

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

ARBITRATION PETITION NO.464 OF 2017

Jitendra D. Tawde

... Petitioner/
Org. Claimant

Versus

Dipti Home Maker Private Limited
And Others

... Respondents

.....

Mr. Pankaj Vijayan a/w Ms. Rohini Menon I/b Intralegal for the Petitioner.
Mr. Vishal Kanade I/b Mr. Kayval P. Shah for Respondent No.1.
Mr. Vipul Shukla I/b Jayesh R. Vyas for Defendant No.2.

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CORAM : S.C.GUPTE, J.

DATE : 23 OCTOBER 2018

P.C. :

. Heard learned Counsel for the parties.

2 This Arbitration Petition challenges an award passed by a Sole Arbitrator in disputes arising between the parties out of redevelopment of a building owned by Respondent No.2 society and developed by Respondent No.1 developer. The Petitioner, who was the original claimant in the arbitration reference, was holding a garage, being Garage No.2, which is said to be about 160 sq. ft. self contained with an attached toilet, and in respect of which, he was admitted as a member of the society holding a share certificate issued by the latter. The redevelopment agreement entered into by Respondent No.2 society with Respondent No.1 developer provides for rights of members to alternative premises in the

redeveloped building. So far as the members of the society holding residential premises are concerned, they are entitled to additional carpet area of 45 per cent 'free of cost' on ownership basis in the new building. The members holding garages are not entitled to any additional area likewise under the agreement. That is one of the bone of contentions of the Petitioner in the present disputes. The other grievance of the Petitioner is that Respondent No.1 developer, in its original application under Section 9 of the Arbitration and Conciliation Act, 1996 ("Act"), at the hearing of which the disputes between the parties were referred to arbitration, has itself stated that the Petitioner was in possession of a garage admeasuring 160 sq.ft. Learned Counsel submits that the terms of reference, so far as the present disputes are concerned, required the learned Arbitrator to decide whether the Petitioner would be entitled to compensation, if any, in lieu of the existing garage or a property of an equivalent area in the proposed building. Learned Counsel submits that in as much as the learned arbitrator has determined the Petitioner's entitlement to an area of merely 126 sq.ft of garage in the redeveloped building, the award is beyond the scope of submission to arbitration. Learned Counsel, relying on the case of **Siddharth Holding Pvt. Ltd. Vs. Saidale Co-operative Housing Society Ltd¹**, also submits that garage members of the society are entitled to be treated on par with residential members and challenges the award on that ground.

3 None of these contentions has any merit. The learned arbitrator, under the terms of submission, was expected to determine whether the Petitioner would be entitled to any compensation in lieu of the existing

1 2003(6) Bom. CR 857

garage or any “property of an equivalent area in the proposed building”. These terms of submission were further clarified by an order dated 16 October 2015 passed by this court to mean that the learned arbitrator could decide the Petitioner's entitlement to compensation in lieu of the existing garage or any area of property in the proposed building. The learned arbitrator, in the premises, was not bound by the terms of submission to any particular predetermined area to which the Petitioner was entitled. Learned Counsel is not right in submitting that the learned arbitrator was simply to decide whether the Petitioner was entitled to compensation for a particular predetermined area or whether he was entitled to property of an equivalent predetermined area. The questions of both area and compensation were clearly left to the learned arbitrator under the terms of submission. The learned Arbitrator, after considering the material before him, and in particular a report of the Court Receiver prepared in pursuance of the proceedings under Section 9 of the Act, to which no exception was taken by either of the parties, accepted the measurement by the Court Receiver as the correct area of the existing garage held by the Petitioner. This determination cannot be termed either as an impossible finding or a finding which no fair or judiciously minded person could have arrived at or a finding which shocks the conscience of the court. The finding is clearly supported by some evidence. It is not arrived at upon consideration of irrelevant material or by disregarding any relevant material. It is clearly a possible view which is supported by evidence. The award, in the premises, cannot be said to be vitiated either on account of contravention of the public policy of India or any patent illegality appearing on the face of the award. As I have already noted above, the award cannot be termed as a determination beyond the terms of

submission. So far as the merit of the case, i.e. the argument of impermissible discrimination between garage numbers and residential members, is concerned, the learned arbitrator has accepted the Respondents' submission that a garage owner cannot be treated on par with a flat owner; a garage was appurtenant to a flat and the particular garage was constructed free of FSI; and benefits of FSI were available to the Respondents only for areas of flats and not of the garage. This is an imminently possible view and does not call for any interference. The case of **Siddharth Holding Pvt. Ltd** (supra) has no application to these facts. In that case, there was no distinction in terms of rights and entitlements of individual members, who were discriminated against, and other members.

4 In the premises, there is no merit in the challenge. The Arbitration Petition is dismissed. No order as to costs.

(S.C. GUPTE, J.)