / entities, the absence of the signatures of other persons / entities apart from the respondents herein does make the two agreements prima facie inchoate.

11.5 The principal purpose of executing the parent and the supplementary agreement was to develop an integrated township, which required a minimum contiguous land of 50 to 55 acres. Such a contiguous land was, undoubtedly, not available with the petitioner, therefore, a township could not have been developed. To determine as to whether it was the obligation of the respondents herein or that of the petitioner, the matter would have to go to trial, which would require the parties herein to lead evidence. The reliance of the petitioner on the clause in the supplementary agreement that the advance paid would have to be adjusted against sale would require examination in the light of the undisputed fact that the fundamental premise on the basis of which the parent and the supplementary agreement were executed between the parties was that an integrated township would be developed. Whether, the petitioner, could call upon the respondents herein, to sell the land owned by them at the stated price, is a matter, which would again require trial. However, most certainly, at the interim stage, in my

opinion, no interim order can be passed in favour of the petitioner, as the respondents, admittedly have executed a fresh collaboration agreement, with another entity, as far back as on 17.08.2012. The respondents' stand that, since they got to know in July 2012 that the petitioner was unable to bring other persons on board; a factor which propelled them to enter into the collaboration agreement dated 17.08.2012, would require evidence to be led in the matter. It is not disputed that the respondent nos.1 and 2, in line with their stand, have refunded a sum of Rs.1.76 Crores to the petitioner. Therefore, having regard to the totality of facts, in my view, an interim order cannot be granted to the petitioner, as prayed for, at this stage.

11.6 The present action seems inchoate in view of the fact that the petitioner has failed to even implead the Choudhary family to the present petition. The petitioner's explanation that a group entity of respondent no.3 i.e., Partap Fabrics vide e-mail dated 30.05.2011 gave details of the land owned by the Choudhary family, would not help, as the supply of details would not by itself establish that the respondents had undertaken the obligation to obtain ownership rights of the land owned by the Choudhary family. Even if, this is assumed to be correct, for the sake of argument, on the petitioner's own showing one more person / entity was required to join the fray, in order to obtain ownership to contiguous land admeasuring 50-55 acres, which was the required minimum area for developing a township. In my opinion, the petitioner's attempt at showing respondents' lack of faith by relying upon a sale deed dated 29.12.2011, to demonstrate that the respondents had acquired land after executing the parent and / or supplementary agreement, would not further its cause, at this stage, as these aspects would not make a dent in the main assertion of the respondents that the petitioner had failed to bring on board all persons so that a minimum

contiguous land was available for the development project, to see the light of the day. It appears on the other hand, on a perusal of the documents placed on record by the petitioner, that Pan Infratech Pvt. Ltd., the new developer, has acquired lands, apart from respondent nos.1 and 2, also from, an entity by the name of Bondi Builders and Developers Pvt. Ltd. The said entity is also not a party to the present proceedings. Therefore, in view of the fact that third party rights have already interceded in the matter, at this stage, balance of convenience is not in favour of the petitioner. The petitioner's remedy, if at all, may lie in an action for damages.

11.7 In view of the above, for the present, I need not decide the issue of jurisdiction, which is left open to be decided at the appropriate stage, if the need arises for the same.

12. For the foregoing reasons, I find no merit in the petition. It is, therefore, accordingly, dismissed. Parties shall, however, bear their own costs.

RAJIV SHAKDHER, J.

NOVEMBER 07, 2013

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