



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Decided on: 31st May, 2023**

+ **CS(COMM) 227/2017**

SH. SUDHIR SOOD Plaintiff
Represented by: Mr. Rajiv K. Garg, Mr. Rajeev Kapoor, Mr. Ashish Garg, Mr. Shivam Bharara, Mr. Shiven Banga, Adv.

versus

M/S. HIND TERMINALS PVT. LTD. Defendant
Represented by: Mr. Neel Kumar Mishra, Mr. D.S. Mishra, Adv. for Mr. Jatin Zaveri, Adv.

+ **CS(COMM) 228/2017**

HIND TERMINALS PVT. LTD. Plaintiff
Represented by: Mr. Neel Kumar Mishra, Mr. D.S. Mishra, Adv. for Mr. Jatin Zaveri, Adv.

versus

SH. SUDHIR SOOD Defendant
Represented by: Mr. Rajiv K. Garg, Mr. Rajeev Kapoor, Mr. Ashish Garg, Mr. Shivam Bharara, Mr. Shiven Banga, Adv.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
MUKTA GUPTA, J.

1. By CS (COMM) 227/2017, Mr. Sudhir Sood seeks decree in his favour and against M/s. Hind Terminals Pvt. Ltd. ("M/s. HTPL") for an amount of ₹2,37,49,406/- along with future and pendent lite interest @ 12% p.a. from the date of filing of suit till realization, besides cost.



2. Summon were issued to M/s. HTPL in the present suit on 1st April 2009.
3. Briefly put, the suit of Mr. Sudhir Sood is that he is a real estate agent engaged in business of locating properties for clients, having his office at D-79, Okhla Industrial Area, Phase-1, Delhi-110020. He entered into a Memorandum of Understanding (“MoU”) dated 4th May, 2006 with M/s. HTPL whereby it was agreed that the 80 acres of land located & identified at Village Janaoli, Tehsil Palwal, Dist. Faridabad, Haryana was to be purchased by M/s. HTPL for setting up a project of Inland Container Depots (“ICD”), and for this purpose, various agreements to sell were executed with the assistance of Mr. Sood between M/s. HTPL and different landowners.
4. It is the case of Mr. Sood that as per clause 10 of the said MoU, M/s. HTPL was to pay a 5% of the total sale consideration to him as service charge/commission/ brokerage. A total of about 86 acres of land was purchased and duly mutated in favour of M/s. HTPL with the help of Mr. Sood. Finally, upon instruction of Mr. Tarun Kalra (DW-2) that no more lands were to be acquired, Mr. Sood vide invoice dated 23rd January 2009 demanded ₹2,64,10,461/- for final settlement of brokerage charges.
5. It is the admitted case of Mr. Sood that of the said total amount, ₹ 25 Lakhs were received by him, and ₹34 Lakhs had to be deducted from his commission account, and accordingly, ₹1,97,81,221.00/- is payable by M/s. HTPL to Mr. Sood, along with interest from September 2007 @ 1% p.m. Mr. Sood also claims ₹4,07,566.00/- as sundry and other expenses incurred by him.



6. In the written statement filed by M/s. HTPL, the company claimed that it is in fact Mr. Sood who is liable to pay large amounts of money to the company, and not otherwise. M/s. HTPL averred that Mr. Sood was neither working according to the terms of MoU nor the specific requirements of the M/s. HTPL, as a consequence whereof, despite having acquired large chunks of lands, the requirements for setting up of the ICD project could not be met. It is alleged by M/s. HTPL that the prices of the lands purchased were way above the agreed price range of ₹30 Lakhs per acre, as a consequence of which an extra amount of ₹18,64,65,287/- had to be spent by the company. Moreover, the total acquisitions were made beyond the total agreed area of 80 acres and therefore, an extra amount of ₹8,41,26,675/- had to be spent, causing huge losses to M/s. HTPL.

7. It is further alleged by M/s. HTPL that certain lands that were acquired by the company did not have a clear title and litigations were going on in respect of said the lands. It was further alleged that Mr. Sood was in breach of terms between the parties as the company itself had to approach the Director Consolidation under Section 42 of the Haryana East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 for consolidation of the lands acquired, instead of Mr. Sood. According to M/s HTPL consolidation of land was essential, in the absence whereof fragmented lands would have served no fruitful purpose.

8. M/s. HTPL also submitted that the company and Mr. Sood had entered into a Supplementary Memorandum of Understanding (“SMoU”) dated 24th November, 2006 in respect of acquisition of a specific land which was not freehold and was reserved for *Bondehar* of Gram Panchayat of



village Janoli, but which was crucial for the company to acquire. This SMOU provided that Mr. Sood would be entitled to compensation only upon completion of the said sale, which Mr. Sood failed to complete.

9. A cross suit was instituted by M/s. HTPL seeking a decree for ₹5,68,60,407/- along with interest @ 18 % p.a., and costs in its favour and against Mr. Sood.

10. Summons were issued in this suit on 16th December, 2009.

11. M/s HTPL in its suit pleaded that the company was involved in the business of development and operation of ICD & Container Freight Stations, Multi Model Transportation across various locations in the country. It is claimed that Mr. Sood approached the company vide an email dated 13th April, 2006 in relation to acquisition of land, and eventually, after both the parties met, Mr. Sood was apprised of the specific requirements of the company, and the two parties entered into the MoU dated 4th May 2006 wherein it was agreed that Mr. Sood would help M/s. HTPL acquire about 80 acres of land at Village Janoli, Faridabad in the range of ₹30 lakhs per acre.

12. It is the case of M/s. HTPL that emails were sent by the company to Mr. Sood complaining that the acquisitions made were not in accordance with the map which forms part of initial understanding between the two parties. It was further notified to Mr. Sood that the requirement of rail siding length of 1000 meters along the rail line was also not met, and because of which it was not possible for M/s. HTPL to establish a viable container depot.



13. It was further alleged by M/s. HTPL that Mr. Sood colluded with the landowners for his personal benefit in conducting price negotiations of the acquired lands, due to which the prices of the lands rose sharply. It was also alleged by M/s. HTPL that on account of mismanagement by Mr. Sood, the company acquired more land than what was required i.e. a total of 95.11 acres land was acquired by them, which was 15.11 acres extra, for which the company had to spend an extra amount of ₹8,61,06,555/-. Further, M/s HTPL alleged that the rate of certain lands was above the agreed rate of ₹30 Lakhs per acre, because of which, the company was compelled to spend an additional amount of ₹18,64,65,287/-. Accordingly, on account of the failures of Mr. Sood to meet the specifications, M/s. HTPL had to suffer huge losses.

14. In the written statement filed by Mr. Sood, it was submitted that the suit filed by M/s. HTPL is an attempt by the company to delay the legally recoverable amount by Mr. Sood in CS(Comm) 227/2017 [earlier CS(OS) 631/2009]. It is stated that the suit filed by M/s. HTPL was time barred as the damages claimed being unliquidated in nature, is governed by law of torts for which the period of limitation is only one year from the date of damages allegedly suffered. It is also stated that no cause of action arises in favour of M/s HTPL as the lands were successfully acquired and mutated in the name of the company. Mr.Sood also stated submitted that M/s. HTPL had shifted their required track of project thrice for various reasons. It is stated that the lands acquired were within the range mentioned in the MoU, and that pursuant to the satisfaction of M/s. HTPL, payments were directly made by the company to the land owners, and representative of M/s. HTPL



were present in each and every negotiation and therefore, no question of force on part of Mr. Sood arises. It is further stated that M/s. HTPL has acquired lands till January 2009, so the question of time being of essence does not arise.

15. It was further stated by Mr. Sood that M/s. HTPL always purchased land after due verification and consultation with their own lawyers. Further the price of the land was always negotiated by the officers of M/s HTPL. Mr. Sood stated that the main reason for litigation was that M/s. HTPL refused to buy complete holdings. The land owners' issue was only that either M/s. HTPL should have either purchased their portion as well or should have let them cultivating at the portion where they were cultivating earlier. Mr. Sood stated that none of the lands acquired through him were under any litigation because of any fault on his part, and that requisite mutation was already got done and handed over to the company.

16. The above mentioned two suits were consolidated vide order dated 10th February 2012, and thereafter the following issues were settled;

1. *Whether the suit is barred by limitation? OPP*
2. *Whether the M/s. HTPL is entitled to the commission/as per MoU dated 04.05.2006? OPD*
3. *Whether the Mr. Sudhir Sood is entitled to have any damages as alleged in the plaint? OPP*
4. *Whether the Mr. Sudhir Sood has complied with the terms of memorandum of understanding dated 04.05.2006 and supplementary memorandum of understanding dated 24.11.2006? OPP*
5. *Whether the Mr. Sudhir Sood is entitled to the pendent lite and future interest as claimed? If so, at what rate? OPP*
6. *Whether the M/s. HTPL is entitled for interest? If so at what rate? OPD*



7. *Relief.*

17. However, vide order dated 21st August 2013, issue nos. 2 & 3 were amended as follows:

2. *Whether the Mr. Sudhir Sood is entitled to the commission as per MOU dated 4th May 2006? OPP*
3. *Whether the M/s. HTPL is entitled to damages as claimed? OPD*

18. To substantiate his claim, Mr. Sood tendered his evidence by way of affidavit. He relied upon 'Annexure to Invoice' (Ex.P-1) detailing the land of 86.172725 acres acquired by M/s. HTPL. He relied upon the MoU dated 4th May, 2006 between the two parties (Ex. P-2), which was also relied upon by M/s. HTPL (Ex.D3 and also Ex.X3). He then relied upon a letter addressed by M/s. HTPL to him dated 10th October 2006 (Ex.P-3), which is also relied upon by the company (Ex.D-4). Vide this letter, the company sought to intimate certain issues like disputed titles of some land holding, the lands acquired not being as per the design and absence of Mr.Sood at the time of demarcation of lands, all of which were clarified by Mr.Sood vide his reply to the said letter dated 12th October,2006 (Ex.P-4). Mr.Sood further relies upon the invoice dated 23rd October,2006 (Ex.P-5) for an amount of ₹95,91,116/- for his services rendered till that date. Further, reliance is placed on various email communications inter se the parties dated 22nd January,2007 (Ex.P-6), 10th May,2007 (Ex.P-7), 24th September,2007 (Ex.P-8), 17th January,2008 (Ex.P-9), 8th January,2009 (Ex.P-10), 10th January,2007 (Ex.P-11). Furthermore, reliance is placed upon letter dated 23rd January,2009 by Mr. Sood to the company (Ex.P12) mentioning that pursuant to the intimation on behalf of the company that no more land was



sought to be acquired, a final invoice for an amount of ₹2,64,10,461/- (Ex. P-13) was raised by Mr. Sood. Along with the said final invoice, an invoice for ₹4,07,566/- (Ex.P-14) expended by Mr. Sood in the acquisition process was also brought in record. Mr. Sood also proved the notices issued under O.XII R.8 Code of Civil Procedure, 1908 (“CPC”) to Mr. Tarun and Mr. Ashwani (Ex. P-16 & P-17 respectively) to produce the account statement of the company showing losses.

19. All these above documents have been admitted on behalf of M/s. HTPL at the stage of admission and denial of documents as also recorded in the order dated 22nd September, 2011 of this Court.

20. On the other hand, on behalf of M/s. HTPL four witnesses were examined and substantiated the claims. Mr. Shashi SP Gupta had tendered his evidence affidavit vide Ex. DW1/A, Mr. Tarun Kalra, authorized signatory of M/s. HTPL had tendered his evidence affidavit vide Ex. DW-2/A, Mr. Lajpat Rai Thapar, Managing Director (Rail Operations) had tendered his evidence affidavit vide Ex. DW-3/A, and Mr. Rohit Surendra Gaitonde, Chief Financial officer of M/s. HTPL had tendered his evidence affidavit vide Ex. DW4/A.

21. M/s. HTPL placed its reliance on original proposal letter dated 24th April,2006 by Mr. Sood to MSC/Tarun Kalra (Ex. D-2, also Ex.X-2) detailing about the work and the manner in which the work is to be done. Reliance was also placed on certain email communications inter se the parties dated 13th April,2006 (Ex.D-1), 2nd November,2006 (Ex. D-5), 28th November 2006 (Ex. D-7) and 28th August 2006 (Ex. D-8). They have also brought on record the original SMOU dated 24th November,2006 (Ex.D-6



and also Ex.X-10). All these documents have been admitted by Mr. Sood, as also recorded in order dated 22nd September, 2011 and 22nd October, 2011 of this Court.

Issue No.1

22. The preliminary issue raised on behalf of Mr. Sood is that the cross suit filed by M/s. HTPL is barred by limitation. It is submitted that the suit was filed by M/s. HTPL on 16th December, 2009, i.e. after lapse of more than one year from the date of last transaction which was on 2nd June, 2008. It is submitted that this suit is for recovery of unliquidated damages as there was no penalty/damages clause under the MoU/ SMOU. Thereafter the period of limitation for filing the suit was one year, hence the suit is barred by limitation, and is liable to be dismissed. Reliance is placed upon Article 72 of the Limitation Act, 1963.

23. Article 72 of the Limitation Act deals with the period of limitation for filing a suit relating to tort—*“For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which the Act extend.”* From the very contention on behalf of Mr. Sood, it is evident that suit of M/s. HTPL is for “unliquidated damages” arising out of the breach of the MoU. Thus, the suit of M/s. HTPL can by no stretch of imagination be held to be governed by Article 72 of the Limitation Act. The present suit being based on a contractual liability and unliquidated damages, the period of limitation for the same would be governed by Article 55 of the Limitation Act which provides that suit for *“compensation for breach of any contract, express or implied, not herein specifically provided for”* can be filed within a period of



three years. And thus, the suit of M/s. HTPL is not barred by limitation. Accordingly, the plea of limitation raised by Mr.Sood deserves to be rejected. Thus, issue No.1 is decided in favour of M/s HTPL and against Mr. Sood.

Issue No.2, 3 and 4 are being dealt with simultaneously.

24. Before advertng to further issues, it would be relevant to reproduce the relevant portions of the MoU dated 4th May, 2006:

“ ...

C. The Second Party has expressed its desire to set up an inland container depot and the First Party has assured the Second Party that it has the necessary expertise and infrastructure to earmark, identify and locate the land suitable for the needs of the Second Party.

D. The First Party has located and identified the land required by the Second Party admeasuring about 80 acres situated at village Janaoli, Tehsil Palwal, District Faridabad, Haryana and the Second Party has approved the said land and the First Party has assured the Second Party that it shall negotiate, deliberate and finalise with the owners, the transfer of the said land in favour of the Second Party. The sale consideration of the land would be in the range of ₹30,00,000/- (Rupees Thirty Lakhs only) per acre.

E. The Second Party on the basis of the assurances and representations given by the First Party, has agreed to enter into the present Memorandum of Understanding for the transfer of the aforesaid 80 acres or thereabout of the aforesaid land situated in village Janaoli, Tehsil Palwal, District Faridabad, Haryana, ont he following terms and conditions:-

NOW THIS MEMORANDUM OF UNDERSTANDING WITNESSETH AS UNDER:-



1. *That the First Party shall furnish a list of all the property owners from whom the aforesaid property is proposed to be sold. The list would be handed over to the Second Party within three days of the execution of this MOU.*
2. *That within one week of submission of the list of owners by the First Party, the Second Party would pay to the Second Party a sum of ₹24,50,000/- (Rupees Twenty Four Lakhs Fifty Thousand only), inter alia, tentatively representing 1% of the total sale consideration of the aforesaid 80 acres of land or thereabout.*
3. *The said amount of 1% would be used and utilized by the First Party for entering into an Agreement with the owners/sellers who would execute and Agreement, inter alia, expressing their willingness to sell their land holdings for the consideration and price mentioned therein.*
4. *The process as mentioned in clause 3 whereby the land owners would express their willingness to sell/transfer their land holdings, would be completed by the First Party within a period of one week.*
5. *That the First Party would ensure that the said land proposed to be purchased are free from all encumbrances, liens, charges, mortgages, litigations, attachments, etc. and that the land owners have a clear, unfettered rights to sell the land.*
6. *The First Party also, as the case may be, obtain on behalf of the land owners No Objections Certificates/No Dues Certificates/any other approval or clearance as may be required from any Authority, Agency or Office.*
7. *That pursuant to the written confirmation (on format to be provided by the Second Party) by the land owners, the First Party would ensure that the Sale Deed is executed in favour of the Second Party within sixty days from the date of the receipt issued by the land owner and the First Party would render its services for purchase of, papers, presentation and execution of the same before the concerned Sub-Registrar and the First Party will ensure that the land owners/sellers are present at the appointed time and date. The stamp duty, as*



applicable, presently being 6% of Sale Consideration amount & registration expenses upto 2% would be borne by Second Party. The First Party would have to ensure that all duty paid Sale Deed documents are ready for execution on the stipulated date.

8. *Balance 97% of Sale Consideration amount would be paid by second party to the First Party and the remaining 2% amount will be paid on account of the land owner/seller to the First Party in cash or cheque.*

9. *The First Party would also, pursuant to the execution and registration of the Sale Deed carry out the mutation in the Revenue records of the concerned Authorities within one week from the execution and registration of the Sale Deed.*

10. *That for the services rendered by the First Party, the Second Party shall pay 5% of the total sale consideration as service charges to the First Party. The aforesaid amount towards service charges would be payable after the Sale Deed is executed and registered and necessary mutation is carried out in the records of the Revenue Authorities in favour of the Second Party. In case of any other party raising a claim for brokerage or mediation of the sale deal, the First Party shall be responsible to settle the same and the Second Party shall have no liability whatsoever in this regard. The First Party indemnifies the Second Party in respect of any claim by any third person towards brokerage/commission charges in respect of the aforesaid transaction and the First Party would be solely responsible for any such claim.*

11. *In the event the First Party is unable to have the written confirmations from the land owners within fifteen days as stipulated above, then the Second Party would be at liberty to terminate this MOU and would be entitled to recover the entire amount as paid by it under clause 7 above against which the First Party has furnished a cheque No.982176 dated 04.05.2006 drawn on Punjab National Bank, Chirag Delhi, New Delhi. The Second Party would be entitled to present and encash the same and the First Party shall ensure that on presentation the said cheque is duly honoured.”*



25. After the MoU, one SMoU was entered into between parties in relation to the purchase of bondehar land, however, the said land could not be purchased by M/s. HTPL. For the purpose of the decisions in these two suits, only clause 11 of the SMoU dated 24th November, 2006 is relevant which reads as under

“11) Upon completion of the sale of the Property within 45 days from the date hereof the Company shall pay the compensation, as mentioned in the MOU dated 04.05.2006, to the Broker”.

26. It is simply the claim of Mr.Sood that since he has rendered his services, assisted the company in acquiring the lands, got the sale deeds executed and lands mutated in favour of M/s. HTPL, therefore, the company is under an obligation in terms of Clause 10 of the MoU to pay commission/brokerage @ 5% of total sale consideration to Mr. Sood.

27. Case of Mr.Sood is that no breach of MoU or the SMoU has been committed by him. As per the MoU, Mr.Sood was required to provide 80 acres of land and instead, he was able to procure more than 86 acres of land for M/s HTPL and thus, fulfilled his promise under the MoU/SMoU which fact stands admitted on behalf of the M/s HTPL. Mr.Sood never refused to perform in any manner or disabled himself from performing his obligations as per the MoU and 86.17 acres of land was duly registered and mutated in favour of M/s HTPL till June, 2008 as per the MoU dated 4th May, 2006.

28. Learned counsel on behalf of Mr.Sood contends that in all the sale transactions entered into, Mr.Sood used his expertise and also carried out due diligence by verifying the titles and marketability of the lands from the



land revenue records/Patwari/Tehsil, and only on being satisfied and receiving verification and confirmation of the title documents of the villagers, arranged meetings for negotiations as to the price and preparation of the agreements to sell/sale deeds between the villagers and representatives of M/s HTPL. Pendency of a litigation does not amount to “encumbrance” and in any case, to overcome any subsequent issue, every seller is made to undertake that the land was free from all encumbrances etc. Further, if there was any defect in the title of the land owners, no mutation could have been carried out in favour of M/s HTPL and it is the admitted case of M/s HTPL that not only the sale deeds were executed and registered, but mutations were also carried out of the land parcels in favour of M/s HTPL. Till date, M/s HTPL has not taken legal action against any of the sellers in respect of any alleged encumbrance or fault in the title. The only litigation arose between one Paras Ram and M/s HTPL, who sold his land in June, 2006 in favour of M/s HTPL and litigation started only when M/s HTPL constructed on the said land in October, 2006 for which there was no obligation on Mr.Sood.

29. Mr. Sood submits that he had first raised an invoice dated 23rd October,2006 (Ex. P-5) for an amount of ₹95,91,116/- which was received by M/s. HTPL, against which Mr. Sood admitted to have received ₹25 Lakhs as ‘part commission’, and it is his submission that he was told that the remaining amount would be paid upon the completion of entire transaction. Further, only after the bill was raised and all the transactions took place, plea on behalf of M/s HTPL was raised that Mr. Sood did not perform his obligations. M/s HTPL and Mr.Sood worked with each other for over two



years and it was only thereafter, that M/s HTPL suddenly took the plea that the land was not suitable for its project despite having voluntarily acquired the land and starting its project thereon. Further even *de hors* the project, the value of the land purchased by M/s. HTPL has increased manifold thereby causing profits to M/s. HTPL.

30. It is further his case that pursuant to the intimation by Mr. Tarun Kalra (DW-2) that no more land is to be acquired, Mr. Sood raised the final invoice dated 23rd January, 2009 (Ex. P-13) for an amount of ₹2,64,10,461/-, and also claimed an amount of ₹4,07,566/- vide statement of account (Ex. P-14) as the expenses incurred by him during the process of acquisition of lands. Apart from the said ₹25 Lakhs, Mr. Sood had also admitted that ₹34 Lakhs were to be deducted from his account in lieu of the settlement of Paras Ram land dispute, and accordingly, the amount claimed by him is ₹1,97,81,221/-, other than interest.

31. The defence of M/s. HTPL in the suit instituted by Mr. Sood, and the claim in the cross suit instituted by itself go hand in hand. It is both the defence and claim of M/s. HTPL that the lands that were acquired with the help of Mr. Sood were not in accordance with the MoU and SMOU, and in order to be eligible for the payments, the entire terms of the MoU were to be complied with, and in the absence thereof, Mr. Sood would not be entitled to any remuneration, rather should be held responsible for the losses that accrued to the company.

32. It is contended on behalf of M/s. HTPL that the MoU dated 4th May, 2006 categorically notes the assurance of Mr. Sood that he shall negotiate, deliberate and finalize with the owners of the land, shall arrange transfer of



the said land in favour of M/s. HTPL and the sale consideration of the land would be in the range of ₹ 30 lakhs per acre. In the SMoU dated 24th November, 2006, time has been made essence of the contract and it has been clarified that the commission to Mr.Sood will be paid only upon completion of the sale of the properties within the specified time of 45 days. Thus, Mr.Sood was contractually obligated to conclude the deals till 8th January, 2007. In view of the shortcomings and breach of promise on behalf of Mr.Sood, M/s. HTPL was required to issue a detailed legal notice dated 10th March, 2009, calling upon Mr.Sood to remit a sum of over ₹38 Crores towards the various amounts mentioned in the legal notice to him. It is only after the legal notice dated 10th March, 2009 was issued by M/s HTPL that Mr.Sood instituted the present suit. Merely because M/s. HTPL did not terminate MoU/SMoU, same would not imply ratification of the acts and omissions of Mr.Sood. M/s. HTPL could not terminate the services of Mr.Sood before the completion of acquisition process as it apprehended cartelization of the acquisition by Mr.Sood along with other brokers thereby causing massive losses to M/s. HTPL. It is only to mitigate the losses, M/s. HTPL chose not to discontinue with the services of Mr.Sood despite Mr.Sood working to the detriment of M/s. HTPL and himself profiteering from the land deals by collusion with the land owners. M/s. HTPL claims that though in the MoU, Mr.Sood claimed that he had experience in the trade for several years, however, in his cross examination dated 21st March, 2014, he admitted that he was into real estate business for the last 7-8 years and thus, Mr.Sood had no experience of real estate business. It was clearly informed to Mr.Sood that the 80 acres of land was required for setting up an



Inland Container Depot (ICD) and when in cross examination he was put a question that for an ICD, there are three major requirements i.e. 1000 meters railway siding, sufficient road connectivity of minimum 100 meters and contiguous land, Mr.Sood admitted that though he knew about the first and third requirement, however, he could not tell about second requirement i.e. sufficient road connectivity of minimum of 100 meters. The SMoU dated 24th November, 2006 was executed only to ensure that the M/s. HTPL had desired length for the railway siding. M/s. HTPL complied with the term of MoU i.e. to pay a sum of ₹ 40 lakhs to Sh. Raghuvir Singh, who was arranged by Mr.Sood. M/s. HTPL had to further pay a sum of ₹ 60 lakhs to Sh. Raghuvir Singh for procurement of the land mentioned in the SMoU dated 24th November, 2006. Despite clearly stating in clause 10 and 11 of the SMoU dated 24th November, 2006 that time was the essence of the contract and upon completion of the sale of the property within 45 days, M/s. HTPL was to pay compensation as mentioned in the MoU dated 4th May, 2006 to Mr.Sood, Mr.Sood could not effect the completion of sale within 45 days or at any point of time thereafter. None of the terms and conditions of the SMoU and the MoU were fulfilled either by Mr.Sood and/or Sh. Raghuvir Singh and consequently, due to non-fulfillment of aforesaid terms and conditions, the company had to return the property purchased from Sh. Raghuvir Singh on 31st May, 2006.

33. It is further the case of M/s HTPL that due to lack of experience and expertise, purchasing patterns i.e. partly purchased and scattered land holdings adopted by Mr.Sood and misrepresentation on his behalf and several lands being under litigation, M/s. HTPL was constrained to pay an



excess of ₹20,66,92,442/-. Based on these representations, M/s. HTPL agreed to purchase lands on isolated areas and the isolated areas marked as land holding Nos.17 and 23 still not being used by M/s. HTPL. M/s. HTPL was required to put up hoardings at the site as the land of Paras Ram marked as the land holding No. 4 in Ex.PW1/X1 purchased by M/s. HTPL to Mr.Sood was disputed as one Ram Singh came to the plot and raised dispute about possession on the strength of an order of the Court of ACJ, Senior Division, Palwal dated 3rd September, 1989. This fact has been admitted by Mr.Sood in his cross examination dated 19th November, 2014. M/s. HTPL was required to purchase land holding Nos. 28 and 29 on 29th December, 2010 and 26th April, 2012 @ ₹1.21 Crores as without these land holdings, rail sidings would not have been possible. In view of Mr.Sood's representation and plan of purchasing properties in scattered manner, M/s. HTPL purchased land holding Nos. 14 and 7 on various dates with the result the owner of land holding No. 26 demanded an exorbitant price and M/s. HTPL, in order to fulfill the basic requirement of 1000 meters railway sidings for the ICD, was constrained to purchase 8.65 acres @ ₹10.47 Crores resulting into exorbitant rate of ₹1.21 Crores per acre.

34. Clause 5 of the MoU dated 4th May, 2006 clearly provided that the lands should be free from all encumbrances i.e. free from all liens, charges, mortgages, litigations, attachments etc. and that the land owners have clear unfettered rights to sell the land. Mr.Sood has admitted regarding the defect of title of Paras Ram in the land holdings during his cross examination. Though Paras Ram sold the land in June, 2006 and it was mutated in the name of M/s. HTPL, the litigation started when M/s. HTPL started



construction its site's office on the said land in October, 2006. Since no relief was being sought against Mr.Sood in the said suit, he was not made a party. From the acts and omissions of Mr.Sood, it was evident that he had made false promises and his acts and omissions amounted to breach of the conditions of MoU and SMOU resulting in serious losses to M/s. HTPL.

35. The next ground taken on behalf of the company was that there was delay on part of Mr. Sood, and that he failed to comply with the timeline. It was alleged that list of prospective sellers was not given in 3 days and that sale deeds were not executed within 60 days, as contemplated under the MoU. It was also alleged by M/s. HTPL that time was of the essence in the contract and that there was delay on the part of Mr. Sood.

36. It was further alleged by M/s. HTPL that Mr. Sood did not get the lands consolidated and that it was the company who had to approach the Director Consolidation to get the lands consolidated. M/s. HTPL alleges that it was a part of the project under the terms of assignment and agreed terms, but Mr. Sood failed to do so. It was also pleaded by M/s. HTPL that Mr. Sood was to get the CLU done in respect of the lands acquired by the company, which has not been got done. For this purpose, firstly, reference can be made to the email dated 13th April, 2006 (Ex.X-1), wherein Mr. Sood confirmed about his ability to get the requisite CLUs for the company. Further, the letter dated 24th April, 2006 (Ex. D-2) by Mr. Sood to MSC/Mr.Tarun (DW-2), also mentions about the obligation of Mr. Sood to get the CLU done, and in the last paragraph of Ex.D-2 it is mentioned that after phase I (i.e. getting sale deeds executed and mutation done), work for Phase II i.e. work for getting the CLU, shall be commenced.



37. Per contra, it was contended on behalf of Mr. Sood that the said condition of land having a 1000 meter railway siding line did not form part of the MoU, and that a continuous 1000 meter railway siding land could not be acquired as a large piece of land belonged to *Bondehar*, and that there was also a *Kachha Rasta* in between, and this issue was informed to M/s. HTPL at the initial stage only, i.e. when he submitted the list of prospective sellers to the company. Mr. Sood further admitted that the lands were acquired in a haphazard manner, and that contiguous lands were not acquired and the reason of buying lands in a non-contiguous manner was to prevent price escalation. It was submitted on his behalf that the manner of procurement of land was neither agreed between the parties nor has been mentioned in the MoU.

38. It was further submitted on behalf of Mr. Sood that he helped the company in successfully acquiring the lands siding the railway line, except the Panchayat land which was given to the *Bondehar*. The bondehar land could not be purchased by M/s. HTPL and eventually the track of the railway line was changed so as to avoid that particular portion of land.

39. It was also submitted on behalf of Mr. Sood that all the decisions of purchase were made by the company only upon its satisfaction, and also that the prices were paid directly by the company to the landowners and only upon its satisfaction. Mr. Sood submitted that the reason for increase in the prices was the then prevailing market conditions, which was also intimated to the representatives of the company vide email dated 11th May, 2006 (Ex. X-4) that the land would now be available at ₹40 Lakhs per acre. He further submitted that the prices of land rose because of the company placing



hoardings at the site and opening of office at the site, despite his suggestion of not to do so. It was submitted on behalf of Mr. Sood that given the fact that final decision was that of the company itself, he cannot be held liable for the prices at which the lands were purchased by M/s HTPL. i.e. above the rate of ₹30 Lakhs per acre. It was further submitted that it was only after having purchased more than 86 acres of land, and when the final bill was raised by Mr. Sood that M/s. HTPL suddenly raised objections and claimed that loss of crores of rupees has been occasioned to it.

40. It is submitted on behalf of Mr. Sood that the company had been using and enjoying the possession of land since their respective sale deeds were executed and further, all the properties have been mutated in the name of the company, and therefore no question of defect in title arises. It was submitted on behalf of Mr. Sood that despite having verified the documents, the fact that title of property belonging to one Sh. Paras Ram was defective, was unknown to both Mr. Sood himself and the company. He submitted that although he offered to get the matter settled, however, the same was denied by M/s. HTPL. Mr. Sood submitted that he even agreed to a deduction of ₹34 Lakhs from his commission account on account of settling the matter.

41. From the evidence on record it is noted that in his cross examination, Mr. Shashi (DW-1) admitted that Mr. Sood did not pressurize the company for purchasing any particular land holding. He further stated with respect to purchase of land, the final decision was taken by the company, with Mr. Tarun (DW-2) along with the Bombay team as the deciding authority, and Mr. Mahender Puri, CEO as the final authority. DW-1 further admitted that the land acquired through Mr. Sood forms the part of 113 acres land on



which the project was installed and was to begin operation. He also submitted that Mr. Sood along with deed writers and his advocates used to vet the sale deeds.

42. Mr. Tarun (DW-2) in his cross examination admitted that the company used to check the documents and that 2-3 officers of the company with the assistance of 2 lawyers were looking after the legal aspects. While elaborating on the process of negotiation, DW-2 stated that at first Mr. Sudhir Sood used to negotiate with the sellers, then, the proposal was submitted to the company with the assurance that the documents have been checked, and thereafter, the concerned proposal was approved and documents were rechecked and audited with the assistance of lawyers. Lastly, the payment was released. The same process was also reiterated by DW-4.

43. In the evidence of DW-1, 2 and 4 it is thus admitted that the final decision on the issue, whether to purchase the property or not and at what price was of the company. The role of Sudhir Sood was more as a facilitator in identifying the properties, carrying out initial negotiations. The final decision to buy the property and at what price was with M/s. HTPL.

44. Mr. Sood admitted that list of land to be acquired was not given in 3 days but stated that the same was given in a weeks' time from the date of MoU. Further in his defence, he attributed the delay in execution of sale deed to M/s. HTPL and stated that the delay in acquiring the land was on part of the company in making the payment and consequently, there was a delay in execution of sale deeds and mutation. It was also submitted on behalf of Mr. Sood that time was not of essence, as the last transaction took



place on 28th May, 2008 and sale deed was executed in 2nd June, 2008 without any protest by the company. Reliance was also placed upon Section 55 of the Indian Contract Act, 1872 in this regard.

45. Contention of M/s. HTPL that Mr.Sood waived his right to the first bill by sending the final bill on completion of the transaction is also incorrect as is evident from the conduct of M/s. HTPL itself. DW-4 in his evidence admitted the receipt of both the bills i.e. the first bill and the final bill and also admitted that part payments were made in respect of the claim against the first bill. Mr.Sood never waived his right to claim any part of the compensation except he forego ₹34 lakhs which was part of the commission in purchase of the land of Paras Ram which according to Mr. Sood was under duress. The plea of the defendant that in view of arbitration clause inserted in the final bill, the present suit was not maintainable deserves to be rejected as the condition of the parties going to the arbitration was neither the term in the MoU nor in the SMoU and no pleadings were ever made in this regard nor any application under Section 8 of the Arbitration and Conciliation Act filed by the defendant.

46. It would be appropriate to note the map showing the various lands which have been acquired and which could not be acquired, as produced by Mr.Sood during the trial and exhibited as Ex.PW1/X1. Though, the defendant has denied the site plan during admission/ denial however, in principle, during the course of arguments there is no dispute in respect of the site plan. The same is as under:





For convenience of the parties, plaintiff Mr.Sood also handed over a chart giving the details of the area in acres of the various plots purchased and the rates besides the date of sale which is as under:-

CHART

S No.	MAP PLOT No	Area In Acre	Rate (Rs.)	Total Amount (Rs.)	Date of Sale	Page of Vol-V
1	1	2.49375	32,24,564	80,41,098	29.05.06	174
2	2	2.0375	37,00,000	75,38,750	31.05.06	182
3	3	2.3125	24,50,000	56,65,625	31.05.06	190
4	4	8.5187	33,50,000	2,85,37,813	05.06.06	198
5	5A	12.325	41,00,000	5,05,32,500	23.06.06	206
6	5B	4.10625	41,00,000	1,68,35,626	19.12.06	326
7	6A	0.509375	35,00,000	17,87,906	29.06.06	213
8	6B	0.509375	41,76,876	20,88,438	6.09.06	292
9	7	4.29375	41,00,000	1,76,04,376	29.06.06	219
10	8	0.384375	41,00,000	15,75,938	29.06.06	225
11	9	2.21875	41,00,000	90,96,876	02.08.06	231
12	10A	1.01875	41,00,000	41,76,876	02.08.06	249
13	10B	0.506	41,00,000	20,75,625	21.08.06	243
14	11	4	41,00,000	1,64,00,000	21.08.06	237
15	12A	1.24375	41,00,000	50,88,393	01.09.06	254
16	12B	0.99375	46,00,000	45,71,250	09.07.07	373
17	13	2.875	41,00,000	1,17,87,500	04.09.06	266
18	14A	0.45	41,00,000	18,46,500	05.09.06	280
19	14B	2.7	41,00,000	1,10,78,456	06.10.06	296
20	14C	0.45	41,00,000	18,86,423	04.09.06	274
21	14D	2.34	41,00,000	96,01,402	05.09.06	286
22	15	1	41,00,000	41,00,000	01.09.06	260
23	16	1	41,00,000	41,00,000	15.11.06	308
24	17A	0.04	44,84,375	1,79,375	01.12.06	320
25	17B	0.46	41,78,000	19,21,875	30.11.06	314
26	18	2.12	41,09,670	87,12,500	29.12.06	334
27	19	1	41,00,000	41,00,000	31.01.07	339
28	20	2.77	40,57,310	1,12,38,750	24.03.07	344
29	21A	0.66	40,84,518	26,95,782	24.03.07	350
30	21B	0.66	40,84,518	26,95,782	24.03.07	354
31	22	1	40,50,000	40,50,000	24.03.07	360
32	23	0.14375	Road	2,50,000	06.03.07	366
33	24A	7.51	66,79,621	5,01,63,958	15.11.07	379
34	24B	0.75	66,70,000	50,02,500	15.11.07	393
35	24C	0.15	1,10,00,000	16,50,000	13.03.08	415
36	24D	1.504	1,10,01,243	1,65,45,870	13.03.08	407
37	26A	8.65625	1,21,00,000	10,47,40,625	30.05.08	431
38	26B	0.615625	1,21,00,000	74,49,062	30.05.08	423

Signature Not Verified

Digitally Signed By ANIL KUMAR BHATT

Signing Date: 31.05.2023 16:38:50

CS(COMM) 227/2017 & connected suit

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47. A perusal of the chart as noted above which is not disputed by the M/s. HTPL shows that most of the lands till plot No. 23 in the map were purchased ranging from ₹24.50lakhs to ₹44,84,375/- and majority were purchased @ ₹41 lakhs per acre. The M/s. HTPL had to pay substantially for plot Nos. 24A, 24B, 24C, 24D, 26A and 26D. A perusal of the site plan Ex.PW1/X1 shows that the entry to the ICD from the main Janoli Baghola Link Road was from plot No. 2 which was bought in the initial stage itself i.e. 31st May, 2006 and @ ₹ 37 lakhs per acre. No evidence has been led by M/s. HTPL to show that this entry was less than 100 meters. It is not disputed by M/s. HTPL that before any sale was made, Mr.Sood negotiated with the land owners and thereafter finally, land was purchased by M/s. HTPL after visiting the sites and entering into proper sale deeds. However, case of Mr.Sood is that in respect of the land on the railway siding belonging to Bondehar and Gram Panchayat, Mr.Sood took all the steps as per the SMoU, however, M/s. HTPL later chose to return the same for the reasons best known to it and took the money back on 11th May, 2007. Thus, for these two parcels of land, making plot No. 17 as a standalone plot and the plot of Bondehar and Gram Panchayat not being available initially but purchased as per the SMoU from Raghuvir Singh, however, later on was returned as the railway line was changed, no liability can be fastened on Mr.Sood. Further, M/s. HTPL has led no evidence to show the damages caused to it except to state that it had to purchase the Gram Panchayat land.

48. From the perusal of the evidence and the contention of the parties, it is evident that Mr. Sood used to identify the land, check the documents and



thereafter, the proposal for the concerned land was sent to M/s. HTPL for final decision, and it was only thereafter that the payment was released for the purchase of land. This makes it evident that there could not have been any pressure/coercion by Mr. Sood upon M/s. HTPL to purchase any land as the final decision was that of company itself.

49. As regards the prices also, the final decision was of the company itself, therefore it cannot be held that M/s. HTPL was coerced by Mr. Sood with respect to the prices. Indubitably, it was agreed that the lands to be purchased would be in the range of ₹30 Lakhs per acre, however, it is common knowledge that prices of land are not within the control of any individual and are volatile by nature and also subject to various factors. Even the fact that a company aims to acquire a large portion of land results in escalation of price. Further, from the evidence, it is evident that hoarding signs were put to show the possession of the company on the lands and an office was also opened at the site which also would have resulted in affirmation of investment by the company resulting in further price escalation of the land. Even otherwise, if the land was not available at the agreed rate of ₹30 Lakhs per acre, it was always for M/s. HTPL not to purchase the land.

50. It has not been disputed that Mr. Sood had assisted M/s. HTPL in acquiring the lands to the extent of more than 86 acres, and admittedly, M/s. HTPL has not paid the brokerage/amount to Mr. Sood for his assistance. Admittedly, sale deeds have also been executed and mutation carried out in favour of company. It has also been admitted by DW-2 & DW-4 in their cross examinations that the officials of company were the ones who took the



final call regarding the purchase of lands. Further, DW-1 & DW-3 in their respective cross examinations stated that the first phase of the project was ready and was likely to commence by the end of the year (2015). DW-2 in his cross examination also stated that with respect to the lands purchased by Mr. Sood, the said lands were mutated and even CLU's were granted. Although M/s. HTPL has flagged certain issues with the lands as acquired, however, the same cannot absolve M/s. HTPL from its liability of paying commission to Mr.Sudhir Sood for the work done by him.

51. Although as per Clause 11 of the MoU, HTPL was at the liberty to terminate the MoU if Mr. Sood was not able to have the written confirmations from the land owners within fifteen days, and also as per clause 10 of the SMOU, the time was described to be of the essence, however, the fact that last transaction with respect to acquisition of land took place on 28th May, 2008 for which sale deed was executed on 02nd June, 2008, shows implied consent on behalf of M/s HTPL altering the agreed "time" in MoU and SMOU.

52. Thus Mr.Sudhir Sood having complied with the terms of the MoU and SMOU, issue No.4 is decided in favour of Mr.Sudhir Sood. Accordingly, issue no. 2 and 3 are decided in favour of the Mr.Sudhir Sood i.e. Mr.Sudhir Sood is entitled to commission as per MoU and against M/s HTPL that it is not entitled to the damages.

53. As per Clause 10 of the MoU, Mr.Sudhir Sood was to get a commission of 5% of the total sale consideration. As already noted, M/s. HTPL was to acquire land within a price range of ₹30 lakhs per acre, however, from the record, it is apparent that the land was in fact acquired at



a higher rate. What remains between the parties is whether Mr. Sood would be entitled to a commission of 5% of the fixed land rate at ₹30 lakhs per acre, or whether it would be calculated on the basis of actual consideration paid (as per the sale deeds) by M/s. HTPL in acquiring the land. The MoU between the parties does not contemplate a situation where the land is purchased at rate above the agreed rate of ₹30 lakhs per acre. And accordingly, M/s. HTPL would have only contemplated that a commission payable to Mr. Sood would at best be at the agreed land rate of ₹30 Lakhs per acre.

54. Therefore, it would be just if the commission payable to Mr.Sood is calculated at a rate of 5% of sale consideration for those pieces of land which were purchased within the range of ₹30 Lakhs per acre, and at the rate of 5% of the fixed land rate computed at ₹30 Lakhs per acre for those pieces of land purchased at a higher rate.

55. Accordingly, the total amount that M/s. HTPL would be liable to pay is ₹1,29,44,501/- out of which ₹25 Lakhs as admitted by Mr. Sood has been paid to him as advance and another amount of ₹34 Lakhs was admitted by Mr.Sood to be deducted as per the settlement towards Paras Ram land dispute, thus the actual amount payable to Mr.Sudhir Sood would be ₹70,44,501/-, as also ₹4,07,566/- i.e. the sundry expenses as admitted by M/s HTPL, thus totaling to ₹74,52,067/-.

Issues 5 & 6

56. The plaintiff Mr.Sood would be entitled to interest pendente lite and future @ 9% per annum. Further, as M/s. HTPL is not entitled to damages, no interest can be granted to it.

**Relief**

57. Consequently, CS(COMM) 228/2017 is dismissed and CS (COMM) 227/2017 is decreed in favour of Mr.Sudhir Sood directing M/s. HTPL to pay a compensation of ₹74,52,067/- to Mr.Sudhir Sood along with interest at the rate of 9% per annum pendent lite and future till realization.

58. Decree sheet be drawn up accordingly.

59. No order as to costs.

(MUKTA GUPTA)
JUDGE

MAY 31, 2023
‘ga’