

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

Present :

Hon'ble Justice Moushumi Bhattacharya

AP 827 of 2023

Rolta Infrastructure and Technology
Services Private Limited

vs

Department of Information Technology
And Electronics, Government of West Bengal

For the petitioner : Mr. Siddhartha Mitra, Sr. Adv.
Mr. Siddhartha Datta, Adv.
Mr. Deepanjan Dutta Roy, Adv.
Mr. Chetan Kr. Kabra, Adv.
Ms. Sanjana Jha, Adv.

For the respondent : Mr. Suman Dutt, Adv.
Mr. Shaunak Mukhopadhyay, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Shrayashee Das, Adv.
Mr. Himanshu Bhawsinghka, Adv.
Mr. Rohan Kr. Thakur, Adv.

Last heard on : 22.12.2023

Delivered on : 05.01.2024

Moushumi Bhattacharya, J.

1. The petitioner seeks stay of a notice dated 20th September, 2023 by way of the present application filed under section 9 of The Arbitration and Conciliation Act, 1996. The impugned notice was sent by the respondent revoking a Deed of Sub-Lease dated 4th July, 2008 by which the respondent granted 5 acres of land to the petitioner for 99 years.

2. The admitted facts brought to the notice of the Court are as follows.

3. The respondent granted the sub-lease of the land to the petitioner for construction of an IT/ITeS Project. The petitioner alleges that the respondent failed to provide power, water and sewage outlet by reason of which the petitioner was unable to complete the construction within the agreed time frame. The respondent, on the other hand, alleges that the petitioner failed to perform its contractual obligations. The respondent terminated the sub-lease on 20th September, 2023. The petitioner objected to the notice of termination by a letter dated 16th October, 2023. The respondent filed an application under the provisions of The West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 for evicting the petitioner from the leasehold land and the Collector also issued a show-cause notice to the petitioner. The petitioner appeared before the First Land Acquisition Collector, Kolkata, objecting to the jurisdiction by filing the response in the proceedings. The petitioner issued a

notice on 8th November, 2023 invoking the arbitration clause contained in clause 5 of the sub-lease agreement.

4. Learned counsel appearing for the petitioner places clause 5 of the sub-lease agreement to urge that the dispute between the parties culminating in the impugned termination notice of 20th September, 2023 is covered by the arbitration clause in the agreement. Counsel submits that the termination is invalid and contrary to the sub-lease agreement and that the arbitrator should decide on the validity of the termination. Counsel submits that unless the letter of termination is stayed, the rights of the petitioner will irrefutably be prejudiced.

5. Learned counsel appearing for the respondent submits that the application should be rejected for want of territorial jurisdiction and that the application is akin to a suit for land. It is also submitted that the subject-matter of the present application is non-arbitrable since the West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 is a special statute for providing a speedy route to the Government for eviction of unauthorized occupants and also has overriding effect over The Arbitration and Conciliation Act, 1996. Counsel relies on sections 20A and 41(ha) of the Specific Relief Act, 1963 to urge that injunction cannot be granted in respect of infrastructure projects. Counsel submits on the factual aspect that the petitioner illegally mortgaged the lease-hold interest in the land consequent to which the concerned Bank invoked the SARFAESI Act. It is submitted that relief in the

nature of injunction cannot be sought for where there has been a breach of contractual obligations.

6. The objection to jurisdiction should be decided first.

7. The present dispute is not a suit for land since the petitioner is not seeking injunction in respect of an immovable property or inviting the Court to decide any question of title or possession of the land. The petitioner merely seeks interim protection over the subject-matter of the arbitration agreement in view of clause 5 of the said agreement which covers disputes and differences between the parties in respect of the sub-lease agreement dated 4th July, 2008. There is a vital difference between an application for interim protection under section 9 of The Arbitration and Conciliation Act, 1996 and a suit for land where the essential question is to determine the title and possession of the land in question: Ref: *P. Ranganathan v. Sai Jagannathan; 1995 (II) CTC 181*. Moreover, the sub-lease agreement was signed by both parties at Kolkata and the address of the respondent at the time of execution of the agreement was 14, Camac Street, Kolkata-16 which falls within the jurisdiction of this Court. As held in *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem; (1989) 2 SCC 163*, the making of the contract forms an integral part of the cause of action and would confer jurisdiction on the concerned Court to entertain the suit.

8. There is no infirmity in the jurisdiction aspect of the matter.

9. An application under section 9 of The Arbitration and Conciliation Act, 1996, must be decided on the troika of a prima facie case, irreparable injury

and balance of convenience. The Court proceeds to test the facts on each of these three planks for considering grant or refusal of interim relief. The foundational requirement of an application filed under section 9 of the Act is preservation of the subject-matter of dispute in arbitration [section 9(1)(ii)(a)]. Clause 5 of the sub-lease agreement provides for resolution of disputes through arbitration in case the endeavour to settle the disputes between the parties fails. The clause is wide enough to cover all disputes in relation to the sub-lease agreement including termination thereof. The subject-matter of the present application is the termination of the sub-lease agreement and is hence a matter which is directly relatable to the arbitration clause.

10. Section 9 confers the Court with plenary powers to intervene where the subject matter of the arbitration agreement is put at risk by any of the parties to the arbitration agreement. There are hence several reasons for the petitioner to approach the Court seeking intervention for preservation of the subject matter of the arbitration. Section 9 allows such intervention prior to initiation of arbitration so that none of the parties can obliterate the subject matter of the arbitration agreement in the meantime. There is little doubt that the impugned notice of termination has put an end to the sub-lease agreement including the arbitration agreement contained therein. The petitioner is hence justified in asking for interim protection in order to protect and preserve the subject-matter of the arbitration agreement until arbitration commences between the parties.

11. The question which arises as a consequence is whether the petitioner has been able to make out a prima facie case for the Court's intervention.

12. Even if the allegations and counter-allegations made by the parties in respect of the non-performance of the contractual obligations are accepted, the fact remains that the impugned letter of termination issued by the respondent is under challenge. It is also undisputed that the petitioner made substantial investments in the project since 2008 but has been unable to construct on the land due to the failure to perform reciprocal obligations both by the petitioner as well as the respondent in relation to supply of essential services such as power, water and sewage facilities. The question, hence, is whether faced with these facts, the Court should remain an inert spectator and refuse to intervene notwithstanding the fact that the notice of termination would remove the foundation of the arbitration agreement once and for all.

13. The answer to that question must undoubtedly be in the negative.

14. Apart from the power conferred on a Court in proceedings under section 9 of the Act, there is no conflict between the 1996 Act and the provisions of The West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962. Both the statutes operate in independent fields and the 1996 Act certainly does not contemplate obliteration of the provisions of the 1962 Act even where proceedings may have been instituted under the former. Indeed, a *non-obstante* clause of a State Act cannot override a later Central Act operating in a different field altogether. Therefore, the Court is not inclined to accept the respondent's

argument that initiation of proceedings under the 1962 Act before the Collector would constitute a bar to the present proceeding.

15. Although, counsel appearing for the respondent argues that the exclusive domain of the judicial authority under the 1962 Act pertaining to matters of eviction should be preserved, this Court disagrees with the contention since there is no statutory embargo on parties in either of the two Acts from invoking the arbitration clause in the agreement and proceeding to arbitration thereafter. The argument that any view expressed by this Court would have a bearing on the ongoing proceedings before the First Land Acquisition Collector under the 1962 Act is speculative and based on hierarchical considerations.

16. The supposed embargo under sections 20A and 41(h)(a) of the Specific Relief Act, 1963 is fallacious since those provisions would only be applicable where the impugned action would result in delay in the completion of an infrastructural project. The present case involves precisely the reverse; that is the notice of termination issued by the respondent may lead to delay in completion of the construction project. An injunction on the other hand would protect the subject-matter of the dispute and advance the parties to the stage of arbitration.

17. The initiation of SARFAESI proceedings in respect of the sub-leased land is not relevant for the purpose of an application under section 9 of the 1996 Act as the mortgage was created only after obtaining the NOC from the respondent and the SARFAESI proceedings is also not a subject matter of the

arbitration under the sub-lease agreement dated 4th July, 2008. It is also relevant that SARFAESI proceedings can only be agitated before a statutory forum which is different to that of a Court hearing an application under section 9 of the 1996 Act.

18. The other two aspects of irreparable injury and balance of convenience both tilt in favour of the petitioner. If the impugned notice of termination is allowed to remain at large, there is every possibility that the respondent would take steps in aid of the notice to cause further irrevocable prejudice to the petitioner. The *prima facie* case established by the petitioner, as stated above, warrants the Court's intervention to preserve the subject matter of arbitration and allow the parties to file their respective claims and defence for adjudication of the dispute in the arbitration. The comparative prejudice which the respondent will suffer upon stay of the impugned notice of termination will be far less than the prejudice suffered by the petitioner if the respondent proceeds to give finality to that notice. It is equally true that unless an order of stay of the notice of termination is passed at this stage, the very substratum of the dispute will be removed and the arbitration agreement rendered infructuous.

19. There is good reason therefore for this Court to stay the impugned notice of termination for a limited period of time until the parties take steps to constitute the arbitral tribunal.

20. The respondent's argument of eviction from public land being a matter which is non-arbitrable is not germane to the applications of the present

nature. The issue of non-arbitrability is a relevant consideration in applications filed under section 11 of the 1996 Act.

21. In *A. Ayyasamy v. A. Paramasivam*; (2016) 10 SCC 386, the Supreme Court held that existence of an arbitration clause will not be a bar to the entertainment of a complaint by a forum under the Consumer Protection Act, 1986. The decision cannot be used as a proposition for urging that the proceedings under The West Bengal Public Land (Eviction of Unauthorised Occupants) Act, 1962 will have precedence over section 9 of The Arbitration and Conciliation Act, 1996. In any event, *A. Ayyasamy* was a decision on rent control and is factually distinguishable from the present matter. *Army Welfare Housing Organisation v. Col. R. Ganesan*; 2021 SCC OnLine Mad 16554 relied on *Booz Allen and Hamilton Inc. v. SBI Home Finance Limited*; (2011) 5 SCC 532 and on *A. Ayyasamy* to hold that eviction or tenancy matters are governed by special statutes and can only be decided by specific Courts with special jurisdiction. The Single Bench of the Madras High Court also relied on *Vidya Drolia v. Durga Trading Corporation*; (2021) 2 SCC 1 to hold that eviction or tenancy matters are disputes which are non-arbitrable. It is relevant to state in this context that *Vidya Drolia* and *A. Ayyasamy* were proceedings under sections 11 and 8 of the 1996 Act respectively where the entire question was whether the parties (and the dispute) should be referred to arbitration. In the present case however, the application under section 9 of the 1996 Act emanates from the arbitration agreement between the parties where the referral Court has been conferred with plenary powers to grant interim

measures of protection for preservation of the subject matter of arbitration. The parties shall, in any event, be at liberty to question the jurisdiction of the arbitrator with appropriate proceedings under the 1996 Act and demand an adjudication in that respect. The referral Court under section 9 should not pre-judge that issue by holding that the dispute is non-arbitrable without being convinced of that argument.

22. The above reasons are good grounds, in the view of this Court, to allow the prayer for stay of the impugned notice of termination dated 20th September, 2023. The interim order of stay shall continue for a period of 6 weeks from the date of this judgment or until appropriate orders are passed by the arbitral tribunal upon constitution thereof, whichever is earlier. Since counsel appearing for the parties have extensively argued the matter on all points, nothing further remains to be decided in the application.

23. AP 827 of 2023 is accordingly allowed and disposed of in terms of this judgment.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)