

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.307 of 2013

Mr.R.Chandrasekaran Alias Valasai Chandran

... Petitioner

Vs

1.M/s.Bollineni Developers Ltd.,
Registered Office at 1st floor,
Progressive Towers, 6-2-913/914,
Khariatabad, Hyderabad – 500 004
With Branch Office at
87/30, Poes Garden, Chennai 600 086
Though its Director B.krishnaiah

2.Mr.Justice K.Sampath
Sole Arbitrator
No.11, Second Street, Jagadambal Colony
Royapettah, Chennai – 600 014.

... respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 09.08.2012 which came into effect on 10.09.2012 as null and void and not binding on the petitioner.

For Petitioner : Ms.Hemalatha

For respondent 1 : Mr.R.Thiagarajan

ORDER

The respondent before the arbitral Tribunal is the petitioner before this Court. The petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, herein after called the Act. The parties are referred to in the same ranking as in the Claim Petition. The facts preceeding the filing of the petition are as follows:

2. The claimant company had entered into an agreement with the respondent on 31.03.2007. As per the agreement, the claimant company was desirous of purchasing contiguous land for developing the same into residential / commercial complex / SEZ units either on its own or through agreements with companies of repute. In order to identify and process the purchase of lands

from various owners the respondent was identified as Aggregator since he was an influential person in the Sriperumbudur area. As per the terms of the agreement the claimant company was to advance money to the respondent as and when required to procure contiguous lands. Money that was given to the respondent was to be used for paying the land owners the cost of lands, incur legal charges for verifying the documents, registration fees etc., and to meet all incidental charges in this regard.

3. The respondent was supposed to hold the lands in trust for the company and then hand over the agreements so entered to the company within a week on their entering into such agreements. The consideration for the above services was a sum of Rs.25,00,000/- per acre to the respondent. It was made clear that the respondent should not register the sale deed in respect of the lands in his name and that he must only execute individual agreement of sale with the respective land owners. The claimant

had requested the respondent to procure over 250 to 500 acres of land. It was made clear that in case the respondent was unable to procure 250 acres of contiguous land the advance amount paid was to be refunded. The parties had also agreed that all disputes between them would be referred to arbitration.

4. Despite giving the advance amount of over Rs.100.875 Crores on various dates by the claimant, the respondent was not able to procure the lands as promised. The respondent was able to procure only 146.01 acres for which the cost incurred by him was about Rs.36,50,25,000/- leaving a balance of Rs.64,37,25,000/- with the respondent. In fact the claimant and the respondent had earlier entered into an agreement dated 27.11.2006 in and by which the respondent was supposed to procure 2500 acres of land. However, that agreement was terminated and the termination was also confirmed by the respondent vide letter dated 25.09.2007.

5. The claimant by their letter dated 27.04.2009 had called upon the respondent to register the lands immediately or to refund the balance amount as provided in the agreement dated 31.03.2007. The claimant had reminded the respondent that they had not discharged the obligations cast upon them under memorandum of understanding dated 31.03.2007 and that despite being granted an opportunity to complete the transaction vide the agreement letter dated 22.08.2008 the same had not been performed. The claimant also informed the respondent that they had come to know the properties which were conveyed in favour of the company was dealt with by the respondent in favour of third parties. As a result of such transfers the companies holding had reduced to an extent of 136.40 acres totalling a sum of Rs.34,09,90,000/-. The claimant therefore demanded refund of the sum of Rs.66,87,60,000/- together with an interest of Rs.21,75,49,671/- in all a sum of Rs.88,63,09,671/-. The claimant had granted the respondent time till 08.05.2009 to complete the transaction or they would

proceed legally against the respondent.

6. The respondent had replied to this letter of the claimant by issuing a legal notice dated 11.06.2009 in which the respondent had contended that he had entered into an agreement with the claimant on the promise that he would be involved in the project of purchasing 2500 acres of land in units of 250 acres each. He would contend that believing this representation the respondent had proceeded to procure the lands abutting the main road at a cost of Rs.1 Crores and above per acre. The respondent further accused the claimant by stating that after getting sale deed in respect of 150 and odd acres the claimant had failed to proceed further either by advancing further sums of money or by purchasing the lands. The respondent also accused the claimant of having approached the Court by invoking the provisions of Section 9 of the act for an interim protection. The respondent had reiterated that he was ready to fulfil his part of the contract under the agreement dated 31.03.2007.

7. The respondent would further state that in case the claimant failed to comply with its obligations he was ready and willing to refund the amounts advanced by the claimant and its group companies and get re conveyance of the lands as per clause 10 of the agreement. The legal notice further stated that the claimant had not demanded or expressed its consent for the appointment of the arbitrator or submit the dispute for arbitration.

8. By their reply dated 01.07.2009, the claimant had suggested the names of the three arbitrators for being appointed as arbitrator. Thereafter both the claimant and the respondent mutually agreed for the appointment of Honourable Justice Mr.K.Sampath (retired Judge of this Court) as a sole Arbitrator.

9. Pending the arbitral proceedings the parties had entered into a compromise and an award in terms of the joint memo of

compromise was passed on 19.12.2011. As per the terms of the joint compromise, the respondent had agreed to pay a sum of Rs.110 Crores to the claimant or his nominees. The claimant was to release the properties belonging to the respondent and re-convey the unattached properties in favour of the respondent simultaneously. The compromise would further state that the above clause would not operate in the event of the respondent paying the claimant the sum of Rs.100 Crores and the claimant releasing the attached properties and re-conveying the unattached properties in the following manner.

10. The respondent was required to pay the sum of Rs.25 Crores by way of demand draft to the claimant or its nominees on or before 05.01.2012. On such payment 20% of the respondent's properties which were attached were to be released and 20% of the unattached properties was to be re-conveyed. In the case of the default interest was to be levied at the rate of 18%.

11. The second tranche of Rs.25 Crores was payable on or before 31.01.2012. Upon such payment the claimant was to simultaneously release 45% of the properties belonging to the respondent which were attached and re-convey 20% of the unattached properties.

12. The third tranche of Rs.25 Crores was payable on or before 29.02.2002. On such payment the claimant was to release 35% of the attached properties to the respondent and re-convey 15% of the unattached properties in the middle portion and 15% in the front area. The default in payment would attract 24% interest.

13. The fourth and final tranche of Rs.25 Crores was payable on or before 31.03.2012 and on such payment the balance of unattached properties was to be released to the respondent. In case of default in the payment of the above sum,

it will carry an interest at the rate of 24% per annum.

14. Additional award dated 09.08.2012 came to be passed contending the following terms:

"1) The award will carry interest at 18% p.a. from 19.12.2011 till date of payment.

2) The parties shall pay fees to their respective counsel calculated at 1% on the final award amount.

3) Each of the parties shall deposit a sum of Rs.5 Lakhs with the arbitrator towards balance of fees within a period of two weeks from today.

4) The award will come into effect on and from 10.09.2012."

15. Despite entering into a joint memo of compromise and the award being passed in terms of the joint memo of compromise the respondent has come forward with the instant petition to set aside the award.

10/14

16. The main ground on which the award is sought to be challenged is that the award dated 09.08.2012 and the earlier award dated 19.12.2011 which were to take effect from 10.09.2012 suffered from legal, procedural and interpretational infirmity. The respondent would contend that he had signed the memo of compromise without comprehending the contents thereof. He would further submit that the interest which has been set out in the memorandum of compromise is contrary to the agreed interest entered into between the parties in the original contract and therefore the Arbitrator has proceeded beyond the terms of the compromise. Besides this other grounds have also been raised.

17. When the matter was posted for hearing on 04.12.2019 before this Court the learned counsel for the petitioner / respondent submitted that the parties were about to enter into a settlement and that if the orders are passed the settlement would

not come through. The learned counsel for the claimant however refuted this contention. The same submissions were made on 12.12.2019 and 18.12.2019. On 18.12.2019 it was made clear that the matter would be adjourned to 19.12.2019 and in case the memorandum was not finalized the Court would pass orders.

18. When the matter came up on 19.12.2019 the learned counsel for the respondent / petitioner would submit that the settlement did not come through and that orders could be passed in the matter.

19. Heard the learned counsel on both sides.

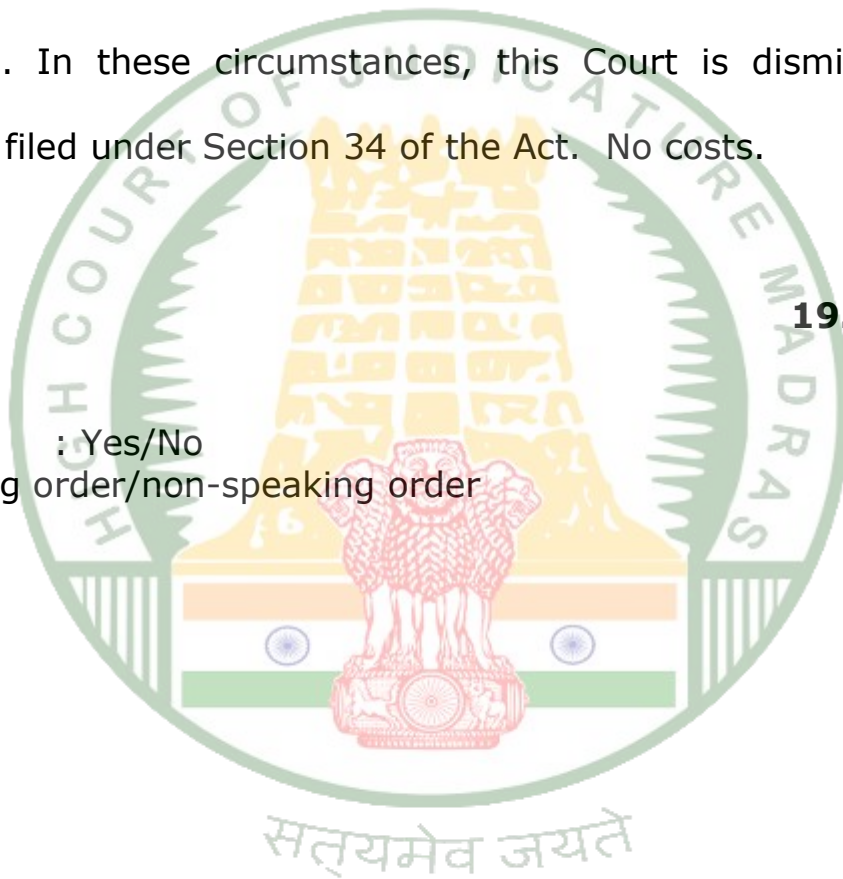
20. Admittedly the award has been passed on the basis of the joint memorandum of compromise entered into between the claimant and the respondent. After having signed the compromise the parties cannot renege on the same. It is also not the case of the respondent that the consent for the

compromise has been obtained by fraud. In the absence of such a contention and its proof no grounds have been made out for setting aside the award.

21. In these circumstances, this Court is dismissing the petition filed under Section 34 of the Act. No costs.

19.12.2019

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Index : Yes/No
Speaking order/non-speaking order



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P.T.ASHA, J.,

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O.P.No.307 of 2013

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19.12.2019