

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 482 OF 2014

Jagruti Arvind Shah & Anr.

..... Petitioners

VERSUS

Lajwanti Suresh Harpalani & Ors.

..... Respondents

Mr.P.Narulla, a/w. Ms.Shweta Doshi, i/b. Jhangiani Narulla & Associates for the Petitioners.

Mr.Vishwajit Sawant, a/w. Mr.Rajesh Singh for Respondent nos. 1 to 3.

CORAM : R.D. DHANUKA, J.

DATED : 24th FEBRUARY, 2015

P.C.

By this petition filed under section 34 of the Arbitration and Conciliation Act, 1996 the petitioner seeks to impugn the arbitral award dated 12th September, 2013 dismissing the claims of specific performance and damages filed by the petitioners. The petitioners were the original claimant before the learned arbitrator whereas the respondents were the original respondents. On 7th February, 2007 a development agreement was entered into between the petitioners and the constituted attorney of the deceased Mr.Suresh Harpalani under which the petitioners were granted development rights in respect of the property by demolishing the existing structures and to construct a new building on the property after getting the plans sanctioned from the Bombay Municipal Corporation.

2. The said deceased executed a power of attorney in favour of the petitioners authorizing the petitioners to do various acts for the development of the said property. It is the case of the petitioners that agreements for permanent alternate

accommodation came to be entered into with 6 occupants under which the petitioners had agreed to give to the occupants Rs.15/- per square feet in respect of the areas occupied by them towards the temporary alternate accommodation.

3. Learned counsel appearing for the petitioners submits that though the original owner obtained certain NOCs from the society, a copy of such NOC was not furnished to the petitioners. Learned counsel submits that though the six occupants had entered into agreements for alternate accommodation with the petitioners, even if they failed to vacate the petitioners had no objection to relieve the original owner of such obligation to get vacant possession under the development agreement entered into between the parties.

4. It is submitted by the learned counsel that though under clause 5 of the development agreement, the agreement would have expired within six months, by correspondence the original owner had kept the agreement alive and had requested the petitioners not to proceed with the development unless all the NOCs were obtained by the original owner. Though there was no such pleadings before the learned arbitrator that the agreement had come to an end by efflux of time, the learned arbitrator on his own interpreted clause 5 of the agreement and has erroneously come to the conclusion that the agreement had come to an end on expiry of the six months from the date of the said agreement.

5. Learned counsel placed reliance on the judgment of the Supreme Court in case of ***Rachakonda Narayana vs. Ponthala Parvathamma and another (2001) 8 SCC 173*** and in particular paragraph (8) in support of the submission that since the petitioners were ready and willing to relieve the respondents of their obligation to obtain the permission from the society or of the occupants and was willing to pay

consideration amount without such compliance, the learned arbitrator ought to have granted specific performance in view of section 12(3) of the Specific Relief Act. It is submitted that it was not even the case of the respondents that the society had not granted NOC at all. It was the case of the respondents that the society had granted conditional NOC. The petitioners were agreeable to relieve the respondents of the conditional NOC granted by the society and were willing to go ahead with the performance of the development agreement even without respondents obtaining any NOC from the society or the tenants. Learned counsel submits that the letter of the respondents purporting to inform the petitioners that the society had granted conditional NOC was in the year 2007 and immediately thereafter the petitioners had in arbitration agreement.

6. A perusal of the award indicates that though there was no such objections raised in the written statement by the respondents that on expiry of six months, in view of clause 5 of the development agreement, NOC not having been obtained by the original owner, the development agreement would come to an end, the learned arbitrator has interpreted the terms of the agreement and has rendered a findings that the agreement had come to an end. In my view the learned arbitrator while considering the prayer for grant of specific performance was entitled to consider the terms and conditions of the development agreement and to ascertain whether specific performance thereof could be granted or not.

7. A perusal of the record indicates that the respondents had brought it on record that the society had granted only conditional NOC. The learned arbitrator has considered this fact that in view of the conditional NOC granted by the society which was brought to the notice of the petitioners, it was not a fit case for grant of specific performance. Such conditional NOC was granted long back. The learned

arbitrator has also considered the fact that though six of the tenants had executed agreement for permanent alternate accommodation the tenants had backed out. Considering all these facts on record, the learned arbitrator in my view has rightly rendered the finding that no specific performance of such agreement could be granted in favour of the petitioners.

8. A perusal of the award indicates that the learned arbitrator has considered the entire evidence on record and has rendered a finding of fact which cannot be interfered with under section 34 of the Arbitration and Conciliation Act, 1996 unless such findings are perverse. In my view findings rendered by the learned arbitrator are not perverse. The interpretation of the development agreement by the learned arbitrator is also a possible interpretation and thus such interpretation cannot be substituted by other interpretation under section 34 of the Arbitration Act by this court.

9. In so far as judgment of the Supreme Court in case of ***Rachakonda Narayana (supra)*** relied upon by the learned counsel for the petitioners is concerned, in my view the said judgment would not assist the petitioners for the reason that in this case the specific performance of suit agreement which was conditional and dependent upon the no objection of the society as well as occupants, development of such plot was impossible. Petition is devoid of merits and is accordingly rejected. There shall be no order as to costs.

[R.D. DHANUKA, J.]