

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

FAO No.484 of 2022(O&M)
Date of Decision:19.04.2022

State of Haryana

..... Petitioner

Vs.

M/s Raja Ram Mohan Rai Education Foundation Society and
others

... Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Samarth Sagar, Addl., A.G., Haryana.

RAJ MOHAN SINGH, J.

[1]. This appeal has been preferred by the appellant against the order and judgment dated 19.02.2021 passed by the Additional District Judge, Chandigarh, whereby objection petition under Section 34 of the Arbitration and Conciliation Act, 1996 against the award dated 12.03.2019 passed by the Arbitrator/respondent No.3 was dismissed and award was upheld.

[2]. Admittedly, the award was passed by respondent No.3 being the sole Arbitrator. Arbitrator was appointed vide order dated 11.10.2017 passed by the Division Bench of the High Court in CWP No.1743 of 2004, COCP NO.1262 of 2006 and

CR No.8346 of 2014. Government of Haryana through its Secretary (Animal Husbandry) entered into an agreement with Raja Ram Mohan Rai Education Foundation Society (Registered) on 02.12.1986, whereby plot measuring 2 acres 7 kanals was handed over to the Society on 11.12.1989 i.e. 3 years after execution of the agreement. There was no civic amenities in the land and the land was agricultural in nature. After putting efforts, the society obtained all civic amenities in order to make site usable for the construction of a vocational institute. The building plans were prepared and the building of first block was constructed in the year 1994 i.e. after 5 years from the date of handing over possession of the land. Building was comprising of one hall measuring 40" X 32", two class rooms, office, servant quarters and toilet block etc. During construction period, the allotted land came within the municipal limits of Hisar and as such, Municipal Council, Hisar restrained the society from raising further construction and asked them to submit the building plan. On 04.05.1994, the building plan was submitted in the office of Municipal Committee, Hisar for approval, but the same was sanctioned on 22.07.2002. Thereafter, the claimant society started raising construction as per sanctioned plan. The construction of the first block was completed prior to the year 1994 and the same was assessed

by the Municipal Council for the purpose of house tax in the year 1995-96. A demand of house tax was raised vide bill dated 08.02.1996 and the same was paid. The electricity connection of the constructed block was also obtained by the claimant society. Clause-4 of the agreement dated 02.12.1986 reads as under:-

“The land is transferred subject to condition that it will be constructed or put to use for the purpose already indicated within a period of five years, failing which, it would be resumed.”

[3]. Perusal of the aforesaid condition would show that the extent of construction was not recited in the said clause. By invoking the aforesaid clause, the Chief Superintendent, Animal Husbandry Department, Hisar issued a show cause notice dated 20.02.2003 on the ground that the claimant society has not put the land to use for the purpose, for which, it was allotted and the land was lying vacant. The society was directed to hand over the possession of the land to the Department, otherwise action would be taken for taking possession of the land back from the claimant society.

[4]. The action of the Department was assailed by the society by way of filing a civil suit for permanent injunction. The suit was withdrawn vide order dated 11.10.2003 with permission to file fresh suit after taking into consideration the requirement

of Section 80 CPC. The Department again issued show cause notice dated 18.07.2003 for resumption of the allotted land during pendency of the suit. The alleged notice was never received by the claimant society as per its case. Since the second notice dated 18.07.2003 was never served upon the claimant society, therefore, the same could not be produced before the Civil Court. The second notice was claimed to be ante dated, forged, fabricated document and was also against the principles of natural justice.

[5]. Thereafter, the Department passed *ex party* order of resumption dated 26.08.2003, thereby superseding the earlier notice dated 20.02.2003, requiring the claimant society to hand over the possession, failing which, the proceedings under Public Premises Act would be initiated.

[6]. Arbitrator after deliberating upon various issues, passed an award dated 12.03.2019. Appellant Department feeling aggrieved against the award, filed objection petition under Section 34 of the Arbitration and Conciliation Act and the same was dismissed vide order dated 19.02.2021. Appellant Department has assailed the order dated 19.02.2021 primarily on the ground that though in the arbitration matters, the interference by the Courts should be minimum, unless and until the award suffers from patent illegality and that patent illegality

falls under the head of public policy. In domestic awards, an additional ground is available under Sub Section (2-A) added by the Amendment Act of 2015 to Section 34 of the Act. Patent illegality is not a mere erroneous application of law, which goes to the roots of the matter. The finding based on no evidence or an award, which ignores vital evidence would be perverse and liable to be set aside on the ground of patent illegality. In this context, learned State counsel for the appellant refers to **State of Chhattisgarh and another Vs. M/s Sal Udyog Private Limited, 2021 AIR (Supreme Court) 5503.** Learned State counsel further refers to the fact that according to RW-1, municipal limits were extended in the year 1988 and therefore, there was erroneous application of mind on the issue of construction and sanctioning of building plan.

[7]. Learned State counsel also refers to notice sent on the address given in an agreement Ex.C2 on the ground that even in the writ petition, the same address i.e 12 House Avenue Lane, New Delhi was shown. The Arbitrator took notice of all these factors with reference to material on record. The Arbitrator has observed that as per the stand taken by the claimant society, the earlier notice dated 20.02.2003 (Ex.C7) was given on the address of 12 Rouse Avenue Lane, New Delhi and the same was given on the correct address and was served upon

the claimant society. Even that notice was challenged by the claimant society in the Court.

[8]. The controversy with regard to the correct address whether it was 12 House Avenue Lane, New Delhi or 12 Rouse Avenue Lane, New Delhi, the Arbitrator has deliberated upon the evidence on record and preferred to take note of correct address of 12 Rouse avenue Lane, on which the earlier notice dated 20.02.2003 was duly served upon the claimant society. The Arbitrator has also discussed that the basic document on the issue of correct address is the certified copy of memo of society (Constitution of Society) (Ex.P2), in which the registered office address of the claimant society was given as **“12 Rouse Avenue Lane, New Delhi”**. At the time of handing over possession of the land to the claimant society on 11.12.1989, the address of the claimant society was mentioned as 12 Rouse Avenue Lane, New Delhi. There is no land in the name of House Avenue Lane, whereas there is a land with the name of Rouse Avenue Lane. This fact could not be controverted by the appellant Department before the Arbitrator. Moreover, the first notice dated 20.02.2003 (Ex.C7) was served upon the claimant society on the address 12 Rouse Avenue Lane, therefore, second notice given on the address of 12 House Avenue Lane was deprecated and Arbitral Tribunal appreciated the said fact

in favour of the claimant society that the subsequent notice dated 18.07.2003 was not issued on the correct address. The second notice dated 18.07.2003 (Ex.C9) was allegedly issued during pendency of the civil suit, challenging the earlier notice dated 20.02.2003 (Ex.C7).

[9]. The suit was withdrawn with a permission to file fresh suit on 11.10.2003 as the State of Haryana could not be impleaded as party and further notice under Section 80 CPC was not given to the State of Haryana. Therefore, the plaintiff was allowed to withdraw the civil suit with permission to file fresh suit. Even this prayer was contested by the appellant Department, but the Civil Judge (Senior Division), Hisar vide order dated 11.10.2003 (Ex.C8), allowed the plaintiff to withdraw the suit with a permission to file fresh suit with the same cause of action. At that time, the appellant-Department did not bring to the notice of the Court, nor to the claimant society that the first notice dated 20.02.2003 had already been superseded with second notice dated 18.07.2003. The factum of taking possession of the land in dispute from the claimant society on 04.09.2003 and 11.09.2003 was also not disclosed in the written statement filed by the appellant Department before the High Court in CWP NO.1743 of 2004, particularly when the written statement was filed on 25.06.2004. On the basis of non-service

of second notice dated 18.07.2003 (Ex.C9), the Arbitrator opined that the resumption order dated 26.08.2003 on the basis of notice dated 18.07.2003 was invalid. The appellant-Department wanted to resume the land by invoking Clause 4 of the agreement dated 02.12.1986, which is silent about the extent of construction.

[10]. Admittedly, the possession of the land in dispute was given to the claimant society on 11.12.1989 and the construction was to be raised within five years. The first block was constructed in the year 1994 i.e. within 5 years from the date of handing over possession. The factum of the construction has been brought on record with the relevant material viz. Photographs, assessment of the house tax in the year 1996-97, demand raised by the Municipal Committee vide bill dated 06.04.1996 (Ex.R14). The assessment of the house tax was made only when building was completed. The statement of Styavan, House Tax Clerk, Municipal Corporation, Hisar (RW2) was relied to show that the house tax was assessed on the completed building. The assessment register of the year 1995-96 was produced, wherein at serial No.4, there was an entry, showing the property was under construction. The raising of construction was done within 5 years. Condition No.4 of the agreement was silent with regard to extent of construction.

Building Inspector Amit Berwal (RW1) deposed that for the first time, building plan was submitted on 04.05.1994. The witness referred to register, in which the application for submission of building plan was entered (Ex.R11). The entry was proved by bringing the original G-8 receipt book (Ex.R12). The witness pleaded ignorance about sanctioning or rejection of the application. In terms of Section 205 of the Haryana Municipal Act, if the building plan is neither sanctioned, nor rejected within a period of 60 days, then it is deemed to have been sanctioned. RW-1 during his cross-examination deposed that the building plan was objected to by the Municipal Committee and therefore, on account of objections, the building plan could not be sanctioned and it remained on papers only.

[11]. The Arbitrator has deliberated upon this issue and found that there is no material on record to show as to what type of objections were raised by the Municipal Committee on this building plan. No documentary evidence has been produced by the appellant-Department. Statement of RW-1 Amit Berwal, Building Inspector was to the effect that the building plan was neither sanctioned, nor rejected as per report. When the factum of submission of application is proved, then with deeming fiction, building plan had to be considered as sanctioned after expiry of 60 days. The claimant society has specifically pleaded that it

has raised the construction over the land in question and while submitting another application for sanctioning of building plan on 12.06.2002, the same was sanctioned on 22.07.2002. At no point of time, the existence of construction was labeled as unauthorized construction by the Municipal Committee. RW-1 has proved that the application for sanctioning of building plan was moved on 12.02.2002 (Ex.R2) and building plan was sanctioned vide order dated 19.07.2002, which was conveyed on 22.07.2002.

[12]. Learned State counsel referred to memo of writ petition No.1743 of 2004, wherein address of 12 House Avenue Lane, New Delhi was shown. This fact was sought to be proved by way of application of admission and denial of the documents moved by the claimant society. The Arbitrator vide order dated 09.06.2018 found that the application was filed by the claimant society, but the appellant-Department failed to file any admission and denial of document and sought time. Thereafter, order dated 16.06.2018 came to be passed by the Arbitrator, showing that admission and denial of documents were made by the appellant-Department and thereafter, the Arbitrator proceeded to frame issues.

[13]. Perusal of orders dated 09.06.2018 and 16.06.2018 would show that no inventory has come forth on record showing

the details of documents, which were subjected to admission and denial by the claimant society and were admitted by the present appellant-Department. Even otherwise, this aspect of the case cannot be treated to be a patent illegality in the light of due service of notice dated 20.02.2003 on the address of 12 Rouse Avenue Lane, New Delhi.

[14]. In any case, perusal of the award dated 12.03.2019 would show that the Arbitrator has appreciated the facts. In the objection petition under Section 34 of the Act, the Additional District Judge has also considered the submissions and came to the conclusion that since the Arbitrator has taken into consideration the issues raised before her, therefore, re-appreciation of the evidence cannot be done by the Court as the evidence has already been analyzed by the Arbitrator. The scope of interference by the Court is minimum in view of Section 34 of the Act, unless and until findings of the Arbitrator are arbitrary, perverse and suffer from patent illegality.

[15]. Perusal of the material on record and the appreciation done by the Arbitrator would show that the alleged erroneous appreciation would not bring the case within the ambit of patent illegality warranting interference by the Court in view of law laid down in **State of Chhattisgarh and another's case (supra)**. Patent illegality should be which goes to the very roots of the

case. The view expressed by the Arbitrator cannot be held to be patent illegality as the same is also based on documentary evidence. Mere erroneous appreciation of fact would not fall within the expression 'patent illegality' by any stretch of imagination, particularly when equally placed preposition based on facts is possible, rather the same has been brought on record by proving that notice issued on 12 Rouse Avenue Lane was served whereas the notice issued on the address of 12 House Avenue Lane was not served.

[16]. In view of law laid down by the Hon'ble Apex Court in **MC Dermott International Inc. Vs. Burn Standard Co. Ltd., 2006(2) Arb LR 498 (SC)**, the Court cannot sit in appeal and examine correctness of award on merits. The Court can interfere only on limited grounds. The view expressed by the Arbitrator is reasonably possible and in such eventuality, the approach of the Court is to minimise the dispute in disposing of an application under Section 34 of the Act in support of the award, rather than to destroy it. The Arbitrator was appointed with the consent of the parties. Reference can also be made to **State of Uttar Pradesh Vs. Ram Nath Construction, 1996(1) SCC 18** and **Bhagwati Oxygen Ltd. Vs. Hindustan Copper Ltd., AIR 2005 SC 207** in the context of re-appraisal of evidence by the Court is not permissible under Section 34 of the Act.

There is no material to show that there is any defect in procedure or in the reasoning and therefore, the case does not fall under the purview of Section 34(2) of the Act.

[17]. In view of law laid down by the Hon'ble Apex Court in **Associate Builders Vs. Delhi Development Authority, (2015) 3 SCC 49**, the interference by the Court can only be permissible when the findings recorded by the Arbitrator are arbitrary, capricious, perverse and suffer from patent illegality. If the award does not suffer with any such disqualification, the same cannot be interfered with by the Court. The law on the interference in the matters of award under Arbitration Act has been circumscribed with the object of minimizing interference by the Court in arbitration matters, therefore, on the basis of facts and circumstances of the case, no interference is called for in this appeal.

[18]. In view of above, the present appeal is dismissed.

19.04.2022
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No