

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 07TH DAY OF AUGUST 2019

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.No.2152 of 2019

in

O.P.No.891 of 2015

CORAM:

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Application No.2152 of 2019
in O.P.No.891 of 2015

1.M.Chelladurai
2.Maragadavalli
3.S.Natarajan
4.N.Nesakumar
5.P.S.Ganesan

..

Applicants/Third Parties

-Vs-

1.Jumbo world Holdings Limited,
SeaMeadow House, Blackburne Highway
Road Town, British Virgin Islands,

2.Dandvati Investments and
Trading Company Private Limited
5th Floor, "The International"
16, New Marine Lines, Cross Road No.1
Churchgate, Mumbai 400020. ... Respondents/Petitioners

3.Embassy Property Developments Privated Limited,
Rep by its Director K.Y.Gopikrishnan
(formerly Dynasty Developers Private Limited)
150 Embassy Point, 150 Infantry Road,
Bengaluru 560001. ... Respondent/Respondent

Prayer: Application filed under Order XIV Rule 8 of O.S.Rules r/w Section 151 of C.P.C., 1996 to grant leave to the applicant to challenge the reference of the property of the applicant viz., 51 cents of land in S.No.289/9 of Zamin Pallavaram Village, Pallavaram Taluk, Kanchjeepuram District, in the Arbitral Award dated 31.08.2015 arising out of arbitration agreement dated 21.12.2005 between the respondents, and consequently to eschew and expunge the listing of the property of the applicants from the above arbitral proceeding.

For Applicants : Mr. S.R. Rajagopal
Senior Counsel
for M/s.R. Selvakumar

For Respondents : Mr. Sathish Parasaran
Senior Counsel &
Mr.Anirudh Krishnan

ORDER

This application has been filed to grant leave to the applicant to challenge the reference of the property of the applicants viz., 51 cents of land in S.No.289/9 of Zamin Pallavaram Village, Pallavaram Taluk, Kanchjeepuram District, in the Arbitral Award dated 31.08.2015 arising out of arbitration agreement dated 21.12.2005 between the respondents, and consequently to eschew and expunge the listing of the property of the applicants from the above arbitral proceeding.

2. It is the main contention of the applicants that they are jointly in possession and enjoyment of the vacant land measuring an extent of 51 cent in S.No.289/9 at Zamin Pallavaram. In the month of July 2007 some unidentified men representing Gordon Woodroffe Company owned by Respondents 1 and 2 attempted to trespass and disturbed the peace. Immediately they filed suit in O.S.No.148 of 2007 for permanent injunction. The suit was decreed in favour of the applicants and appeal was also dismissed by judgment dated 07.10.2013.

3. The Respondents 1 and 2 claimed rights over the property contending that they had purchased the same on 10.3.1922 by means of sale deed bearing Document No.1551/1922. According to the Applicants the above document was a forged and fabricated one. When the matter stood thus, in the month of October 2018 the Applicants had decided to sell the land and when they approached the prospective buyers, they came to know that sale agreement dated 21.12.2005 entered between the Respondents and also issued paper publication dated 01.09.2015. According to the Applicants their properties also subject matter of the Arbitral proceedings between the parties.

The Arbitration Award was issued on 31.08.2015. Hence, this

application.

4. The Third Respondent filed counter stating that third parties have no right to expunge the listing of the properties of the Applicants. It is nothing but abusing of process of law. The Arbitration dispute was between the Respondents which was arose out of the Share Purchase Agreement. If at all the Applicants/Third Parties have any rights, interest and title over the property, the same needs to be adjudicated in the appropriate forum. It is the contention that the present proceedings culminating from the Share Purchase Agreement and Arbitration proceedings between the Respondents. The scope of O.P.No.891 of 2015 is confined to the dispute arising out of the Share Purchase Agreement and not with regard to tile of the immovable property. Hence, prayed for dismissal of the Application.

5. Learned counsel appearing for the Applicants submitted that the Applicants are the title owners, they have already filed suit and obtained permanent injunction in respect of their properties. However, there was an attempt to trespass the land by some unidentified men representing Gordon Woodroffe

Company owned by Respondents 1 and 2. Hence, it is his contention that since their right and title to the extent of 51 cents is also involved in the Arbitration Award dated 31.08.2015 they may be granted leave to challenge the proceedings.

6. The learned counsel appearing for the Respondents Mr. Anirudh Krishnan and Mr. Sathish Parasaran learned Senior Counsel submitted that this Arbitration Award is the result of the Share Purchase Agreement. Therefore, the issue involved in the Arbitral Award proceedings only with regard to the enforcement of the share purchase agreement and not in respect of the immovable properties. Therefore, their contention is that the Applicants cannot be impleaded and there is no need to grant leave.

7. The main contention of the Applicants is that they are the owners of the property and sale deed dated 10.03.1922 has been forged and fabricated. To substantiate their claim they have also brought to the notice that the Registration Department has issued information under Right to Information Act to the effect that the Document bearing No.1551/1922 SRO Saidapet, registered in respect to 1/16th share registered by one Errappa

Naicker in favour of the Prasanna Venkatesa Narasinga Perumal Sannidhi. Now, the above document has shown as if one Raghunatha Iyer executed a sale deed in favour of the Gordon Woodroffe Leather Manufacturing Company. It is also not disputed that Criminal Complaint has been filed and in this regard investigation is in process. Further the Applicants also produced a copy of the decree and judgment filed by them in respect of their property for an extent of 51 cents claimed in the petition. Such being the position if the Applicants felt that the Award affects their right in the immovable property, the Applicants can very well substantiate the same before the appropriate civil forum. The Award in fact, even covering the above subject matter of the land viz., 51 cents certainly would not bind them. Merely on the basis of the Award one cannot claim title over the property of the third parties. Such Being the position, and it is also the fact that the counsel appearing for the Respondents submitted that the entire arbitral proceedings only relate to enforcement of share purchase agreement alone, no leave can be granted to the Applicants in this proceedings.

8. Though Bombay High Court in a judgment **Prabhat**

<https://hcservices.ecourts.gov.in/hcservices/>

Steel Traders Pvt. Ltd., v. Excel Metal processors Pvt. Ltd.,

(Bombay) [Arbitral Petition No.619, 642, 622, 688,643,574 of 2017] has held that third party who is likely to be affected by any other order in proceedings under Section 9 of the Act may intervene those proceedings and oppose the grant of reliefs and apply for vacating any order passed therein and there is no total bar for maintainability of the arbitral appeal by third party under Section 37 of the Act. In para 56 of the judgment the Bombay High Court relied upon a judgment of the Supreme Court in **Municipal Council, Hansi, District Hissar, Haryana v. Mani Raj & ors. [(2001) 4 SCC 173]** in which it is held as follows:

"56. The Supreme Court in the case of *Municipal Council, Hansi, District Hissar, Haryana vs. Mani Raj & Ors.* (supra) while considering the provisions of Order I Rule 8-A of the Code of Civil Procedure, 1908 has held that a party was in possession of the disputed property and was not party in the award case and the earlier two orders passed by the Court on the basis of which direction was given to such third party to deliver possession of the disputed property. Application for intervention made by such third party ought to have been allowed when the direction adversely and seriously affected the valuable rights of such third party over the immovable property in dispute. The principles of law laid down by the Supreme Court in the case of *Municipal Council, Hansi, District Hissar, Haryana vs. Mani Raj & Ors.* (supra) can be extended to this case where admittedly the petitioners in all these arbitration petitions were

adversely affected in view of the interim measures granted by the learned arbitrator in the proceedings between the respondent nos.1, 2 & 3. "

9. Though Bombay High Court Judgment is entirely based on the appeal by the third party maintainable under Section 37 of the Act, the findings of the Apex Court referred above makes it clear when the third party right over the immovable property is seriously affected, there is no bar for impleading them in the proceedings. Though above finding indicate that when third party rights is adversely affected by any Award he cannot be remediless. But the fact remains in this case is that the counsel appearing for the Respondents has admitted before this Court that the Award is only in respect of enforcement of the agreement between the respondents. If the Applicants wants to establish their independent right, they can always defend their right as discussed above. In view of the same leave is rejected.

10. In the result the Application No.2152 of 2019 in O.P.No.891 of 2015 is rejected. No cost.

Sd/.N.S.K.J.

07.08.2019

//Certified to be a true copy//

Dated this the day of 2019.

SU/07.08.2019

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.