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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 13.02.2025

DELIVERED ON: 24.03.2025

CORAM:

THE HON'BLE Dr.JUSTICE ANITA SUMANTH

and

THE HON'BLE MR.JUSTICE C. KUMARAPPAN

OSA. No. 16 of 2023

1. The Managing Director,
Tamil Nadu Housing Board,
331, Anna Salai, Chennai-600035.

2.The Chief Engineer,
Tamil Nadu Housing Board,
331, Anna Salai, Chennai-600035.

3.The Superintending Engineer,
Tamil Nadu Housing Board,
Salem Circle, Salem – 636008.

4.The Executive Engineer,
Tamil Nadu Housing Board,
Salem Circle, Salem – 636008.

..Appellants

Vs



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M/s.Annamar &Co.,
Rep. by its Managing Partner,
1.L.Subramani and
2.Indra Prakash,
2A/1, Kamarajapuram,
CHB Colony, Vellore Road,
Tiruchengode,
Namakkal District -637211.

..Respondent

Prayer : This Appeal is filed under Order XXXVI Rule 1 of OS Rules r/w Section 15 of Letters Patent and the Provision under Section 37(1) (b) under The Arbitration and Conciliation Act, 1996, to set aside the order of this Court dated 03.01.2020 passed in O.P.No. 510 of 2018.

For Appellants : MrM.K. Kabir, Senior Counsel

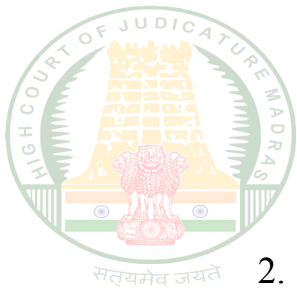
For Mr.C. Kalaichelvan

For Respondents : Mr. S. Parthasarathy

JUDGMENT

*(Judgment of the Court was made by **Dr.JUSTICE ANITA SUMANTH**)*

This Original Side Appeal is filed by the Tamil Nadu Housing Board ('TNHB'/'Board') aggrieved by an order passed on 03.01.2020 by the learned Judge, disposing original petition in O.P.No.510 of 2018.



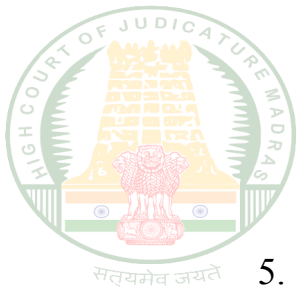
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2. We have heard the detailed submissions of Mr.M.K.Kabir, learned Senior Counsel for Mr.C.Kalaichelvan, learned counsel on record for the appellants and Mr.S.Parthasarathy learned counsel for the Respondent.

3. The admitted facts on which their arguments are premised are as follows. The Respondent had submitted a bid to a tender floated by the Board and had been successful. Work order dated 24.02.1998 had been issued and lump sum Agreement dated 05.03.1998 ('Agreement') had been entered inter se the parties. The Respondent was required to commence execution of work for the construction of 21 Middle Income Group (MIG I) Duplex houses, 21 High Income Group (HIG II) houses and 22 MIG houses at Namakkal.

4. It was the stand of the Respondent that the site was not handed over in time and hence it was in a position to execute only a part of the scope of work entrusted to it. Dispute thus arose between the parties, as the claim of the Respondent for re-working of the cost of construction had been objected to by the Board. The Board then took a stand that until a specific undertaking was executed by the Respondent that the same costs as agreed to initially would be adhered to, the site would not be handed over to them.



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5. W.P.No.11628 of 2000 came to be filed by the Respondent seeking a mandamus directing the Board to handover possession of the site. It is only after the direction of the Court that possession was handed over to them and construction commenced. Even thereafter, the Respondent encountered difficulties as requisite supply of cement and other materials were not made as undertaken by the Board. This paved the way for yet another writ petition by the Respondent seeking directions to the Board to continue supply of the materials necessary to enable seamless construction.

6. By order dated 06.12.2004, W.P.No.15256 of 2002 came to be disposed by this Court, directing the Respondent (Petitioner in that writ petition) to invoke the Clause being Clause 3 of agreement dated 05.03.1998.

7. A petition was thereafter filed on the file of Principal District Judge, Namakkal for appointment of Arbitrator, which came to be dismissed which order was upheld by this Court in CRP.No.517 of 2007. In review, this Court by order dated 19.12.2009, directed the Respondent to move a petition under Section 11 in terms of provisions of the Arbitration and Conciliation Act 1996 ('A and C Act'), before this Court seeking appointment of an Arbitrator. It is only thereafter that the



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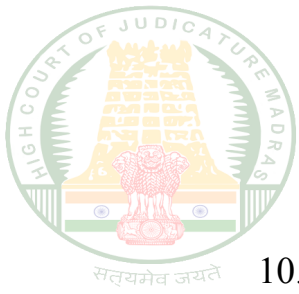
matter was placed before the sole Arbitrator and both sides were heard in detail.

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Ultimately, an award came to be passed by the learned Arbitrator on 03.11.2017, challenging which the said Original Petition had been filed.

8. The learned Judge, by order dated 03.01.2020 has considered the submissions of the parties in extenso, ultimately finding no merit in the stand of the TNHB seeking intervention in award dated 03.11.2017. Hence this intra Court appeal under Section 37 of the A and C Act.

9. We find that the grounds raised in the present appeal are merely a reiteration of the grounds/arguments already considered by both the learned Arbitrator as well as by this Court in the original petition filed under Section 34 of the Act. The submissions of the Board mainly revolve around the interpretation of the clauses in the Agreement to state that it was not obligatory for the Board to supply material when it is unavailable in the market and there was no responsibility cast upon it, in this regard. We are of the view that the findings in the award in this regard by the learned Arbitrator are well founded and the learned Judge has considered the very same arguments, rightly negating the same.



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10. The learned Arbitrator has framed issues as to (i) whether there was a delay by the Respondent in handing over the site (ii) whether the site was handed over in terms of the Agreement and ii) whether the Board has violated the terms of the Agreement as regards the supply of cement and steel. All the questions have been answered in favour of the Respondent, after taking into account the materials on record.

11. The delay in handing over the site to the Respondent is apparent and there is hardly any contest in regard to the conclusions of the learned Arbitrator and this Court in that regard. As regards the factum of delay in execution of the contract, the issue has been answered to state that such delay had been caused by, and was a consequence of the delay by the Board in handing over the site to the Respondent herein. Learned Arbitrator has also accepted the stand of the Respondent that Board was bound, in terms of Clauses 12 & 37 Agreement to supply the materials such as cement and steel.

12. Learned Arbitrator also finds that there was considerable delay in the non-supply of materials, and such delay is attributable only to the Board. In fact, on



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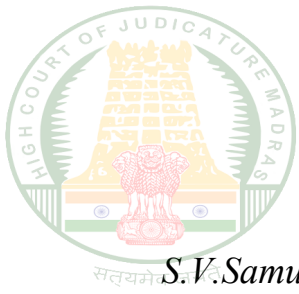
the consideration of the relevant material, and having decided the issue in favour of the respondent, he expresses anguish in the following terms.

‘39. I do not think that it is necessary to repeat or reemphasize the unreasonable manner in which the Respondents (in the Arbitration which is the Board) have conducted themselves. The fact that the Respondents wield power and in a position to dominate, does not mean that they could adopt an unreasonable attitude of not only coercing the claimant not to pursue his legal remedy which itself exposes lack of bonafides and when justice was done by virtue of the orders of the High Court dated 24.08.2000 in W.P.No. 11628 of 2000, the Respondents adopt the same attitude of telling the contractor not to ask for escalation which was precisely the reason why pressure was brought up on the claimant to give an undertaking not to pursue his legitimate legal remedy or arbitration. One would rarely come across such unfortunate and glaringly improper attitude on the part of a public authority even after having been warned against the High Court.’

13. It is after a detailed consideration of the contract and the issues framed for consideration, that the learned Arbitrator comes to accept the claims of the Respondent. We find that the issues answered by the learned Arbitrator are the very issues raised in the Section 34 appeal, and now canvassed before us.

14. The Supreme Court, in the recent judgement in the case of *Somdatt Builders – NCC – NEC (JV) Vs. National Highways Authority of India & Others*¹ reiterates the settled proposition of law as enunciated in earlier judgments in

¹ Civil Appeal No.2058 of 2012, dated 27.01.2025



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S.V.Samudram Vs. State of Karnataka and another² and UHL Power Company limited Vs. State of Himachal Pradesh³ (of three Hon'ble Judges of the Supreme Court), to the effect that the remit of intervention in appeals under Sections 34 and 37 is extremely limited.

15. In those cases as well, the issue on merits related to the binding effect of contractual terms by the parties. The Court reiterates that the interpretation of the clauses of contracts at the stage of an appeal under Section 37 of the A & C Act, where such contracts have been examined by the Learned Arbitrator and thereafter in appeal under Section 34 can only be in situations where there is apparent perversity and not merely for the reappreciation of the matter.

16. In the present case, no such perversity has been brought to our notice, and the Appellant is only, on the contrary, reiterating the same facts and circumstances as noted by the Learned Arbitrator and this Court. Courts have also settled the position that even in a position where the Award is contested as being perverse, if the Court finds that the view adopted by the Arbitrator is one plausible view, there is no justification or scope under Section 34 to intervene. Much less in an appeal

² ((2024) 3 SCC 623)

³ ((2022) 4 SCC 116)



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under Section 37, particularly where the Court is faced with concurrent findings of facts, in the Award as well as the order under Section 34 of the Act, as in the present case.

17. In light of the aforesaid discussion and bearing in mind the judgments of the Supreme Court cited supra, we have no hesitation in confirming order dated 03.01.2021 passed in O.P.No.510 of 2018. The purpose of the A & C Act, particularly that of speedy resolution and bringing matters to a finality, are lost when the State moves an appeal in circumstances such as the present. While the Courts have taken a stern view in this regard even in appeals filed by private entities, it is all the more to be avoided, when at the instance of the State.

18. The learned Arbitrator has expressed anguish over the inappropriate manner by way the Appellant had conducted its business and we have, at paragraph 12 supra, recorded his statements in that regard. Taking a cue therefrom, as also for the reason that the Appellant has yet again filed the present appeal not content with adverse orders at two stages, we dismiss this Original Side Appeal, on terms. The Board will remit a sum of Rs.1,00,000/-(Rupees One lakh only), Rs.50,000/- payable to the Respondent and the remaining Rs.50,000 payable to the High Court



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Legal Services Authority, both within a period of four weeks (4) from the date of uploading a copy of this order on the official website of this Court.

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(A.S.M., J.) (C.K., J.)

24.03.2025

Internet: Yes

Index : Yes

Neutral citation : Yes

Speaking order

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To

1.The Principal Secretary,
Transport Department,
Secretariat, Chennai-600009.

2.The District Collector,
Coimbatore District Collectorate Building,
Coimbatore – 641018.

3. The Special District Revenue Officer,
Coimbatore Airport runway expansion
Coimbatore -641019.

4.The Special Tahsildar, Land Acquisition,
Coimbatore Airport Runway Expansion,
Collectorate Building, Coimbatore-641018.



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Dr. ANITA SUMANTH,J.

and

C. KUMARAPPAN,J

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Pre-delivery judgment in

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