

\$~6, 7, 17 to 27 & 34, 35

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 26th November, 2019*

+ FAO(OS) 169/2019 & CMs.APPL 39617/2019 & 47430/2019

M/S TRUE ZONE BUILDWELL PVT LTD Appellant

Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

versus

SURENDRA PAL & ANR Respondents

Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

+ FAO(OS) (COMM) 288/2019 & CMs.APPL 45359/2019 &
48050/2019

TRUE ZONE BUILDWELL PVT LTD Appellant

Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

versus

ANIL KUMAR & ANR Respondents

Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

+ FAO(OS) (COMM) 251/2019 & CMs.APPL 42543/2019 &
48048/2019

TRUE ZONE BUILDWELL PVT LTD Appellant

Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

versus

SAJJAN KUMAR Respondent

Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

+ FAO(OS) (COMM) 252/2019 & CMs.APPL 42545/2019 &
48042/2019

- TRUE ZONE BUILDWELL PVT LTD Appellant
- Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates
- versus
- SAI DASS (THR LRS) & ANR Respondents
- Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates
- + FAO(OS) (COMM) 253/2019 & CMs.APPL 42549/2019 &
48038/2019
- TRUE ZONE BUILDWELL PVT LTD Appellant
- Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates
- versus
- AJAY GUPTA & ORS Respondents
- Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates
- + FAO(OS) (COMM) 254/2019 & CMs.APPL 42551/2019 &
48064/2019
- TRUE ZONE BUILDWELL PVT LTD Appellant
- Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates
- versus
- JAGDISH KUMAR & ORS Respondents
- Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates
- + FAO(OS) (COMM) 255/2019 & CMs.APPL 42553/2019 &
48054/2019
- TRUE ZONE BUILDWELL PVT LTD Appellant
- Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

versus
 VED PAL Respondent
 Through Mr. Rajiv Nayar, Senior Advocate
 with Mr. Niraj Singh, Ms. Aishwarya
 Singh, Ms. Reha Mall and Mr. Atipra
 Aich, Advocates
 + FAO(OS) (COMM) 256/2019 & CMs.APPL 42555/2019 &
 48056/2019
 TRUE ZONE BUILDWELL PVT LTD Appellant
 Through Mr. Subodh K. Pathak, Mr. Adil Alvi
 and Mr. Akash Swami, Advocates
 versus
 DHARAMVEER @ KARAMVEER Respondent
 Through Mr. Rajiv Nayar, Senior Advocate
 with Mr. Niraj Singh, Ms. Aishwarya
 Singh, Ms. Reha Mall and Mr. Atipra
 Aich, Advocates
 + FAO(OS) (COMM) 257/2019 & CMs.APPL 42557/2019 &
 48052/2019
 TRUE ZONE BUILDWELL PVT LTD Appellant
 Through Mr. Subodh K. Pathak, Mr. Adil Alvi
 and Mr. Akash Swami, Advocates
 versus
 AMAR SINGH Respondent
 Through Mr. Rajiv Nayar, Senior Advocate
 with Mr. Niraj Singh, Ms. Aishwarya
 Singh, Ms. Reha Mall and Mr. Atipra
 Aich, Advocates
 + FAO(OS) (COMM) 258/2019 & CMs.APPL 42559/2019 &
 48062/2019
 TRUE ZONE BUILDWELL PVT LTD Appellant
 Through Mr. Subodh K. Pathak, Mr. Adil Alvi
 and Mr. Akash Swami, Advocates
 versus
 SURESH PAL Respondent
 Through Mr. Rajiv Nayar, Senior Advocate
 with Mr. Niraj Singh, Ms. Aishwarya

+ FAO(OS) (COMM) 259/2019 & CMs.APPL 42561/2019 & 48060/2019

Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

Page 4 of 17

TRUE ZONE BUILDWELL PVT LTD Appellant
Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

versus

NASEEB SINGH (DECEASED) THR LRS Respondents
Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

+ FAO(OS) (COMM) 291/2019 & CMs.APPL 45374-35375/2019,
48046/2019

TRUE ZONE BUILDWELL PVT LTD Appellant
Through Mr. Subodh K. Pathak, Mr. Adil Alvi
and Mr. Akash Swami, Advocates

versus

SURJEET SINGH & ANR Respondents
Through Mr. Rajiv Nayar, Senior Advocate
with Mr. Niraj Singh, Ms. Aishwarya
Singh, Ms. Reha Mall and Mr. Atipra
Aich, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CAV.PET.1032/2019 in FAO(OS) (COMM) 291/2019

1. Mr. Nayar, learned Senior Counsel, on instructions, enters appearance on behalf of the caveator.
2. Accordingly the caveat petition stands disposed of.

CM.APPL 48041/2019(Exemption) in FAO(OS) (COMM) 236/2019
CM.APPL 48047/2019(Exemption) in FAO(OS) (COMM) 291/2019

3. Exemption allowed, subject to all just exceptions.
4. The applications stand disposed of.

FAO(OS) 169/2019
FAO(OS) (COMM) 288/2019
FAO(OS) (COMM) 251/2019
FAO(OS) (COMM) 252/2019
FAO(OS) (COMM) 253/2019
FAO(OS) (COMM) 254/2019
O(OS) (COMM) 255/2019
FAO(OS) (COMM) 256/2019
FAO(OS) (COMM) 257/2019
FAO(OS) (COMM) 258/2019
FAO(OS) (COMM) 259/2019
FAO(OS) (COMM) 260/2019
FAO(OS) (COMM) 261/2019
FAO(OS) (COMM) 236/2019
FAO(OS) (COMM) 291/2019

5. These appeals are directed against the order dated 07.08.2019 passed by a learned Single Judge of this Court in OMP No. 11/2018 filed under Section 34 of the Arbitration and Conciliation Act, 1996. Objections to the Award dated 21.12.2004 were decided by the learned Single Judge of this Court by a common order dated 07.08.2019. For the sake of convenience, facts in OMP 11/2018 titled 'Surendra Pal & Anr. vs. True Zone Buildwell Pvt. Ltd.' were noticed by the learned Single Judge.
6. With the consent of the parties, we dispose of all the appeals by this common order. For the sake of convenience, facts in FAO(OS) No.169/2019 are noticed for the disposal of all the appeals.
7. The present appeals have been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (the 'Act'). The main challenge is to the impugned order dated 07.08.2019 passed by the learned Single Judge by which the objections to the award filed by the respondents herein

were allowed and the impugned award was set-aside. For the sake of convenience, the appellant herein will be referred to as the ‘buyer’ and the respondents herein will be referred to as the ‘sellers’.

8. Parties entered into an Agreement to Sell dated 16.02.2006 in respect of the agricultural land owned by the respondents herein in Village Phoosgarh, Tehsil Karnal, District Karnal, Haryana. The entire sale consideration was paid by the buyer to the sellers. Admittedly, the land had been notified under Sections 4 and 6 of the Land Acquisition Act, 1894 by the Land Acquisition Collector which is reflected in clause 5 of the Agreement to Sell pertaining to different respondents, which we reproduce below:

“5. That since the land is under notification of Section 4 and 6 of L.A. Act for acquisition so the sale deed cannot be executed and registered in the circumstances and as we have received full and final sale consideration from the second party so we have handed over the possession to the Second Party on the spot and we have also executed a registered general power of attorney in favour of Sh. Gulzar Joiya and the Second Party is at his full liberty to get the sale deed, conveyance deed or transfer deed be executed and registered in its own name or its nominees or its assignees either from my above GPA or from myself personally and all the relevant original documents in respect of the said land have been handed over by the First Party to the Second Party/Developer.”

9. It is the case of the appellant that it learnt that not only Sections 4 and 6 notifications had been issued but a notification under Section 9 had also been issued on 21.12.2004 and possession of the subject land had been taken by the Haryana Urban Development Authority (HUDA). Consequently the appellant filed a writ petition in the Punjab and

Haryana High Court for release of the land from acquisition. The writ petition was disposed of by an order dated 16.07.2005 referring the disputes to a High Powered Committee. The High Powered Committee passed a speaking order on 01.09.2008, rejecting the reliefs claimed by the appellant herein. The appellant then filed objections under Section 30 of the Land Acquisition Act, 1894 which were dismissed on 27.03.2012, which order has since attained finality. The appellant thereafter filed a petition under Section 9 of the Act before the Additional District Judge, Karnal, Haryana, which was also dismissed on 24.05.2012.

10. Initially, the appellant appointed a Sole Arbitrator, who was then substituted; and finally rendered the Award on 05.02.2018 allowing the claim of the appellant herein, which led to the filing of the petition by the respondents under Section 34 of the Act. The objections were allowed and the Award was set aside, which has led to the filing of the present appeals under Section 37 of the Act.
11. The learned Single Judge has set-aside the Award primarily on the ground that claims made were barred by limitation.
12. Mr. Pathak, learned counsel for the appellant submits that the respondents had played fraud upon the appellant knowing fully well that a Section 9 Notification had been issued. The learned counsel for the appellant submits that the respondents did not disclose this fact to the appellant and accordingly the appellant is entitled to refund of the sale consideration, which stands paid. Learned counsel further submits that the sellers had assured the buyer that the land under sale is free from all sorts of encumbrances, i.e. Agreement to Sell/Sale Mortgage,

Gift Deed, Lien, Legal Flaws Deed, General Power of Attorney, Receipt etc. The sellers had also represented that no notice of default of payment or re-entry or acquisition etc. had been entered into. Reliance is placed on clause 3 of the Agreement to Sell, which we reproduce below:

“3. That the first party hereby assures the second party that the said property under sale is free from all sorts of encumbrances i.e. Agreement to Sell/sale mortgage, gift, lien, legal flaws, court decrees or injunctions or lis pendens, claims or attachments whatever. No notice of any default or re-entry or acquisition etc., have been issued or received in respect of the subject property and the first party has not committed and will not commit any default of any term/condition imposed by law or the lessor or any other authority or set out in any other agreement concerning the property which shall prejudice the rights of the Second Party.”

13. Learned counsel for the appellant submits that the parties were *ad idem* that once sale consideration was paid, the seller would have no right, title or interest whatsoever in the land which is evident from reading of clause 7 of the Agreement to Sell, as per which the buyer was entitled to receive the compensation and enhanced compensation etc. Para 7 of the Agreement to Sell to that effect is reproduced below:

“7. That the first party has not been left with any rights, title and interest whatsoever in the said Land and / or in the compensation to be received from the Haryana Government or competent Authority. The Second party has become absolute owner of the said property as well as shall have right to receive the compensation from the Government/Authority.”

14. Learned counsel for the appellant submits that various supporting documents relating to the Agreement to Sell were also executed by the respondents in the form of Receipts, Affidavit, Indemnity Bond, Possession Letters, General Power of Attorney, all of which also show that after the receipt of the sale consideration, the respondents were left with no right, title or interest in the land; and no claim whatsoever could have been made by them in relation to the land, including for receiving any additional compensation. The documents so executed also show how the sellers have played fraud upon the buyer.
15. Learned counsel has also contended that the buyer had filed a writ petition challenging the acquisition proceedings in the Punjab and Haryana High Court. The matter was referred to a High Powered Committee of the State Government to consider the prayer of the appellants for release of the parcel of land from acquisition. Learned counsel submits that although this prayer was rejected, but the period of limitation for invoking arbitration would begin from the date prayer made for release of compensation under Section 30 of the Land Acquisition Act, 1984 was rejected, i.e., 27.03.2012. It is contended that this fact has been completely ignored by the learned Single Judge. Additionally, it is contended that the period of limitation would commence from the date when the petition under Section 9 filed before court of learned Additional District Judge, Karnal, subsequent to order dated 27.03.2012, was dismissed on 24.05.2012; and further cause of action would arise when the compensation was actually received by the respondents, which was during the period 2010-14 as per the appellants, and 2010-12 as per the respondents. It is further contended that the

scope of interference in proceedings under Section 34 of the Act is narrow and the learned Single Judge could not have lightly set aside the Award, which is a well-reasoned Award passed by the learned Arbitrator.

16. Mr. Nayar, learned Senior Counsel for the respondents submits that there is no infirmity in the order passed by the Single Judge which would require interference in the proceedings under Section 37 of the Act. Senior Counsel submits that the Single Judge has rightly considered that the period of limitation would commence at the latest from the date when the High Powered Committee rejected the claim of the appellant on 01.09.2008. Mr. Nayar has also relied upon Section 17 of the Limitation Act, 1963 to show that the period of limitation would begin to run when the appellant discovered the fraud; and, as per the pleadings of the appellant, fraud was discovered at least as early as the time when the order was passed by the High Powered Committee. Mr. Nayar submits that it is hard to believe that a big developer/construction company would have entered into an Agreement to Sell and paid the entire sale consideration amount without carrying-out a thorough due diligence of the lands, especially when in the Agreement to Sell it was disclosed that Section 4 and 6 Notifications had already been issued. He points out that there is no explanation as to why the appellant did not examine the record and satisfy itself that the sellers had a marketable title and that they were not fettered from selling the land. Learned Senior Counsel submits that the Agreement to Sell was entered into between the parties with open eyes and the appellant was fully aware of the acquisition proceedings and there was no question of fraud

having been committed nor was there any averment to that effect in the Statement of Claim. Further, if the appellants were not satisfied as to the clear marketable title, or if their endeavour was to get the land released from acquisition under Section 40 of the Land Acquisition Act, they could have held back the entire sale consideration, or at least part of the sale consideration, to be paid when the land is cleared from acquisition proceedings. Reliance is placed on prayer (a) of the Statement of Claim filed by the appellant before the sole Arbitrator, which is reproduced below:

“a) award the claimant an amount of Rs.8,09,17,559/- (Rupees eight crores nine lacs seventeen thousand five hundred fifty nine only) details referred as above in para no.16 of the instant claim petition and be pleased to pass an award thereof accordingly in favour of the claimant and against the respondents.”

17. Accordingly, it is contended that the period of limitation would start running from the time when the High Powered Committee rejected the case of the appellant for release of the land as correctly held by the learned Single Judge.
18. We have heard the learned counsels for the parties and have considered their rival submissions.
19. The basic facts are not in dispute. The parties had entered into an Agreement to Sell on 16.02.2006. The Agreement to Sell clearly records that Notifications under Sections 4 and 6 of the Land Acquisition Act, 1894 had already been issued. The Agreement to Sell also made it clear that after signing of the Agreement to Sell, the respondents would be left with no right, title or interest in the subject

land. The observations made in the order passed by the High Powered Committee, by which the representation of the appellant was rejected, read as under:

“7. It was observed by the committee that the award was announced in accordance with law on 21.12.2004 and the possession was delivered to HUDA on the same day. This fact is evidenced from the revenue record i.e. a copy of rapat roznamcha dt. 21.12.2004 wherein the transfer of possession from land owners to HUDA has been recorded. The pleading of the petitioner that the award was announced on 21.12.2004 to save the notification from lapsing is without any basis. The acquisition has been done as per process of law. After the announcement of award, it is for the land owners to take compensation and not taking of compensation, is no ground for releasing the acquired land.

8. It is also observed that the petitioner Company has entered into collaboration agreements with original owners of land which is subsequent to the date of announcement of award and transfer of possession. Agreements entered into after 21.12.2004 are void ab initio since the land owners had no title of land on the date of entering into agreement.

The plea taken by the petitioner that the case of M/s True Zone Buildwell Pvt. Ltd. is similar to theirs is not true. M/s True Zone Buildwell Pvt. Ltd. applied for licence for an area of 55.175 acres in sector 32, Karnal on 14.9.2004, they had entered into collaboration with individual land owners on 28.8.2004, the land was released by Director, Urban Estate Development on 6.12.2004. All these activities were completed well before the date of announcement of award i.e. 21.12.2004. Whereas, in the case of petitioners even the application for license was filed on 17.12.2004 i.e. much after announcement of award. Not only this, the petitioners approached Hon'ble High Court on 26.10.2005 i.e. more than eleven months after the announcement of award and

handing over the possession to HUDA. The collaboration agreement was executed on 29.12.2004. The application for license can be considered only in case the applicant has a title to the land. In this case neither the applicant companies nor the land owners with whom it had entered into agreement have any title of land in question.

(Emphasis supplied)”

20. The learned Single Judge has relied upon the above observations while deciding when the period of limitation would begin to run. The Award was rendered on 21.12.2004 i.e. prior to the appellant entering into the Agreement to Sell. It is also the case of the Land Acquisition Collector that at the stage of issuance of Section 9 Notification itself, possession of the land was taken. Despite the Notification under Section 9 having been issued, the parties entered into the Agreement to Sell, when in fact, at that point in time the seller had no title over the land in question. Once the above observations were made, in our view, the learned Single Judge has correctly held that the period of limitation would begin with order dated 05.09.2018 passed by the High Powered Committee, since the effect of this order would be that the Agreement to Sell entered into between the parties would be null and void; and consequently, having no title over the land in question, the sellers had sold the land to the appellant and received the entire sale consideration, thereby giving to the appellant its cause of action. If the appellant was aggrieved, the period of limitation would begin from this point in time and not when the compensation was released in favour of the sellers, as has been claimed in the Statement of Claim, for the reason that the main claim was for refund of the sale consideration paid to the respondents and not for making-over of compensation received by the respondents.

21. The question which would arise for our consideration is this: at what point of time did the appellant realise that a fraud had been played upon it by the sellers; and that it was therefore entitled to refund of sale consideration, which it had paid under a wrong belief that a Section 9 notification had not been issued. In this context, we are compelled to observe that it is hard to believe that a developer/construction company which has entered into several Agreements to Sell would not gather that once Notifications under Sections 4 and 6 had been issued it was necessary to conduct a through due-diligence to check the status of acquisition. We cannot overlook that notice was issued to interested-persons; public notice was given at a convenient place and/or near the land which has been taken over, stating that the Government is intending to take possession of the land. Notices were also served on the occupier. We also deem it appropriate to reproduce clause 11 of the Agreement to Sell, which reads as under:

“11. Second party will get the land released from acquisition from HUDA/Government of Haryana and immediately thereafter the first party will execute a proper sale deed of the said land in the name of second party and get the sale deed registered in the office of Sub-Registrar.”

22. Reading of the aforesaid clause makes it clear that the second party, i.e., the appellant would get the land released from acquisition from HUDA/Government of Haryana and immediately thereafter, the seller was to execute a proper sale deed of the land in the name of the buyer, whereby again, it is evident that the advanced stage of acquisition proceedings in respect of the land was clearly within the appellant's knowledge.

23. The learned counsel for the appellant contends that the appellant would be entitled to the benefit of Section 14 of the Limitation Act, 1963, namely of exclusion of time, since on 27.03.2012 they had approached the wrong Court by filing a proceeding under Section 30 of the Land Acquisition Act, 1894 before the Additional District Judge, Karnal, Haryana. We find no force in this submission of the learned counsel as Section 14 of the Limitation Act, 1963 would not apply since the subject matter of the arbitration claim was not a claim for compensation or apportionment of compensation under Section 30 of the Land Acquisition Act, 1894 but only a claim for refund of sale consideration paid under the agreement to sell.
24. We have noticed that in addition to the Agreement to Sell, there were various other documents that were executed like Receipt of Payment, Will and General Power of Attorney, etc., of which the General Power of Attorney was even cancelled on 21.03.2007; and again, arbitration was invoked in 2013, i.e. well beyond three years of cancellation of the General Power of Attorney; and the Statement of Claim was filed another year after the date that arbitration was invoked i.e. in the year 2014.
25. Thus, looking into all these factors, including the decision of the High Powered Committee, we find no infirmity in the order passed by the learned Single Judge. The claim of the appellant is evidently beyond the period of limitation; and is therefore not maintainable, as being time-barred.
26. Accordingly, all the appeals are dismissed.

CMs.APPL 39617/2019 & 47430/2019 in FAO(OS) 169/2019
CMs.APPL 45359/2019 & 48050/2019 in FAO(OS) (COMM) 288/2019

CMs.APPL 42543/2019 & 48048/2019 in FAO(OS) (COMM) 251/2019
CMs.APPL 42545/2019 & 48042/2019 in FAO(OS) (COMM) 252/2019
CMs.APPL 42549/2019 & 48038/2019 in FAO(OS) (COMM) 253/2019
CMs.APPL 42551/2019 & 48064/2019 in FAO(OS) (COMM) 254/2019
CMs.APPL 42553/2019 & 48054/2019 in FAO(OS) (COMM) 255/2019
CMs.APPL 42555/2019 & 48056/2019 in FAO(OS) (COMM) 256/2019
CMs.APPL 42557/2019 & 48052/2019 in FAO(OS) (COMM) 257/2019
CMs.APPL 42559/2019 & 48062/2019 in FAO(OS) (COMM) 258/2019
CMs.APPL 42561/2019 & 48060/2019 in FAO(OS) (COMM) 259/2019
CMs.APPL 42563/2019 & 48044/2019 in FAO(OS) (COMM) 260/2019
CMs.APPL 42568/2019 & 48058/2019 in FAO(OS) (COMM) 261/2019
CMs.APPL 42742/2019, 48040/2019 in FAO(OS) (COMM) 236/2019
CMs.APPL 45374-35375/2019, 48046/2019 in FAO(OS) (COMM) 291/2019

27. The applications also stand dismissed in view of the order passed in the appeals.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

NOVEMBER 26, 2019

pst