

Misc. (Arb) Case – 97/2023(CC)

**Present: Neyaz Alam
Judge, Commercial Court at Rajarhat,
North 24 Parganas**

**CNR: WBNP19-000194-2023
J.O Code.WB01398**

Later

No caveat is pending as per note of the office.

The case record is taken up for hearing of an application u/s. 9 of Arbitration & Conciliation Act, 1996 on the ground of urgency.

Heard. Considered and allowed.

Issue notice upon the respondents/opposite parties simultaneously through court and by registered post with A/D.

Issue notice returnable by **18.01.2024**.

Petitioner's application for interim measures/reliefs is moved by the Ld.Counsel appearing for the petitioner.

Perused the application u/s.9 of the Arbitration & Conciliation Act, 1996.

Seen the xerox copies of annexures filed on behalf of the petitioner.

Considered the submissions advanced by the Ld. Counsel for the petitioner.

Petitioner is a sole proprietorship concern engaged in the business of development and building construction.

Opposite parties are the land owners in respect of the schedule property.

Brief fact of the case is that one Abinash Chandra was the absolute owner in respect of ALL THAT piece and parcel of homestead land measuring about 8 (Eight) Cotthas 03 (Three) Chitaks and 13 (Thirteen) Sq. ft. more or less together with a dilapidated pucca structure with tiles shade measuring about 1500 Sq. Ft. more or less standing thereon which is lying and situated under Mouza - Dakshin Nimta, JL No. 08, Touzi no. 173, Re Su No. 102, R.S. Dag no. 9570, under R.S. Khatian No. 732 & 1012, under the jurisdiction of A.D.S.R.O. Cossipore Dum Dum.

While possessing the schedule properties, said Abinash Chandra died on 17.04.1988 leaving behind the present opposite parties as his surviving legal heirs and successors and jointly inherited the entire property as per Hindu Succession Act and possessed the undivided property under their own use and occupation free from all encumbrances.

It is alleged that due to lack of experiences, expertise and fund, the opposite parties decided to assign the said construction job to a reputed developer by executing a development agreement together with one registered power of attorney.

Accordingly a development agreement was executed by and between the petitioner and the opposite parties on 4th day of August, 2016 being No. 2362, registered in the Book No. 1, registered before the office A.D.S.R.O. Belghoria and in terms of the said development agreement the opposite parties also executed a registered development power of

attorney which was also registered on 4th day of August, 2016 being No. 2370, Registered in the Book No. 1, registered before the office A.D.S.R.O. Belghoria.

It is submitted in terms of the said development agreement the opposite parties are jointly entitled to get 40% area of the sanction building after completion of the multistoried building. That in terms of the aforesaid agreement the petitioner being the developer is entitled to the rest portion excepting the owner's allocation. The petitioner obtained a sanctioned building plan from the North Dum Dum Municipality being plan No. 213-18/19 dated 01.09.2018 and also started the construction work in the said property.

Further submitted that in terms of the agreement the petitioner is legally entitled to construct at least G+4 storied building but as the initial plan was sanctioned up to G+3 consequently the petitioner was unable to construct the G+4 storied building and some delay has been occurred due to sudden outbreak of pandemic situation for Covid 19 and as a result the development work was stalled consequently the petitioner was unable to complete the construction work within stipulated time. Although prior to the outbreak of the pandemic situation the construction work was also got delayed due to non-cooperation made on the part of the opposite parties which causes serious prejudice and irreparable loss and injury to the petitioner. It is further to be mentioned herein that the respondents did not even provide the link deed and parcha which also caused serious delay in obtaining the sanction building plan.

Further state that the opposite parties failed to provide the necessary documents in time. Moreover during the progress of the construction work, it was found that land was not suitable for construction of the multistoried building as a result huge piling works was done in the schedule property and all those requirements took substantial time in completion of the construction work of the building and the cost of construction was also enhanced. Moreover the opposite parties also failed to provide the BL & LRO mutation of the suit property which resulted in obtaining the sanction of the building plan from the competent authority. Moreover the opposite parties did not co-operate in the construction work and caused serious hindrance to the petitioner in every possible manner.

It is contended presently building in question has already been constructed save and except few incomplete finishing works are pending. Moreover the petitioner has already provided and handed over the allocated portion to most of the owners being the opposite parties being No.3, 4, 5 and 6 but the allocation to the opposite parties No. 1, 2 and 7 could not be made due to pendency of some finishing works and the petitioner is very much willing to complete such incomplete finishing work and thereby to hand over their allocated portion at the earliest possible time.

Further contended in the month of December, 2022 the opposite parties suddenly started to cause serious hindrances in completion of the aforesaid incomplete works/pending work in the building and also causing serious obstruction in construction of the 4th floor in the building which according to the agreement the petitioner is legally entitled to construct

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the said floor and such obstruction made on the part of the opposite parties leads to the stoppage of further construction of the minor unfinished works as well as the construction of the 4th floor of the building in terms of the agreement.

It has been pointed out that the opposite parties lodged written complaint before the municipal authority based on false allegations and thereby stopped the construction works and also put objection in the obtaining the revised plan and thereby caused serious prejudice to the petitioner. More over the opposite parties violated the terms and condition of the development agreement by putting objection in construction of the 4th floor of the building. It is stated owner's allocation have already been completed and the owners are playing trick to hinder the construction of the 4th floor of the building and also to cause serious monetary loss to the petitioner and are also blackmailing the petitioner with the support of the local hooligans and demanding the amount beyond the ambit of the development agreement.

Lastly the petitioner sent numbers of legal notices to the respondents stating his contention and requested to act in terms of the development agreement. Moreover the petitioner also replied to the various notices issued by the Learned advocate of the opposite parties and in the replies the petitioner denied all the allegations raised against the petitioner but still the unlawful acts and activities of the opposite parties did not stop and for that the petitioner is suffering irreparable loss and injury.

Finally the opposites in association with other unlawful associates started to cause serious disturbance to the petitioner and also restrained the petitioner from entering in the said property and thereby caused irreparable loss and injury. Considering the situation the petitioner lodged a GDE before in the Nimta Police Station being GDE No. 977 dated 16.04.2023 but till today no steps has been taken by the said authority and caused serious prejudice to the petitioner, hence, preventive relief is prayed for.

:: Findings of the Court ::

Deducing the factual matrix, it transpires that the petitioner is a sole proprietorship concern engaged in the business of development and building construction and the Opposite parties are the land owners in respect of the schedule property.

The opposite parties after negotiation and discussion entered into registered Development Agreement dated 4th day of August, 2016 with the opposite parties for the development of the schedule property and it was decided the opposite parties being the owners of the schedule property were entitled 40% of the constructed portion and the rest belonged to the developer.

Thereafter, registered Power of Attorney was also effected in favour of the petitioner and pursuant thereto the developer obtained G+3 building sanction plan. The building was completed upto G+3 and most of the owners were duly accommodated except opposite party nos.1, 2 and 7 since finishing works remained due.

It was further decided that the petitioner in order to realize his investment, the petitioner will be allowed to construct extra floor. However, when the petitioner started

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construction for the 4th floor, the opposite parties obstructed and created all hindrance from further construction and further lodged complaint to different authorities as a result, the Municipal Authority issued stop work notice causing severe loss and injury to the petitioner. Being aggrieved by the consistent disturbances by the opposite parties, the petitioner was compelled to lodge complaint before the local Police Station and proceeded before this Court seeking preventive relief.

From the chronology of the above facts and after perusal of the Section 9 application together with the annexures, it transpires that the petitioner is the developer of the schedule property entered into registered development agreement with the opposite parties being the owners. Thereafter, disputes and disturbances cropped up between the parties for which the petitioner had to discontinue the construction activity followed by stop work notice issued by the local Municipal Authority. Therefore, the petitioner has made out a prima facie arguable case which requires adjudication by the arbitral tribunal. The balance of convenience and inconvenience is not inclined in favour of the petitioner, however, the petitioner has been suffering day to day loss and injury due to stoppage of the construction work.

Therefore, the petitioner has not successfully qualified all the requirements or touchstone of three principles in the grant of temporary injunction viz.

- a. Prima facie case,
- b. Balance of convenience and inconvenience,
- c. Irreparable loss and injury.

At this preliminary stage the court is restricted to the petition, sworn statement of the petitioner with annexed documents, together with the averments made therein. Thus, the law on the issue emerges to the effect that an ex-parte ad-interim injunction shall be granted by the Court after considering all the pros and cons and preferably after issuing short notice but in exceptional cases, equitable and discretionary jurisdiction can be exercised whereby protective order needed to be passed and in view of the given factual matrix, I am inclined to hear the prayer of injunction after short notice given to the opposite parties.

Hence, ad-interim relief sought for in the injunction application is hereby refused.

Issue notice upon the respondent to show cause within 15 days from the date of receipt of notice as to why the petitioner's prayer for temporary injunction as prayed for shall not be granted.

Requisite at once.

To date.

Sd/- Neyaz Alam
Judge
Commercial Court,
Rajarhat, North 24 Parganas