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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 31.05.2024

+ FAO(OS) (COMM) 112/2024 CM APPL. 34321-23/2024

M/S FINE GREEN CONSTRUCTIONS PVT. LTD...Appellant

Through: Mr.Parsa Anantha Nageshwar
Rao, Mr.P.Mohith Rao and
Mr.Saaik Sohil Akhtar,
Advocates.

versus

RAIL LAND DEVELOPMENT AUTHORITY & ORS.

..... Respondents

Through: Mr.Neeraj, SPC, Mr.Vedansh
Anand, GP, Mr.Rudra Paliwal,
Mr.Mahesh Kumar Rathore, and
Mr.Sanjay Pal, Advocates.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J.**

1. The appellant has filed the present appeal impugning an order dated 10.04.2024 (hereafter *the impugned order*) passed by the learned Single Judge of this Court in O.M.P (I) (COMM) 98/2024 captioned ***M/s Fine Green Constructions Pvt. Ltd. v. Rail Land Development Authority & Others***. The appellant had filed the said application under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*), *inter alia*, praying as under:

“a) Direct the Respondents Nos.1 to 3 and their men/officers/employees to not to interfere with the possession and enjoyment of the petitioner, ingress/egress/ its tenants over the



Multifunctional Complex at Salem Railway Station; and/or;"

2. The appellant had entered into an agreement with respondent no.1 (Rail Land Development Authority – hereafter *RLDA*) for construction of a commercial multi-functional complex at Salem Railway Station, pursuant to tenders invited by RLDA. The appellant had participated in the bidding process and was declared as a successful bidder. The letter of acceptance (LoA) was issued to the appellant on 01.09.2014.

3. Subsequently, the parties entered into a lease agreement dated 30.12.2014 (hereafter *the Lease Agreement*), whereby the appellant was granted lease of the subject property for a period of forty-five years. The appellant completed the construction of the multi-functional complex at Salem Railway Station and the completion certificate was issued by RLDA on 30.11.2015.

4. Apparently, the disputes between the parties have arisen in respect of the Lease Agreement. By a letter dated 10.05.2019, the appellant terminated the Lease Agreement on the ground that RLDA had constructed an escalator shed, blocking the internal road. According to the appellant, the same was impermissible.

5. The relevant extract of the said letter is set out below:

“Our entire grievance with regard to the provision of right to way to the site and the construction of the shed and ramp by the railways which has been blocking the entire entrance of the building and the failure on the part of RLDA to resolve the said issue which has a material adverse effect on our ability to perform our obligation under the agreement, constitutes default on the part of RLDA and therefore we have a right to terminate



the agreement and settle the issue. It is also relevant to mention here that the shed is constructed on the road which is only access to the building which in fact shown in the tender document and sanction plan.

Since there is a default on the part of RLDA, the agreement stands terminated and you are required to settle our accounts in accordance with the procedure contained in Article 22.1.2 and the other clauses.

We request you to immediately initiate action for determining the amounts payable to us on termination treating the termination by us as a termination on default on the part of RLDA. It is also relevant to mention here that we have availed huge loans for the construction of entire building and we have sublet only a part of the portion, which in fact was leased out before erecting the shed and after erection of the shed we could not sublet any part of the building since no body was coming forward, you have requested to take all these factors into account and settle the amounts to us and see that we would not sustain any loss in the process. Till such exercise is completed we have to collect the rents from the tenants for the purpose of maintenance of the building and to pay interest on the loan amounts.”

6. Plainly, the appellant cannot continue to retain possession of the complex after terminating the Lease Agreement for the subject property. It is submitted on behalf of the appellant that the said termination was not accepted.

7. The respondents dispute the grounds on which the appellant has sought to terminate the Lease Agreement. However, in so far as the appellant is concerned, admittedly, it has not complied with the terms of the Lease Agreement in as much as the appellant did not pay the lease rentals as required to be paid in terms of the Lease Agreement, after it had terminated the same.

8. According to the respondents, a sum of ₹3,09,91,295/- is due and



payable by the appellant in respect of the outstanding lease premium along with interest and annual lease rent along with interest. In the aforesaid circumstances, RLDA by a letter dated 16.05.2024, called upon the appellant to vacate the site/multifunctional complex at Salem and hand over the peaceful possession of the same to RLDA. In addition, RLDA had also called upon the appellant to pay the amount due till vacation of the aforesaid premises.

9. In the aforesaid circumstances, the appellant invoked the arbitration agreement for reference of the disputes to arbitration. The appellant had also filed an application under Section 9 of the A&C Act seeking an order restraining the respondents from interfering with the possession of the multi-functional complex.

10. The learned Single Judge has denied the prayer for the aforesaid interim measures of protection on the ground that the appellant has terminated the Lease Agreement by letter dated 10.05.2019.

11. The appellant had also filed a writ petition (W.P.(C) 6961/2024) claiming similar reliefs before the Hon'ble Madras High Court, which have not been granted.

12. The learned Single Judge has reasoned since on the one hand the appellant has terminated the Lease Agreement and has not paid the such rentals and on the other hand insists on occupying the site in question and recovering rent from the sub-lessees.

13. Considering that the appellant has not paid the lease rentals and has terminated the Lease Agreement, the only claim that the appellant



can possibly have, is a monetary claim. In view of the above, we find no grounds to interdict the respondents from taking over possession of the site in question.

14. We find no infirmity with the decision of the learned Single Judge in rejecting the appellant's application under Section 9 of the A&C Act.

15. The present appeal is unmerited and accordingly dismissed. All pending applications are also dismissed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 31, 2024/r