

Jatinder Nath vs.m/s Chopra Land Developers & Anr.

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Court : Delhi

Decided On : Apr-13-2018

Appellant : Jatinder Nath

Respondent : M/S Chopra Land Developers & Anr.

Advocate for Def. : Mr. Shubham Bhalla, Mr. Shohit Chaudhary, Mr. Kushagra Nigam, Mr. Rakesh Mathur, Mr. G. D. Mishra

Advocate for Pet/Ap. : Mr. Jatin Zaveri, Mr. Neel Kamal Mishra

Judgement :

\$~12 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

13. h April, 2018 + RFA2102017 & CM APPL. 7806/2018 JATINDER NATH
Appellant Through: Mr. Jatin Zaveri and Mr. Neel Kamal Mishra, Advocates.
(M:9810156642) versus M/S CHOPRA LAND DEVELOPERS & ANR.

... RESPONDENTS

Through: Mr. Shubham Bhalla, Advocate for R

(M:9654427273) Mr. Shohit Chaudhary and Mr. Kushagra Nigam, Advocates for
Mr. Rakesh Mathur. (M:9999091964) Mr. G. D. Mishra, Standing Counsel for
SDMC. (M:8800821485) CORAM: JUSTICE PRATHIBA M. SINGH PRATHIBA M.
SINGH, J.

(Oral) 1. The Appellant/Plaintiff (hereinafter, Plaintiff), Mr. Jatinder Nath, through his daughter and power of attorney holder, Ms. Vaishali Sood filed the subject suit seeking declaration, possession and consequential reliefs against M/s. Chopra Land Developers Pvt. Ltd. and Mr. O. P. Chopra (hereinafter Builder) in respect of property measuring 400 Sq. Yards being G-13, Malviya Nagar Extension (now Saket), New Delhi (hereinafter the suit property).

2. The Plaintiff was allotted this plot by the Delhi Development Authority (DDA) in a public auction held in 1972. An agreement dated 16th March, 1990 was entered into between the Plaintiff and the Builder RFA2102017 Page 1 of 11 which was an agreement for development of the suit property on the terms and conditions contained therein. The case of the Plaintiff is that the Builder failed to comply with the various terms and conditions and that illegal and unauthorized construction was raised in violation of the municipal laws, due to which the MCD sealed the structure vide order dated 29th November, 1991. As per the agreement, the Builder had to obtain the necessary sanction plans for the erection of the structure and construction on the property and any deviations and unauthorized construction would not be permissible. In view of the various breaches by the Builder, the Plaintiff issued notice dated 3rd August, 1992 calling upon the Builder to hand over the possession of the suit property. According to the Plaintiff, the Builder illegally sold two portions of the property to, two persons namely Mr. P. K. Mathur and Mr. Pramod Dang. As per the agreement, there was an arbitration clause under which any disputes between parties would be referred to the Sole Arbitrator - Shri Damodar Sharma. Clauses 11 & 20 of the agreement are set out herein below: 11. In case of any dispute arising between the parties in this respect, the matter shall be referred to the Sole Arbitrator for his valuable decision and his decisions shall be final and binding on both the parties. .

20. That in case of any dispute arising between the parties in respect of these presents, the same shall be referred for Arbitration to the sole Arbitrator Shri Damodar Sharma, 5-N/35, NIT, Faridabad shall be the sole Arbitrator and the decision shall be binding on both the parties. RFA2102017 Page 2 of 11 3. The named Arbitrator Mr. Damodar Sharma had entered into reference on 24th August, 1992. On 1st September, 1992, the Plaintiff took the possession of first,

second and third floors of the partly constructed incomplete structure and remaining portions i.e. basement and ground floor of the structure remained in the possession of the Builder and his vendees Mr. Pramod Dang and Mr. P. K. Mathur.

4. Suit No.945/1992 was filed by the Builder wherein status quo order was initially passed. The said suit was finally dismissed on 29th March, 2010 and the appeal filed by the Builder was also dismissed on 2nd July, 2010.

5. The structure was again sealed on 11th November, 1992 by the MCD and on 18th May, 1993 the MCD revoked the sanctions of the building plan. Orders for demolition were passed by the MCD on 21st April, 1993.

6. In the meantime, Mr. P. K. Mathur also instituted suit no.278/1993 seeking to restrain the Plaintiff from dispossessing him. This suit was dismissed on 24th February, 1995 for non-prosecution.

7. Mr. Damodar Sharma did not make the award within four months of entering reference and hence the Plaintiff filed an application under Section 20 of the Arbitration Act before this Court. Parallely, in WP(C) 5038/1993 the Plaintiff challenged the revocation of the sanctioned plans by the MCD. In the meantime, Mr. Damodar Sharma passed an ex-parte award on 29th March, 1994. WP(C) 5038/1993 was disposed of by this Court on 27th August, 1997 directing the owners and the Builder to apply to the MCD for rectification of the building plan within two weeks. The Plaintiff then wrote to the MCD on 22nd September, 1997 requesting the MCD to demolish the unauthorized construction. Mr. Bhalla, learned counsel for Respondent No.1 RFA2102017 Page 3 of 11 submits that some demolition was even carried out by the MCD and the structure that stands as of now is in a dilapidated condition.

8. The second vendee of the Builder, Mr. Pramod Dang filed a suit 2415/1996 seeking restraint order against the MCD from sealing the basement. This Court, on 11th September, 1998 passed an order to the effect that no title vests in Mr. Pramod Dang as he had purchased the property from the Builder and finally the said suit was dismissed on 26th April, 2000.

9. The award passed by Mr. Damodar Sharma, was finally set aside vide order dated 27th May, 2010. The order of the Faridabad Court, setting aside the award, was taken in revision by the Builder to the Punjab & Haryana High Court. The said revision petition has also been disposed of in the following terms. Without pondering upon the merits and de-merits of the case and keeping in view the fact that the parties are litigating before the Delhi High Court and an application under Section 8 of 1996 Act was filed, I deem it appropriate to dispose of the present revision by granting the petitioner to raise all the pleas in the application which has already been filed under Section 8 of 1996 Act. It is made clear that the findings rendered by both the Courts below would not come in their way seeking reference to the arbitrator in view of the terms and conditions of the agreement. Revision stands disposed of. liberty to Thus, the award passed by Mr. Damodar Sharma is set aside.

10. The Plaintiff has filed the subject suit seeking the following reliefs. a) that this Hon'ble Court be pleased to declare RFA2102017 Page 4 of 11 the Defendants are liable that the contract being agreement dated 16.3.90 entered into by and between the Plaintiff and the Defendants no longer subsists and the suit-plot with existing incomplete structure rest with the Plaintiff; and to handover the suit-plot, with incomplete structure to the Plaintiff; b) that this Hon'ble Court be pleased to pass a decree and order directing the defendants, jointly and severally, to hand over to the Plaintiff the peaceful possession of the plot measuring 400 sq, yards bearing No.G-13, Malviya Nagar (now Saket), New Delhi together with the incomplete structure standing thereon; c) that this Hon'ble Court may kindly pass a decree and order directing the defendants, jointly and severally, to pay all outstanding dues of public authorities over the suit-plot and the structure standing thereon including the dues of MCD, DDA, Water Authorities and Electricity they handover authorities etc. peaceful possession of suit-plot with incomplete structure to the Plaintiff; d) Pending hearing and final disposal of the present suit, this Hon'ble Court may kindly appoint a Receiver of the suit-plot together with incomplete structure standing thereon with all powers to protect and preserve the suit-plot and the structure including the power to remove any person from the possession of the structure standing on the suit-plot; e) Pending hearing and final disposal of the suit, this Hon'ble Court may kindly restrain the defendants, or

representatives and/or any person claiming through the defendants be restrained from in any manner, deal with or transfer of encumber or create any third party rights over the suit-plot the date the servants till their agents, RFA2102017 Page 5 of 11 together with incomplete structure standing thereon or occupy and use the suit-plot together with structure standing thereon in any manner whatsoever. 11. In addition, the Plaintiff filed an application under Order II Rule 2 CPC seeking liberty/leave of this Court to claim a sum of Rs.5,47,39,500/- as damages. The Builder moved an application under Section 8 of the Arbitration Act seeking reference of disputes to arbitration. This application was decided by the Trial Court by the impugned order dated 2nd June, 2016 in the following terms: 11. In view of the aforesaid facts and the judgement of the Ld. Civil Judge, which was upheld by the Ld. Addl. District Judge, Faridabad, the present suit is dismissed as the dispute is covered under the arbitration clause of the agreement dated 16.03.1990. Needless to state that the parties shall be bound by the observation / findings of the Ld. Civil Judge in order dated 27.05.2010. 12. The Plaintiff has filed the present appeal impugning the said order of the dismissal of the suit. This Court has, heard the present appeal on various dates i.e. 7th February, 2018, 27th February, 2018 and 8th March, 2018.

13. On 7th February, 2018, this Court had appointed a Local Commissioner to visit the property. Para 10 of the said order reads as under: 10. Accordingly, Ms. Prabh Sahay Kaur, Advocate (M-9810158581) who is present in court is appointed as Local Commissioner to visit the property No.G-13, Saket, Delhi and submit a report on the following: i) of RFA2102017 Exact status of the property, the extent construction of nature and the Page 6 of 11 construction; ii) the property. Ascertain as to who is in possession of The Local Commissioner is permitted to take photographs of the property and submit a report within 10 days. 14. The local commission was executed and the findings of the Local Commissioner were captured in the order dated 27th February, 2018 to the following effect. 1. The Local Commissioners report has been received. The parties are present. From a perusal of the report, it is clear that the basement and the Ground Floor have been sold by Mr. Chopra, the Respondent. The entire building is lying vacant. Most of the property does not appear to be even in a living condition as it has been sealed and then demolished by the MCD. Mr. Chopra/Respondent has states that the

basement was sold by him to Mr. Dang for a sum of Rs.23 lakhs. However, only Rs.4 lakhs has been paid to him. In so far as the front portion of the Ground Floor is concerned, he has sold it to one Mr. P.K. Mathur for a sum of Rs.15 lakhs and the entire sale consideration has been received by him. The rear portion of the Ground Floor is with the care taker appointed by him, one Mrs. Sharda and her family. 15. Pursuant to the orders passed on 27th February, 2018 and 8th March, 2018 the Builder has got the rear portion of the ground floor vacated from the caretaker. It is submitted today that the some of the belongings of the caretaker are still lying in the suit property. The Plaintiff and the Builder shall visit the suit property on 19th April, 2018 at 11:30 am and under their joint supervision, Builder shall ensure that belongings of the caretaker are RFA2102017 Page 7 of 11 removed from the suit property.

16. This Court on 8th March, 2018 had also directed the Builder to file an affidavit in the following terms.

4. Mr. Shubham Bhalla, counsel for Respondent No.1 is stated to be unwell. Proxy counsel has appeared with the client, Mr. Chopra, who submits that if an adjournment is granted, they would make submissions on the next date as to whether Respondent No.1 is willing to carry out the rectifications in the building as per the norms. Let an affidavit to this extent be filed within a week. 17. An affidavit has since been filed on 17th March, 2018 by the Builder, however, the same is silent on the issue of rectification. In any event, it is submitted by learned counsel for Appellant that as per clause 14(1) of the Development Agreement, if the property is not completed within the stipulated time, the ownership of the land as well as incomplete building shall vest with the owner i.e. Plaintiff. Clause 14(1) of the agreement reads as under: themselves the builders bind 14. That, the time being the essence of this agreement, to the entire Housing Complex duly construct approved with completion certificate procured from the concerned authorities, within a period of 24 months from the date of the Extension letter is issued by the DDA / permission to commence construction work. The period of 24 months shall count from such a date. i) That in the event of builders failing to complete the construction of the Housing RFA2102017 Page 8 of 11 and void. Complex within the said stipulated period for whatsoever reasons, the owner shall be within his

rights to treat the agreement having been vitiated/cancelled/null And consequently, the ownership of land as of land as well as incomplete building shall rest with the owner only. However, the builder may claim the construction cost of the incomplete building, the valuation as may be decided by the Hon'ble Arbitrator. It is however, clarified here that under this eventuality, the builders hereby agreed to the forfeiture of a sum of Rs.5,00,000/- paid by him as explained in para No.15. hereinafter. Besides, the owner shall be within his rights to deduct all advances received by the builder against the agreement to sell of their portion of the building as explained in para no.22 hereafter from the respective buyers. Any other pending payments in respect of costs of materials, labour wages, constructor's bills, municipal, water, electricity, telephone etc. charges shall be deducted. 18. A perusal of the records and the facts narrated above reveals that there are serious disputes between the parties. The parties have been litigating for more than 27 years. The Plaintiff is more than 79 years of age and has not been able to enjoy his property which has been entangled in innumerable disputes. The Builder had, prima facie not carried out the construction as per the sanctioned plans, leading to the notices of the MCD, demolition and sealing of the property. The property, as is evidenced from the photographs is in a dilapidated condition. The contract is clear that if there is any delay the building reverts to the owner.

19. Thus, the impugned judgement, dismissing the suit of the Plaintiff is RFA2102017 Page 9 of 11 erroneous and unsustainable. The agreement between the parties contains an arbitration clause and parties agree that a sole arbitrator may be appointed by this Court to adjudicate the disputes between the parties.

20. This Court is also of the prima facie opinion that the ownership of the incomplete land and building vests with the Plaintiff. The Plaintiff is, thus, permitted to carry out rectification/construction in the structure as it stands after obtaining the requisite sanctions/compounding from the municipal authorities. The

... RESPONDENTS

shall not interfere in the peaceful use, enjoyment and occupation of the property by the Plaintiff or create any impediments in the rectification/construction by the Plaintiff/owner in the suit property in any manner whatsoever. Insofar as the two

floors, which have been alleged to be sold by the Builder to Mr. P. K. Mathur and Mr. Pramod Dang are concerned, this Court has not gone into the issue of the rights or title of the said two parties. It is for them to intervene in the arbitration proceedings which will now commence between the Plaintiff and the Builder.

21. With the consent of the parties, Justice Indermeet Kaur, Retired Judge of this Court is appointed as the Sole Arbitrator to adjudicate the disputes between the Plaintiff and the Builder arising out of the Development Agreement dated 16th March, 1990. The Complaint filed in this case shall be treated as the claim petition before the Arbitrator and the Plaintiff is permitted to carry out further amendments or additions as he may be advised. The Builder is permitted to file his defence and counter claim, if any, before the Arbitrator. Insofar Mr. P. K. Mathur and Mr. Pramod Dang are concerned, the Plaintiff and the Builder are agreeable that they can be permitted to intervene in the arbitration proceedings, if advised. It is thus, RFA2102017 Page 10 of 11 ordered accordingly. All the claims and counter claims between the parties shall be decided by the Arbitrator. Parties are directed to appear before the Ld. Sole Arbitrator Justice Indermeet Kaur (Retd.) (M:9910384614) on 3rd May, 2018 at 4:00 pm at 62, Lodhi Road Estate, New Delhi.

22. On 19th April, 2018 at 11:30 am, when the Plaintiff and Builder shall visit the suit property, both parties shall be permitted to make a joint inspection report of any movable material lying there and if there is any movable material belonging to the Builder, owner shall permit the Builder to remove the said material. Thereupon the Builder shall handover keys of the back portion of the building to the Owner. Subsequent to 19th April, 2018, the Builder shall not enter the suit property.

23. The present occupants of the basement and ground floor Mr. Pramod Dang and Mr. P. K. Mathur shall not create any impediment in the rectification/construction in the property. If Mr. Dang and Mr. Mathur/LRs wish to seek any remedies, they are given liberty to approach the Arbitrator.

24. The fees of the Arbitrator and the time limit for passing of the award shall be governed by the provisions of the Arbitration and Conciliation Act, 1996 as amended in 2015. The fee shall be shared equally between the Plaintiff and the

Builder. In case, Mr. Mathur/ his LRs and Mr. Dang intervene in the proceedings, the Arbitrator shall determine as to what fee is to be paid by them.

25. Appeal is disposed of in the above terms. Miscellaneous applications stand disposed of. Dasti. PRATHIBA M. SINGH APRIL13 2018/dk RFA2102017 JUDGE
Page 11 of 11

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