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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 01.07.2013

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O.M.P. 561/2007

DELHI AGRICULTURAL MARKETING BOARD Petitioner

versus

SMT. BHAGWAN DEVI AND ANOTHER Respondents

Advocates appeared in this case:

For the Petitioner: Mrs Avnish Ahlawat & Mrs Tania Ahlawat, Advs.

For the Respondents: Mr Ravi Gupta, Sr. Adv. with Mr Swastik Singh & Mr Ajay Gulati, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J (ORAL)

1. The captioned petition is filed under Section 34 of the Arbitration & Conciliation Act, 1996 (in short the 1996 Act) to lay challenge to the award dated 10.07.2007 passed by the learned Arbitrator. The award has been passed by late Hon'ble Mr. Justice Arun Kumar; a retired judge of the Supreme Court.

1.1 The sole ground on which the award has been challenged is the absence of permission accorded by the Lt. Governor of Delhi, under Section 48(1) of the Land Acquisition Act, 1894 (in short the L.A. Act), to withdraw the acquisition proceedings qua the land in issue.

1.2 In this behalf it is also the stand of the petitioner, i.e., the Delhi

Agricultural Marketing Board (in short the Board) that not only an order for withdrawal of acquisition proceedings had to be passed by the Lt. Governor but also an appropriate notification had to be issued in that behalf. It is submitted that the said actions having not been taken in the instant case, the settlement which was arrived at between the parties, i.e., written agreement dated 30.09.1988, could not have been ordered to be specifically enforced, as has been directed by the learned Arbitrator, by way of the impugned award.

1.3 I may note, at the very outset, that this is the only ground raised and argued before me by the learned counsel for the petitioner to assail the award.

2. The facts of the case are not in dispute. The background of facts which have led to the filing of the present petition are broadly as follows:

2.1 Respondent no. 1, who was the original claimant before the learned Arbitrator, claimed ownership in respect of the land admeasuring 6 bighas 10 biswas situate in khasra no. 296, 298 and 303 located in village Mamoorpur, Delhi (hereinafter referred to as the land in issue).

2.2 Apparently, the aforementioned land of respondent no. 1 was subject matter of acquisition proceedings as a part of a larger parcel of land admeasuring 33 acres. The acquisition proceedings in respect of the said land, admeasuring 33 acres, was taken out by the Land Acquisition Collector (LAC) in order to enable expansion of the new grain market, known as the Narela Anaaj Mandi, by the Board.

2.3 It is towards this end, that a notification under Section 4 of the L.A. Act was taken out on, 30.10.1963. The aforesaid notification was followed by a notification under Section 6, which was taken out on 10.01.1969. An

award was passed, admittedly, on 19.09.1986. The Board claims to have taken possession of the entire 33 acres of land including the land owned by respondent no. 1 admeasuring 6 bighas and 10 biswas on, 22.09.1986.

2.4 There is no dispute in respect of the fact that respondent no. 1 assailed the acquisition proceedings by filing a writ petition in this court. This writ petition was numbered as CWP No. 149/1987. In the said writ petition an interim order was passed by this court on, 23.01.1987. The aforesaid date, being the first date when the writ petition was moved, this court issued notice on the said date and, in the meanwhile, directed stay of dispossession of respondent no. 1.

2.5 It appears that, while the writ petition was pending in this court parleys were held between the representatives of the Board and respondent no. 1 for arriving at an out of court settlement between them. There is no dispute, a fact which is averred in Section 34 petition filed by the Board, that the Board, on 22.09.1988, decided to arrive at an out of court settlement with respondent no. 1. It is in pursuance of this decision that, on 26.09.1988, the requisite stamp paper was purchased for reducing the settlement to writing. The exercise of reducing the settlement to writing was carried out on 27.09.1988. It is also not in dispute, as is averred in the petition filed before the court that, on 29.09.1988 the matter was placed before the Board, wherein requisite approval was granted for arriving at a settlement. Preliminary steps having been taken, on 30.09.1988, the Chairman of the Board, signed the settlement agreement, on behalf of the Board.

3. I may only note here that, in the settlement agreement of 30.09.1988, in clause (g), the following is noted. The reason, I am quoting the same is

on account of the fact that certain submissions have been made on behalf of the petitioner with regard to what is noted therein; an aspect which I will deal with in the latter part of my judgment.

“(g) That the Board which has become absolute owner of the said land which has also been mutated in its favour in the revenue record shall execute proper conveyance deed with the *prior* consent of Land Acquisition Collector at her cost in favour of the transferee in respect of the portion of the said land assigned to her by those present for a valuable consideration, which shall be equal to the proportionate compensation awarded by the land Acquisition Collector under the aforesaid Award dated 19.9.1986 including the additional interest and interest under Section 4(3) and solutium etc. as per award plus 12 per cent interest from the date of deposit of compensation money made by the Board with the Land Acquisition Collector till payment of the consideration by the transferee to the Board....”

4. Continuing with the narrative, in view of the settlement arrived at between the Board and respondent no. 1, the writ petition filed by respondent no. 1, i.e., CWP No. 149/1987, was disposed of by the court vide its order dated 05.10.1988.

4.1 Evidently, the Board re-visited the issue after obtaining legal advice. The issue was re-considered, apparently, at the Board's meeting held on 24.11.1988.

4.2 Though the legal advice is not placed on record, an extract of the resolution has been set out in the petition filed under Section 34. The sum and substance of the resolution is that the Board appears to have been advised that, it was not competent to transfer the land in favour of any person (I would assume in this case respondent no. 1), without a requisite conveyance deed being executed by the Government of India (in short GOI)

in favour of the Board. It appears that the Department of Law and Delhi Administration was also of the view that: since the land in issue stood notified/ acquired; with the award having been pronounced; and given the fact that possession had been taken, the land in issue, could not be de-notified under Section 16 and 48 of the L.A. Act.

5. It is in the background of the aforesaid decision taken at the meeting of 24.11.1988 that the Board filed an application in the disposed of writ petition i.e., CWP no. 149/1987, being CM No. 2239/1989, for recall of order dated 05.10.1988. Apparently, prior to the Board's application for recall, respondent no. 1 had filed two interlocutory applications in the said writ petition being: CM Nos. 2209/1989 and 2210/1989. By these applications, in substance, respondent no. 1 sought implementation of the agreement dated 30.09.1988.

5.1 The court, however, disposed of all three interlocutory applications vide order dated 06.08.2002. In the operative part of the order passed on 06.08.2002 the court dismissed CM Nos. 2209/1989 and 2210/1989 on the ground that they were not maintainable, while in respect of CM No. 2239/1989 it was observed that the same had been rendered infructuous. An observation was, however, made that it would be open to respondent no. 1 to avail of a remedy; albeit in accordance with law. Similar opportunity was given to the Board to take all objections, as may be permissible, including the ones taken in its CM No. 2239/1989.

6. Having regard to aforesaid, respondent no. 1 filed an arbitration application being A.A. No. 278/2004 and a petition for stay being: OMP No. 444/2004. Based on the aforementioned applications of respondent no. 1, this court vide order dated 17.05.2006, appointed late Hon'ble Mr Justice

Arun Kumar as an arbitrator in the matter. As indicated above, deliberations by learned Arbitrator led to the passing of the impugned award.

7. In the award the arbitrator framed three substantive issues. The last and the fourth issue related to relief(s), if any. All issues have been decided in favour of respondent no. 1 and against the Board. The arbitrator returned findings of fact with regard to the following aspects: (i) that respondent no. 1 was owner of the land in issue; and (ii) that the Board was competent to enter into in the settlement agreement dated 30.09.1988.

7.1 It is in the background of the findings arrived at by the learned arbitrator qua issue nos.(i) and (ii) and based on the evidence on record, that he has also held that the Board was liable to specifically perform the obligations contained in the settlement agreement dated 30.09.1988, executed with respondent no.1.

8. Being aggrieved, the Board filed a petition under Section 34 of the 1996 Act, as indicated above, to assail the award.

9. Ms Ahlawat, who appears for the petitioner, submits that the impugned award deserves to be set aside for the reasons that the Board is not in a position to release the land in issue, in favour of respondent no.1, as that power under Section 48 of the L.A. Act vests only in the Lt. Governor. As indicated above, in support of this submission it is submitted by Ms Ahlawat that not only was the Lt. Governor required to direct withdrawal of the acquisition proceedings but due notification had to be issued, which was required to be gazetted, in accordance with law, for the Board to direct release of the land in issue, in favour of respondent no. 1. It is submitted that in the absence of these pre-requisites, the Arbitrator could not have

directed specific performance of the settlement agreement.

9.1 To support this submission, Ms.Ahlawat relied upon clause (g) of the settlement agreement which requires the Board to obtain “prior consent” of the LAC before executing a conveyance deed.

10. Mr Gupta, learned senior counsel, on the other hand, has placed reliance on the findings of fact returned by the learned Arbitrator to contend that since acquisition proceedings stood completed, the power under Section 48 of the L.A. Act could neither have been exercised nor was required to be exercised, in the instant case. Mr Gupta referred me to the various documents filed before the learned Arbitrator to demonstrate that it was Board’s stand that: the acquisition proceedings were completed; paper possession of the land was taken; and that, the land in issue, stood mutated in favour of the Board.

10.1 Mr Gupta, in order to buttress his argument, also sought to place reliance on an exchange deed executed by the Board qua another parcel of land, which formed part of 33 acres of the land acquired, to demonstrate the point that the said exchange, transfer of interest could only have been effectuated if the Board was the owner of the entire land admeasuring 33 acres.

10.2 It is in this context, that Mr Gupta has also urged that respondent no. 1, consciously took the decision of not impleading the LAC or the GOI before the learned Arbitrator.

10.3 Mr Gupta contended that clause (g), which finds mention in the settlement agreement (to which I have made a reference above), would have had significance if, acquisition proceedings were still pending. It is his contention that, since acquisition proceedings have come to an end,

consequent to which the entire land, which included the land in issue, vested with the Board, the reference to the requirement of obtaining a No Objection Certificate (NOC) from the LAC is, really a ministerial act, and cannot, come in the way of the settlement agreement being specifically enforced, as between the parties, i.e., the Board and respondent no. 1.

11. In rejoinder, Ms Ahlawat referred me to the resolution dated 24.11.1988 to contend that, in the resolution there is a reference to the fact that a conveyance deed needs to be executed between the GOI and the Board for it to acquire legal title to the entire land admeasuring 33 acres, including the land in issue.

11.1 On this aspect, I put a specific query to Ms Ahlawat as to whether in all these years the GOI had, as a matter of fact, ever executed a conveyance deed in favour of the Board to confer title in respect of land acquired for its purposes. Ms Ahlawat has fairly conceded that to her knowledge no conveyance deed had been executed in the past. I also put to Ms Ahlawat, as to whether, in line with what is stated in the resolution of 24.11.1988 any evidence had been led before the learned Arbitrator. Ms Ahlawat fairly informed me that no evidence had been led before the learned Arbitrator, with regard to the practice of execution of conveyance deed(s) as between the GOI and the Board.

11.2 As a matter of fact, Mr Gupta has referred me to the deposition of the Board's witness, before the learned Arbitrator, and contended, based on the said deposition, that no such procedure of execution of conveyance deed is adopted. Mr Gupta stressed that the witness has clearly deposed that, apart from steps required to be taken to effectuate acquisition and the issuance of a possession letter, no other steps are taken before vesting the ownership in

land in the authority for whose purpose the acquisition proceedings are carried out in the first instance.

12. Having heard the learned counsels for the parties, according to me, the challenge based on Section 48 of the L.A. Act to the impugned award, cannot be sustained.

12.1 The facts have already been set out by me, in respect of which, there is no dispute. It is clearly not in dispute that respondent no. 1 had assailed the acquisition proceedings by instituting a writ petition in this court, which was numbered as, CWP No. 149/1987. In the said writ petition an interim order was passed in favour of respondent no. 1.

12.2 It is to be noted, a fact which is once again not in dispute, that respondent no. 1 was claiming, at the relevant time, ownership in the land admeasuring 6 bighas and 10 biswas. It was while, the writ petition was pending adjudication, that the Board, arrived at a settlement with respondent no. 1, which is reflected in the agreement dated 30.09.1988.

12.3 The sum and substance of the agreement was that, respondent no. 1 was to acquire unimpeded ownership rights qua one-half portion of the land, over which, she claimed ownership rights before the writ court. In order words, land admeasuring 3 bighas and 5 biswas would enure to the benefit of respondent no. 1, while the Board would have the benefit of ownership, and the consequential rights, flowing therefrom, in the remaining portion, i.e., 3 bighas and 5 biswas. On this broad understanding, as indicated above, the settlement agreement dated 30.09.1988 was executed between the Board and respondent no. 1.

13. The events which led to the execution of the agreement dated 30.09.1988 has already been recorded by me which are not in dispute. It

was not an agreement which was entered into in hurry or without due deliberation. Stamp paper was bought on 26.09.1998. The agreement arrived at between the parties, was reduced to writing on 26.09.1988, and the same, was duly considered by a requisite quorum of the Board, on 29.09.1988. It was only after due deliberation, that, on 30.09.1988, the then Chairman of the Board signed the agreement on behalf of the Board.

13.1 It is no one's case that the Chairman did not have the authority to execute the settlement on behalf of the Board. It may also be noted, as recorded in the foregoing paragraphs, that the Board all along claimed that it was the absolute owner of the land in issue. The said aspect is clearly reflected in clause (g) of the settlement agreement, wherein it is recorded that the Board became absolute owner of the land in issue and that the said land stood mutated in its favour in the revenue record.

13.2 As a matter of fact, the Board also claimed possession of the entire land, which included the land in issue. Ms Ahlawat at some stage stated that what the Board had in its favour was the paper possession, while the physical possession of the land continued with respondent no. 1. This aspect is not in dispute as is reflected not only in the interim order passed by this court on 23.01.1987 but is also evident on a bare perusal of the possession report which has been placed on record. In this behalf, I may only refer to the possession proceedings drawn up by the officers of the LAC. The relevant extract of the same reads as follows:

“..... The possession of the land bearing Khasra no. 302 (3-12) which is within the boundary walls of the temple and where a big Samadhi is erected has not been, for the present, is not handed over. Except this possession proceedings were completed on the spot....” (emphasis is mine)

14. In this background, could it be said that the Board was not the legal owner of the land in issue, once acquisition proceedings were concluded. To deal with this poser, I need not go further than adverting to the counter affidavit filed by the Board in CWP No. 149/1987. The relevant extract reads as follows:

“...After taking over the possession of the land, this factum was recorded in the Police Station Narela vide report of even date a copy of which is attached herewith as Annexure R-V. The land including the land of the petitioner has also been mutated in the revenue record in favour of Delhi Agricultural Marketing Board...”

(emphasis is mine)

14.1 The same aspect is also highlighted in the affidavit of one Mr Banshi Dhar, filed on behalf of the Board, in CM No. 254/1987 in CWP 149/1987. The relevant extract reads as follows:

“.... The land of the petitioner measuring 7 bighas bearing Khasra No. 303 (3-0), 298 (3-0), 296 (0-10) situated in village Mamurpur, Narela, Delhi, has been acquired by award No. 195/1986-87 dated 19.9.1986. The possession of the land was taken over by the Land Acquisition Collector and handed over to the Answering Respondent on the 22nd September, 1986. The petitioner has, therefore, no right, title or interest in the said land.....

..... The Acquisition proceedings have been completed by the pronouncement of the award on 19th September, 1986 and taking over the possession on 22nd September, 1986. It is denied that any balance of convenience lies in favour of the applicant.....”.

(emphasis is mine)

14.2 The same aspect is reiterated in another affidavit filed by Mr S.P. Ashta, once again in the writ proceedings. The relevant extracts read as follows:

“....The Delhi Agricultural marketing Board acquired the land bearing Khasra No. 289, 290, 291, 292, 293, 294, 296, 298/1, 298/2, 302 and 303 (including the land of the petitioner) situated in the revenue estate of village Mumoorpur and adjoining the land in the revenue estate of village Khureni which had already been notified for acquisition under the Land Acquisition Act for the public purpose of “development of Nerala Township”. The award was announced on 19th September, 1986. The payment of the awarded amount was fully made by the Delhi Agricultural marketing Board to the Land Acquisition Collector before taking over the possession....”.

(emphasis is mine)

15. A perusal of the stand taken by the Board before this court in the aforesaid writ petition would clearly show that, it is the Board's stand that the acquisition proceedings stand concluded and that it had acquired legal title of the entire land, which included the land in issue. Therefore, as rightly held by the learned Arbitrator, the only entity which was competent to execute the settlement agreement was the Board itself. Though, there is no evidence led that there was an amorphous suggestion made both before me and the Arbitrator that the settlement agreement was executed by the then Chairman of the Board with respondent no. 1 for oblique motives. This aspect has been dealt with by the learned Arbitrator; I need not dwell on it once more, except to say that admittedly, no evidence has been led before the learned Arbitrator to establish the veracity of the said assertion. The dates and events, as referred to hereinabove, belie such a charge. Surmises and conjectures cannot supplant evidence.

16. This brings me to the last two aspects pertaining to the necessity of execution of a conveyance deed by the GOI in favour of the Board, and the

requirement of a NOC being issued by the LAC in favour of the Board.

16.1 In so far as execution of conveyance deed is concerned, I have already recorded, (as I was told by Ms Ahlawat in court today), there is no material placed before the learned Arbitrator to demonstrate that such a requirement in law, or any practice, obtained in this behalf. As a matter of fact, as indicated above, Mr Gupta referred me to the following deposition of the Board's witness which seems to indicate that there is no requirement of the nature sought to be banded by the Board. The witness, who deposed, and on whose deposition reliance is placed by Mr Gupta, was one Mr M.G. Prabhakaran. The relevant extract from his deposition is noted hereinafter:

“...The Narela Mandi at present, is situated on about 33 acres of land. Since beginning, this land of 33 acres was acquired for setting up of the Grain Mandi. This 33 acres of land was comprising of the land situated in Village Mamoorpur and Village Kureni. It is correct to suggest that land of both the villages was acquired by the same acquisition proceeding under the Land Acquisition Act. After the acquisition of the land, entire land by the Land Acquisition Department, we were handed over the physical possession of the land of both the villages. A possession letter was issued by the Government of India in our favour and there is no other document. It is correct that there is no conveyance Deed executed by the Government of India in favour of the Board in regard to the land situated at Village Kureni. Volunteered – Only possession letter is a document executed by the Government in favour of the Board in regard to the Village Kureni. Similar is the possession letter issued by the Government in favour of the Board with respect to the land in village Mamoorpur. We have got the possession letters with us on record...

.....The 51 three storeyed shops have not yet been allotted to any person. In future, the same shall be allotted to the traders. Such allotment shall be made either by the Board or by the Agricultural Produce Marketing Committee (APMC), Narela.

We don't require any permission from any government authority or DDA for making such allotments and such allotments shall be made solely by our Board only. The money(s) received from such allotment shall also go to the Board or APMC, Narela and no other person shall have any claim over the same. All development and affairs of the Mandi/ Grain Market are within the discretion of Board or APMC, Narela only. While making the allotments of shops, the allotment letters and possession letters will be issued in favour of the allottee by the Board or the APMC, Narela.....”
(emphasis is mine)

16.2 The aforesaid would clearly show, that there is no requirement of execution of a conveyance deed by the Government. The Board acquired the right, title and thus the ownership qua the entire 33 acres of land, which included the land in issue and, therefore, by a logical corollary, it was competent to enter into a settlement agreement de hors the conveyance deed being executed in its favour by the Government, contrary to what is sought to be contended now. As a matter of fact, the Board had taken physical possession of entire land save and except that portion of the land over which respondent no. 1 claimed ownership. In respect of this land, it had what is loosely referred to as ‘paper possession’.

17. The last aspect with regard to that which finds a mention in clause (g) of the settlement agreement, i.e., issuance of a NOC, I am in agreement with Mr Gupta's contention that a NOC by LAC is required to be issued only to establish that there are no acquisition proceedings pending qua the land in respect of which parties intend to execute a conveyance deed. There are no acquisition proceedings pending in the instant case, and therefore, if at all, issuance of a NOC by the LAC will only be a ministerial act. The contention of the Board that the learned Arbitrator has, in making

observation in that regard, gone beyond the scope of the arbitration, according to me, is an argument that is untenable and hence is rejected.

18. For the reasons given hereinabove, I find no error in the award. The petition under Section 34 of the 1996 Act is, accordingly, dismissed. The parties shall, however, bear their own costs.

RAJIV SHAKDHER, J

JULY 01, 2013

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