

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDI GARH

ARB-31-2016 (O&M)

Date of decision: - 23.09.2016

Army Welfare Housing Organisation

... Petitioner

Versus

Haryana Urban Development Authority

... Respondent

CORAM: HON'BLE MR. JUSTICE S. J. VAZIFDAR, CHIEF JUSTICE

Present: - Mr. A.K. Tewari, Advocate,
for the petitioner.

Mr. P.S. Rana, Advocate,
Mr. G.S. Rana, Advocate,
for the respondent.

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S. J. VAZIFDAR, C. J. (ORAL)

This is a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an arbitrator.

2. The petitioner had applied for the allotment of a plot. The respondent allotted a plot to the petitioner. The usual documents in the case of such allotment were executed by the parties. An application for allotment was made. A Letter of Intent (LoI) was issued. Upon the petitioner complying with all the terms and conditions, a regular LoI was also issued. One of the terms in this document required the petitioner to pay the enhanced compensation i.e. the compensation as may be enhanced. The regular LoI for instance stated that the price mentioned therein was tentative to the extent that any enhancement in the cost of land awarded by the

competent authority under the Land Acquisition Act shall also be payable proportionately as determined by the authority. The additional premium determined was required to be paid within thirty days of the demand. The dispute in this case relates to the respondent's demand for the enhanced compensation. The clause relating to arbitration reads as under: -

"All disputes and differences arising out of or in any way touching or concerning this allotment whatsoever shall be referred to the sole arbitration of the Chief Administrator or any other officer appointed by him. It will not be an objection to such appointment that the arbitrator so appointed is a Government servant or an officer of the Authority that he had to deal with the matter to which this allotment relates in the course of his duties as such Government servant or officer as the case may be, he has expressed his views on all or any of the matters in dispute or difference. The decision of such arbitrator shall be final and binding on the concerned parties."

3. The respondent had raised a demand for enhanced compensation. The petitioner challenged the same by filing CWP-581-2012 which was disposed of by an order and judgement of a Division Bench of this Court dated 15.03.2012. The Division Bench disposed of the writ petition in terms of an order passed in another writ petition being CWP-18681-2011. In that case, a Committee was constituted by the respondents, which was to disclose the basis of the demand for enhanced compensation. Particulars in respect thereof were directed to be issued including as regards the notifications under the Land

Acquisition Act. The petitioner was entitled to an opportunity of hearing and filing fresh objections. In the petitioner's case, the Division Bench clarified that while considering the claim of the petitioner in terms of the said directions, the authorities concerned would also consider any additional representations that may be made. The Empowered Committee was directed to pass an order in respect of the additional representations.

4. Pursuant to the orders, the respondents took a decision as contained in their communication dated 28.05.2012. The respondents raised a demand. This time the demand was limited to about ₹ 9,735,943.00/-. The petitioner contends that even this demand is wrongful. Admittedly, the petitioner has paid the entire demand. Having disputed the demand, it now seeks a refund thereof.

5. There is no doubt that the disputes fall within the ambit of the arbitration clause.

6. The petitioner by its letter dated 29.06.2015 invoked the arbitration clause and called upon the respondent to nominate an arbitrator. The respondent, however, failed to do so to date. It has, therefore, forfeited its right to appoint an arbitrator.

7. Faced with this, it was contended on behalf of the respondent that in another group of writ petitions the first one of which is CWP-18687-2012 titled as Residents Welfare Society Vs Haryana Urban Development Authority and another to

which admittedly the petitioner herein was not a party, further orders dated 27.02.2016 have been passed by a Division Bench of this Court directing the respondents to reconsider and recompute the demand for enhanced compensation. That order records the respondents' statement that the demand for enhanced compensation stands withdrawn and that fresh demand would be raised after affording the petitioners in those writ petitions an opportunity of being heard.

8. The orders in those writ petitions to which the petitioner was not a party cannot affect the petitioner's right to claim/invoke the arbitration clause in its agreement. Each agreement is independent of the other. The similarly situated allottees having agreed to an order to have the demand recomputed/reassessed cannot prejudice the petitioner.

9. It was then contended that this petition is premature as the demand against the petitioner stands withdrawn. This is a curious statement. The respondent has admittedly received an entire amount demanded by it. It cannot on the one hand state that it has withdrawn the demand and on the other refuse to return the amount and simultaneously insist that it is entitled to recompute the demand and that in the meantime the petitioner ought not to have recalled the records to recover the amounts which it claims are due to it.

10. The contention that the arbitration agreement has already named the arbitrator is not well founded. Under the said clause, the reference to arbitration is to the Chief

Administrator or any other officer appointed by him. There is no certainty, therefore, about the arbitrator upon receipt of the letter dated 29.06.2015 invoking the arbitration clause. The respondent could have nominated an arbitrator. It, however, has not done so to date. The respondent, has, therefore, forfeited its right to appoint an arbitrator.

11. In these circumstances, the petition is disposed of by appointing Mr. Justice Kuldeep Singh, a former Judge of the Supreme Court of India, as the sole arbitrator.

12. The venue of arbitration shall be the Chandigarh Arbitration Centre.

(S. J. VAZIFDAR)
CHIEF JUSTICE

23.09.2016

Anodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No