

dik

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO. 1534 OF 2015

Tahnee Heights Co-op. Housing Society Ltd. ...Petitioner
VS
Trust (Apex Body of 4 buildings consisting of Silver
Arch Co-op.Housing Society Ltd. & Ors. ...Respondents

.....
Mr Simil Purohit a/w Chirag Dave i/b M/s Legasis Partners for the Petitioner
Mr Zal Andhyarujina a/w A Dasgupta i/b Jhangiani Narula & Associates for
Respondent No.2.
Mr J.P.Sen, Sr. Advocate i/b Chaitra Rao for Respondent Nos.3 and 4.
.....

CORAM : S.C. GUPTE, J.

FEBRUARY 02, 2016

P.C. :

This arbitration petition is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), impugning an interim order passed by a Sole Arbitrator on an application under Section 17 of the Arbitration Act.

2 The Petitioner and Respondent Nos. 2 to 4 are four societies, who jointly hold a plot of land admeasuring 11,170.13 square meters under a lease deed. The four societies have their respective buildings located around or on the periphery of this plot of land. For the purpose of joint development of the open plot of land for their common use and benefit, these four societies came together to form a partnership under Section 20 of the Maharashtra Co-operative Societies Act ("Societies Act"). Respondent No.1, designated as "Trust", is, thus, an Apex Body of the four societies. Undivided shares of the four societies are respectively 40 per cent of the Petitioner and 20 per cent each of Respondent Nos. 2 to 4. Through Respondent No.1, the societies have submitted plans and applied for permissions and sanctions of the Municipal Corporation of Greater Mumbai for

development of the open land. The development plans have yet to be sanctioned. It is the Petitioner's case that in the meeting of Managing Committee of the first Respondent held on 30 January 2014, a resolution came to be passed authorizing creation of a playground on a part of the open plot for its members' exclusive use by the Petitioner. The passing of this resolution is a matter of dispute. (There are conflicting versions about whether such resolution was validly passed by the Managing Committee of the first Respondent.) An application was thereupon moved by Respondent No.2 herein, in April 2014, under Section 9 of the Arbitration Act seeking an interim order of restraint on giving effect to the disputed resolution. Initially, an ad-interim order was passed by this Court restraining the societies from giving effect to the resolution. Finally, the disputes were, by an order dated 27 February 2015, referred to a Sole Arbitrator with liberty to the parties to make an application under Section 17 for interim reliefs. The ad-interim order was continued till the matter was decided by the Sole Arbitrator under Section 17 of the Arbitration Act. Respondent No.2 preferred an application, accordingly, under Section 17 of the Arbitration Act before the Sole Arbitrator for an interim restraint against giving effect to the disputed resolution. The parties were heard by the Sole Arbitrator and the impugned order was passed restraining the Petitioner and Respondent Nos.3 and 4 from creating or developing a playground in the open plot of land for exclusive possession and use of any of the four societies on any portion of the open land. It was clarified that such temporary injunction would not come in the way of the Petitioner herein creating a playground on the plot of land subject to the condition that such playground would be kept accessible and open for the use of members of all four societies and their families. This order is impugned by the Petitioner in the present petition under Section 37 of the Arbitration Act.

3 The learned Arbitrator considered two issues for the purposes of the interim application under Section 17 of the Arbitration Act. Firstly, he considered whether a co-owner of property could have exclusive possession or claim exclusive ownership in respect of any particular portion of the property. This was from the standpoint of the law of joint ownership. Secondly, the learned Arbitrator considered the question of *inter se* rights and liabilities between parties

within the framework of the Deed of Partnership executed between the four societies under the Societies Act and the rights of such partnership or apex body to authorize any particular society to be in possession or use of any particular portion of the property. The learned Arbitrator construed various provisions of the Deed of Partnership and also past applications by individual societies for temporary use of the open plot of land. On scrutiny of the material, the learned Arbitrator came to a conclusion, firstly, that co-ownership does not create any right in an individual co-owner to claim exclusive ownership or possession in respect of any portion of the property. Secondly, the learned Arbitrator found that the Deed of Partnership did not authorize Respondent No.1 or its Managing Committee to allow exclusive possession or use of any part of the open plot of land by any of the four societies.

4 The conclusion drawn by the learned Arbitrator on the basis of the analysis of the partnership deed and the conduct of parties within the framework thereof is not only a possible view but an eminently probable view of the material. The Deed of Partnership describes the objectives of the partnership (Clause 7) as (a) identification of the purposes for which the open land could be used and (b) modalities for developing the open land for the purposes so identified including making of rules and regulations for maintenance and user of facilities created on the open land. The nature of interest of partner societies in the open land as recorded and acknowledged in the Deed of Partnership (Clause 10) implies an undivided share, right, title and interest of each of the partner societies with obligation annexed thereto for developing the open land in accordance therewith. It is specifically provided that none of the partner societies shall claim interest which is derogatory to or inconsistent with either the Lease Deed or the Deed of Partnership or conduct any activities on the open land so as to constitute breach of any conditions thereof. It is also clarified that, notwithstanding the generation of any assets created out of the development of the open land, none of the parties shall claim exclusive ownership or interest in such assets. The powers and functions of the Managing Committee of the partnership, Respondent No.1, include (Clause 19) exercise of all such powers and doing of all such things as the partner societies may themselves exercise and do to achieve the purposes

with respect to the open land. Without prejudice, the Trust Managing Committee was to exercise powers to draft bye laws, policy manuals, guidelines for membership, use, administration, maintenance and operation of the club house and other facilities including under ground parking spaces and open land. Finally, the obligations of the partner societies specifically recorded under the Deed of Partnership (Clause 20) require that each of the societies shall have their respective undivided interest in the open land as appended to their proprietary interest in the land and that they shall never claim any portion of the open land by division or secure an interest severally. These provisions clearly indicate, at least at this *prima facie* stage, that the open plot of land cannot be used by any individual partner society to the exclusion of others of the four societies, both by way of an incident of joint ownership and also as per the mandate of the Deed of Partnership. The conclusion of the learned Arbitrator that the Deed of partnership does nothing more than to empower the Managing Committee to decide on certain matters within the framework of the law of joint ownership and the provisions of the Partnership Deed, and that the proposal of the Petitioner to the extent that it involves exclusive possession and use of the playground plot by it was contrary both to the general legal incidents of joint ownership and to the understanding of the parties embodied in the Partnership Deed, is a fair and reasonable conclusion which does not call for any interference under Section 37.

5 In the premises, there is no merit in the petition and the same is dismissed. It is clarified that the observations made in this order are only for the purpose of considering the *prima facie* merits of the case under Section 17 of the Arbitration Act and these observations shall not influence the decision of the learned Arbitrator on merits of the reference.

(S.C.GUPTA J.)