

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

ARBITRATION APPLICATION NO.126 OF 2018

ORDER

By way of this application filed under Section 11(4) & (6) of the Arbitration and Conciliation Act, 1996 (*for brevity*, 'the Act of 1996'), the applicants seek appointment of a sole Arbitrator to adjudicate their claims aggregating to Rs.43,43,68,000/- against M/s Western Constructions, the first respondent partnership firm.

The case of the applicants is that they, along with respondents 2 to 8, owned specific extents of land in a compact piece admeasuring Acs.42.00 guntas in Sy.Nos.653, 655, 656 and 664 of Vampuguda, Kapra Village, Keesara Revenue Mandal, Medchal-Malkajgiri District. They executed a Registered Development Agreement-cum-General Power of Attorney dated 25.08.2012, bearing Document No.2908 of 2012, authorising the first respondent firm to develop an extent of Acs.39.00 guntas out of their landholding into residential plots. The applicants and respondents 2 to 8 were entitled to 70% of the net plotted area while the first respondent firm was entitled to the balance 30%.

Clause 8 of the development agreement contemplated that the parties would enter into a separate supplementary agreement showing their respective shares in terms of allotment of plots, after the first respondent firm obtained sanction and approval of the layout. The applicants allege that the first respondent firm obtained the necessary permission and sanction from the authorities and completed development of the land but no supplementary agreement was executed showing the entitlement of the parties through allotment of plots. The applicants got issued legal notice dated 09.01.2018 to the first respondent firm and respondents 2 to 8 to come forward and apportion the plots as per the

entitlement of the parties and for execution and registration of a supplementary deed in terms thereof. The applicants stated in the said notice that in the event no action was taken, they would be constrained to initiate arbitration proceedings under Clause 35 of the development agreement. As there was no reply to the aforestated notice, the applicants filed the present application.

Notice having been ordered on this application on 30.11.2018, Sri K.Ravi Mahender, learned counsel, entered appearance for the first respondent firm while Sri T.S.Anirudh Reddy, learned counsel, entered appearance for respondents 2 to 4 and Sri Police Venkat Reddy, learned counsel, entered appearance for respondents 5 to 8.

No counter-affidavit was filed by any of the respondents. However, an undated Joint Memo was filed on 18.04.2019. This Joint Memo was signed by all the applicants and respondents, along with their respective learned counsel. Therein, it was stated that the parties had no objection to the appointment of an Arbitrator and they requested for appointment of a sole Arbitrator instead of a Tribunal consisting of three Arbitrators to avoid multiplicity of costs. They jointly requested this Court to appoint a sole Arbitrator, preferably a retired High Court Judge, to resolve their disputes.

Clause 35 of the development agreement reads as follows:

“In the event of any dispute arises between the parties, the same shall be resolved amicably. If the parties fails to resolve the dispute amicably, the matter should be referred to arbitration and the provisions of Arbitration and Conciliation Act, shall apply to the arbitration proceedings. Each party shall appoint their own arbitrator. The arbitrators thus appointed shall appoint the third arbitrator as the chairman of the tribunal. The place of arbitration shall be Hyderabad and the courts situated in the Hyderabad District, alone shall, have the territorial jurisdiction to entertain the dispute. The Award of the tribunal shall be final and binding upon the parties.”

Existence of an arbitration agreement between the parties is manifest. The requirement of Section 11 (6-A) of the Act of 1996 is therefore satisfied. Issuance and receipt of the arbitration notice dated 09.10.2018, whereby the applicants cautioned the respondents that in the event they failed to come forward within the stipulated time, they would be constrained to initiate arbitration proceedings under Clause 35 of the development agreement, is not disputed. Further, in the light of the undated Joint Memo filed by all the parties, this Court would be justified in appointing a sole Arbitrator, as sought by all the parties, in deviation from what they had agreed upon as set out in Clause 35 of the development agreement.

The Arbitration Application is accordingly ordered appointing Sri Justice Vilas V. Afzulpurkar, Flat No.401 & 402, Ruby, Lumbini Rockdale Apts, Beside Eenadu Office, Somajiguda, Hyderabad-82, as the sole Arbitrator for resolution of the disputes between the applicants and the respondents arising out of the Development Agreement-cum-General Power of Attorney dated 25.08.2012, in accordance with the provisions and mandate of the Act of 1996. The learned Arbitrator shall be entitled to fees as per the rates specified in the Fourth Schedule to the Act of 1996, inserted by Act 3 of 2016 with effect from 23.10.2015, which shall be borne by both parties in equal measure. No order as to costs.

SANJAY KUMAR, J

18th JUNE, 2019

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