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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ARB.P. 366/2009

GOVERNMENT OF HARYANA & ANR. Petitioners
Through: Mr. Arun Bhardwaj, Advocate.

versus

LT. GOVERNOR OF DELHI & ANR. Respondents
Through: Mr. Sanjay Kumar Pathak, Ms. K.
Kaomudi Kiran Pathak and Mr. Kushal Raj,
Advocate for GNCTD/R-1.
Mr. R.V. Sinha, Mr. Ruchir Mishra and Mr. A.S.
Singh, Advocate for UOI/R-2.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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16.03.2017

1. This is a petition filed by the Government of Haryana (Petitioner No. 1) and the Managing Director ('MD') of the Haryana Tourism Corporation (Petitioner No. 2) under Section 11 (6) of the Arbitration and Conciliation Act 1996 ('Act') seeking reference of the disputes between Petitioners and the Respondent, Government of National Capital Territory of Delhi ('GNCTD'), arising out of a Perpetual Lease Deed (PLD) dated 22nd December, 1975 to arbitration.

2. In terms of the aforementioned PLD, a parcel of land at Adchini village was given on a lease for a period of 100 years by the Respondent in favour of Petitioner No. 1. The PLD contains an arbitration clause.

3. At the outset, a preliminary objection is raised by learned counsel for the Respondent that Petitioner No. 2 i.e., the MD of the Haryana Tourism Corporation was not a party to the PLD and, therefore, cannot possibly maintain the present petition. He adds that earlier to the present petition both Petitioners filed Writ Petition (C) No. 1244 of 2000 seeking the very reliefs that are sought in the arbitration proceedings. He refers to the order passed in the said writ petition on 4th September, 2001 which reads as under:

“CW No. 1224/2000 & CM No. 2036/2000

Counsel for the petitioner seeks adjournment to amend the memo of parties. It is submitted that this petition has in fact been filed by the Haryana Tourism Corporation through its Managing Director and not by the Government of Haryana. At the request of the petitioner, adjourned to 10 October, 2001.”

4. It is, accordingly, submitted that as far as Petitioner No. 1 is concerned, it has abandoned its claim. As far as Petitioner No. 2 is concerned it is not a party to the PLD.

5. The Court finds that as far as the above prayer in the writ petition, no subsequent order appears to have been passed deleting Government of Haryana as a Petitioner. On the other hand, the Court finds that in the final order passed in the writ petition by this Court on 6th May, 2009, the Government of Haryana continued to be shown as the Petitioner. The said final order reads as under:

“W.P. (C) 1244/2000

GOVERNMENT OF HARYANA ...Petitioner

Through: Mr. Sudhir Walia,
Advocate.

Versus

GOVERNMENT OF NCT OF DELHIRespondent
Through: Mr. Parag P. Tripathi, ASG
with Mr. Sanjay Poddar, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT

ORDER
06.05.2009

After some hearing, learned counsel for the writ petitioner wishes to withdraw the writ petition with liberty to seek recourse to other remedies including but not limited to approaching for a reference under clause-VIII in the lease deed. Learned counsel submits that since interim orders have been subsisting all this while this Court should continue the same for some time to enable the writ petitioner to seek extension of such protective order.

Liberty granted.

The *status quo* with regard to possession of land shall be maintained by the parties for a period of eight weeks. In the meanwhile, it is open to the writ petitioner to avail of civil remedies, in accordance with law. The extension of interim order shall not be construed as an expression on its merits. The petition is permitted to be withdrawn but in the above terms.

All rights and contentions of the parties are reserved.”

6. Consequently, the Court is unable to agree with learned counsel for the Petitioner that there was abandonment of the claim by Government of Haryana. However, the Court agrees with learned counsel for the Respondent that Petitioner No. 2 i.e., the MD of Haryana Tourism

Corporation is not a party to the PLD and cannot therefore be a party to the arbitral proceedings. The arbitration will only be between the Government of Haryana and the GNCTD.

7. The other objection raised by the Respondent to the present petition is that the claim by the Government of Haryana is time barred. In this context, it requires to be noticed that the dispute between the parties arises out of the termination of the PLD by the Respondent on 18th January, 2000. According to the Petitioner, there were negotiations taking place between the parties regarding conversion of the land use and that the termination was arbitrary and illegal.

8. This Court does not wish to examine the contention of the parties in this regard. What requires to be noticed is that within a few days after the said order, the Government of Haryana filed CW No. 1244 of 2000 in this Court and on 13th March, 2000, the dispossession of the Petitioner was stayed by the Court. That order continued till the above order finally disposed of the petition.

9. Within a few months after disposal of the writ petition, the present petition was filed and, therefore, it cannot be said that the Government of Haryana had abandoned its claim. *Prima facie*, therefore, it also does not appear that the claim can be said to be time barred.

10. It is nevertheless clarified that all the contentions of the parties as regards the disputes including the maintainability of any of the claims or counter-claims will be examined by the learned sole Arbitrator to be

appointed by the Court without reference to the above *prima facie* observations made by the Court in this order.

11. The Court, accordingly, appoints Mr. Justice Sunil Ambwani, former Chief Justice of High Court of Rajasthan (Mob. No. 9415238954) as the sole Arbitrator to adjudicate the disputes between the Petitioner No.1 and the Respondent including their claims and counter-claims. He will proceed in accordance with the Act.

12. The parties will appear before Mr. Justice Ambwani on 1st May, 2017 at 4:00 pm. If the said date and/or time is not convenient to Justice Ambwani, he will inform the parties of the changed time and date at least ten days in advance. The venue for the above hearing would be fixed by the Petitioner and the expenses will be shared by the above two parties equally. Justice Ambwani would fix his own terms.

13. The petition is disposed of in the above terms. A copy of this order be sent to Justice Ambwani forthwith.

S. MURALIDHAR, J

MARCH 16, 2017

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