Smt. Shakuntala Gupta Vs Union of India (UOI) and Others

Court: Delhi High Court

Date of Decision: Aug. 7, 2009

Acts Referred: Arbitration and Conciliation Act, 1996 â€" Section 34
Income Tax Act, 1961 â€" Section 269UD(1A)

Hon'ble Judges: Neeraj Kishan Kaul, J; Mukul Mudgal, J

Bench: Division Bench

Advocate: C. Mukund, Ashok Kumar Jain and Pankaj Jain, for the Appellant; R.V. Sinha and A.S. Singh for Respondent No. 1 and Sanjay Poddar, for the Respondent

Final Decision: Dismissed

Judgement

Neeraj Kishan Kaul, J.
The present appeal arises out of the impugned order dated 16th April, 2009 rejecting the objections of the

appellant filed u/s 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred as the Act.) against the Award dated 9th July, 2004.

2. Briefly stated the facts of the case are as follows:

The appellant/her predecessors is/was the owner of a portion of a property No. 2, Under Hill Road, Civil Lines, Delhi. The said property was

requisitioned on 3rd April, 1980 under the provisions of the Requisition and Acquisition of Immovable Property Act, 1952. It is not in dispute that

the said requisitioning lapsed on 10th March, 1987. The Government, however, on 6th March, 1987 issued a notification under the provisions of

the Land Acquisition Act, 1894 for acquisition of the said property. The said notification was challenged by the appellant by filing a Writ Petition

(Civil) No. 894 of 1987 in this Court which was allowed vide order dated 26th February, 1997. By allowing the said writ petition and directing the

restoration of possession of the property to the appellant within a period of four weeks thereof, it was held as under:

The petitioner is entitled to receive from respondents damages for use and occupation of the property from 10.03.1987 till possession is restored.

The same are required to be determined under the provisions of the (Requisition and Acquisition of Immovable Property) Act, (1952) by

appointment of an arbitrator. Considering the facts and circumstances in Banwari Lal case that after the Act lapsed on 10.03.1987 and possession

was not restored for almost four years while quashing the impugned notifications, the Court on its own proceeded to make appointment of an

arbitrator. The facts of this case are also similar. The Act lapsed on 1987. For almost ten years now, the petitioner has been deprived of the

amount of damages. As such, we are also of the view that it would be just appropriate that an arbitrator also appointed in this by us to avoid

further delay in determination of damages payable to the petitioner. Mr. Justice P. K. Bahri, a retired Judge of this Court is appointed as arbitrator,

who will enter upon a reference within a period of four weeks from the date of receipt of a copy of this order. The arbitrator will call upon the

parties to submit their respective claims and will proceed to make his award in accordance with law ascertaining the amount of damages for the

period from 10.03.1987 till the date the possession is restored to the petitioner.

3. Pursuant to the above order of this Court, the Arbitrator rendered the Award dated 9th July, 2004 and the appellant preferred objections

thereto which were rejected vide the impugned judgment of the learned Single Judge dated 16th April, 2009. It was inter alia the case of the

appellant before the Arbitrator that the property in question was commercial, situated in a commercial locality, being closely connected to Old

Secretariat, Punjab National Bank, Exchange Stores, Oberoi Maidens Hotel, ISBT etc.; that the property in question was requisitioned for having

public offices and was used after requisitioning for running different public offices; that the approved Government Valuer engaged by the appellant

had determined the value of the land as Rs. 55,000/- per sq. mt. as on September 1994. The appellant claimed damages in the total sum of Rs.

15,73,83,914/-.

4. Per contra it was contended on behalf of the respondents before the Arbitrator that the premises were in a dilapidated condition, residential in

nature and even the zonal development plan showed the user of the premises as residential; that the respondents had been paying compensation to

the appellant determined under the Requisitioning Act at the rate of Rs. 5,703/- per month and such payment had been accepted by the appellant

without any objection up to 30th September, 1996. The Arbitrator came to the conclusion that the user of the premises could not be considered to

be residential at all. Further the Arbitrator noted that the valuation relied upon by the appellant was on the basis of a notice issued by the Income

Tax Department u/s 269UD(1A) of the Income Tax Act, in relation to a plot of land at Rajpur Road, Civil Lines, Delhi but there was nothing to

show that the Income Tax Department had pursuant to the notice acquired that property at the said rates. The Arbitrator also found that the valuer

of the appellant had taken double the rate than that in the Income Tax notice aforesaid, treating the property in question to be commercial.

5. The appellant had also produced before the Arbitrator documents of letting out of properties in Chandni Chowk, Bunglow Road, Sabzi Mandi

and Kamla Nagar. The Arbitrator held the said instances to be not applicable or relatable to the property in question for the reason of the said

properties being far away and/or for the reason of being in established commercial markets/commercial areas, while the area where the property in

question is situated is not such. The Arbitrator held that the appellant had not given any instances of letting of any similar property in that area and

thus, the Arbitrator came to the conclusion that the appellant had not brought forward any evidence to show as to what rent was being fetched by

similar types of properties in the locality. The appellant had also placed reliance on the report of the committee of three PWD Engineers constituted

by the respondents determining the market rent of property for paying compensation to the appellant. It was the contention of the appellant before

the Arbitrator that the committee had determined the rent treating the property as ""residential. while admittedly, the property was commercial and

was requisitioned for commercial purposes and was used during requisitioning for office purposes. The Arbitrator found that the committee had

determined the rate keeping in view the fact that the property was used for office purposes and saw no reason to enhance the rates fixed by the

committee.

6. The parties were also at issue before the Arbitrator as to the plinth area of the property. The Arbitrator held that the appellant had not disputed

the plinth area on the basis whereof compensation was determined under the Requisitioning Act and was thus not entitled to contest the plinth area.

It was also held by the Arbitrator that the open area had no independent use and was meant to be an adjunct of the main premises, so no separate

rent for the same was to be determined.

7. The Arbitrator, thus, directed the payment of damages to the appellant at the rates as per the report of the committee constituted by the

respondents aforesaid save that from 14th December, 1997 to 11th November, 2002 for which period there was no report, the rate of damages

was enhanced by 50 per cent of the last prevalent rate.

8. The learned Single Judge, in our view, rightly relied on the decision of the Hon.ble Supreme Court of India in Union of India (UOI) and Others

Vs. Banwari Lal and Sons (P) Ltd., . In the said judgment it was held by the Apex Court that possession of the Union of India post lapsing of the

requisitioning could not be in the nature of trespass. The Supreme Court held that in view of the permission granted by the Court in that case,

enabling the Union of India to use and occupy the property, it could not be said that the possession of Union of India after the requisition had

lapsed was illegal and wrongful and in the nature of trespass. It was further laid down that in the circumstances damages were claimable not on the

basis of mesne profits but on the basis of fair rent. The basis adopted by the Arbitrator in that case of income/profit method was thus not found by

the Supreme Court to be applicable in the facts of the case. The Supreme Court also noted that the fair rent of the property as determined under

the Requisitioning Act was being accepted by the owner in that case, as in this case also and the Arbitrator had erred in not considering the said

rent. The Supreme Court also held that there was no reason for the Arbitrator to assess damages for open spaces which formed part of the main

building for which damages had been assessed. It was also emphasized by the Supreme Court that the factor of the age of the building was

relevant.

The learned Single Judge correctly observed that the judgment in Banwari Lal"s case (supra) was on identical facts addressed most of the issues

raised in the present case. The learned Single Judge also took note of the fact that the appellant failed to produce any evidence of letting of any

property in the locality before the Arbitrator. The said part of the Award has not been challenged by the appellant. The learned Single Judge rightly

observed that it was for the appellant which was claiming the mesne profits/damages for use and occupation or fair rent as aforesaid to do so and

the onus of leading evidence in that regard was on the appellant. The learned Single Judge thus concluded that the appellant having failed to

discharge the said onus, the Arbitrator had no option but to proceed on the basis of the material available to him. The learned Single Judge, in our

view, also correctly relied on a decision of the Division Bench of this Court in National Radio and Electronic Co. Ltd. Vs. Motion Pictures

Association, , wherein it was held that the burden for proving the rate at which mesne profits are claimed is on the person claiming the mesne

profits and in the absence of any evidence led by such person, the Court cannot award mesne profits at any rate higher than the rate at which the

rent was being last paid, by the defendant in that case, who was earlier a tenant in the premises. The learned Single Judge took note of the fact that

the Arbitrator had found the valuation report submitted by the appellant to be based on a wrong premise and relied on Banwari Lal"s case (supra)

to come to the said conclusion. The Arbitrator also found the instances of letting produced by the appellant to be not relatable to the premises in

question. Accordingly, as per the learned Single Judge no interference with such findings of the Arbitrator was permissible u/s 34 of the Act. The

findings of the Arbitrator of what should have been the fair rent of the property at Under Hill Road were consequently rightly upheld by the learned

Single Judge. The learned Single Judge correctly observed that the leases of Chandani Chowk, Bunglow Road, Sabji Mandi and Kamla Nagar

produced by the appellant were rightly held by the Arbitrator to be not capable of enabling the Arbitrator to deduce as to what should have been

the fair rent of the property at Under Hill Road.

9. The learned Single Judge also found no fault with the Arbitrator adopting the report of the committee of engineers of PWD constituted by the

respondents itself and took note of the fact that the damages awarded as per the report were higher than the amount being paid to the appellant

during requisitioning and to only such amount would the appellant have been entitled to in the absence of any evidence of letting of nearby premises

having been produced by the appellant before the Arbitrator. The said finding of the learned Single Judge, in our view, warrants no interference.

The learned Single Judge rightly rejected the request of the appellant to consider the documents procured by it during the pendency of the

objections. The learned Single Judge was right in accepting the contention of the respondents that the purport of the 1996 Act was to reduce

interference of the Court in arbitration and such purport will be defeated if the Court in exercise of powers u/s 34 of the Act interferes with the

findings as those of rate of compensation/ damages/mesne profits assessed by an Arbitrator, particularly when the approach of the Arbitrator is not

found to suffer from any illegality. While considering the objections u/s 34 of the Act, the Court cannot sit in appeal over the Award. The learned

Single Judge, in our view, has rightly rejected the petition u/s 34 of the Act. When the Arbitrator has taken a plausible view, it is not for the Court

to sit in appeal over the same while entertaining a petition u/s 34 of the Arbitration and Conciliation Act, 1996. The Court cannot re-appreciate the

evidence or examine the correctness of the conclusions arrived at by the Arbitrator. When the Arbitrator has applied his mind to the pleadings, the

evidence adduced before him and the relevant material, there is no scope for the Court to reappraise the matter as if this were in appeal and even if

two views are possible, the view taken by the Arbitrator would prevail. So long as an Award made by an Arbitrator can be said to be one by a

reasonable person, no interference is called for. The Court is clearly precluded from reappraising the evidence. This is not a case where the

Arbitrator had mis-conducted himself or passed an Award in absence of any evidence which is apparent on the face of the Award or has not

followed the statutory legal position or where there is total perversity in the Award to justify interference by the Court u/s 34 of the Act. Hence, in

our considered opinion, the objections to the Award have rightly been dismissed by the learned Single Judge.

10. In view of the above discussion, we see no reason to interfere with the findings of the learned Single Judge. The appeal is accordingly

dismissed.