

M/S Indraprastha Shelters (P) Ltd vs South India Biblical Seminary on 15 December, 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF DECEMBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.11783 OF 2020 (GM-RES)

BETWEEN :

M/S INDRAPRASTHA SHELTERS (P) LTD

A COMPANY INCORPORATED UNDER

THE COMPANIES ACT, 1956

HAVING ITS OFFICE AT:4TH FLOOR

PRESTIGE CORNICHE, 62/1

RICHMOND ROAD

BENGALURU 560 025

REPRESENTED BY ITS

MANAGING DIRECTOR

MR. ANIRUDH S. KAMAT

... PETITIONER

(BY MR. NAVKESH BATRA, ADVOCATE)

AND :

1. SOUTH INDIA BIBLICAL SEMINARY

ALSO KNOWN AS SIBS MINISTRIES

A SOCIETY REGISTERED

UNDER KARNATAKA SOCIETIES ACT, 1960

HAVING ITS REGISTERED OFFICE

AT 'ANANDAGIRI', BANGARPET-563 114

REPRESENTED BY ITS
TREASURER AND AUTHORIZED
REPRESENTATIVE
MR. SAM RUFUS SELWINE

2. EVANGELICAL TRUST ASSOCIATION
OF SOUTH INDIA
A SECTION 25 COMPANY
INCORPORATED UNDER THE
COMPANIES ACT, 1956 HAVING ITS

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REGISTERED OFFICE AT NO.54
KHB COLONY, KORAMANGALA
BANGALORE-560 095
AND ALSO AT NO.3, 1STMAIN ROAD
LINGARAJAPURAM
ST. THOMAS TOWN POST
BANGALORE-560 084

... RESPONDENTS

(BY MR. JOSHUA H. SAMUEL, ADVOCATE FOR R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE
IMPUGNED ORDER, DTD.05.10.2020 PASSED BY THE COURT OF
LXXXII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT
BENGALURU (COMMERCIAL COURT CCH 83), IN
COM.A.A.NO.111/2019, ON THE PETITIONERS I.A. NO.VII, U/S 2 (1)
(C) VIDE ANNEX-A

THIS WRIT PETITION, HAVING BEEN HEARD THROUGH VIDEO
CONFERENCING AND RESERVED FOR ORDERS ON 21.10.2020,
COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE
COURT PRONOUNCED THE FOLLOWING:-

ORDER

The point involved in this writ petition is whether the lis between petitioner and respondents is a commercial dispute?

2. Heard Mr. Navkesh Batra, learned Advocate for petitioner, Mr. Joshua H. Samuel, learned Advocate for respondent No.1 and Mr. V.B. Shivakumar, learned Advocate for respondent No.2.

3. Brief facts of the case are, on October 4, 2010, the first respondent, South India Biblical Seminary ('SIBS' for short) entered into a Joint Development Agreement with petitioner for development of its properties. According to SIBS, petitioner has agreed to construct and deliver 50% of the 'total super built-up area' in the form of Flats together with proportionate share of the covered and uncovered parking spaces, common areas, etc., as per the sanctioned plan. Petitioner was required to communicate in writing about the completion of development and the date of handing over the possession of the agreed area. Petitioner did not send any communication. SIBS wrote to petitioner on July 20, 2016 requesting for a copy of the Allocation Agreement, sanctioned plan and other documents. The said letter was followed with reminders, but there was no response from the petitioner. The Joint Development agreement provides for resolution of dispute by Arbitration. SIBS, while contemplating to take further action to refer the matter for Arbitration, has filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 in the Commercial Court, Bengaluru, registered as Com.A.A. No. 111/2019, praying inter alia for interim custody of Flats bearing No. 002, 202 and 203.

4. On August 18, 2020, petitioner filed an application under Section 2(1)(c) of the Commercial Courts Act, 2015 (for short 'the Act') to return the Arbitration Application, contending inter alia that the subject matter of the Arbitration Application does not fall within the scope of 'Commercial dispute' as defined in the Act.

5. By its order dated October 5, 2020, the Commercial Court has dismissed petitioner's application with costs. Hence, this petition.

6. Mr. Batra, for the petitioner submitted that SIBS is the owner of immovable properties. Petitioner is a Private Limited Company in the business of building and development. Parties have entered into Joint Development Agreement. The grievance of SIBS is that its share in the built-up area has not been handed-over. The dispute raised by SIBS does not fall within the definition of Commercial Dispute. Therefore, the impugned order is not sustainable in law.

7. Mr.Samuel, argued opposing the petition. Mr.Shivakumar, supported the arguments of Mr.Samuel.

8. I have carefully considered rival contentions and perused the records.

9. 'Commercial Dispute' is defined in Section 2(1)(c) of the Commercial Courts Act, 2015.

10. Mr. Batra relied upon *Bunga Daniel Babu Vs. M/s. Shri. Vasudeva Constructions and others* 1 and *Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd.*, and another².

11. Adverting to paragraph No.23 of the Joint Development Agreement, Mr. Batra contended that it is (Civil Appeal No.944/2016 decided on July 22, 2016) 2 (2008) 10 SCC 345 .

expressly agreed between the parties that nothing in the agreement shall be deemed as a partnership, or a joint venture or an association of persons between the parties or contract of employment between the parties. Therefore Commercial Court has no jurisdiction.

12. In reply, Mr. Samuel placed reliance on paragraph No.15 in *M/s. D.M. Corporation Pvt. Ltd., Vs. State of Maharashtra* decided on April 5, 2018 by High Court of Judicature at Bombay in W.P. No.3119/2018 and prayed for dismissal of this writ petition.

13. In *Faqir Chand*, it is held that a joint venture is to be distinguished from a relationship of independent Contractor, the latter being one who, exercising an independent employment, contracts to do work according to his own methods and without being subject to the control of his employer.

14. On facts, the covenants contained in paragraph No.12 clearly show that petitioner has kept SIBS indemnified against any loss, liabilities, cost or claim, action or proceedings that may arise against Owners' constructed area. In paragraph No. 15 of the Joint Development Agreement, the obligations of petitioner are set out. A careful reading of the Joint Development Agreement shows that, in substance, petitioner has agreed to construct Flats and deliver 50% of the constructed area with proportionate common area etc. SIBS is not responsible for any act and omission on the part of the petitioner in the course of construction of the building. Therefore, the agreement between the parties cannot be considered as a joint venture. In substance, it is a 'Development and Construction agreement'. There is no covenant in the agreement which may render one party liable for any acts or omissions of the other party. There is no active involvement of SIBS in execution of the project.

15. In paragraph No.15 of *D.M. Corporation*, relied upon by Mr.Samuel, it is held that where the subject matter of Arbitration is a Commercial Dispute of a specified value, then it must be transferred to the Commercial Court.

16. In the case on hand, on facts, it is clear that the terms of agreement do not disclose any aspect by virtue of which the dispute between the parties can be categorized as a 'Commercial Dispute'.

17. In view of above, this petition merits consideration. Hence, the following:

ORDER

(a) Writ petition is allowed.

- (b) Order dated 5th October 2020 passed by the LXXXII Additional City Civil and Sessions Judge at Bengaluru (CCH - 83) in COM.A.A No.111/2019 is set-aside.
- (c) I.A. No.7 in Com AA is allowed.
- (d) The Commercial Court shall return the application filed by first respondent-South India Biblical Seminary for presentation before the jurisdictional Court. No costs.