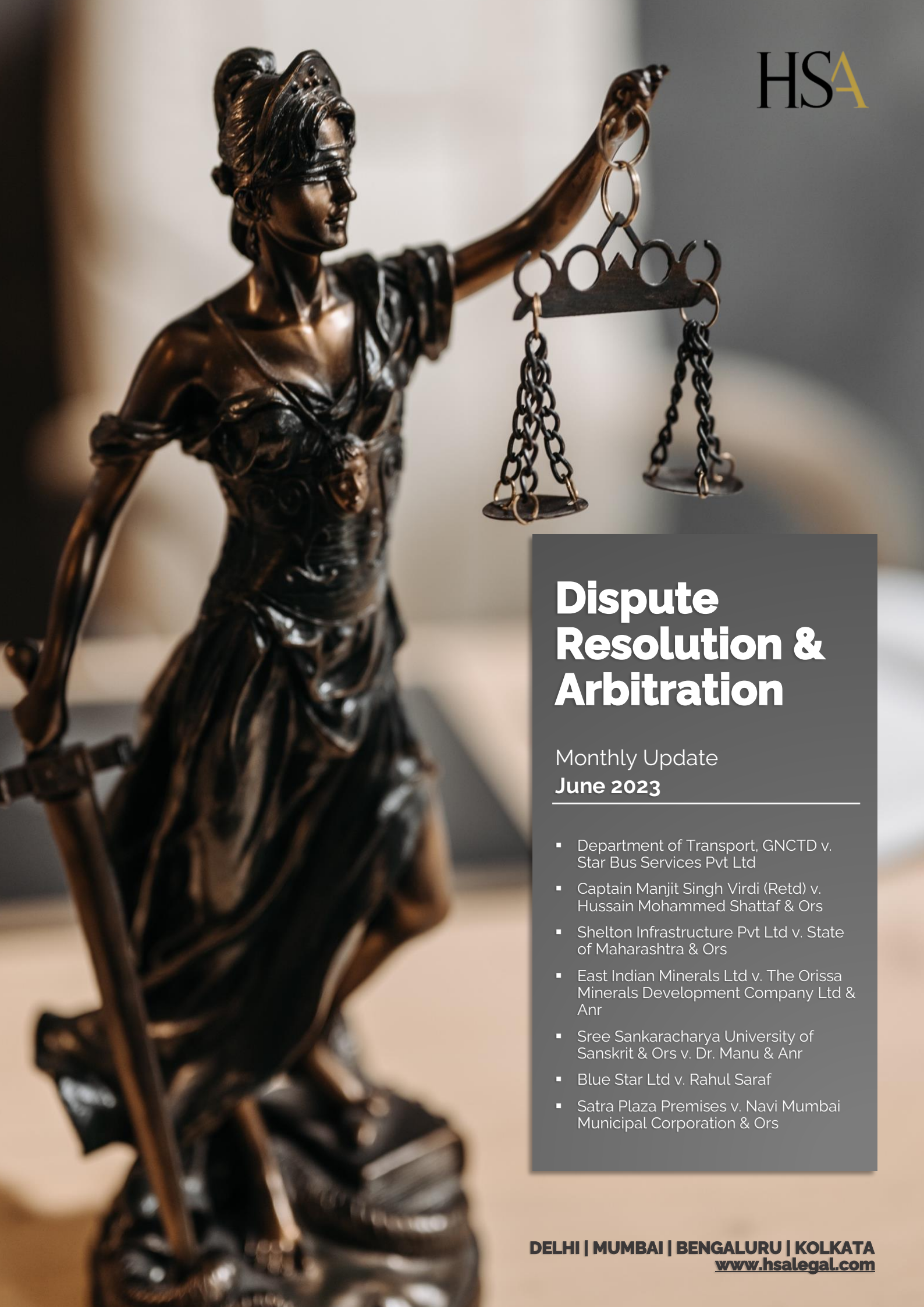

HSA

Dispute Resolution & Arbitration

Monthly Update

June 2023

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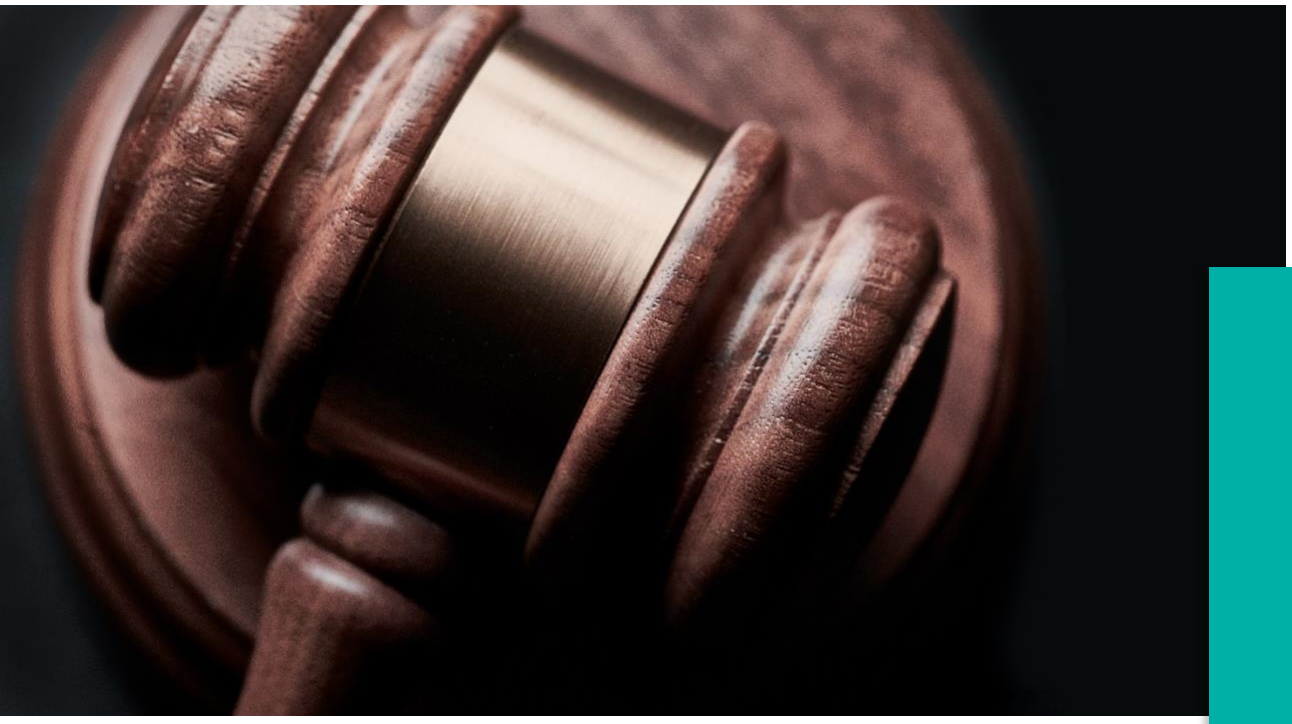
DISPUTE RESOLUTION AND ARBITRATION UPDATE



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Department of Transport, GNCTD v. Star Bus Services Pvt Ltd

Delhi High Court | 2023 SCC OnLine Del 2890

Background facts

- Star Bus Services Pvt Ltd (**Respondent**) invited bids for the provision of bus services via Request for Qualification (**RFQ**) for private stage carriage buses through corporate entities. After due evaluation of proposals, GNCTD (**Petitioner**) accepted the proposal of the Respondent and in furtherance of the same, issued a Letter of Acceptance (**LoA**).
- Thereafter, a Concession Agreement (**CA**) was entered into between the Petitioner and the Respondent, whereby the Respondent was to induct low-floor CNG buses for a period of 10 yea. As per the terms set out therein, the Respondent was required to provide a consolidated Depot at Gadaipur, Delhi, with certain civil infrastructure facilities stipulated therein. However, during the subsistence of the contract, issues arose between the parties due to the termination of the said contract by the Respondent.
- The *lis* regarding the provision of buses in the CA underwent a series of litigations. The Delhi High Court (HC) with the consent of the parties, terminated the mandate of the Sole Arbitrator and appointed Justice R.C. Lahoti (Retd.), as the Sole Arbitrator to adjudicate the disputes.
- The Arbitral Tribunal reserved the Award on September 8, 2018 and finally, the Award was rendered on June 9, 2020. The Award was passed in favor of the Respondent Awarding it an amount of INR 57,04,47,373 with interest at 9% per annum from June 5, 2016 till the date of payment (**Impugned Award**).

Issues at hand?

- Whether the Impugned Award is vitiated by fraud, patently illegal, and in conflict with the public policy of India?
- Whether the delay in the pronouncement of the Impugned Award after final arguments have concluded has vitiated the Award?

Decision of the Court

- At the outset, the High Court (**HC**) noted that the main issue before the Arbitral Tribunal was whether the Petitioner committed a fundamental breach of the contract by failing to provide the contractually stipulated depot to the Respondent. In this regard, HC observed that Arbitrator had considered the contentions of the Petitioner and the responses of the Respondent and had given detailed reasons in support of his finding as to fundamental breach by the Petitioner, which left the Respondent with no option except, or at least entitled it, to terminate the contract.
- Concerning the Petitioner's allegation that the Respondent committed fraud by diverting INR 26,73,29,885 to Argentum Auto Pvt Ltd for the purchase of 100 buses, the HC noted that the Respondent had voluntarily disclosed the transaction in question, and the Petitioner was aware of the same much before that. Thus, HC opined that on perusal of the records and the submissions made by the parties, it is established that the Arbitral Tribunal had given a reasoned Award. Further, HC noted that the Petitioner was not able to establish a ground for setting aside the Award on merits so far. Therefore, HC did not find any merit in the Petitioner's contentions that the Impugned Award is unintelligible and contrary to the public policy of India.
- HC relied on its judgment in the case of ***Harji Engg Work Pvt Ltd v. Bharat Heavy Electricals Ltd***[1] and noted that since the Arbitration Act provided only for limited grounds on which an Award can be set aside, the Arbitrator is additionally responsible for rendering a prompt Award. Abnormal delays without any explanation from the Arbitrator, as was the scenario in the present case, would cause prejudice and such an Award would be unjust.
- HC carefully perused the provision on setting aside the Award and noted that the scope of interference under Section 34 of the Arbitration Act is limited. The HC placed reliance on its judgment in the case of ***Director General, Central Reserve Police Force v. Fibroplast Marine Pvt Ltd***[2] and observed that the inordinate and unexplained delay in rendering the Award makes it amenable to challenge under Section 34(2)(b)(ii) of the Arbitration Act, that is, conflicting with the public policy of India.
- Thereafter, HC observed that while jurisdictions like Turkey, Taiwan, Egypt, Syria, Sudan, and even India have incorporated time limits into their national laws within which an Award must be rendered, jurisdictions like Italy and Belgium have provisions granting parties the autonomy to decide the time limit within which Arbitral Tribunals must make an Award. HC perused Section 29A (1) and noted that the Arbitral Tribunal must render an Award within 12 months from the date on which the Tribunal entered a reference. Thus, HC concluded that by applying the aforementioned position of law to the facts and circumstances of the case, it is clear that there is a substantial gap of 1.5 years between the date of reserving the Award and the date of the Award.
- Therefore, HC held that the Impugned Award stands vitiated on two terms, firstly for an inordinate, unexplained, and substantial delay of more than 1.5 years from the date on which the Award was reserved, thus being in contravention of the public policy of India; and secondly, under the provision of Section 29A(1) r/w Section 29A(4) of the Act, the Impugned Award is in the teeth of law due to the lack of jurisdiction of the Arbitrator which stood terminated per the said provisions. Accordingly, the HC set aside the Impugned Award.

HSA
Viewpoint

While passing this judgment, the HC has given primacy to the objective of the arbitration i.e., to reach a final disposition in a speedy, effective, inexpensive, and expeditious manner. In cases where an Arbitral Tribunal takes too long to render the Award, the purpose and intent of arbitration as being a party-driven, expedient, and cost-effective means of dispute resolution, stands defeated. The HC has clarified that the Award passed after an inordinate, substantial, and unexplained delay would be contrary to the purpose of the arbitration as envisioned in the Arbitration Act. This judgment is a step in the right direction towards making India an arbitration hub by ensuring that the disputes in arbitration are adjudicated in a time bound manner, which is in consonance with the intent of introducing Section 29A under the Arbitration Act.

Captain Manjit Singh Virdi (Retd) v. Hussain Mohammed Shattaf & Ors

Supreme Court of India | Criminal Appeal No. 1399 of 2023 and 2023 SCC OnLine SC 653)

Background facts

- An FIR dated May 14, 2006 was lodged at Lonawala City Police Station for the murder of Manmohan Singh Sukhdev Singh Virdi, whose body was found lying in a pool of blood in his bedroom.
- After the FIR was registered, investigation was conducted and statements of a number of persons were recorded under Sections 161 and 164 of the Criminal Procedure Code (**CrPC**). Even a psychological evaluation including Psychological Profiling, Polygraph Testing and Brain Electrical Oscillations Signature Profiling (**BEOS**) of Hussain Mohammed Shattaf i.e. (**Respondent No. 1**) was conducted on May 31, 2007 and similar tests were conducted on the other four persons who were close aides of Respondent No. 1.
- After the completion of investigation, a charge-sheet dated December 9, 2009 was filed against the Respondent No. 1 and Waheeda Hussain Shattaf i.e. (Respondent No. 2) stating while

[1] 2008 SCC OnLine Del 1080
[2] 2022 SCC OnLine Del 1335

Respondent No. 1 was staying in Dubai for the purpose of his business, his wife Respondent No. 2 came in contact with the deceased and developed friendship.

- It was further stated in the charge-sheet that the said friendship turned into physical relationship and when Respondent No. 1 returned from Dubai, he came to know about the same. It was stated that to take revenge, Respondent No. 1 in connivance with Respondent No. 2 and another person conspired to kill the deceased through his assailants.
- The case was executed by the Magistrate to the Sessions Court. The accused persons (Respondent No. 1 and 2) filed Revision Application for discharge before the Sessions Court which was dismissed vide order dated February 21, 2012.
- However, the Bombay High Court vide Impugned Order dated July 17, 2013 set aside the order passed by the Trial Court and discharged Respondent No. 1 and 2. The Impugned Order of the High Court was challenged by the Appellant before the Supreme Court.
- The Counsel appearing for the Appellant submitted that the High Court had conducted a mini trial merely by referring to some of the statements recorded by the police during investigation, which were forming part of the charge-sheet which was beyond the scope of jurisdiction of the Court at the time of consideration of the application for discharge and HC failed to take in cognizance that there was psychological evaluation including Polygraph Testing and BEOS conducted on Respondent No. 1 and four other aides of him, which lead towards the accusation of Respondent No. 1 and 2 in the crime.
- On the other hand, the Counsel appearing for the Respondent No. 1 and 2 submitted that it is a case of blind murder and there was no eye-witness. It was further contended that a false story was built up by the prosecution for which there is no material to support and the Trial Court had failed to exercise jurisdiction vested in it to discharge the Respondents.

Issue at hand?

- Whether an accused can be discharged on an application made by the accused without referring to the evidence in its entirety and without framing of charges?

Decision of the Court

- At the outset, the Division Bench of Supreme Court held that if the facts of the case are examined in the light of law laid down by this Court on the subject, it is evident that the High Court has not even referred to the evidence collected by Investigating Agency produced along with the charge-sheet in its entirety. Rather there is selective reference to the statements of some of the persons recorded during the investigation. It shows that there was total non-application of mind, and the High Court had exercised the jurisdiction in a manner which is not vested in it.
- The Court further observed that though psychological evaluation test report only may not be sufficient to convict an accused but is certainly a material piece of evidence. Despite this material on record, the High Court could not have opined that the case was not made out even for framing of charge, for which only *prima facie* case is to be seen.
- The Supreme Court relied on various cases such as the ***State of Rajasthan v. Ashok Kumar Kashyap***[3] where in was observed that the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 of Criminal Procedure Code, if not, he will discharge the accused.
- The Court relied on the case of ***State of Karnataka v. MR Hiremath***[4] in which it was held that It is a settled principle of law that at the stage of considering an application for discharge the Court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence.
- The Supreme Court also relied on the judgement of the ***State of TN v. N Suresh Raja***[5] in which it was held that at this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In the Court's opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame

HSA
Viewpoint

This decision of the Supreme Court is a remarkable judgment in which the SC has set a precedent for all the lower Courts that an accused can be discharged only if no case is made out even after presuming entire prosecution evidence to be true. The judgement lays the foundation principle that at the stage of charge, the Court may only intervene if there are strong reasons that a prime facie case is made against the accused persons otherwise it will amount to abuse process of law.

[3] (2021) 11 SCC 191
[4] (2019) 7 SCC 515
[5] (2014) 11 SCC 709

the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

- The HC vide Impugned Order had summed up the entire evidence in two paras without even referring to the psychological evaluation including Psychological Profiling, Polygraph Testing and BEOS tests of the accused and the other aides of Respondent No. 1 and ordered discharge of Respondent No. 1 and 2. Thus for the above reasons stated, the Appeal was allowed and the Impugned Order of the High Court was set aside.

Shelton Infrastructure Pvt Ltd v. State of Maharashtra & Ors

Supreme Court of India | 2023 SCC OnLine Bom 1008

Background facts

- In February 2021, public tenders were invited by City and Industrial Development Corporation (**CIDCO**) for allotment of the residential cum commercial plots vested with CIDCO. The participants who submitted tenders before CIDCO were Shelton Infrastructure Pvt Ltd, Neelkant Infratech Co, Juhi Habitat Pvt Ltd, Gami and Satyam Ventures Pvt Ltd, Godrej Properties Ltd, Kamdhenu Green (**Petitioners**). The Petitioners were the successful allotees owing to which they deposited earnest money qua the plots allotted to them.
- Further, as per the terms and conditions as mentioned in their respective allotment letters, the Petitioners were required to pay the first installment of lease premium within four weeks from the date of allotment and the second installment within six weeks from the date of payment of first installment. Thus, the Petitioners were incumbent to deposit the lease premium in two instalments to CIDCO within a period of 10 weeks from the date of allotment.
- It is pertinent to note that the Navi Mumbai Municipal Corporation (**NMMC**), by virtue of notification dated December 14, 2017, had declared its intention to prepare a draft redevelopment plan for the area under its jurisdiction and subsequently within a period of weeks' time, NMMC by virtue of letter dated December 22, 2017, refrained CIDCO from selling any vacant land owned by it in accordance with the notification dated December 14, 2017. Relying on such a letter, NMMC on December 13, 2019, passed a general body resolution stating that several plots in different nodes of Navi Mumbai shall be reserved for public purposes. However, it was later discovered that neither the letter nor the resolution was on the public domain owing to which the Petitioners were completely unaware of such facts during the bidding process.
- The Petitioners were completely shocked when they discovered the fact that the plots of land allotted by CIDCO to them were reserved for different public purposes by NMMC. The Petitioners attempted to establish communication with both NMMC and CIDCO by virtue of several correspondences seeking answers pertaining to the reservation of the allotted lands, however, no reply was received from either CIDCO or NMMC. As ambiguity persisted over the entire allotment process, none of the petitioners paid the first instalment to CIDCO which was duly payable within the first four weeks of the allotment process.
- On further enquiry, the above issue was asserted by the CIDCO and NMMC which led to litigation before the Bombay High Court by virtue of several writ petitions filed by the Petitioners herein which were later moved before the Court for ad-interim reliefs.
- By virtue of orders dated May 7, 2021 and May 11, 2021 the Court granted interim reliefs to the Petitioners wherein, the Court categorically directed CIDCO to suspend the schedule of payment at Clause (c) of allotment letter without levying any interest or penalty and restrained it from terminating the allotment of plots to the Petitioners or to take any coercive steps under the tender or allotment letter.
- In the meantime, Public Interest Litigation (**PIL**) was filed by Mr. Nishant Karsen Bhagat and Mr. Sunil Garg bearing in case of ***Nishant Karsan Bhagat & Ors v. CIDCO & Ors***[6] and ***Mr. Sunil J. Garg & Ors v. State of Maharashtra & Ors***[7] which were heard by the Division Bench of Court.
- The judgement on PIL petitions was pronounced on August 30, 2022 wherein it was held that CIDCO had rightfully auctioned these plots of land and the Petitioners herein were the rightful beneficiaries and that the reservation made by NMMC was not permissible for the plots which were already vested with CIDCO.
- One of the Petitioners aggrieved by the decision of the Division Bench in the said PIL filed Special Leave Petition (Civil) (SLP) No. 22639 of 2022 before Supreme Court of India (SC). The SC however

[6] PIL No. 22 of 2021
[7] PIL No. 37 of 2021

ratified the order of the Division Bench by virtue of order dated February 10, 2023 and dismissed the aforesaid SLP.

Issues at hand?

- Whether NMMC is empowered to reserve certain plots of land vested with CIDCO for public purpose?
- Whether the plots allotted to the Petitioners by CIDCO still valid?
- Whether the Petitioners were required to pay the lease premium to CIDCO within first four weeks of the allotment process irrespective of the subsisting ambiguities pertaining to the plots of land reserved for public purposes by NMMC?

Decision of the Tribunal

- The Court observed that, the Petitioners purchased the plots from CIDCO through public tenders, since CIDCO was empowered under sub-Section (3A) of Section 113 of Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**) to develop lands as vested in it, make allotment of plots and to dispose lands as vested with CIDCO, for residential and commercial uses.
- The Court further stated that even pursuant to constitution of NMMC within the meaning of Section 2(19) of the MRTP Act, in its capacity as local planning authority, CIDCO retained its authority to dispose of the plots in accordance with the New Bombay Disposal of Land Regulations and it was by virtue of such statutory authority, CIDCO had invited bids. This clearly shows that NMMC had no authority to make any reservations or to reserve the subject plots which were allotted to the Petitioners.
- The Court acknowledged that the Petitioners were the successful bidders and beneficiaries of public tenders and that the respective plots allotted to them by virtue of allotment letters stood in their favor.
- The Court in the present case, had relied on judgement in the matter of ***Unitech Ltd v Telangana State Industrial Infrastructure Corporation (TSIIC)***[8] passed by the SC wherein it was held that TSIIC had no authority to make allotment of land in favor of Unitech Ltd as it was not an owner of such land and granted Unitech Ltd with an entire interest of INR 165 crore along with interest. Moreover, the SC stated that recourse to the jurisdiction under Article 226 of the Constitution of India is not excluded altogether in a contractual matter.
- Therefore, the Court directed CIDCO to accept the lease premium amount in two installments without levying of interest or other delayed charges as per the terms and conditions of the allotment letter and it further declared that the Petitioners were entitled to develop the plots as per the development permissions as may be issued in favor of the Petitioner.

HSA
Viewpoint

As an authorized public body, CIDCO ought to have made a clear representation to the Petitioners with respect to the unencumbered plots in question and that it cannot place the allotees of the plots in an uncertain situation. On the contrary, despite the hanging swords of the uncertainty of allotment of plots, CIDCO acted arbitrarily and demanded from Petitioners to make the payment of the instalment of lease premium which was unreasonable and unfair in the matter of allotment of plots read with Section 19(1)(g) of the Constitution of India. It cannot be neglected that the Petitioners could have proceeded to complete the instalment payments, if the allotment of plots were free from reservations and certain of development potential of the plots. Significantly, such a public body dealing with public at large cannot act in deviation to the terms and conditions as mentioned in the respective allotment letters which would result in several litigations.

East Indian Minerals Ltd v. The Orissa Minerals Development Company Ltd & Anr

Calcutta High Court | AP No. 667 of 2022

Background facts

- The Petitioner being a Joint Venture Company and Respondent No. 1 being a company holding iron mines under lease from the Government of Orissa, entered into an agreement on October 4, 1993 for a period of 20 years for setting up crushing and processing plant and for sale of iron ore.
- Respondent No. 1 was unable to materialize the objective of the agreement and hence dispute arose between the parties. Accordingly, the Petitioner invoked arbitration vide a letter dated December 15, 2006 whereby it nominated Senior Advocate Mr. Ahin Choudhury as its nominee Arbitrator. Similarly, Respondent No. 1 nominated Senior Advocate Mr. R.N. Das as its nominee Arbitrator. Thereafter, the two Arbitrators appointed Dr. Tapan Banerjee as the Presiding Arbitrator.
- The arbitration proceedings began but could not be completed due to the death of the Presiding Arbitrator and a reconstituted Arbitral Tribunal was appointed with Mr. R.N. Ray being the Presiding Arbitrator, who also expired after the 32nd sitting was concluded.
- During the pendency of the Application filed under Section 16 of the Arbitration and Conciliation Act, 1996 (Act) before the Arbitral Tribunal, criminal proceedings were initiated against the Petitioner which culminated on December 18, 2021. The last arbitration sitting was conducted on February 4, 2016 after which there have been no developments in the arbitration proceeding.

[8] Civil Appeal No. 317 of 2021 arising out of SLP (C) No. 9019 of 2019

- Thereafter, vide letter dated May 23, 2022, the Petitioner requested the two Arbitrators to appoint a new Presiding Arbitrator, which they could not comply with.
- Consequently, the Petitioner inter alia filed the instant Petition before the Calcutta High Court (HC) for termination of mandate of the deceased arbitrator and appointment of a Presiding Arbitrator under Sections 14 & 15 r/w Section 11 of the Act.

Issues at hand?

- Whether a delay/lapse of more than 7 years in resuming the arbitral proceedings would render arbitration infructuous?
- Whether the arbitration cannot proceed owing to applicability of Section 29A of the Act?

Decision of the Court

- At the outset, the HC held that the issue whether a delay of 7 years in filing of a Section 14 and 15 application since the last sitting of the arbitration would make the claims barred by limitation, is an issue which has to be decided by the Arbitrator.
- The HC relied on its decision in the case of ***Subrata Mitra v. Shyamali Basu***[9] and Anr and held that once the reference has been made before the Arbitral Tribunal and the proceedings have been commenced, the delay in the resumption of such arbitral proceedings would not wipe out the arbitral reference. It was further held that arbitral proceedings cannot be rendered inoperative by dismissal of the said application as the reference of the issue of limitation must also be raised before the Arbitral Tribunal and adjudicated by the same.
- The HC observed that the arbitration clause in the instant case was invoked on December 15, 2006 and remarked that it is no longer res integra that purely procedural provisions are to be applicable retrospectively. But it is also settled law that such applicability can be ousted if specified in any statute. It is also to be seen if Section 29A of the Act is purely procedural in nature. Accordingly, the HC relied on the judgement of the Supreme Court in the case of ***BCCI v. Kochi Cricket Pvt Ltd***[10] and held that Section 29A of the Act shall apply prospectively to arbitration proceedings commenced in accordance with Section 21 of the Act, unless the parties otherwise agreed.
- Additionally, the HC relied on the judgement of the Supreme Court in the case of ***SP Singla Constructions Pvt Ltd v. State of Himachal Pradesh***[11] and held that the Respondent's contention that arbitration agreement provided for import of statutory modification and hence the Amended Act of 2015 shall apply retrospectively to the parties, cannot be sustained.
- In view of the above, the High Court terminated the mandate of the Late Arbitrator, Justice R.N. Ray and appointed Justice Asok Kumar Ganguly, Former Judge, Supreme Court of India, as the Presiding Arbitrator to resolve the dispute between the parties and thereby disposed of the Petition.

HSA
Viewpoint

This decision clarifies that the issue of limitation and delay in filing an application under Section 14 and 15 of the Act should be decided by an Arbitrator. The significance of the judgment is that it makes it clear that delay in the resumption/conclusion of arbitral proceedings would not wipe out the arbitral reference and render it inoperative. This judgment removes all ambiguities relating to retrospective application of Section 29A of the Act and makes it clear that the same applies prospectively to arbitration proceedings.

Sree Sankaracharya University of Sanskrit & Ors v. Dr. Manu & Anr

Kerala High Court | 2023 SCC OnLine SC 640; Civil Appeal No. 3752 of 2023

Background facts

- The present appeal has been filed by the Appellant-University assailing the final judgment and order dated August 10, 2016, passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 254 of 2016.
- Respondent No. 1, namely, Dr. Manu joined the service of the Appellant-University on July 14, 1999 as a Lecturer in the Hindi language department. By an order dated 25 November, 2004, Respondent No. 1 was placed in the senior scale w.e.f. 14 July, 1999. Further, he was granted four advance increments by virtue of Clause 6.16 of the UGC scheme dated December 21, 1999 which states that candidates who hold Ph.D. degree at the time of recruitment as Lecturers would be eligible for four advance increments.
- Thereafter, by an order dated October 20, 2011, Respondent No. 1 was placed as a Selection Grade Lecturer w.e.f. July 14, 2000, with the notional date of placement as December 22, 1999 and consequently, his pay was fixed by order dated January 12, 2012 at INR 46,440/9000/55,440. In fixing the pay, two advance increments payable on placement of a Lecturer holding a Ph.D. degree as a Selection Grade Lecturer, as per Clause 6.18 of the UGC scheme dated December 21, 1999 were not granted.

[9] AP 67 of 2020
[10] (2018) 6 SCC 287
[11] (2019) 2 SCC 488

- Respondent No. 1 filed a Writ Petition before the High Court of Kerala challenging the orders of the Appellant-University dated October 20, 2011 and January 12, 2012, on the ground that two advance increments, payable to him on placement as a Selection Grade Lecturer were erroneously withheld.
- The Single Judge of the High Court partly allowed W.P. (C) No. 28567 of 2012 and directed the Appellant-University to pay Respondent No. 2 two advance increments in terms of Clause 6.18 of the Government Order dated December 21, 1999.
- The same was challenged by the University and was dismissed by the Division Bench. Hence, the present Petition.
- **Submissions on behalf of the Appellant:**
  - The judgments of the Single Judge and the Division Bench of the High Court of Kerala were based on an incorrect appreciation of the law and facts of the case and, therefore, deserve to be set aside.
  - A close reading of Clauses 6.16 to 6.19 of the Government Order dated December 21, 1999 would indicate that the maximum number of advance increments that a teacher having a Ph.D. degree could avail is limited to four, under all circumstances.
  - The said provisions do not contemplate a double benefit by virtue of a Ph.D. qualification. That having availed the benefit of advance increments at the time of recruitment by virtue of holding a Ph.D. qualification, a Lecturer cannot once again claim increments based on his/her Ph.D. qualification at the time of being placed in the Selection Grade.
  - The Government Order dated March 29, 2001 was a clarificatory order and not one that would vest or withdraw any substantive rights. Therefore, the said clarification would relate back to the date on which the previous Government Order dated December 21, 1999 came into effect. Accordingly, such an order must be made applicable retrospectively from the date on which the order sought to be clarified came into effect.
- **Submissions on behalf of the Respondents:**
  - A conjoint reading of Clauses 6.16, 6.18 and 6.19 would reveal that a Lecturer with a Ph.D. degree at the time of recruitment as a Lecturer would be eligible for six advance increments, i.e., four advance increments at the time of recruitment and two additional increments at the time of being placed in the Selection Grade.
  - Further, a Lecturer who does not possess a Ph.D. degree at the time of his recruitment, but subsequently obtains one while serving as a Lecturer before placement in the Selection Grade, would be eligible for four advance increments, i.e., two advance increments on obtaining a Ph.D. degree and two more increments on being placed in the Selection Grade.
  - Hence, Clauses 6.16, 6.18 and 6.19 could not be construed to imply that a Lecturer who had already got the benefit of four advance increments at the time of recruitment, would not be eligible for two more advance increments on being placed in the Selection Grade.
  - The Government Order dated March 29, 2001 which significantly modified/amended the meaning of Clauses 6.16, 6.18 and 6.19, could not be stated to be a clarification and therefore made applicable retrospectively. It did not indicate that the same was to operate retrospectively and hence, cannot be stated to have retrospective effect.

Issues at hand?

- Whether the High Court was right and justified in directing grant of two advance increments to Respondent No. 1 in terms of Clause 6.18 of the Government Order dated December 21, 1999, on his placement as a Selection Grade Lecturer?
- Whether the Order dated March 29, 2001 was a clarification of Clauses 6.16 to 6.19 of the Government Order dated December 21, 1999, or whether, it amended or modified the same with retrospective effect?

Decision of the Court

- The Court analyzed the clauses of the Government Order dated December 21, 1999, and on a conjoint reading of the same it could be inferred that a Lecturer with a Ph.D. degree at the time of recruitment as a Lecturer and subsequent placement in the Selection Grade would be eligible for a total six advance increments.
- Thereafter, the Order dated March 29, 2001 was analyzed and the new position that emerged was that the number of advance increments that would accrue to such a Lecturer on being placed in the Selection Grade was reduced to four, contrary to six as mentioned in the previous order.
- The Government Order dated March 29, 2001 modifies the Government Order dated December 21, 1999 by inter-alia providing that a Lecturer would not be simultaneously eligible for the incentives under Clause 6.16 and 6.19 thereof.

- On the aspect of retrospective application of law in case of clarificatory order, the Court relied upon ***State of Bihar v. Ramesh Prasad Verma (Dead) through LRs***[12] which states that any legislation or instrument having the force of law, which is clarificatory or explanatory in nature and purport and which seeks to clear doubts or correct an obvious omission in a statute, would generally be retrospective in operation.
- The Court also referred to ***Commissioner of Income Tax, Bombay v. Podar Cement Pvt Ltd***[13], ***Allied Motors Pvt Ltd v. Commissioner of Income Tax, Delhi***[14], ***Bihta Cooperative Development Cane Marketing Union Ltd v. Bank of Bihar***[15], ***Virtual Soft Systems Ltd v. Commissioner of Income Tax, Delhi***[16], ***Union of India v. Martin Lottery Agencies Ltd***[17]. From the aforesaid authorities, the Court culled out the following principles:
  - If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.
  - In order for a subsequent order/provision/amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.
  - An explanation/clarification may not expand or alter the scope of the original provision.
  - Merely because a provision is described as a clarification/explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyze the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.
- On applying the above-mentioned principles, the Apex Court held that the subsequent Government Order dated March 29, 2001 cannot be declared as a clarification and therefore be made applicable retrospectively.
- The law provides that a clarification must not have the effect of saddling any party with an unanticipated burden or withdrawing from any party an anticipated benefit. However, the Government Order dated March 29, 2001 has restricted the eligibility of Lecturers for advance increments at the time of placement in the Selection Grade, only to those who do not have a Ph.D. degree at the time of recruitment and subsequently acquire the same.
- Therefore, permitting retrospective application of the said order would result in withdrawing vested rights of Lecturers who had a Ph.D. at the time of their recruitment and were placed in the Selection Grade before March 29, 2001 with four plus two advance increments.
- On an analysis of the true nature and purport of the subsequent Government Order dated March 29, 2001, the Apex Court opined that it is not merely clarificatory but is a substantial amendment which seeks to withdraw the benefit of two advance increments in favor of a certain category of Lecturer. The benefit withdrawn was not anticipated under the previously existing scheme. Therefore, such an amendment cannot be given retrospective effect.
- Thus, the appeal was dismissed.

HSA
Viewpoint

This judgment is laudable as it clarifies when an order can be termed as a modification or an amendment. A clarificatory order has a retrospective application but a mere modification cannot be given a retrospective effect since it saddles the parties with unanticipated burden. The legal position further encapsulates that merely because the subsequent Government Order has been described as a clarification/explanation or is said to have been issued following a clarification that was sought in that regard, the Court is not bound to accept that the said order is only clarificatory in nature. As such, construction and intent of the order has rightfully been left to the assessment of Courts.

Blue Star Ltd v. Rahul Saraf

Calcutta High Court I AP No. 852 of 2022

Background facts

- The Petitioner, Blue Star Ltd, entered into a Memorandum of Understanding (**MoU**) with the Respondent, Rahul Saraf, as per which the Petitioner was to render its operation and maintenance services from January 1, 2019 to December 31, 2021.
- Services were provided by the Petitioner, in lieu of which invoices were raised and even paid by the Respondent. However, disputes arose between the parties with respect to non-payment of a few invoices. The Petitioner raised requests for payments vide series of letters.
- On the Respondent's failure to pay the amount demanded, the Petitioner invoked the arbitration clause and nominated an Arbitrator vide notice dated August 29, 2022, which was received by the Respondent on September 1, 2022.

[12] (2017) 5 SCC 665
[13] (1997) 226 ITR 625 (SC)
[14] (1997) 224 ITR 677 (SC)
[15] A.I.R. 1967 SC 389
[16] (2007) 289 ITR 83 (SC)
[17] (2009) 12 SCC 209

- After expiry of a period of 30 days, the Respondent issued a letter dated November 4, 2022, refusing to accept the appointment of the Arbitrator appointed by the Petitioner and disputed the existence of any valid arbitration clause. Consequently, the Petitioner filed the present application under the Arbitration and Conciliation Act, 1996 (**Act**) praying for appointment of an Arbitrator.
- **Submissions on behalf of the Petitioner:**
  - The dispute is arbitrable in nature and there exists a binding arbitration agreement between the parties which can be easily deduced from the provisions of the MoU, specifically, Clause 7 and 13.
  - Reliance was placed on ***Jagdish Chander v. Ramesh Chander & Ors***[18] to bring home the point that intent of the parties has to be analyzed, which in the present situation was to determinatively refer disputes to arbitration.
- **Submissions on behalf of the Respondents:**
  - A perusal of the dispute resolution clauses would indicate that the ingredients of a valid arbitration clause, as understood on a conjoint reading of Section 2(b) and Section 7 of the Act, are not met. There is no consensus between the parties in the MoU to submit to arbitration.
  - Mere use of the word 'arbitration' or 'Arbitrator' in a heading or clause would not aggregate to an arbitration agreement. Similarly, the mere possibility of parties agreeing to arbitrate in the future, as contrasted from an obligation to refer disputes to arbitration, would not surmount to an arbitration agreement.

Issues at hand?

- Whether ingredients/requirements of a binding arbitration clause are present or found wanting in the identical agreements in the instant petitions?
- Whether there exists a valid arbitration agreement?

Decision of the Authority

- The Court referred to ***NTPC Ltd v. SPML Infra Ltd***[19], ***Jagdish Chander v. Ramesh Chander & Ors***[20], ***Niwas Enterprise v. Rabindra Pandorang Ratnaparkhi & Anr***[21], and ***Nagreeka Indcon Products Pvt Ltd v. Cargocare Logistics (India) Pvt Ltd***[22] and expounded that an arbitration agreement can be couched in various modes and forms. However, mere mentioning of the terms 'arbitration' or 'Arbitrator' in a heading or existence of these terms in a scattered manner in clauses of agreements between parties do not aggregate to being an arbitration agreement. There must exist a clear intention of the parties and a meeting of their minds to mandatorily submit any future dispute, that may arise, to arbitration.
- Such an intention should illuminate itself in the form of an explicit obligation that is binding between the parties and not merely a possibility that may materialize if the parties so decide after a fresh application of mind, post-facto occurrence of disputes.
- The Court also delved into the concerned clauses. Clause 7 makes a reference to 'Arbitration Proceedings' and Clause 13 clarifies what the Arbitrator shall not do. On an examination of Clause 7, no intention or understanding between the parties can be gleaned which specifically and mandatorily requires a reference of future disputes to arbitration.
- The plausible understanding is that a possibility of there being a reference to arbitration is left open, if the parties, in the future, opt for it. As seen in the law discussed before, such a possibility is not enough to consolidate an arbitration agreement.
- The understanding that emerges on reading of Clause 7 and 13 is that if the parties opt for arbitration, then in that limited scenario, the Arbitrator is precluded from granting interest. But arbitration is a possibility which may unravel itself if and only if the parties choose to opt for it, post occurrence of disputes and it is conditional and not a mandatory obligation between the parties to refer the dispute to arbitration.
- In light of the above, there exists no arbitration agreement between the parties and therefore the Court cannot appoint an Arbitrator in exercise of its power under Section 11.
- Accordingly, the Petition was dismissed.

HSA
Viewpoint

This judgment reiterates the settled position of law that a valid arbitration agreement should reflect the definite and explicit intention of the parties unmistakably and unequivocally agreeing that if the dispute arise between the parties, it shall mandatorily be settled by arbitration. Mere adding a particular clause stating arbitration does not imply an arbitration agreement.

[18] (2007) 5 SCC 719
[19] 2023 SCC OnLine SC 389
[20] (2007) 5 SCC 719,
[21] 2022 SCC OnLine Bom 6472
[22] 2023 SCC OnLine Bom 498

Satra Plaza Premises v. Navi Mumbai Municipal Corporation & Ors

Bombay High Court I 2023 SCC Online Bom 1000

Background facts

- In the present case, the Petitioner is a co-operative society duly registered under the Maharashtra Co-operative Societies Act, 1960. The land on which the Petitioner's premises was constructed was described as Plot Nos. 19 and 20, Vashi, Navi Mumbai- 400703.
- The present dispute arose when the Municipal Corporation revoked the Occupancy Certificate (OC) which was granted to the Petitioner and the revised Commencement Certificate (**CC**). It must be noted that City and Industrial Development Corporation of Maharashtra Ltd (**CIDCO**) had constructed two buildings (**Buildings**) and allotted the same to the Municipal Corporation along with Plot Nos. 19 and 20 (**Plots**).
- As the Municipal Corporation found the buildings for office purposes, it invited tenders for the sale of the said Buildings and Plots. Om Housing Pvt Ltd (**Om Housing**) won the bid and subsequently, the Municipal Corporation by its letter dated February 02, 2006 applied to CIDCO for permission to transfer and assign its leasehold rights of the composite plot in favor of Om Housing. The Municipal Corporation also made payment of INR 14,78,10,000 towards the additional lease premium for the grant of additional FSI and amalgamation of two plots to CIDCO.
- After payment of the said amount, permission was granted by CIDCO for the utilization of additional FSI and also for the amalgamation of the two plots on the terms and conditions as were decided upon. CIDCO, vide two letters dated December 21, 2006, granted permission to the Municipal Corporation to transfer and assign its leasehold rights vis-à-vis the said plots and two buildings standing thereon in favor of the Om Housing. A deed of assignment was thereafter executed by the Municipal Corporation on December 21, 2006 in favor of Om Housing once the permission was granted to the Municipal Corporation by CIDCO.
- By virtue of a tripartite agreement signed between Municipal Corporation, CIDCO Om Housing, the plots stood vested with Om Housing. Subsequently, an amalgamation scheme was submitted by virtue of which Om Housing amalgamated with Satra Properties India Ltd (**Satra Properties**) (earlier known as Express Leasing Ltd) The amalgamation of Om Housing with Satra Properties was also duly acknowledged by CIDCO in a letter dated March 27, 2008.
- Once Satra Properties acquired the right, title and interest in the composite plot with the due permission of the authorities, it demolished both the office buildings standing on Plot No. 19. Satra Properties also applied for permission for development on the composite plot as per the provisions of Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**). The same was granted by the Municipal Corporation to Satra Properties in its letter dated March 07, 2007. A CC was also issued which further proves that the plans of Satra Properties to construct a commercial building consisting of two levels of basement for parking and storage and ground plus thirteen upper floors were approved by the Municipal Corporation.
- Satra Properties also sold various shops and offices in the building being constructed by it on the said Plots by virtue of Agreements for Sale. Once the construction was complete, Satra Properties applied for the grant of OC.
- Pursuant to letter dated February 09, 2012, the Municipal Corporation granted OC to Satra Properties. However, the grant of OC was followed by another letter of even date addressed by the Assistant Director of Town Planning, Navi Mumbai Municipal Corporation (**NMCC**) that mentioned a list of conditions in respect of the grant of OC. According to Condition No. 4, a No Due Certificate (**NDC**) was to be obtained by the Petitioners from CIDCO failing which the grant of OC would stand revoked.
- Satra Properties attempted to establish communication with CIDCO and repeatedly asked CIDCO for a NDC. It is noteworthy that Satra Properties made it clear to CIDCO on more than one occasion that in the absence of a NDC from CIDCO, the Occupancy Certificate granted to Satra Properties would get revoked. However, either no reply was received or CIDCO asked Satra Properties to wait for the issuance of NDC.
- A show cause notice was issued to Satra Properties on January 22, 2014 to explain the failure of submission of NDC. A fresh show cause notice was issued to Satra Properties but no details of the hearing were provided therein. Thereafter the Petitioner requested the Municipal Corporation to be heard in the hearing which was to take place. Consequently, a hearing on the show cause notice was held without providing any notice to the Petitioner or Satra Properties, thus, depriving them of the right to be heard. The hearing was concluded without granting a chance to the Petitioner or Satra Properties to be heard and thereafter revoked the OC and also the revised CC.
- NMCC further stated that a NOC from CIDCO was required since CIDCO continued to own most of the lands in the Navi Mumbai Project Area and to ensure that various charges from the allottees of such lands had been collected. It was also submitted that due communication was made to Satra Properties regarding this condition. Further, CIDCO through its advocate submitted that matters

pertaining to the grant and revocation of Occupancy Certificate completely fall within the ambit of NMCC.

- The Petitioner, on the other hand, submitted that the revocation of Occupancy Certificate was in complete contravention to the provisions of Section 51 of the MRTP Act.
- The Petitioner also submitted that CIDCO could have recovered charges from Satra Properties even in the absence of an NOC as per Regulation 3 of New Bombay Disposal of Land Rules, 1975. Furthermore, the Petitioner also submitted that the Occupancy Certificate was revoked without hearing the Petitioner that violated the principles of natural justice. The Petitioner also argued that the revocation was completely arbitrary and went against the rights guaranteed under Article 19 (1) (g) and Article 300 A of the Constitution of India.

Issue at hand?

- Whether NMCC was justified in revoking the Occupancy Certificate duly granted to the Petitioner?

Decision of the Court

- The Bombay High Court (HC) held that the actions of NMCC were not within the ambit of Section 51 of MRTP Act. MRTP Act enumerates that Occupancy Certificates can only be revoked in specified situations, which are explicitly mentioned in the Section 51 (1) of the MRTP Act.
- The BHC also held that the issuance of conditional Occupancy Certificate was unjustified. The Condition No. 4 incorporated in the Occupancy Certificate was illegal and was without any authority in law.
- Revocation of an Occupancy Certificate due to the failure to obtain NOC from CIDCO was a blatant violation of the provisions of the MRTP Act.
- Further, the BHC also held that as the Petitioner was not heard, the principles of natural justice were not adhered to.

HSA
Viewpoint

The actions and correspondences addressed by the NMCC were completely unjustifiable and beyond the ambit of the provisions of Section 51 of the MRTP Act pertaining to cancellation of the OC granted to the Petitioner's premises. The HC had rightly stated that the conditions stated in the OC were not in consonance with law. NMCC had clearly violated the principles of natural justice by not granting appropriate opportunity to the Petitioner to be heard before revoking the OC and CC.

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