

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

**O.P. No.446 of 2018
and Application No.4142 of 2018**

1. C.Margatham
2. C.Dinesh Kumar
3. Chokkalingam .. Petitioners

-VS-

U.SumanLathaMetha .. Respondent

Prayer: Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the Arbitral Award dated 22.11.2017 passed by the learned Arbitrator namely Er.N.Pichaimurthi in the matter of Arbitration arising out of the Petitioners and the respondent MOU dated 28.05.2015 by allowing this petition.

For Petitioners : Mr.V.Ragavachari
for Mr.A.Esakkiappan
For Respondent : Adeeshanto

ORDER

This petition has been filed, challenging the award passed by the learned Sole Arbitrator for an amount of Rs.12,14,492/- (Rupees Twelve Lakhs Fourteen Thousand Four Hundred and Ninety Two Only) with interest at the rate of 12% per annum.

2. Originally, the claim has been made for the return of advance amount paid on the basis of Memorandum of Understanding dated 28.05.2015 entered between the parties. The agreement was entered for sale of 265 acres of land in favour of the respondent herein and the advance amount of Rs.9,00,000/- (Rupees Nine lakhs only) has been paid on the agreement. It appears that after executing such agreement, the petitioners herein has entered in a similar agreement dated 06.06.2015 in favour of Pudukottai Green Power Pvt. Ltd. and he has also entered into another agreement dated 23.06.2015 in favour of one Sanju Tharappel which culminated into filing of the suit.

3. The proceedings against the respondent is not to deal with the property. It appears that this Court has passed an order of injunction restraining the agreement holder under agreement dated 06.06.2015 and 23.06.2015 not to deal with the properties, wherein, the respondent was also made as a party. Thereafter, it appears that one of the parties, namely Pudukottai Green Power Pvt. Ltd has entered into compromise with the respondent herein to clear his title in respect of the property agreed to be purchased by them under agreement dated 06.06.2015. In the above compromise, it appears that a sum of

Rs.25,30,000/- (Rupees twenty five lakhs and thirty thousand only) has been paid by the subsequent purchaser in favour of the earlier agreement holder. However, the fact remains that the original agreement entered on 28.05.2015 between the petitioners and the respondent was in existence in respect of remaining acres to the extent of around 210 acres. As the agreement cannot be completed, the matter was referred to the Arbitrator for claiming the compensation and also for the recovery of advance.

4. The learned Arbitrator analysing the documents as well as pleadings on both sides, declined the compensation. However, he passed an award for a sum of Rs.12,14,492/- (Rupees Twelve Lakhs Fourteen Thousand Four Hundred and Ninety Two Only) which includes the interest for a sum of Rs.9,20,000/- (Rupees Nine lakhs and twenty thousand only) paid on the agreement dated 28.05.2015. The above award has been put under challenge with this petition.

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5. The main contention of the learned counsel for the petitioners that since the respondent has already paid the compensation by the Pudukottai Green Power Pvt. Ltd, the Arbitrator ought not have allowed

the return of advance amount based on the agreement dated 28.05.2015. It is his main contention that since earlier contract itself abandoned by the respondent, the Arbitrator ought not have awarded the return of advance amount. His further contention that the part of contract cannot be enforced, substantial provision of law has not been followed and there is no mutuality between the parties. Hence, it is his contention that the award is liable to be interfered.

6. The learned counsel appearing for the respondent submits that the notice has been properly sent and in fact, the parties were represented by their counsel. The Arbitrator has clearly mentioned that the parties itself given up a oral evidence. Further, the payment made by Pudukottai Green Power Pvt. Ltd is no way connected to the issue, since the above payment made only to clear the title and to have specific portion of the property agreed to be purchased by the Pudukottai Green Power Pvt. Ltd. The learned Arbitrator has considered the entire facts and reasonably interpreted the contract and passed a reasoned order.

7. I have perused the entire award as well as the rival submissions of the parties. It is not disputed that the agreement entered between the parties on 28.05.2015 for sale of more than 265 acres and it is also not a disputed fact that subsequent to the above agreement, the seller has created encumbrance by entering into similar agreements with Pudukottai Green Power Pvt. Ltd and one Sanju Tharappel. These facts are not in dispute. The Arbitrator is appointed only to decide the issue as to whether the claimant namely the respondent is entitled for compensation due to breach of Contract or he is entitled to refund of the advance amount.

8. The learned Arbitrator factually found that the amount paid to the respondent by Pudukottai Green Power Pvt. Ltd is in respect of a different transaction and it is only in order to set right the title in respect of 57 acres agreed to be purchased by Pudukottai Green Power Pvt. Ltd, whereas, the contract for remaining acres still continued to be in existence. However, the same could not be performed, particularly, the seller has not performed his part of complaint and finally found that he is entitled to an order for refund of advance amount. It is an admitted fact that the petitioner and the respondent entered

into the contract on 28.05.2015. Despite, the specific terms of agreement that seller will not create any third party interest during the subsistence of agreement, he has entered into contract with third parties. Such being the position, the third party/subsequent purchaser settled the issue with the agreement holder and the same cannot be taken advantage of by the petitioners to contend that the advance amount in respect of the agreement has been adjusted towards the above payment, i.e., the transactions have been made only in order to set right the title of the properties purchased by the third parties, namely, the subsequent purchaser. That being the position, I am of the view that the Arbitrator's reasoning is well founded and the Arbitrator has arrived at such findings and passed an award based on the facts. Therefore, this Court cannot sit as an Appellate Court to re-appreciate the entire evidence when the admitted amount is not disputed in the contract and which is not performed as agreed between the parties. The person who parted with the money has no other option for the return of amount. Therefore, the question of violation of public policy does not arise in this case.

9. I do not find any material reason to interfere with the award.
Accordingly, the original petition is dismissed. No costs.
Consequently, connected application is closed.

27.06.2019

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Index:Yes/No
Internet:Yes/No
Speaking order: Non-speaking order



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N.SATHISH KUMAR,J.

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