

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL AND CIVIL JURISDICTION
ORIGINAL SIDE

AP/220/2020

SK. ANWAR HAQUE AND ANR.
VS
AMINA BEGUM AND ORS.

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 21st August, 2025.

Appearance:
Mr. Shuvanil Chakraborty, Adv.
...for the petitioners.

The Court: Despite repeated service upon the respondents, none appears.

Learned Advocate had informed the petitioners by letter dated June 23, 2024 that, he was appearing on behalf of all the respondents. By the said letter, he denied and disputed the contents of this application which was served upon his clients. The said Advocate had also been served with a copy of the application and a notice. On the last occasion, one last opportunity was given to the respondents to appear. Learned Advocate for the petitioner submits that repeated phone calls were also made to the learned Advocate.

Under such circumstances, this application is taken up *ex parte* as the Court is convinced that the respondents are not interested to appear before the Court. It is on record that, the original application as also the application for substitution of the legal heirs of the respondent no.9, have been served upon all the respondents.

This is an application for appointment of an Arbitrator in terms of clause 18 of the development agreement dated 11th June, 2010. The petitioners submit that time was never the essence of the contract, because the owners failed to mutate their names in the municipal records. The construction by the petitioners would be subject to mutation and sanction of the building plan.

It appears that sometime in July, 2012, the Assistant Assessor Collector (South), Ward no.065 of the Kolkata Municipal Corporation was requested by some of the respondents to stop the mutation process. Again, by a letter dated April 10, 2014, the said letter was withdrawn and the complaint against the petitioners was also withdrawn. The letter shows that the petitioners were entrusted by those land owners to obtain the mutation certificate in respect of premises in question, after the Corporation completed the process. By a letter dated September 3, 2019, one of the respondents rescinded the agreement and stated that the agreement had expired due to efflux of time. Thereafter, the petitioners invoked arbitration in terms of clause 18 of the said agreement, for settlement of the disputes arising from the development agreement.

In this case, it is submitted that time was not the essence and the developer could only start the project after mutation was obtained by the respondents. The respondents applied for mutation. Then they stopped the mutation process in 2012 and again they revived the process in 2014. On September 3, 2019 they rescinded the agreement. Thus, the first refusal, in my prima facie view, was on September 3, 2019. The question of limitation in this case is a mixed question of law and fact, which will be decided by the learned Arbitrator along with all other

objections that may be raised by the respondents. This Court is, prima facie, satisfied that there is an arbitration clause in the development agreement.

Under such circumstances, Mr. Debasish Banerjee, learned Advocate, Bar Association, Room No. 16, is appointed as the Arbitrator to arbitrate upon the disputes between the parties.

The learned Arbitrator shall comply with the provisions of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall be at liberty to fix his remuneration as per the schedule of Arbitration and Conciliation Act, 1996.

AP 220 of 2020 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)