

THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN

ARBITRATION APPLICATION No.19 OF 2011

ORDER:

This is an Application under sub-sections (2) and (6) of Section 11 of the Arbitration and Conciliation Act, 1996; hereinafter referred to as 'the Act'.

2. Heard learned Senior counsel for the applicant and the learned Assistant Solicitor General for respondents.

3. The applicant B.Puranmal claims to be the absolute owner of property bearing No.207-A with open land admeasuring Ac.9.41 guntas situated in Tarbund, Secunderabad Cantonment, Secunderabad, by virtue of a Deed of Settlement from the successor-in-interest of original owner M/s.H.K.Bengali. The applicant claims that he has been declared as owner of the said property by virtue of the decree, dated 04.04.2005 in O.S.No.253 of 2005 on the file of the III Senior Civil Judge, City Civil Court, Secunderabad. He claims that initially he was the General Power of Attorney of the heirs of M/s.H.K.Bengali and he was authorized to deal with the property bearing Bungalow No.207-A in all respects. He also claims that pursuant to the aforesaid decree, he became absolute owner and possessor of Bungalow No.207-A and except him, no other person has any right, title or interest and possession over the said property. The applicant pleads that Bungalow No.207-A was taken on lease on behalf of the Union of India and the competent authority had entered into lease agreement, dated 03.06.1961 and that document of lease casts certain obligations on the respondents to maintain the said tenement and use it for residential accommodation. The premises was used on lease till 1974 and on 29.01.1974, the fourth

respondent issued an administrative approval for de-hiring of that Bungalow on the ground that the said tenement Bungalow was unfit for habitation for hygienic and sanitary reasons. The applicant further pleads that neither his predecessor-in-title nor he has been permitted to carry out repairs for the old Bungalow in spite of it being in dilapidated condition and the obligation of official respondents including the Garrison Engineer to effect minor repairs were also not carried out. The damage caused to the property is huge and the applicant addressed several letters to the respondents to de-hire the property to enable him to effect repairs so as to utilize the same for his beneficial enjoyment. According to the applicant, even going by the respondents' own showing, the Bungalow in question is not put to use for the last nearly 30 years and it is kept vacant. The refusal of the respondents to de-hire the property in question and also other attendant issues have given rise to disputes between the parties, which according to the applicant, are to be resolved through arbitration in terms of the arbitration clause contained in lease agreement, dated 03.06.1961, to the following effect:-

“In the event of any dispute, difference, question or thing arising between the lessor and lessee as regards the interpretation of any terms of conditions herein contained or as regards the rights, obligations and duties of the parties under this Agreement or any matter concerning or touching this Agreement or arising out of it (except the decision whereof is herein expressly provided for) the same shall be referred for decision to as Arbitrator not below the rank of a Lt.Col. or Civilian Officer of equivalent status to be appointed by the Commander Station HQ. Secunderabad Area and the decision on the parties hereto. The provisions of the Arbitration Act, 1940 and of the rules thereunder or any statutory modification thereof shall apply to such arbitration.”

4. Apart from the plea of existence of disputes and also the eligibility to go for arbitration, the applicant has also pleaded that there were prior litigations including O.S.No.507 of 2005 before the III Senior Civil Judge, City Civil Court, Secunderabad, in which I.A.No.1280 of 2005 was filed by the fifth respondent Garrison Engineer seeking permission to deposit rents into the Court referable to the original occupancy holder M/s.H.K.Bengali and also Civil Revision Petition No.951 of 2006 before this Court arising from such proceedings. I mention these factors here though they may not be pointedly relevant to decide the issue whether this Application for appointment of Arbitrator is eligible to be allowed.

5. The applicant has also pointed out that in relation to a similar situation and agreement, this Court had issued an Order appointing an Arbitrator in Arbitration Application No.32 of 2007. The said Order is placed on record as a precedent on similar set of facts and circumstances.

6. There are three counter affidavits in this case stated to be on behalf of respondents 1 to 3. A counter affidavit sworn to in June, 2011, without a specific date, is by Mr A.V.Dharma Reddy, Defence Estates Officer, A.P.Circle, Secunderabad. Another counter affidavit is sworn to by Mr Prashant Manohar Adam on 23.01.2012. He has described himself as Assistant Defence Estates Officer in the Office of the Defence Estates Officer. Mr A.V.Dharma Reddy, Defence Estates Officer has placed yet another affidavit sworn to on 23.01.2012.

7. The respondents, through the aforesaid three counter affidavits, referred to the Cantonment Land Administration Rules, 1937 framed under Section 280 of the Cantonments Act, 1924 and

the obligation of the Defence Estates Officer to maintain a General Land Register. The contents of the General Land Register and the classification of lands are delineated in those affidavits. It is part of their pleading that as per Old Grant terms, the structure belongs to the occupancy holder and the land belongs to the Central Government and as per the terms of the Grant, Bungalows built on Old Grant site can be hired to the Defence Department for accommodating their officers. The occupancy holder is described as Smt H.K.Bengali and the plea is that the physical position of the land as well as the building cannot be altered except with prior approval. It is also pleaded that there is a policy decision of the Government of India that Bungalows held on hire by Government and the sites are held by the occupancy holders on resumable tenure, will not be de-hired.

8. The questions whether the obligations arising out of the original lease and the liabilities of parties continuing under that terms of that lease, even as regards to a holding-over tenant, are matters which are referable for adjudication of disputes in terms of arbitration clause in the lease agreement, dated 03.06.1961. The issue whether the applicant is a successor-in-interest of the lessor under that lease is not a matter to be determined in these proceedings because *prima facie* the applicant has shown that his eligibility is covered by virtue of Deed of Settlement and affirmed through a Court decree. All issues relatable to the eligibility of the applicant to seeking relief even by way of arbitration is itself an issue which would lie for consideration by the arbitral tribunal.

9. In view of the aforesaid, I am of the view that this is a case where requisite measure has to be taken for appointment of Arbitrator and for passing such Order as would be necessary in furtherance of that. I am also in agreement with the view expressed by the decision in Arbitration Application No.32 of 2007 rendered noticing the settled position of law that the Chief Justice or his designate is not to go into other aspects of the disputes, which are to be decided by the Arbitrator and once this Authority is satisfied that there is an arbitration agreement between the parties and disputes exist for resolution, the Order, that is called for, is only to take a due measure in view of the failure of the respondents to respond to the applicant's request for arbitration. Hence, this Arbitration Application is allowed appointing an Arbitrator.

10. Accordingly, Sri Justice Vilas V.Afzulpurkar, former Judge of this Court, is appointed as Arbitrator to arbitrate on the disputes between the applicant and the respondents, including the claims and counter claims of both sides. The said Arbitrator shall enter on reference and proceed with, as enjoined by the Arbitration and Conciliation Act, 1996. No order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

02.11.2018
pln