IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.26396 of 2022(O&M)
Reserved on 24.11.2022
Date of Pronouncement:09.12.2022

MGF Developments Ltd. ..... Petitioner

Vs.

State of Haryana and others ... Respondents

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

Present: Mr. Sanjeev Sharma, Sr. Advocate and
Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Singh Talwar, Advocate
Ms. Arundhati Kulshreshtha, Advocate
Mr. Jugansh Goyal, Advocate and
Mr. Abhijeet Singh Rawaley, Advocate
for the petitioner.

Mr. Sumit Gupta, Addl., A.G., Haryana.

Mr. Randeep Singh Rai, Sr. Advocate and
Mr. Aashish Chopra, Sr. Advocate with
Mr. Kunal Dawar, Advocate
Ms. Rupa Pathania, Advocate
Ms. Rubina Virmani, Advocate and
Ms. Nitika Sharma, Advovate
for respondents No.2 to 6.

Mr. Amit Jhanji, Sr. Advocate with
Mr. S.P.S. Aulakh, Advocate
Mr. Himmat Singh Sidhu, Advocate and
Ms. Eliza Gupta, Advocate
for respondents No.7 to 9.

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RAJ MOHAN SINGH, J.

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ, order or direction, especially in the nature of certiorari for quashing the order dated 13.10.2022 (Annexure P-30), order dated 15.10.2022 (Annexure P-31) and order dated 02.11.2022 (Annexure P-32) passed by the Daily Lok Adalat, Gurugram in CM No.600 of 2022 titled MGF Developments Ltd. Vs. Cosmo Propbuild Pvt. Ltd. and others in Civil Suit No.2536 of 2016 titled M/s Sparsh Promoters Pvt. Ltd. Vs. M/s Cosmo. Prayer to stay the operation of the aforesaid orders has also been made.

[2]. Perusal of the record would indicate that the petitioner is a company incorporated in terms of Companies Act, 1956. M3M India Limited is a holding company. Subsidiary group of companies are Nourish Developers Pvt. Ltd., COSMO Propbuild Pvt. Ltd, Surya Propcon Pvt. Ltd., Neer Builders Pvt. Ltd, Vibrant Infratech Pvt. Ltd. and Starcity Realtech Pvt. Ltd. EMAAR India Ltd. is also a holding company. Subsidiary group of companies are Sparsh Promoters Pvt. Ltd., Sandesh Buildcon Pvt. Ltd. and Sidhant Building Private Ltd. Similarly, the petitioner i.e. MGF Developments Ltd. is also the holding

company.

[3]. The dispute of the petitioner/MGF Developments Ltd. is with M3M India Ltd. and its subsidiary companies, who are trying to obtain licence qua the land parcels, for which the petitioner claims to have exclusive right of usage and development as per the demerger order dated 08.01.2018 corrected on 16.07.2018 passed by the National Company Law Tribunal, Principal Bench, New Delhi (hereinafter to be referred as “the NCLT').

[4]. According to the petitioner, there is no dispute with Sparsh Promoters Pvt. Ltd., Sandesh Buildcon Pvt. Ltd., Sidhant Building Private Ltd and the holding company EMAAR India Ltd. However, since the award dated 09.12.2016 has been obtained in their names, therefore, these companies have also been impleaded as proforma respondents.

[5]. The award of Daily Lok Adalat, Gurugram was passed between the aforesaid proforma respondents on the one hand and COSMO Propbuild Pvt. Ltd, Surya Propcon Pvt. Ltd., Neer Builders Pvt. Ltd, Vibrant Infratech Pvt. Ltd. and Starcity Realtech Pvt. Ltd. on the other hand. The names of proforma respondents i.e. M/s Sparsh Promoters Pvt. Ltd. etc are incorporated in the column of ownership in the revenue record. Under the demerger order dated 08.01.2018 corrected on

16.07.2018, these proforma respondents were under legal obligation to act as per instructions of the petitioner. The petitioner being the beneficiary has an exclusive right to use and develop the land parcels and the petitioner has substantial interest in the litigation.

[6]. During statutory demerger, the petitioner received usage and development rights in certain land parcels in village Chauma, Tehsil and District Gurugram. As per demerger order, the petitioner has a exclusive right to use and develop the land parcels situated in Sectors 111 and 113, Gurugram. The subsidiary companies of M3M India Ltd. fraudulently obtained the consent of the petitioner in passing of the award of the Daily Lok Adalat, Gurugram on 09.12.2016 and has fraudulently managed to get the mutation of the ownership entered in the revenue record. Agreed consideration was not passed over to the petitioner except a very meager amount. The cheques have also been dishonoured, therefore, as per Clause-7 of the Compromise Deed dated 23.11.2016, the deed is automatically stood cancelled and has been rendered null and void.

[7]. Subsidiary companies of M3M India Ltd. have filed an application for grant of licence to develop a Group Housing Colony over the land measuring 16.1125 acres including the land measuring 7.01 acres of the petitioner.

[8]. In the context of the claim and rival claim made by the petitioner and the respondents, CWP No.25534 of 2021 came to be filed by the petitioner, which was disposed of vide order dated 19.04.2022. Para Nos.32, 33, 37, 38 and 41 of the aforesaid order reproduced hereasunder:-

> *"[32]. Learned Senior counsel for respondents No.13 to 15 on the other hand by relying upon* ***New Okhla Industrial Development Authority (Noida) vs. Yunus and others, 2022 SCC OnLine SC 138****;* ***Triloki Nath Singh vs. Anirudh Singh and others, (2020) 6 SCC 629*** *and* ***Sneh Gupta vs. Devi Sarup and others, 2009(6) SCC 194*** *submits that the award passed by the Lok Adalat is the culmination of a non-adjudicatory process. The parties are persuaded even by members of the Lok Adalat to arrive at mutually agreeable compromise. The Award sets out the terms. The provisions contained in Section 21 of the Act by which the Award is treated as if it were a decree is intended only to clothe the Award with enforceability. In view of the provisions of Section 21 by which it is to be treated as a decree which cannot be challenged, undoubtedly, by way of an appeal in view of the express provisions forbidding it, unless it is set aside in other appropriate proceedings, it becomes enforceable. The purport of the law giver is only to confer it with enforceability in like manner as if it were a decree. Thus, the legal fiction that the Award is to be treated as a decree goes no further. There is a distinction where compromise is arrived under Order 23 CPC between the parties and*

the Court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21. Without anything more, the award passed by the Lok Adalat becomes a decree. Petitioner being a stranger to the compromise decree cannot maintain independent suit in view of bar under Order 23 Rule 3-A CPC. Since petitioner is not privy to the compromise decree, therefore, ratio of ***State of Punjab vs. Jalour Singh*** *and* ***Bhargavi Construction & Anr.'s*** *cases (supra) are not attracted in favour of the petitioner.*

[33]. Learned Senior counsel for respondents No.13 to 15 further submits that even void orders are to be assailed in accordance with law within limitation. Even if order is void or voidable, the same must be set aside in accordance with law. Reference has been made to ***M. Meenakshi vs. Metadin Agarwal, (2006) 7 SCC 470****;* ***Sultan Sadik vs. Sanjay Raj Subba, (2004) 3 SCC 377*** *and* ***State of Punjab vs. Gurdev Singh, (1191) 4 SCC 1****.*

[37]. Having heard the rival submissions made by learned Senior counsel for the parties, I find that the award dated 09.12.2016 is passed by the Daily Lok Adalat. This award has been passed by the Daily Lok Adalat presided by the Civil Judge (Jr. Divn.) Gurgaon, therefore, it has to be treated alike compromise decree under Order 23 Rule 3 CPC. It is also true that all questions are to be decided in the same suit as the decree is not amenable to appeal and thus fresh independent suit is barred.

[38]. Petitioner in terms of its pleadings has specifically

acquiesced the factum of filing civil suit, execution of exchange deeds and compromise, incorporation of mutations in the revenue record, alleged misrepresentation of respondents. In view of above, it would remain debatable as to whether petitioner can espouse the cause at such a belated stage by moving an objection petition in the same proceeding. This Court would not comment upon the remedies which may be availed by the petitioner in accordance with law in future. Certainly qua this aspect, the petitioner cannot maintain the present petition being suffered with delay and latches and also the petitioner having acquiesced the subject matter of civil suit, exchange deed and compromise etc.

[41]. In view of aforesaid observations, for the first limb of argument, the petitioner would be at liberty to avail its legal remedies in accordance with law. For the second limb of argument, respondent No.1 shall allocate the pending application to any other competent officer or may take up the issue itself in accordance with law. The present arrangement is being made in view of attending facts and circumstances of the present case without creating any such precedent for any other case. Let the needful be done by respondent No.1 within a period of two weeks."

[9]. Evidently, this Court while dealing with the issues in the aforesaid CWP No.25534 of 2021 has dilated upon the fact that the award passed by the Lok Adalat is the culmination of a non-adjudicatory process and has to be treated as a decree. The provisions contained in Section 21 of the Act by which the

award is treated as if it were a decree is intended only to clothe the award with enforceability, which cannot be challenged undoubtedly by way of an appeal in view of express provisions forbidding the same, unless it is set aside in other appropriate proceedings, it becomes enforceable. The legal fiction that the award is to be treated as a decree goes no further. There is a distinction where compromise is arrived under Order 23 CPC between the parties and the Court is expected to look into the compromise and satisfy itself that it is lawful before it assumes efficacy by virtue of Section 21 of the Act. The petitioner being a stranger to the compromise decree, cannot maintain independent suit in view of bar created under Order 23 Rule 3-A CPC. Since the petitioner is not privy to the compromise decree, therefore, it was observed that the ratio of ***State of Punjab Vs. Jalour Singh, (2008) 2 SCC 660*** and ***Bhargavi Construction and another Vs. Kothakapu Muthyam Reddy and others, 2017 SCC Online SC 1053*** are not attracted in favour of the petitioner.

[10]. Evidently, the award dated 09.12.2016 was passed by the Daily Lok Adalat presided by the Civil Judge (Junior Division), Gurugram, therefore, it has to be treated alike compromise decree under Order 23 Rule 3 CPC. All issues arising out of the compromise decree are to be decided in the

same suit as the decree is not further amenable to appeal and fresh independent suit is also barred.

[11]. This Court while disposing of the aforesaid CWP No.25534 of 2021 has also observed that the petitioner had also acquiesced the factum of filing the civil suit, execution of exchange deeds and compromise and giving effect of mutations in the revenue record as well as alleged misrepresentation of the respondents therein.

[12]. In view of the facts and circumstances of the case, it was also observed that it would remain debatable as to whether the petitioner can espouse the cause at such a belated stage by moving the objection petition in the same proceeding. However, this Court did not comment upon the remedies which may be availed by the petitioner in accordance with law. In view the aforesaid fact, it was held that the petitioner cannot maintain the said writ petition being suffered with delay and latches and also having acquiesced the subject matter of civil suit, exchange deed and compromise etc. The second limb of consideration in the aforesaid writ petition is not relevant for the present controversy. After the order dated 19.04.2022, the review application filed by the petitioner was also dismissed vide order dated 04.05.2022.

[13]. Thereafter, a civil suit for permanent and mandatory

injunction and declaration has been filed by the petitioner on 01.07.2022 against COSMO Propbuild Pvt. Ltd, Surya Propcon Pvt. Ltd., Starcity Realtech Pvt. Ltd., Neer Builders Pvt. Ltd, Vibrant Infratech Pvt. Ltd. M3M India Pvt. Ltd, Nourish Developers Pvt. Ltd, Department of Town and Country Planning etc. which is pending. The petitioner has also filed an application under Order 39 Rules 1 and 2 CPC for grant of interim injunction. In addition to that, an application under Order XXIII proviso to Rule 3 read with Section 151 CPC for declaration and setting aside the compromise deed dated 23.11.2016 and the award dated 09.12.2016 in Civil Suit No.2536 of 2016 being null and void was also filed with a prayer for issuing direction to cancel the mutation and exchange deed registered with Sub Registrar on the basis of compromise deed and award.

[14]. Civil Judge (Junior Division), Gurugram vide order dated 13.10.2022 after noticing the observations made by this Court in the order dated 19.04.2022 passed in CWP No.25534 of 2021, disposed of the application by observing in para Nos.26, 27, 28 and 29 in the following manner:-

> *"26. So far as the order of NCLT is concerned, there is no doubt or dispute that the applicant is the resulting company of demerged company EMAAR MGF Land Ltd. and the plaintiffs M/s Sparsh*

Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd. and M/s Siddhant Buildcon Pvt. Ltd. are the demerged undertaking which would vest in the resulting company. At the same time, it is the admitted fact that the scheme of demerger is not yet implemented fully and litigation is pending before NCLT regarding implementation of the scheme. Meaning thereby, the rights and liabilities of the applicant and the plaintiffs are not yet determined. In the absence of conclusive implementation of the scheme, the applicant alone cannot independently make any claim in respect of the settlement arrived at between the plaintiffs and the defendants. The court has to protect the interest of the litigating sides. Therefore, the locus of the applicant shall be subject to outcome of the litigation pending before NCLT.

27. Noteworthy, M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd. and M/s Siddhant Buildcon Pvt. Ltd. have not filed the application for enforcement or cancellation of the Award or their rights and liabilities under the settlement. They have not even joined hands of the applicant. The applicant was not privy to the settlement and has filed this application claiming right on the basis of demerger order which is not yet implemented. Since the dispute is pending before NCLT, it is not fit stage to decide the issue of locus of the applicant and the issue is kept pending for decision at appropriate stage after taking reply of respondents No. 8 to 10 i.e. the plaintiffs.

28.It is relevant to note that it was specifically *mentioned in the settlement deed that entire monetary consideration for the exchange deed Annexure-E had already been paid and the consideration amount was only in respect of exchange deeds mentioned at serial No. 1 to 4. At the same time, there was no intention of the parties to carry out the settlement in piecemeal. Both these pleadings are contradictory. That being the factual position, the argument of the defendants that they were always and are still ready to make the payment in terms of settlement is concerned assumes importance and evidence needs to be collected to determine the issue whether the non-payment was intentional or on account of non-cooperation by the plaintiffs. Subject to finding on this issue, the legal aspect regarding cancellation of the exchange deeds shall be considered in view of the settled legal proposition on the subject.*

29. However, until final adjudication, the equity and interest of justice demands that the defendants cannot be allowed to use the property without making payment by taking excuse of ongoing litigation between the applicant and the plaintiffs. As such, without commenting on merits, the interim injunction application is disposed of by directing the defendants to deposit the balance consideration of Rs.96,68,83,585/- with simple interest @ 6% per annum w.e.f. 01.01.2018 within a period of one month by way of demand draft in the name of the plaintiffs i.e. M/s Sparsh Promoters Pvt. Ltd., M/s Sandesh Buildcon Pvt. Ltd. and M/s Siddhant

Buildcon Pvt. Ltd. failing which the defendants shall be restrained from raising construction or creating third party interest in the land comprised in the exchange deeds. The amount shall be then deposited in fixed deposits to prevent loss of interest and shall be released or returned subject to final adjudication of the dispute. IA No. 01 of 2022 is disposed of."

[15]. Evidently, the order has been passed by the Civil Judge (Junior Division), Gurugram and not by the Permanent Lok Adalat. Thereafter, the Civil Judge (Junior Division), Gurugram passed an order dated 15.10.2022 in the context of depositing demand draft in compliance of order dated 13.10.2022. The demand draft has been taken on record and thereafter, notice was issued to the applicant and respondents therein. Vide order dated 02.11.2022, Civil Judge (Junior Division), Gurugram has ordered that the amount be deposited in the form of FDRs in the name of parties with HDFC Bank. The amount shall be deposited in FD initially for a period of one year one day subject to withdrawal of the amount before the stipulated time as per order of the Court. In case, the amount is not being released or withdrawn on maturity, the amount shall be re-deposited in FD for specific period of the same time.

[16]. Learned Senior Counsel for the petitioner relied upon ***Pushpa Devi Bhagat (dead) through LR. Sadhna Rai Vs.***

Rajinder Singh and others, (2006) 5 Supreme Court Cases 566 and ***Palla Ram Vs. Permanent Lok Adalat, Sirsa, 2010 SCC OnLine P&H 8173*** to contend that the present writ petition is maintainable.

[17]. Learned Senior Counsel for the respondents have vehemently submitted that this Court while disposing of CWP No.25534 of 2021 on 19.04.2022 has already observed that the ratios of ***State of Punjab Vs. Jalour Singh's case (supra)*** and ***Bhargavi Construction and another Vs. Kothakapu Muthyam Reddy and others case (supra)*** are not attracted to the present case, therefore, the writ petition is not maintainable. The application under Order 39 Rules 1 and 2 CPC has been filed before the Civil Court and not before the Permanent Lok Adalat and under Section 104 read with Order 43 Rule 1(r) CPC, the impugned orders are further amenable to appeal and the present writ petition is not maintainable. Learned Senior Counsel further submitted that the writ petition under Article 226/227 of the Constitution of India is not maintainable, particularly when the remedy of appeal is provided under Civil Procedure Code. Power of superintendence in terms of Article 227 of the Constitution of India has to be exercised very sparingly only in appropriate cases. Since alternative remedy of appeal is available, therefore, the present petition is not

maintainable.

[18]. Learned Senior Counsel for the respondents No.2 to 6 relied upon ***Civil Appeal No.7764 of 2019 (@ Special Leave Petition (C) No.26055 of 2018)*** titled ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others Vs. Tuticorin Educational Society and others*** decided on 03.10.2019, ***CR No.412 of 2021*** titled ***Ram Kumar and others Vs. Narayani Devi and others*** decided on 18.03.2021 and ***W.P No.3824 of 2011 titled Ved Prakash Mukhariya Vs. Balmukund Sharma and others*** decided on 09.08.2011.

[19]. Learned Senior Counsel for the respondents No.7 to 9 relied upon ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and others case (supra), Radhey Shyam and another Vs. Chhabi Nath and others, (2015) 5 SCC 423*** and ***Naresh Shridhar Mirajkar and others Vs. State of Maharashtra and another, (1966) 3 SCR 744*** to contend that the present petition is not maintainable as alternative remedy of appeal under Order 43 Rule 1(r) CPC is available to the petitioner.

[20]. Having considered the submissions made by the learned counsel for the parties and in the light of observations made in CWP No.25534 of 2021 on 19.04.2022, I deem it appropriate to hold that the present petition is not maintainable.

This petition is accordingly dismissed. The petitioner, if so advised, may avail its legal remedies in accordance with law.

(RAJ MOHAN SINGH)
09.12.2022 **JUDGE**
Prince

Whether speaking/reasoned Yes/No
Whether reportable Yes/No