



Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
ARBITRATION PETITION NO. 103 OF 2019

Vilas Ganpati Dongare & Ors

...Petitioners

Versus

Shri Empire Builders and Developers through its
Partner

...Respondent

Mr Harshad M Inamdar, for the Petitioners.

**Mr Atharva R Bhingardev, i/b Vaibhav R Gaikwad, for the
Respondent.**

CORAM Dr N K Gokhale, J.

DATED: 23rd August 2023

PC:-

1. The Petitioner has sought appointment of a Sole Arbitrator to adjudicate the disputes and differences between the parties arising out of the Development Agreement dated 25th April 2014.
2. The Respondent has been served and appears in the matter through counsel. The matter is heard finally by consent.
3. Shorn of unnecessary details, the facts in brief are that the Petitioners are co-owners of all that piece and parcel of land lying, being and situate at Revision Survey No.37 and Survey No.54 and the share of the Petitioners is to the extent of 31.33 Are in Revision

Survey No.37 and 8.33 Are in Survey No.54, Siddhanathwadi, Taluka Wai, District Satara outside municipal limit of Wai. (Hereinafter referred to as “**the property**”). The Respondent is a partnership firm engaged in the business of real estate and land development. The Respondents No. 1A and 1B are the partners of the Respondent No.1 Firm.

4. The Petitioners and the Respondent entered into a Development Agreement in respect of the property. The Development Agreement was registered at Sr. No.1629 of 2014 and 1631 of 2014 before the Joint Registrar, Wai. A Special Power of Attorneys were also executed and registered.

5. It is the contention of the Petitioners that the Respondent was required to complete the construction work within a period of 36 months from the date of sanction of building plan and hand over possession of 40% of the tenements to the Petitioners. Accordingly, the building plan was sanctioned, and Commencement Certificate was also granted by the Planning Authority.

6. Article XVIII of the Development Agreement dated 25th April 2014 provided for reference of any dispute, difference or question arising out of the said contract to arbitration. The said Article, however, does not name any Arbitrator. Articles XVIII and XIX read as follows:

“ARTICLE XVIII – ARBITRATION

In case of any dispute, difference or question arising between the parties with regard to interpretation meaning or scope of this Agreement or any rights and liabilities of the parties under the Agreement or out of the Agreement or in any manner whatsoever concerning this Agreement the same shall be decided by and referred for arbitration to the Arbitrator or any person nominated/appointed by the Developer and the Owner mutually under the provisions of the Arbitration and Conciliation Act, 1996 or any amendment thereto, whose decision will be final and binding upon both the parties.

ARTICLE-XIX – JURISDICTION

The Courts of Satara/WAI alone shall have the jurisdiction to entertain and try all actions suits and proceedings arising out of this agreement.”

7. It appears that a dispute arose between the parties and the Petitioners invoked the arbitration clause in the agreement and issued notice dated 26th October 2018 to the Respondents conveying that the disputes have arisen and that they wish to invoke the arbitration clause in the agreement. It was also conveyed to the Respondent that the Petitioners have appointed one Advocate Manmath Sadashiv Athalye from Satara as Sole Arbitrator. The Respondent replied to the said notice on 4th December 2018 denying the contents of the same. Thereafter the Petition came to be filed.

8. I have heard both the parties. On instructions, both the Counsels are agreeable to refer the dispute to a Sole Arbitrator nominated by this Court. As there is consent between the parties

for appointment of a Sole Arbitrator, the Petition is disposed of by the following order:

ORDER

1. Shri Rajendra Balkrishna Deshpande, Retired District Judge is appointed as a Sole Arbitrator to enter reference and adjudicate the disputes between the parties out of the Development Agreement dated 25th April 2014. The seat of the arbitration shall be Satara as agreed by the parties in the Clause of Article XIX of the agreement.
2. The learned Sole Arbitrator shall forward a statement of disclosure as per the requirement of Section 12(1) of Arbitration and Conciliation Act 1996 to the Prothonotary and Senior Master of this Court to be placed on record of this Petition with a copy forwarded to both the parties.
3. At the first instance the parties shall appear before the learned Arbitrator within a period of ten days from the date of uploading of this order or on such date that may be fixed by the Sole Arbitrator.
4. All contentions of the parties on merits of the disputes are expressly left open.
5. The fees payable to the Arbitral Tribunal shall be in accordance with the Bombay High Court (Fee payable to

the Arbitrator) Rules, 2018 which shall be borne by the parties in equal proportion.

6. The Petition is disposed of in the above terms. There will be no order as to costs.
7. Office to forward a copy of this order to the learned Sole Arbitrator on the following address:

***“Shri Rajendra Balkrishna Deshpande,
(Retired District Judge),
Vidani, Taluka Phaltan, District Satara,
Pin Code – 415 523.
Mobile No. 9423217332/9284161661;
Email ID: rajendrabd@gmail.com***

**Alternative Address:
806, Sonigara Laurel Mankar Chowk,
Opposite to Kalpataru Harmoy,
Kaspate Vasti, Wakad,
Pune, Pin Code – 411 057.”**

(Dr N K Gokhale, J)

Note: This order is modified by an order dated 8th September 2023 passed on a submission of Registry. Corrections are shown in bold and italics.