

Vandana Raheja & Ors vs Union Of India & Ors on 9 February, 2021

Author: Prathiba M. Singh

Bench: Prathiba M. Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 8523/2020 & CM APPL. No. 27448/20

VANDANA RAHEJA & ORS.

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Through: Mr. Piyush Singh and Ms. Aditi

Sinha, Advocates.

versus

UNION OF INDIA & ORS.

Through:

Mr. Vivek Kohli,

Mr. Praveen Kumar

for Respondent No. 1

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% 09.02.2021

1. This hearing has been done through video conferencing.

2. The present petition has been filed by 40 Petitioners, who had booked commercial spaces with Respondent No.2 at Spaze Corporate Park, Sector- 69-70, Gurgaon, Haryana. The case of the Petitioners is that they have paid the entire sale consideration with the expectation that the project would be completed and delivered to them in a time bound manner. Initially, there was a delay in the construction work at the project site. As per the Petitioners, after almost eight years, only the bare shell structure of the towers was complete. Thereafter, in 2019, Respondent No.2 offered a scheme for investment return and promised to repay the investment at either Rs.55 or Rs.65 per sq. feet per month till the units were leased out. On completion of the project, the units were to be leased out to lessees.

3. According to the Petitioners, without consulting them, a lease was entered into between Petitioner Nos.2 and 3 and the same was a sham lease inasmuch as six months of the waiver of the lease amount was granted and thereafter it was shown as if Respondent No.3 had terminated the lease

with Respondent No.2. Under the lease agreement, without informing the Petitioners and without impleading them, arbitral proceedings were initiated and the sole arbitrator, Hon'ble Mr. Justice (Retd.) Deepak Verma, was appointed as an Arbitrator. The Petitioners herein moved an application before the Id. Arbitrator, which was rejected. Thereafter, the matter was reserved for pronouncement of the award.

4. The Petitioners herein pray for quashing/staying of the arbitration proceedings, which according to them, were conducted in a surreptitious and fraudulent manner. Further, an investigation via Serious Fraud Investigation Office (SFIO) is sought against Respondent Nos.2 and 3.

5. Id. Counsel for the Petitioners submits that they have not enjoyed the commercial space which they purchased even for a single day despite paying the entire sale consideration. In fact, possession has also not been given to them. It is further submitted that once the writ was filed, the award was also pronounced behind their back on 1st October 2020. Till date, they do not even have a copy of the award.

6. Mr. Vivek Kohli, Id. Senior counsel appearing for Respondent No.2 submits that he has a preliminary objection as to the maintainability of the present petition to the extent that the quashing or staying of arbitral proceedings would not be a relief which can be granted in a writ under Article 226 & 227 of the Constitution of India. He also challenges the territorial jurisdiction of this Court.

7. A perusal of the chronology of facts and events in this case raises various issues as to how the commercial spaces which were allotted to the Petitioners have allegedly been leased out without the consent of the Petitioners. Respondent No.2 was repeatedly asked as to what was the amount of lease paid to the Petitioners, as received from Respondent No.2. However, the response has been that the same has been adjusted towards dues from the Petitioners. The jurisdiction of this Court under Art.227 qua arbitral proceedings is well settled by the Supreme Court recently in Deep Industries Limited Vs. ONGC & Anr., 2019 SCC OnLine SC 1602 as also in Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd. and Anr., 2021 SCC OnLine SC 8.

8. However, before passing any orders, considering the facts and circumstances of this case, there is an immediate need to safeguard the possession of the commercial space booked and owned by the Petitioners. Accordingly, it is deemed appropriate to appoint Mr. Vivek Gurnani, Advocate (M: 9584487160), who is present in Court, as a Local Commissioner to visit the above project and ascertain the following facts:-

- i) Identify all the commercial spaces belonging to the Petitioners and their present status;
- ii) Ascertain the extent and status of the construction and completion of the project;
- iii) Give a rough estimate as to the number of spaces in the said project and their occupancy at the time of execution of the Local Commission.

9. Representatives of the parties are permitted to accompany the Local Commissioner. The local commission shall be executed on 11th February, 2021 at 11.30 am. The Local Commissioner is permitted to take photographs, if required. The SHO of the concerned area to assist the Local Commissioner. The fee of the Local Commissioner is fixed at Rs. 1 lakh, to be borne equally by the Petitioners and Respondent No.2, at this stage. The Local Commissioner's Report be filed within ten days from the execution of the local commission.

10. Issue notice. Notice is accepted on behalf of Respondent No. 2. Mr. Praveen Jain, ld. counsel, accepts notice for Respondent No.1/UOI. Issue notice to Respondent No.3.

11. Let a counter affidavit be filed by Respondent No.2 responding to the averments in the writ petition and giving the complete statement of the amounts, if any, collected by way of lease from Respondent No.3 and paid to the Petitioners. The preliminary objections raised by Respondent No.2 today shall be raised as part of the counter affidavit and be considered on the next date of hearing.

12. Copy of award dated 1st October, 2020 be placed on record.

13. List on 15th April, 2021 for consideration on the interim relief and the preliminary objections.

PRATHIBA M. SINGH, J.

FEBRUARY 9, 2021 mw/t