IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

FAO No.5566 of 2014 (O&M)
Date of decision: 23.09.2015

Haryana Urban Development Authority and another

... Appellants

vs.

Ishwar Ram and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Vishal Garg, Advocate
for the appellants.

<u>AMIT RAWAL J. (Oral)</u>

<u>C.M. No.15455-CII of 2015</u>

For the reasons stated in the application, duly supported by an affidavit, delay of 99 days in filing the appeal, is condoned.

C.M. stands disposed of.

<u>FAO No.5566 of 2014 (O&M)</u>

Haryana Urban Development Authority (hereinafter referred to as the HUDA) is in appeal against the order dated 07.10.2013, whereby, their objections filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “1996 Act”), against the Award dated 14.09.2010, have been dismissed.

Mr. Vishal Garg, learned counsel appearing on behalf of the appellants submits that since the terms and conditions of the allotment are sacrosanct between the allottees and governing body, i.e., HUDA, HUDA on account of enhancement had made a demand of amount from the allottees. The aforesaid matter was challenged by the allottees in this Court, vide civil writ petition bearing No.3115 of 2008. After realizing that, the matter involved interpretation of calculation, the same was referred to the Arbitrator. In pursuance to the aforementioned order, the allottees submitted their claim before the Arbitrator. He further submits that Arbitrator has committed illegality and perversity in setting aside the demand by accepting the claim of the allottees and HUDA has been directed to pay excess amount received in lieu of said demand. The objections filed also met with the same fate, therefore, the present appeal involves the questions of law, to be adjudicated by this Court. He further submits, that in case, the arbitrator had to form an opinion, for setting aside the said demand, matter should have been referred to HUDA for determination/re-calculation.

I have heard learned counsel for the appellants and appraised the paper book.

The Arbitrator, in my view, was none else but a retired District and Sessions Judge and has given a detailed, reasoned, award for setting aside the demand. It would be apt to reproduce the relevant portion of the award, which is as under:-

"*This discussion so far has covered the following areas:-*

Particulars	***Area in acres***
Non saleable area of common utility services	*88.82*
Area under plots	*72.89*
Area allotted to Housing Board including EWS portion	*20.3*
Other saleable area	*5.42*
Area retained by HUDA	*47.43*
Total	*234.86*

The total acquired area is 235.09 acres but the actual area utilized comes to 234.86 acres and thus indicating a shortage of 0.23 acres. The claimants pointed out this in their petition and the respondent HUDA accepted this in para 11(J) of written reply on merits with the explanation that it is due to conversation of area from hectares to acres. However, nominal it might be the ELC of this area, has to be debited in HUDA account. Thus, the total area retained by HUDA would come to 47.73 +0.23 (47.96) acres. It is the ELC of this total area that shall be subtracted from the total payable ELC, before being passed on the plot holders in column no.9 of the calculation.

The aforesaid discussion has highlighted number of *infirmities of the calculation carried out by the HUDA for the determination of additional price. These are too patent to be ignored. In this situation, the contention of the learned counsel for HUDA that the impugned calculation being on the lines of earlier two unchallenged ELC calculations, no grievance can be made against the last two ELCs, has no force.*

The final point urged by the claimants is that the subsidized cost of EWS category of plots by HUDA in pursuance of its policy, the subsidy should be entirely borne by HUDA or by the Central/State Govt., not by plot holders of general category. On careful consideration, I find that it is the matter of policy followed by HUDA from the very inception of the scheme. Initially, the minimum price of general category plots was fixed at Rs.625/- per square yard and that of EWS category at Rs.200/- per square yard. This was accepted by the plot holders/claimants; they applied for the allotment of plots on those conditions and got the allotment. They are, therefore, bound by that and cannot agitate that point at this stage.

Consequently, I proceed to pass the award on the following lines.

The demand notices C-4 and C-6 are based on wrong *and inequitable calculations and are hereby set aside. HUDA being the determining authority under the Regulations is directed to carry out that exercise afresh according to law and following directions shall be complied with while determining the amount payable by the claimant in respect of 3rd and 4th ELCs.*

a) For the assessment of ELC on account of 3rd enhancement, the interest under Section 28 of the Act for the period beyond six months of 22.2.2006 shall be excluded.

b) After having finalized the balance amount to be recovered, the ELC of the area retained by HUDA viz 37.74 + 4.50 +5.19 +0.23 (total 47.66 acres) shall be deducted.

c) For the calculation of the balance amount recoverable from the plot holders, the plotable area of 70.51 +11.16 +0.25 (nursing home/clinic site) +4.97 (school site) + 0.20 (religious building site), total 87.09 acres shall be taken into account.

d) For working out the proportionate increase regarding general category and EWS category plots, the ratio of 625:00 (per square yard) shall be adopted.

e) On the correct completion of calculations so carried out and having regard to the payments, if any, by the *claimants, fresh demand notices of the amount found due, shall be served upon the claimants along with the copy of calculation sheet for deposit in accordance with the terms of allotment letter and regulations.*

The respondents shall also pay the costs, quantified at ₹1,00 lac, to the claimants.

Given under my signatures this 14th day of September, 2010 at Chandigarh.”

The objecting Court dismissed the objections on account of the fact that the objections were not within the parameters, as per Section 34 of 1996 Act. I do not find any illegality, much less, perversity, in well reasoned award given by the Arbitrator as it was based on the calculations arrived at by taking into consideration non saleable area, area under plots, are allotted to Housing Board including EWS portion, other saleable area and area retained by HUDA. Once there is already adjudication of the matter, I do not find any reason to remand back the matter to the Arbitrator, as it entails another round of litigation and allottees had to undergo rigmarole of the prolong/protracted litigation.

It is now a settled law that as to under what circumstances the award has to be interfered with. The question which has now been raised in the aforementioned appeal has already been answered by the Hon'ble Supreme Court in catena of judgments wherein it has been laid down that until and unless the award suffers from illegality as statutorily prescribed under Section 31 (3) of the Act, the same cannot be interfered with. In this context I intend to refer the judgments of Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49 and Navodaya Mass Entertainment Ltd. Vs. J. M. Combines (2015) 5 SCC 698.** In the aforementioned judgment the Hon'ble Supreme Court had culled out the ratio decidendi by holding that until and unless there is error apparent on the face of record or the arbitrator has not followed statutory legal position, it is only in these circumstances it would be justified interfering with the award. The High Court should not act as a Court of appeal and reappraise the material/evidence and embarked on a path by substitution in its own view. It is not the case of the appellant that the award is against the public policy or has violated the principles of judicial approach, much less against the statute and other provisions of Section 34 of the Act. The Arbitrator has dealt with the dispute which was contemplated and was within the scope of it. In my view the award of the Arbitrator does not suffer from any illegality in as much as the Arbitrator who is expert has dealt with the matter and decided the claim of respective claimants to the parties to the *lis.*

The award read as a whole is just, fair and reasonable. It is now a settled law that the Arbitrator is the sole judge of quality and quantity of the evidence before him and decide on the basis of the available evidence.

In my view, no error of law arise from the award. The award is perfect and justified and all the objections filed against the same were wholly misconceived.

There is no merit in the aforementioned appeal. The same is accordingly dismissed.

(AMIT RAWAL)
JUDGE

September 23, 2015
savita