

In the High Court of Judicature at Madras

Dated : 09.01.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.257 of 2012

Mohanrao Dandamudi

.. Petitioner

-vs-

1.The Government of Tamil Nadu,
Rep. by the Secretary to the Govt.,
Information & Tourism (T3) Dept.,
Fort St. George, Chennai.

2.TamilNadu Tourism Development
Corporation Limited, rep. by its
Managing Director.

.. Respondents

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint Arbitrator/s to resolve the dispute arising out of the Agreement dated 24.06.1985 read with the judgments dated 30.07.2009 of this Court in W.P.No.7162 of 1999 and W.P.No.5212 of 2000 to resolve the issues between the petitioner and the respondents.

For Petitioner

: Mr.R.Venkataraman

For Respondents

: Mr.P.H.Aravind Pandian,
Addl. Advocate General
Asst. by Mr.M.Venugopal,
Spl.G.P. (C.S.)

* * * * *

ORDER

The petitioner, an Indian, who became a naturalized Citizen of U.S.A. in 1978, claims to have invested funds in the tourism project in pursuance to the offers made by the Government of Tamil Nadu based on U.N. Development Program. In furtherance of this arrangement, three G.Os. were passed in 1984 for the following:

- a) For setting up International Beach Resort complex at Thiruvidadanthai
- b) For establishing Internation Youth Resort at Muttukadu
(With respect to the above preliminary agreements setting out the terms were also entered into in December 1984)
- c) To set up Accommodation facilities and Shopping Complex at the vacant land of 83 grounds near Valluvar Kottam.

2.A final comprehensive agreement was entered into on 24.06.1985, after the initial study. Suffice to say that this Court is concerned with the disputes arising out of the said G.Os. and the subsequent cancellation vide G.O. Ms.No.130 and 131, dated 30.03.1989.

3.The petitioner took out various proceedings challenging that cancellation, the Courts asked to re-examine the same, but the matter

could not be resolved. The last such adjudication is stated to be in W.P.Nos.7162 of 1999 and 5212 of 2000 decided on 20.07.2009, which record the submission of the respondents that the only remedy for the petitioner is to take recourse to arbitration. But, the Court opined that the Government should first take a decision on the claim of the petitioner arising out of the cancellation of the G.Os., but if the matter was still not resolved, the petitioner was at liberty to either approach the Court or work out his remedies under the arbitration clause.

4.It appears that thereafter the respondents offered a sum of Rs.55,08,000/- to the petitioner on 27.05.2010, which was not accepted by the petitioner. The dispute, thus, survives and the petitioner approached this Court by filing the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996.

5.The counter-affidavit filed by the respondents seeks to defend its position to cancel the earlier G.Os. inter alia on the ground that the land could not be alienated. Once again it is not necessary to go into the details of the defence, as that is not the subject matter of this Court, but suffice to say that in view of C.A.G.'s order opining adversely, the G.Os. were terminated.

6.As far as the defence to the arbitration clause is concerned, the

said clause is not disputed, but it is stated that due to lapse of 25 years of time, the law of limitation would apply.

7. On hearing the learned counsel for parties, I am of the view that the defence to the petition is unsustainable. The petitioner has been raising the grievance through writ proceedings, the orders culminated in his favour, to the extent of the matter being re-examined by Government authorities and the respondents themselves took the stand that the remedy of the petitioner was by arbitration. All these aspects, in a sense, came to an end only when the amount was offered in May 2010 by the respondents, which was refused by the petitioner. The present petition has been filed in 2012, well within time. Thus, I am of the view that the arbitration clause comes into play, which reads as under:

"39. If any dispute and/or difference shall at any time arise between the parties to this agreement or any clause or their respective rights, claims or liabilities hereunder or otherwise, however, in relation to or arising out of or concerning this agreement, such dispute and/or differences shall be referred to arbitration by two arbitrators, one to be appointed by each party and in the event of the arbitrators differing, to an umpire to be appointed by the said two arbitrators before entering upon the reference. The Arbitration Act 1940 as amended from time to time shall apply."

8.Learned counsel for the parties state that in view of the aforesaid conclusion, a Single Arbitrator may be appointed and the proceedings be governed by the Arbitration and Conciliation Act, 1996. This joint plea is accepted.

9.In view of aforesaid, as proposed by learned counsel for the parties by agreement, I appoint **Mrs.Justice Chitra Venkataraman**, a retired Judge of this Court, as the Sole Arbitrator to enter upon the reference and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally.

10.The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

(S.K.K., C.J.)
09.01.2015

sra

The Hon'ble Chief Justice

(sra)

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