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Arb.O.P.(Com. Div.) No.473 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2025

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com. Div.) No.473 of 2023

1. G. Thiruvengadam (Deceased)

2. Vasugi

(2nd petitioner brought on records
as legal heirs of the deceased 1st petitioner
as per order dated 11.06.2024
in A.No.2221 of 2024)

... Petitioners

Vs.

Maharishi Institute of Creative Intelligence ,
Maharishi Gardens,
No.28, Dr. Gurusamy Road,
Chetpet, Chennai - 600 031.
Represented by its Secretary and
also at No.121, DLF Galleria,
Mayur Vihar,
Phase - 1, Delhi - 110 091.

... Respondent

PRAYER: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award dated 01.06.2023 in respect of rejecting the claim of the petitioner as set out in paragraph 59 (a to e) and allowing part of the counter claim of the respondent as set out in paragraph 60 of the award dated 01.06.2023 and to direct the respondent to pay the cost of the present proceedings.



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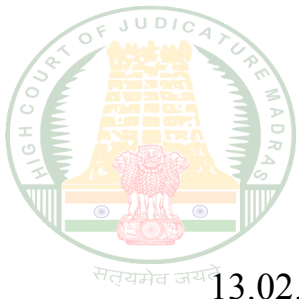


For Petitioners : Mr.D.R. Raghunath
For Respondent : Ms. Jayalakshmi P.
Mr. Satish Chandrasekaran

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned arbitral award dated 01.06.2023 passed by the sole arbitrator.

2. The petitioner is the claimant in the arbitration and the respondent is the respondent in the arbitration. There arose disputes between the petitioner and the respondent under the lease deed dated 13.02.2020. The petitioner, under the lease deed dated 13.02.2020, agreed to construct 60,000 sq. ft. of built up area for the purpose of running a school by the respondent in the premises owned by the petitioner. The petitioner claims that the petitioner had constructed 30,000 sq. ft. built up area and the possession of the same was also handed over to the respondent, and since the respondent failed to pay rent for the same, they are entitled to recover arrears of rent from the respondent for the 30,000 sq. ft. built-up area. While entering into the lease deed dated 13.02.2020, the petitioner has acknowledged the receipt of a sum of Rs. 3 Crores from the respondent by way of security deposit.



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3. There exists an arbitration clause in the lease deed dated 13.02.2020. The petitioner initiated arbitration by invoking the arbitration clause and this Court had appointed an arbitrator to adjudicate the dispute between the petitioner and the respondent under Section 11 of the Arbitration and Conciliation Act. The arbitrator acted upon the reference. In the arbitration, the petitioner made various claims including the claim for arrears of lease rentals from the respondent. However in the arbitration, a categorical plea was taken by the respondent that the petitioner never handed over physical possession of the property (30,000 sq. ft. built up area) as claimed by him to the respondent and therefore, they are not liable to pay any arrears of rent to the petitioner. The respondent also made counter claim in the arbitration against the petitioner seeking recovery of a sum of Rs.3 Crores, which they had paid as security deposit to the petitioner together with interest.

4. Based on the pleadings of the respective parties, the arbitrator framed issues. The arbitrator under the impugned arbitral award has rejected the claim of the petitioner but has partly allowed the counter claim made by the respondent, by directing the petitioner to refund the sum of Rs.3 Crores



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to the respondent together with interest at 12% per annum from the date of the counter claim till the date of realization. Aggrieved by the impugned arbitral award dated 01.06.2023, the petitioner, who is the claimant in the arbitration, has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996.

5. Heard Mr. D. R. Raghunath, learned counsel for the petitioner and Ms. Jayalakshmi P. and Mr. Satish Chandrasekaran, learned counsels for the respondent.

6. The learned counsel for the petitioner would submit the following:

a) Despite having produced sufficient evidence before the arbitrator that the petitioner was always ready and willing to hand over possession of the 30,000 sq. ft. built-up area to the respondent, the arbitrator failed to take note of the said fact and had erroneously passed the impugned arbitral award by total non-application of mind;

b) The learned counsel for the petitioner would also rely upon Section 105 of the Transfer of Property Act, which defines lease and would submit



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that it is not necessary to hand over physical possession of the property to the respondent and it would suffice if the respondent was enjoying the property as the respondent has been utilizing the petitioner's property by admitting students and collecting fees and also putting up hoardings in the property;

c) The award passed by the arbitrator is arbitrary and it is not based on the evidence placed on record by the parties;

d) The arbitrator failed to take note of the admission made by the respondent witness (RW1) during the cross-examination that the respondent School has admitted students from the date of commencement of the lease. Therefore, the arbitrator ought to have directed the respondent to pay the arrears of lease rentals to the petitioner as claimed in the arbitration.

e) The learned counsel for the petitioner would submit that as per the terms and conditions of the lease deed, the respondent is liable to pay lease rentals for the built up area occupied by them available as on that date, which is 30,000 sq. ft. built up area. The arbitrator has failed to take note of



the said fact in the impugned arbitral award. The learned counsel for the petitioner, therefore, submits that contrary to the evidence placed on record by the respective parties, the arbitrator has passed the impugned arbitral award.

7. On the other hand, the learned counsel for the respondent would reiterate the contents of the counter claim made by the respondent against the petitioner before the arbitrator and would submit that the petitioner has never handed over possession of the building to the respondent. She would also submit that no documentary evidence was produced by the petitioner before the arbitrator to prove that physical possession of the building was handed over to the respondent. Having paid a sum of Rs. 3 Crores by way of security deposit to the petitioner, the petitioner has to necessarily refund the same to the respondent together with interest since the petitioner did not complete the construction and hand over possession as per the terms and conditions of the lease deed.

8. The learned counsel for the respondent would also submit that the scope of Section 34 of the Arbitration and Conciliation Act is very limited



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as this Court is not an appellate Court to re-appreciate the evidence placed on record before the arbitrator. According to her, only based on the evidence available on record, the arbitrator has rightly dismissed the claim of the petitioner and had partly allowed the counter claim of the respondent by directing the petitioner to refund a sum of Rs. 3 Crores together with interest at 12% per annum, which is the security deposit amount paid by the respondent to the petitioner at the time of entering into the lease deed. In so far as Section 34 petition is concerned, the law is well settled that this Court is not an appellate Court to re-appreciate the evidence, when the arbitrator has passed the award only based on the evidence available on record.

Discussion:

9. The following are the undisputed facts:

a) The petitioner, under the lease deed, agreed to construct 60,000 sq. ft. built-up area for the benefit of the respondent to run a school. He agreed to construct the same on or before 01.06.2020. However, admittedly, the petitioner failed to construct 60,000 sq. ft. built-up area within the stipulated time. Even today, the petitioner has not constructed 60,000 sq. ft. built-up area;



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b) The petitioner claimed before the arbitrator that he was ready and willing to hand over possession of 30,000 sq. ft. built-up area to the respondent from 01.06.2020 onwards and it was only the respondent, who failed to take possession of the property (30,000 sq. ft. built up area) and therefore, the respondent is liable to pay arrears of lease rentals to the petitioner as the construction was tailor-made for the respondent. The same has been categorically denied by the respondent before the arbitrator as seen from the counter claim made by the respondent against the petitioner as they have stated that the petitioner never constructed 30,000 sq. ft. built-up area as on 01.06.2020 and they never offered to hand over physical possession of the property to the respondent as on 01.06.2020;

c) Before the arbitrator, the petitioner has not produced any evidence in the form of Property Tax receipts, Water Tax receipts, Sewerage Charges receipts, etc., (Statutory payments) for having constructed 30,000 sq. ft. super built-up area as on 01.06.2020, which is the deadline fixed in the lease deed, which is the subject matter of dispute between the parties;



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d) In the lease deed, which is the subject matter of dispute between the parties, there is no bifurcation of the buildings as claimed by the petitioner during the course of his submissions made by the learned counsel for the petitioner that the petitioner had agreed to construct two blocks in his premises for and on behalf of the respondent comprising of 30,000 sq. ft. each. Any such contention made by the petitioner will have to be supported by documentary evidence or the contents of the lease deed should contain the same. Neither through the lease deed nor in the documentary evidence produced by the petitioner before the arbitrator, it is established that the petitioner agreed to construct 60,000 sq. ft. built-up area for the respondent in two blocks each comprising of 30,000 sq. ft.;

e) The petitioner has also not produced the statutory approvals obtained as stipulated under clause 7 of the lease deed before the arbitrator to substantiate his case that he was ready to handover possession of 30,000 sq. ft. built-up area to the respondent on 01.06.2020 being the deadline fixed in the lease deed, which is the subject matter of the dispute between the parties;



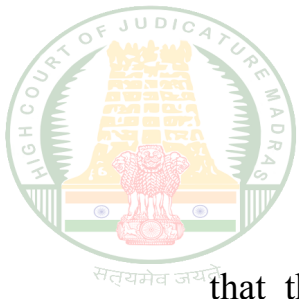
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f) The payment of Rs.3 Crores by the respondent to the petitioner by way of security deposit prior to the date of the lease date has also not been disputed by the petitioner;

10. Only after giving due consideration to the aforementioned undisputed facts, the arbitrator has dismissed the claim petition filed by the petitioner and has partly awarded the counter claim in favour of the respondent. In the impugned arbitral award, the arbitrator has framed issues, based on the pleadings and has given adequate reasons for coming to the conclusion that the claim of the petitioner is untenable and the counter claim of the respondent has to be partly allowed. The arbitrator has considered all the contentions that have been raised before this Court only based on the evidence available on record and only thereafter, has passed the impugned arbitral award.

11. The following factors were also taken into consideration by the arbitrator in the impugned arbitral award for coming to the conclusion:

a) For the purpose of running a school, a bare superstructure is insufficient. Right to enjoy the immovable property is not a mere right to take possession of the building, which is not otherwise complete in all respects to run a school;

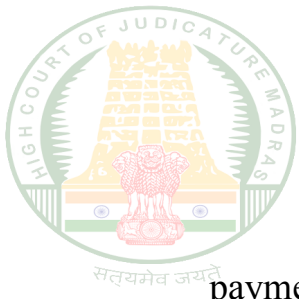


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b) No written communication has been filed by the petitioner to prove that the respondent's earlier representative, Late Mr. Namasivayam, had admitted that the 30,000 sq. ft. built-up area was constructed by the petitioner and the petitioner was ready to hand over possession of the same to the respondent. The petitioner (claimant) had claimed that the 30,000 sq. ft. built up area was completed prior to May 2020 in his oral evidence. However, in the petitioner's communication dated 07.01.2021 (marked as Ex.C14), he has clearly stated that he has not been able to handover the possession on or before 31.05.2020 but only on 07.01.2021, since only part of the building was ready for occupation. Therefore, even as per his own admission, as on 01.06.2020, 30,000 sq. ft. was never available for occupation;

c) The petitioner has also admitted in his deposition that he was not aware as to when the photographs (Ex.C12) were taken;

d) The petitioner has also admitted in his deposition that he has not obtained completion certificate for 30,000 sq. ft. built-up area. He has also stated that he has not filed any documents regarding availability of EB, water supply and sewerage;



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e) By way of answer to Question No.68 regarding as to when the payment of rent is to begin, the petitioner has deposed that payment of rent will begin as soon as the construction is completed in part. He has further admitted in his cross-examination that he has not obtained the final approval from the local body;

f) The Advocate Commissioner appointed by this Court under Section 9 of the Arbitration and Conciliation Act, in his report, has pointed out various deficiencies in the constructed building and the Advocate Commissioner has also stated that the building has also not been completed in its entirety as on the date of inspection. The inspection was held on 8.10.2021;

g) Statutory approvals like structural stability certificate, fire safety clearance, TNEB clearance and the sanitary inspector clearance have not been obtained by the petitioner;

h) From the Advocate Commissioner's report (Ex.C25), as on 01.06.2020, being the deadline fixed under the lease deed, 30,000 sq. ft.

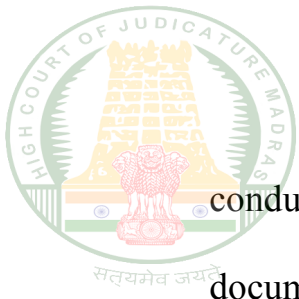


built up area was not available in the manner which could be utilized for the purpose of running a school;

i) The petitioner is currently running a school on his own in the leased premises and therefore, the petitioner has not suffered any loss as he is utilizing the constructed area. No prior consent was also obtained by the petitioner from the respondent for running the school on his own.

12. The lease deed contemplates actual physical possession to be handed over to the respondent for the purpose of running the school on or before 01.06.2020. Therefore, by mere usage of the address of the premises in hoardings and enrollment of students, employment of teachers, etc., it cannot be held that right of enjoyment has been exercised by the respondent. Therefore, the respondent is not liable to pay the rent as claimed by the petitioner.

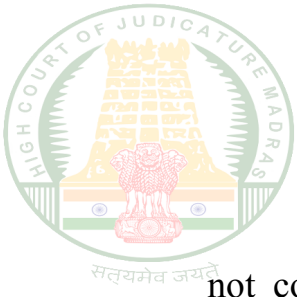
13. Admission of students by the respondent during the period of the lease will not amount to handing over possession of the property by the petitioner to the respondent. Being a school, even online classes can be



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conducted. Therefore, when the petitioner has not produced any documentary evidence before the arbitrator to prove that he was ready and willing to hand over possession of the property (30,000 sq. ft. built-up area) on 01.06.2020, this Court is of the considered view that the arbitrator has given a correct finding by holding that the petitioner had not constructed 30,000 sq. ft. built up area on 01.06.2020, which is the deadline fixed in the lease deed, which is the subject matter of dispute between the parties.

14. Essential terms of the lease is to include the period for which the lease operates. In this case, the lease is for a period of 15 years and comes into operation from 01.06.2020 and ends by 31.05.2035. As per Clauses 2 and 3 of the lease deed, the commencement is premised on handing over of possession of entire superstructure of 60,000 sq. ft. or available superstructure as on 01.06.2020. It is not mere existence of superstructure which is required, but the superstructure that should be capable of being put to use as a school. The governing contract between the parties is Ex.C4, lease Deed, as Ex.C4, lease deed has superseded Ex.C2 which was entered prior to Ex.C4.



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15. On account of non-completion of the superstructure, the lease had not come into effect and therefore, the petitioner is liable to refund the security deposit of Rs.3 Crores to the respondent together with interest at 12% per annum.

16. As seen from the discussion in the impugned arbitral award, detailed and convincing reasons have been given by the arbitrator for coming to the conclusion that the petitioner's claim has to be rejected and the counter claim made by the respondent has to be partly allowed. Only after giving due consideration to the pleadings of the respective parties and after giving consideration to the evidence available on record, the arbitrator has come to the right conclusion by holding that the petitioner's claim has to be rejected and the counter claim made by the respondent has to be partly allowed. The award passed by the Arbitrator is an intelligible award which does not call for interference.

17. The scope for interference under Section 34 of the Arbitration and Conciliation Act is very limited. This Court is not an appellate body to re-appreciate the evidence when the arbitrator has passed the impugned arbitral award only based on the evidence available on record before him.



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ABDUL QUDDHOSE. J.,

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WEB COPY 18. Having not handed over possession of the building to the respondent as stipulated under the lease deed, and having received Rs.3 Crores from the respondent by way of security deposit, and having not refunded the same to the respondent, the arbitrator has come to the right conclusion that the petitioner is liable to refund the sum of Rs.3 Crores received by him from the respondent by way of security deposit together with interest at the rate of 12% per annum as stipulated under the impugned arbitral award.

19. This Court does not find any infirmity in the findings given by the arbitrator in the impugned arbitral award and therefore, there is no merit in this petition. Accordingly, this petition is dismissed. No costs.

12.06.2025

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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