IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.2508 of 2011 (O&M)
Date of Decision:24.12.2014

Air India Ltd.

….Appellant

Versus

Estate Officer, HUDA and another

….Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. M.S. Bedi, Senior Advocate with
Mr. S.R. Chaudhuri, Advocate for the appellant.

Mr. Ajay Nara, Advocate for the respondents.

NAVITA SINGH, J.

1. An arbitral award was passed on 19.2.2008 in which the Arbitrator allowed deduction of 10% of the amount paid by the appellant. Objections were filed against the award, which were dismissed vide the impugned order.

2. The backdrop of the matter is that the respondent, vide its memo dated 2.12.1995, made allotment of 8.7 acres of land to the appellant at total cost of Rs.725.32 lac, for which, deposit of 10% of the total cost i.e. Rs.72.53 lac was demanded from the appellant. The said amount was deposited by the appellant on 23.12.1995. Thereafter, a letter was issued by the respondent demanding payment of further installment, which was 15% of the total cost. The amount was to be deposited within 30 days from the letter of intent i.e. 17.5.1996. The amount was deposited by the appellant.

3. Remaining 75% of the amount was payable in five equal annual installments and letter of acceptance was issued by the respondent to the appellant and an agreement was also signed between the parties. Possession of the land was to be delivered within 90 days from the date of issue of the allotment letter but the respondent failed to hand over the land as committed.

The appellant waited for the respondent to perform its part of the contract. Since the respondent did not handover the possession for a long period, the appellant was constrained to abandon the whole contract and decided to surrender the land. Accordingly, a letter was written to the respondent and refund was claimed. Since the needful was not done by the respondent, the matter was referred to the Arbitrator as per the agreement between the parties and the Arbitrator passed the award as mentioned above at the outset.

4. The court below dismissed the objections petition of the appellant on the ground that the respondent i.e. HUDA had a policy regarding refund of the earnest money subject to deduction of 10% of the deposited amount and, therefore, the Arbitrator, who acted in consonance with the policy and guidelines of HUDA, made no mistake in passing the award in that regard.

5. Learned counsel for the appellant argued that all facts of the matter stood admitted by the respondent so far as the allotment and payment of money by the appellant was concerned. The respondent had also agreed to the request of surrender made by the appellant and refund was to be made. The Arbitrator, however, simply acted on some letter of the respondent, which contained guidelines/policy but was not conveyed to the appellant. The said letter (Annexure A10) was written by the Chief Administrator, HUDA to all the Administrators, Estate Officers and Assistant District Attorneys in the Estate Offices. It was mentioned that in view of judgment delivered by this Court on 18.7.1995 in Civil Writ Petitions No.867 and 887 of 1994, the provisions of sub Sections (2) (3) and (4) of Section 17 of the HUDA Act would be deemed to have been satisfied and it was decided that surrender of residential plot would be allowed after forfeiting an amount of 10% and other dues payable. Copy of judgment passed in Civil Writ Petitions No.867 of 1994 is produced by counsel

for the appellant but the date of decision mentioned in that is 12.2.2014 and also that relates to a different matter.

6. The contention of learned counsel for the respondent that the Arbitrator rightly acted as per the policy framed by HUDA is, therefore, not acceptable.

7. Learned counsel for the appellant also rightly argued that nothing was mentioned about the deduction either in the allotment letter or in the agreement between the parties. These facts are admitted by the other side. Also it is a fact not denied that as per the allotment letter (Annexure A5), possession was to be delivered by the respondent within 90 days from the date of that letter which was 8.10.1997. Admittedly, the possession was not delivered as committed and the appellant decided to surrender the land and wrote letter dated 2.11.1999 in that regard. The appellant waited for more than two years after the letter of allotment and due to inaction on the part of the respondent, surrender was made.

8. Since the entire fault lay with the respondent i.e. HUDA, the appellant could not be penalized for that. The money of the appellant remained blocked for a long period and its project to put up a housing society was stalled and rather it was the appellant who was being penalized.

9. Though the scope of Section 34 of the Arbitration and Conciliation Act is limited, yet in the given facts and circumstances, it can be said that the Arbitrator acted beyond the scope of agreement and allowed deduction of 10% without any cogent basis. The Arbitrator was the Chief Administrator, HUDA and may be for that reason he thought it advisable to adhere to the guidelines issued by HUDA through Chief Administrator, little understanding that the appellant was put to harassment and financial loss due to delay caused by HUDA itself.

10. The appeal is allowed. The impugned order as also the award passed are set aside. The respondent shall pay the amount of 10% amounting to Rs.76,35,233/- with interest at the rate of 12% per annum.

(NAVITA SINGH)
JUDGE

24.12.2014
ishwar

Whether to be referred to reporter: Yes