

Court No. - 17

Case :- WRIT - C No. - 9282 of 2023

Petitioner :- Smt. Amrit Kaur And 5 Others

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Revenue U.P. Lko. And Another

Counsel for Petitioner :- Shishir Chandra, Gangeshwar Pandey, Mrs. Suniti Sachan

Counsel for Respondent :- C.S.C.

Hon'ble Alok Mathur, J.

1. Heard Sri Syed Tanzeb Ahmad, Advocate holding brief of Sri Shishir chandra, learned counsel for petitioner as well as learned Standing Counsel for respondents.

2. It has been submitted by learned counsel for petitioner that petitioners along with one Sri Rajendra Nath Huja had jointly executed a Memorandum of Joint Venture agreement on 06.06.2013 with Ratn Housing Development Ltd., a company duly incorporated under the companies Act. The Joint Venture agreement was executed with regard to agricultural and to raise a multistoried building over the said land. Several permissions were required to be obtained from various Government Departments and accordingly the said Joint Venture Agreement was presented before the Arbitral Tribunal in a proceeding under the Arbitration and Conciliation Act.

3. The Arbitral Tribunal after perusing the Joint Venture Agreement was of the opinion that the said instrument was not duly stamped and made a reference under Section 33 of the Indian Stamps Act.

4. The District Magistrate on receipt of the said reference had issued notices to the petitioners to show cause as to why the said instrument be not impounded. The petitioner on receipt of the said notice, replied to the notices and submitted that as per Proviso to Clause 3 of Section 33 of the Act, no action can be taken after a period of 8 years from execution of the said agreement and the Joint Venture Agreement was executed sometimes in 2013 and more than 8 years has lapsed hence the same is liable to be impounded.

5. Considering the reply submitted by petitioners, the District Magistrate had proceeded to pass an order dated 14.11.2022 stating that preliminary objections raised by the petitioners

would be considered at the stage of final decision of the case. It is the order dated 14.11.2022 which has been assailed before this court.

6. Learned counsel for petitioners in support of his submissions has submitted that no proceedings can be initiated after a period of 8 years from the date of execution of the agreement under Section 33 of the Act of 1989 and submits that the District Magistrate ought to have passed necessary orders on the date itself rather than listing the case for final hearing.

7. Learned Standing Counsel on the other hand has submitted that objections of the petitioner have yet to be considered and there is no infirmity in the order of District Magistrate who has posted the matter for final hearing and recorded that objections raised by the petitioners would be considered at the stage of final decision of the reference received from the Arbitral Tribunal.

8. I have heard learned counsel for parties and perused the record.

9. It is noticed that District Magistrate has proceeded under Section 33 of the Act of 1989 after receipt of reference of the Arbitral Tribunal. It is further noticed that the instrument was executed on 06.06.2013 and accordingly the petitioner have taken various pleas which were admissible to them under the provisions of Act of 1989 to oppose the said notice including the fact that instrument cannot be impounded after a period of 8 years.

10. The question of limitation is always a question of fact and law and it is for this reason that the District Magistrate has recorded that the objections raised by the petitioners would be decided at the preliminary stage best at the stage of final disposal of the matter.

11. This Court does not find any infirmity in the order of District Magistrate inasmuch as he has not passed any order on merits effecting the right of the petitioners nor has he made any comments with regard to the objection of limitation raised by the petitioners in their reply.

12. There is no infirmity in the order of District Magistrate inasmuch as he has held that the objections filed would be decided after hearing the parties and after taking required evidence. It could not be demonstrated that the issue of limitation should have been decided at the preliminary stage and therefore this Court does not find any error in the impugned

order.

13. In light of the above, no interference is required as no vested right has been taken away and the District Magistrate has merely stated that objections will be decided at the stage of final hearing.

14. In light of the above, without interfering in the matter the writ petition is disposed of with a direction to the district Magistrate to consider and decide the matter with expeditious. The petitioners undertake to cooperate in the said proceedings.

15. Supplementary affidavit filed today is taken on record.

(Alok Mathur, J.)

Order Date :- 30.10.2023

Ravi/