

Delhi Development Authority Vs. Jackson Engineers (P) Ltd.

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Court : Delhi

Decided On : Aug-26-1996

Reported in : 1996IVAD(Delhi)351; 70(1997)DLT535

Judge : R.C. Lahoti and; S.N. Kapoor, JJ.

Acts : [Arbitration Act, 1940](#) - Sections 20

Appeal No. : First Appeal No. 92 of 1996

Appellant : Delhi Development Authority

Respondent : Jackson Engineers (P) Ltd.

Advocate for Pet/Ap. : Jayant Bhushan and; W.N. Gujral, Advs

Judgement :

R.C. Lahoti, J.

(1) This is an appeal directed against an order of learned Single Judge of this Court who has under Section 20 of [Arbitration Act, 1940](#) directed the disputes between the parties to be referred to arbitration by a retired Judge of this Court.

(2) The relevant facts may briefly be noticed. On 8.8.95 an auction was held by the respondent-DDA for the sale of leasehold rights in vacant plot No.C-149 measuring 1010.32 sq.mtrs. in Rewari Line, Phase-11, New Delhi. The petitioner

paid Rs.4,85,000.00 . On 12.9.85 the petitioner was issued an allotment-cum-demand letter requiring the petitioner to pay the balance amount of Rs.14,55,011.00 . The petitioner did not pay the balance amount as it had come to its notice that there was encroachment on the plot auctioned by the Dda and it may not succeed in getting vacant possession of the plot. The Dda tried to sort out the matter. On 10.6.87, the petitioner tendered the balance amount by demand draft which was returned by the DDA. It appears that the plot was once again encroached upon by unauthorised persons. The Dda sought for extension of time from the Government of India for payment of balance amount by the petitioner. Ultimately the present petition under Section 20 of the Arbitration Act has been filed on 25.1.89 wherein the petitioner has sought for the arbitration agreement between the parties being ordered to be filed in the Court and the dispute between the parties being referred to the sole arbitration of the Lt. Governor of Delhi or his nominee that may be appointed by him.

(3) , The prayer for appointment of arbitrator was opposed by the Dda mainly on the ground that there was no arbitration agreement between the parties based on which relief could be allowed to the petitioner.

(4) Two questions arise for decision in the appeal: (i) whether there was an arbitration agreement between the parties and (ii) if so, whether the dispute between the parties could have been directed to be referred to the arbitration of anyone other than the Lt.Governor or his nominee.

(5) Having heard the learned counsel for the parties and having perused the relevant documents, we are of the opinion that the appeal deserves to succeed on both the counts.

(6) We may first notice the arbitration agreement on which the respondent has relied.

(7) The auction was held under the provisions of the Dda (Disposal of Nazul Land) Rules, 1981. Rule 42(1) and Rule 43 provide as under :-

'42. Allottee to be lessee of the Central Government.-(l) Save as otherwise provided in rule 44, all Nazul land allotted under these rules, whether at pre-determined rates or at fixed premium under rule 7, or by auction or by tender, shall be held by the allottee as lessee of the President of India on the terms and conditions prescribed by these rules and contained in the lease-deed to be executed by the allottee. xxx xxx xxx xxx xxx xxx 43. Lease to be executed by the allottee Every allottee of Nazul land shall execute a lease deed in accordance with Form C appended to these rules. In addition, a lease-deed may contain such other covenants, clauses or conditions not inconsistent with the provisions of Form 'C' as may be considered necessary in the circumstances of each case.' (underlining by us)

(8) FORM-C as appended to the Rules is the proforma of the perpetual lease to be executed by the allottee (auction purchaser) in favor of the President of India. Clause Vi of the proforma of the perpetual lease provides as under :-

'VI. In the event of any question dispute or difference arising under these presents or in connection therewith (except as to any matters the decision of which is specially provided by these presents), the same shall be referred to the sole arbitration of the Lieutenant Governor or any other person appointed by him. It will be no objection that the arbitrator is a Government servant, and that he has to deal with the matters to which the Lease relates or that in the course of his duties as a Government servant he has expressed views on all of any of the matters in dispute or difference. The award of the arbitrator shall be final and binding on the parties.'

(9) The plots were advertised for sale. Terms and conditions of the auction were notified as Annexure R-3. Term No.3 thereof (the relevant part) provided as under :-

3. EXECUTION Of Lease Deed, Payment Of Ground Rent And Other Main Conditions Of LEASE. i) A form of perpetual lease deed can be obtained on payment of Rs.5.00 from the office of the Delhi Development Authority. The allottee shall be deemed to have agreed to all the terms and conditions contained therein. ii) The allottee shall execute the lease deed in the said form within six

months from the date .of offer of possession of the plot to him or within six months from the date the allottee demands possession of the plot after payment of the requisite premium payable by him, which ever is earlier. iii) The plot shall be held by the allottee as the lessee of the president of India on the terms and conditions prescribed by the Delhi Development Authority (Disposal of Developed Hazul Lund) Rules, 1981 as contained in the lease deed to the executed by the allottee. (underlining by us)

(10) At the fall of the hammer, the respondent (auction purchaser) was asked to sign a proforma (R-2) of an application which is titled as an 'Application by the highest bidder for allotment of the perpetual leasehold rights in an industrial plot under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981'. The proforma has columns for particulars of the highest bidder, the plot and the auction to be filled in. At the end is the following matter required to be signed by the highest bidder, which was signed by the petitioner :-

'I/WE, the undersigned being the highest bidder in the auction, as mentioned above, hereby apply on my behalf/on behalf of the applicant above named to the Delhi Development Authority, New Delhi for allotment of the perpetual lease hold rights in the industrial plot described above under the terms and conditions of sale by auction of such rights under the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981. I/We have read and understood the conditions of auction and those contained in the proforma of the perpetual lease deed and hereby unequivocally accept the same. I/We, the intending purchaser(s) will pay the balance of the premium and other amounts and execute the lease in the form enclosed in accordance with the said conditions. Signature of the highest bidder on his/her own behalf/on behalf of the applicant above named,

(11) It is submitted by the learned counsel for the respondent that the above said three documents clearly reveal that the parties were to be bound by the terms and conditions of the perpetual lease which contains arbitration clause and with the fall of the hammer in favor of the respondent on acceptance of the bid made by it, the arbitration clause had come into operation and would govern the parties. The learned counsel for the Dda has submitted that the lease was yet to be executed

and so long as it was not executed and had not come into operation between the parties, the terms and conditions incorporated in the deed of lease which would include the arbitration clause as well, cannot govern the relationship of the parties. There is substance in the submission of the learned counsel for the DDA.

(12) Section 2(a) of the [Arbitration Act, 1940](#) defines arbitration agreement to mean a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not. There has to be a valid and binding agreement between the parties which must be in writing though the signatures of the parties are not essential if the parties are ad idem on the agreement.

(13) We now proceed to examine each of the three documents relied on by the respondent so as to find out if any of them satisfies the requirement of arbitration agreement between the parties.

(14) SUB-CLAUSE (i) of Clause 3 of the terms and conditions of auction (Annexure R-3) speaks of a form of perpetual lease deed being obtained from the office of the Dda, for the purpose of execution of lease deed. The object of this term 3(i) is to hold the auction purchaser bound by the terms and conditions set out in the lease deed for the purpose of execution by him but at a point of time when the occasion may arise for such execution. The object is to see that the auction purchaser may not at the time ripe for execution of deed of lease say that he was not aware of the terms and conditions of the lease deed. So is the case with the application (proforma - Annexure R-2) signed by the respondent on the fall of the hammer in its favor at the auction. The auction purchaser i.e. the respondent is deemed to have accepted the terms and conditions of the deed of lease as set out in the proforma for the purpose of its execution in the sense that on the occasion arising for execution of lease, the auction purchaser cannot back out and say that he was not bound to execute the lease containing such terms and conditions or that he was not agreeable to any of the terms set out in the proforma.

(15) The whole thing is made clear by the Rules. As per Rules 42 and 43, an occasion for execution of lease deed would arise only on allotment in favor of the auction purchaser. The scheme of the Rules shows that the allotment of Nazul land can be by auction or by tender. In any case the stage for allotment arises only

on full payment being made by the bidder/tenderer. It is the allotment which would be followed by execution of lease deed. On the lease deed being executed the relationship between the parties would be governed by the terms and conditions of the lease deed including the arbitration clause. There is nothing in the terms and conditions of auction, the application form signed by the auction purchaser or the Rules to hold the parties being bound by the terms and conditions of the lease deed though the lease deed was not even executed and though the occasion for execution of lease deed had not yet arisen. To put it in other words, the arbitration clause as contained in the lease deed does not come into operation nor does govern the relationship of the parties at any time prior to the execution of the lease deed. Merely by reference to Clause Vi of the proforma of the lease deed appended as Form-C to the Rules, the respondent could not have moved the petition under Section 20 of the Arbitration Act seeking filing of the arbitration agreement and appointment of arbitrator.

(16) Intrinsic evidence is provided by the arbitration clause itself that it was riot intended to come into operation at any time before execution of lease deed. The clause contemplates any question dispute or difference arising under 'these presents or in connection therewith' being referred to arbitration. 'These presents' means the lease deed. There can be no question dispute or difference arising under 'these presents', if 'these presents' have not even come into existence. 'In connection therewith' means in connection with 'these presents', that is, the lease deed. So long as the lease deed itself has not been executed and come into existence there can be no question of any dispute or difference arising in connection with the lease deed.

(17) Section 20 of the Arbitration Act requires that following four conditions must be satisfied before a persons may apply there under :-

(I) There must be an arbitration agreement between the parties; (ii) This agreement must cover the subject matter of the suit as well as points in dispute; (iii) The disputes which are sought to be resolved through arbitration, must be existing and must be specified; and (iv) The Court which is approached for referring the dispute(s) to arbitration, must have jurisdiction over the matter to which agreement

relates.

(18) The basis of an agreement under the Act is a written submission by the parties. No particular form is necessary, but the words used for this purpose must be words of choice and determination to go to arbitration and not problematic words of mere possibility. It is not even necessary that the formal word such as arbitration is used but what is essential is that the parties should intend to make a reference or submission to arbitration and should only be ad idem in this respect. A mere possibility of deed of lease coming into existence, consequent upon its execution at a later date, cannot persuade Us to draw an inference and hold that the parties were ad idem on its terms and conditions (including the arbitration clause) at any point of time anterior to actual execution of lease deed - an event which never happened.

(19) Even if the arbitration clause contained in Clause-VI of the proforma lease deed could be said to have come into operation so as to govern the parties then also the arbitrator having been named therein, the Court could not have directed the dispute to be referred to anyone other than the named arbitrator unless it was held that the arbitrator had refused to act or was unable to act or was not fit to be appointed an arbitrator. Such is not the finding recorded by the learned Single Judge. However, this question loses all its significance in view of the finding arrived at by us that there was no arbitration agreement between the parties.

(20) For the foregoing reasons, the appeal is allowed and the impugned order of the learned Single Judge is set aside. No order as to the costs.

(21) Before parting, we would like to observe that the present one is a hard case for the respondent. It appears to be not in dispute that the plot put to auction by the appellant-DDA was encroached upon by unauthorised persons. The appellant-DDA could not have been in a position to deliver vacant possession over the plot to the respondent even if it would have paid (the balance amount in time. Presumably for this reason, the Dda was also gaining time and pursuing the Central Government to extend the time for payment of the balance amount to it so that the encroachment could be removed and vacant possession over the plot could be delivered to the respondent. The Dda did not succeed. It appears that the

respondent is not to be blamed in the entire episode. It is a fit case where the Dda should avoid litigation and volunteer to allow a just relief to the respondent.

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