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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.336 of 2015

1. M/s Vimal Constructions, a partnership firm duly registered under the relevant provisions of the Partnership Act, 1932 and carries on the business of Engineers and Contractors at Ravi Bhawan, Jai Stambh Chowk, Raipur – 492 001 (Chhattisgarh)
2. Kamal Chand Jain, son of Late Maniklal Jain, aged about 40 years, Partner M/s Vimal Constructions, resident of 21, South Avenue, Choubey Colony, Raipur, Chhattisgarh, Civil and Revenue District Raipur

---- Appellants

versus

1. The Municipal Corporation, Raipur a body corporate having common seal and perpetual succession having being constituted under Section 7 of the Municipal Corporation Act, 1956 and having its principal office at White House, Chhotapara, Raipur, Chhattisgarh
2. The Commissioner, Municipal Corporation, Raipur, Chhattisgarh
3. The State of Chhattisgarh, through the Principal Secretary of the Government of Chhattisgarh, Department of Public Works, Mantralaya (D.K. Bhawan), G.E. Road, Raipur, Chhattisgarh
4. Secretary of the Government of Chhattisgarh, Department of Town Administration and Development (Nagariya Prashasen Evam Vikas), Mantralaya, Raipur, Chhattisgarh
5. The Divisional Commissioner, Raipur Division, Raipur, Chhattisgarh

---- **Respondents**

For Appellants	: Shri B.P.Sharma and Shri Ankur Agrawal, Advocates
For Respondents No.1&2/Corporation	: Shri H.B.Agrawal, Senior Advocate with Shri Pankaj Agrawal, Advocate
For Respondents No.3,4&5/State	: Shri U.N.S. Deo, Government Advocate

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Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per Navin Sinha, Chief Justice

10/9/2015

1. The present appeal arises from order dated 1.5.2015 dismissing Writ Petition No.836 of 2002. The Learned Single Judge held that the writ petition was not maintainable against the order dated 22.1.2002 passed by

Respondent No.4 and the remedy for the Appellant lay before the Arbitration Tribunal under the Chhattisgarh Madhyastham Adhikaran Adhiniyam, 1983 (hereinafter referred to as “the Arbitration Tribunal”).

2. Learned Counsel for the Appellant submitted that Clause 17 of the contract agreement provided that any grievance by either party was to be first raised before the Divisional Commissioner. Appeal from the same lay before Respondent No.4 within thirty days, and whose decision was to be final and binding on the parties. If the order was final and binding the only remedy available to the Appellant was under Article 226 of the Constitution to challenge it on limited grounds available in judicial review. The appellate order could not be assailed before the Arbitration Tribunal as no dispute was sought to be raised by the Appellant with regard to any amount. It is only a dispute under Section 2(d) of the Arbitration Tribunal Act that could be carried to the Tribunal. Dispute has been defined as a claim for ascertained money valued at Rs.50,000/- or more relating to any difference arising from execution or non-execution of a work or contract. The Appellant was not raising any dispute under the contract claiming any sum of money.

3. Without prejudice to the same, Learned Counsel for the Appellant submitted that the Respondent Corporation had petitioned the Divisional Commissioner on 4.9.1997 acknowledging that the complete construction area to be developed was handed over by it to the Appellant on 6.1.1996 pursuant to agreement dated 12.1.1993. Yet it was contended that because the Appellant had otherwise commenced construction before that date, the three year period for completion of the works was to be reckoned from the latter date. As the Appellant had failed to complete the construction in three years, the Respondent Corporation was entitled to penalty compensation of Rs. Two lacs per month. The Respondent Corporation simultaneously acknowledged that because of certain stay orders passed by the Court, the complete work area as required under Clause 4(a) of the agreement could not be handed over to the Appellant before 6.1.1996. The Divisional Commissioner held that in the circumstances the Appellant was not at fault under Clauses 2 and 4(m) and thus not liable to pay penalty of Rs.2,00,000/- per month from 12.3.1993 for having failed to complete the construction in three years. It was also noticed that notwithstanding the same, the Appellant had abided by its obligations under the agreement by payment of Rs.3,11,11,101/-.

4. The Respondent Corporation carried the matter in appeal to Respondent No.4. The appellate authority acknowledged that there was substance in the contention of the present Appellant that it was the Corporation which had failed to abide by the conditions in not providing the entire work area till 6.1.1996. Yet by a perverse reasoning, Respondent No.4 held that because the Appellant had not made any formal request for extension of the period for completion of works calculated from 12.1.1993 and had nonetheless managed to do some work in the available area, the order of the Divisional Commissioner was not sustainable and the Appellant was liable to pay the penalty amount. It was thus submitted that the reasoning and conclusions of Respondent No.4 were self contradictory. It amounts to giving an advantage to the Respondent Corporation for its own lapses and admitted breach of the terms of the agreement by it.

5. Learned Senior Counsel Shri H.B. Agrawal appearing on behalf of the Respondent Corporation submitted that the order by Respondent No.4 is well considered and reasoned. It calls for no interference in judicial review. The fact that the Appellant continued with substantial construction despite the entire work area not having been handed over and completed the lower basement, upper basement, ground floor and first floor, it is evidence that it was not the reason for the Appellant being unable to complete the entire construction within three years calculated from 12.1.1993. The Appellant had an alternative remedy before the Arbitration Tribunal under the agreement as held by the Learned Single Judge and the writ petition was not maintainable.

6. We have considered the submissions on behalf of the parties, the terms of the agreement and the orders passed by the Divisional Commissioner, Respondent No.4 and also considered the issue of alternate remedy.

7. Leaving open the larger question as to whether the writ petition was barred because of the alternate remedy, we shall consider the maintainability of the writ petition on that premise. Normally, an arbitration clause in the agreement or provision of an alternate remedy would bar a writ petition especially if complicated and disputed question of facts were involved requiring inquiry and taking of evidence. But it is not an absolute principle and would vary on the facts of a case. If on the face of it the order is arbitrary and perverse, no disputed facts are involved, the writ court in the interest of justice may lift the self imposed restriction and the writ petition would be maintainable.

8. Reference may appropriately be made to (2011) 5 SCC 697 (Union of India v. Tantia Construction (P) Ltd.) observing as follows :-

> "33. Apart from the above, even on the question of maintainability of the writ petition on account of the arbitration clause included in the agreement between the parties, it is now well established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution.
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> 34. We endorse the view of the High Court that

> notwithstanding the provisions relating to the arbitration clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the writ petition filed on behalf of the respondent Company. We, therefore, see no reason to interfere with the views expressed by the High Court on the maintainability of the writ petition and also on its merits."

9. A development agreement was executed between the Appellant and the Respondent Corporation on 12.1.1993 for construction of the first phase of a commercial complex on a parcel of land measuring 6854 Square Meters belonging to the Corporation identified as Khasra Numbers 625, 626/1, 626/2, 629 and 630 in Municipal Ward No.24 at G.E. Road, Raipur. Clause 2 of the agreement provided that the agreement would be deemed to have commenced from the date the Respondent Corporation gave vacant and peaceful possession of the entire area comprised in the agreement and the period of three years for completion was to be reckoned from the last date of possession. Clause 4(f) of the agreement further provided that the Corporation would make over vacant possession of the entire area comprised in the said premises to the developer after eviction of the occupiers/encroachers at its own cost. No further discussion is required to establish that there were encroachments affecting the construction and which were required to be removed by the Respondent Corporation. By a deeming fiction the contract was to be effective from the date encroachments were removed and vacant possession handed over of the entire contract area and not from the date of signing of the agreement. Clause 4(m) of the agreement further recites that on the date of the agreement a portion of the lands was in actual physical possession and occupation of different persons either as tenant/licensees of the owners/rank trespassers/encroachers and since the building was to be constructed on the said premises the encroached/occupied portion was to be used as an approach to the main building to be constructed. It needs no discussion or extensive reasoning that if the approach area to the construction was severely restricted, the construction naturally had to be affected for reasons not attributable to the Appellant. The fact that notwithstanding the same the Appellant may have been able to raise some construction did not amount to compliance by the Respondent Corporation of its obligations under the contract. Clause 4 of the agreement provided that the Corporation was to hand over vacant and peaceful possession of the entire area to the Appellant within six months from the date of the agreement. In the event of failure to abide by the same, the Appellant was entitled to suspend payment of future installments notwithstanding which it abided by its obligations. It is not the case of the Corporation that it removed the encroachments to facilitate the construction within six months from the date of the agreement.

10. Clause 5 of the NIT which also formed part of the agreement provided that if the Appellant desired extension of time for completion of the contract on the ground of its having been unavoidably hindered, it would apply in writing to the Municipal Commissioner. A logical and reasonable interpretation of the same would not include a breach by the Respondent Corporation but only for reasons attributable to the Appellant alone.

11. The terms of the agreement are clear and admit of no ambiguity. The parties also do not appear to have been under any confusion with regard to their respective obligations for provision of the entire work area free of any hindrances, reckoning of the date for commencement of the contract by a deeming fiction. If the terms of the agreement are clear, it has to be given full effect and it is not open for any person or authority to apply its own interpretation to the same devoid of the real intention of the parties. In (1999) 3 SCC 465 (LIC of India v. Raj Kumar Rajgarhia) it was observed:-

> "15…….But, we are of the opinion that it is not always possible to be guided by the meaning of the words as found in the dictionary while resorting to interpret the actual meaning of a word found in an agreement

> between the parties. In our opinion, while construing the meaning of a particular word found in an agreement between the parties the intention of the parties to the document in question will have to be given necessary weightage and it is not possible to give a wider and liberal meaning merely because one of the parties to the said agreement is a public authority……."

12. The Respondent Corporation petitioned the Divisional Commissioner under Clause 17 of the agreement on 4.9.1997 acknowledging that the entire work area was finally handed over to the Appellant on 6.1.1996 and therefore the completion period was to be reckoned till 6.1.1999. It then acknowledged that twenty-four shops could not be removed on account of the stay order by the Court because of which possession of the full work area of the premises which was subject matter of the agreement could not be given to the Appellant under Clause 4(a) of the agreement. But, it then opined that because the Appellant had raised some construction notwithstanding the same, it could not be considered an impediment in construction by the Appellant within the time period. The Commissioner after hearing the parties held that if the Respondent Corporation had itself failed to comply with the terms of the agreement by handing over possession of the entire premises which was subject matter of the agreement, there was no justification in its claim for penalty of Rs.2,00,000/- per month from 6.1.1996. The matter was carried in appeal by the Respondent Corporation to Respondent No.4. The appellate order held that there was substance in the contention of the Appellant that the entire premises had not been handed over to it under the agreement till 6.1.1996. But, thereafter it opined that nonetheless, the Appellant was still required to make an application for extension of period for completion of works which it did not do, as also the fact that despite not being handed over the entire area for construction, it did construct the lower basement, upper basement, ground floor and first floor. Therefore, the Municipal Corporation was correct in contending that the period of three years was to be reckoned from 6.1.1993 till 6.1.1996 and not from 6.1.1996 till 6.1.1999 because construction despite obstacles had commenced after the agreement on 6.1.1993.

13. If the Municipal Corporation in its original application to the Divisional Commissioner acknowledged that it had failed to hand over the entire premises to the Appellant under the agreement for construction and did so only on 6.1.1996, indisputably the fault lay with the Respondent Corporation in having failed to abide by the terms of the agreement. In that situation, according to the agreement between the parties, the deemed date of the commencement of the agreement was to be when the entire premises were made available on 6.1.1996, a fact not in dispute. The fact that the Appellant may have nonetheless commenced construction cannot be interpreted with all its constraints to mean that the Respondent Corporation was at liberty not to discharge its obligations and despite the fault being its own in abiding by the conditions of the contract was entitled still to a compensation of Rs.2,00,000/- per month reckoned from 6.1.1993. There could not be two dates for commencement of the construction because of the deeming fiction clause. The order of the appellate authority is self contradictory when it acknowledges that there was a substance in the claim of the Appellant and yet rejects it without any reasons by invoking the clause for extension of the contract by the Appellant which would have applied if the works were delayed for reasons attributable to the Appellant alone. The Appellant was not required to apply for extension of time for completion of the work if it was the Respondent Corporation which had failed to abide by the terms of the contract and failed to hand over the entire premises under the agreement till 6.1.1996. Respondent No.4 posed to himself a wrong question and therefore arrived at a wrong conclusion in the law. The question to be considered was the date possession of the entire work area was handed over to the Appellant and which was to be the deemed date for commencement of the agreement. Due to whose fault was the handing over of possession delayed. It was observed in (2005) 3 SCC 241 (Cholan Roadways Ltd. v. G. Thirugnanasambandam) as follows :-

> "34….It is now well settled that a quasi-judicial authority must pose unto itself a correct question so as to arrive at a correct finding of fact. A wrong question posed leads to a wrong answer……"

The order therefore is not sustainable in its present form and the matter has to be remanded.

14. The Secretary, Urban Administration and Development, Respondent No.4 shall hear the parties afresh, apply his mind to the terms of the agreement, the original application of the Respondent Corporation before the Divisional Commissioner, the conclusions of the Divisional Commissioner, the grounds urged before him by the parties in appeal to arrive at a fresh determination fixing the deemed date when possession was handed over to the Appellant under the agreement to determine the rights and liabilities of the parties keeping in mind that the intention of the parties had to be culled out from the language of the agreement and not what the appellate authority or any other may opine with regard to the same.

15. The appellate order dated 22.1.2002 is set aside and the matter remanded to Respondent No.4 for fresh determination in accordance with law at an early date expeditiously.

16. The appeal is allowed.

Sd/-	Sd/-
(**Navin Sinha**)	(**P. Sam Koshy**)
CHIEF JUSTICE	**JUDGE**

Gopal