

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

O.P.No. 476 of 2015
and
O.P.No.1050 of 2017
&
Application No. 8697 of 2017

1. M.K.Phandian ...Petitioner in O.P.No.476/2015
2. P.Ashok
3. Rama Srinivasan ...Petitioners in O.P.No.1050/2017

Vs.

O.P.No.476/2015

1. O.Muthu
2. R.S.Anbazhagan, Deputy Collector (Retd),
Sole Arbitrator
3. D.Balan
4. Smt.Jyotheeswari
5. P.Ashok
6. Rama Srinivasan ...Respondents

{This petition is not pressed against 3rd to 6th respondents}

O.P.No.1050/2017

1. O.Muthu
2. M.K.Pandian
3. D.Balan
4. R.S.Anbazhagan, Deputy Collector (Retd),
Sole Aribitrator ...Respondents

Prayer in O.P.No.476/2015 : Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 23.03.2015 passed in A.C.P.No.1 of 2014 passed by the second respondent/arbitrator.

Prayer in O.P.No.1050/2017 : Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the exparte Award dated 23.03.2015 passed by the fourth respondent vide Arbitration Proceedings bearing Arbitration Case No. 1 of 2014 in so far as the petitioners and their mother Jyotheeswari, since deceased are concerned.

For Petitioners : Mr.K.Ramkumar
(in O.P.No.476/2015)
Mr.C.P.Sivamohan
(in O.P.No.1050/2017)

For Respondents : Mr.S.V.Jayaraman
(Senior Counsel)
for Mr.T.Dhanasekaran for R1
(in both OPs)
Mr.V.Soundarapandian for R2
No appearance for R3
Mr.C.Prabhakaran for R4
(in O.P.No.1050/2017)

COMMON ORDER

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

2. In the above Original Petition, a challenge has been made to the Award passed by the Arbitrator and on the basis of the Agreement said to have been executed by the parties. In fact, a sum of Rs.24,00,00,000/- (Rupees Twenty Four Crores only) has been awarded as compensation by the Arbitrator for breach of Sale Agreement dated 23.03.2015. It appears that an Agreement had been entered into between one O.Muthu Referring Party of the first part and M.K.Phandian, Referring Party of the second part in the agreement. The entire agreement is to solicit, litigation and to clear the property and the contract has entered in the nature of the chamberity. It is also to be noted that the owner of the property is not made a party in agreement. Whereas, the Clause No.7 of the Agreement states that if in the event of a dispute, the same shall be referred to a common person and as the Arbitrator and his decision is final and conclusive. It appears that the Arbitrator has awarded damages to the tune of Rs. 24,00,00,000/- (Rupees Twenty Four Crores only) in favour of the claimant.

3. I am of the view that such Award cannot be sustained. First of all, the contract in which the party has entered in respect of the immovable property behind the back of the owner of the property and

making themselves to the parties to the Agreement for soliciting the advise and clearing legal hurdles in the property and for financing the litigation. All this conditions are in the nature of chamberity which is not recognized in India. Such contract is not recognized in India and opposed to public pollicy. When such contract was sought to be enforced by way of an Arbitrator, the finding of the Arbitrator is much worse to award such huge damages, without any element of evidence. The contract itself has executed for a sum of Rs.1,00,00,000/- (Rupees One Crore only) but the damages have been awarded for Rs.24,00,00,000/- (Rupees Twenty Four Crores only) without any evidence. Similarly, the owner of the property was also not party to alleged Arbitral Proceedings. However, such Award was sought to be executed against the owner of the property. Admittedly, he was not party to the contract or in the Arbitration Proceeding. Such being the position, the very contract itself is opposed to public policy and the entire Award suffers from illegality and against the very fundamental policy of India.

4. I am of the view that such Award cannot be sustained and the same is set to be aside. It is also stated that on the basis

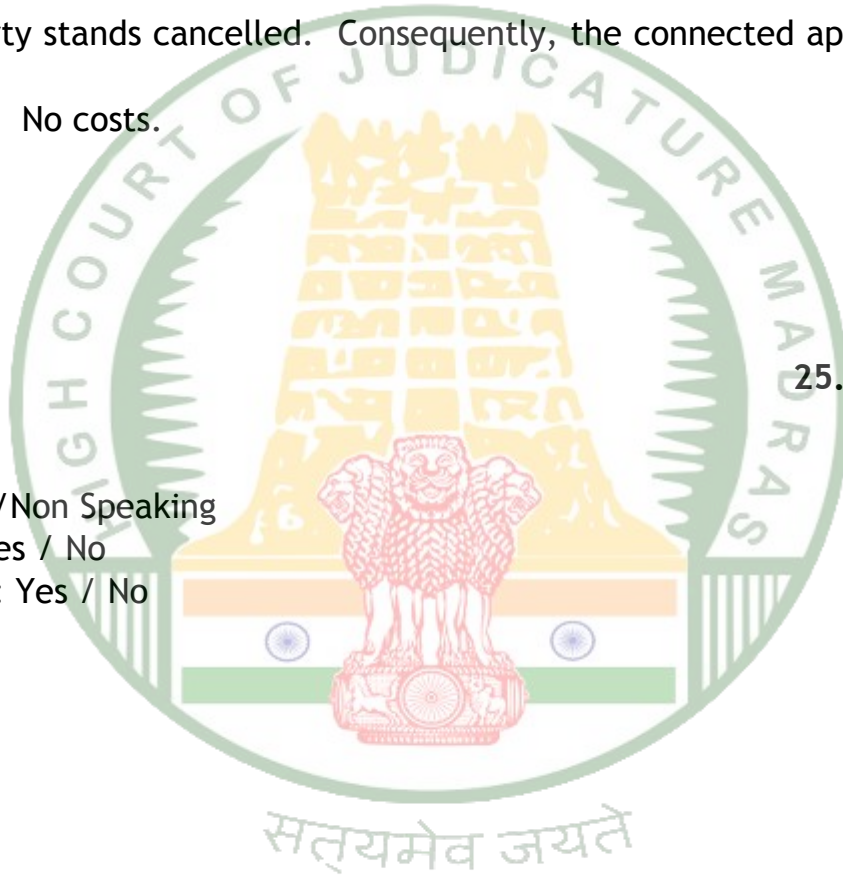
<http://www.judis.nic.in> of this Award, the property of the owner was already attached in

E.P.No.9 of 2017 and such attachment is also to be raised. In view of the fact that entire Award passed, is not sustainable, this Original Petitions are allowed and the Award is set aside. Order of attachment of property stands cancelled. Consequently, the connected application is closed. No costs.

25.06.2019

Speaking/Non Speaking
Index : Yes / No
Internet : Yes / No

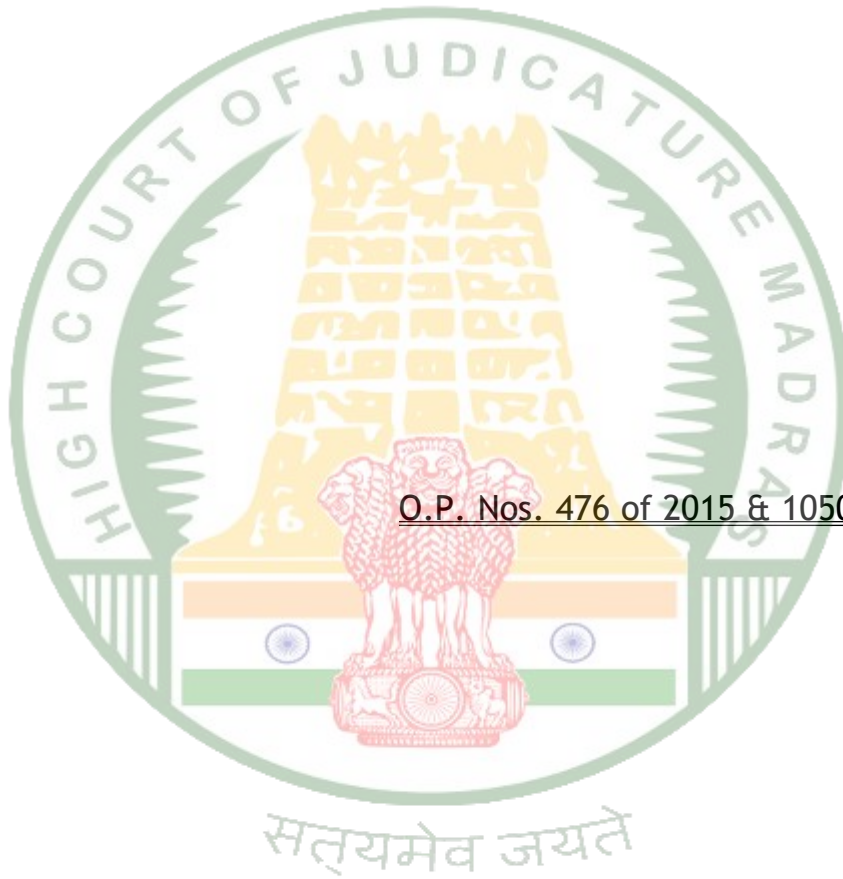
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