

**THE HON'BLE SMT. JUSTICE MOUSHUMI BHATTACHARYA
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

CIVIL REVISION PETITION No.1622 OF 2024

ORDER: *(Per Hon'ble Justice Moushumi Bhattacharya)*

The Civil Revision Petition arises out of an impugned docket order passed by the Trial Court on 03.04.2024 on an application filed by the petitioners herein for impleading certain parties as respondents in the Arbitration Original Petition (ARB.O.P.No.13 of 2023).

2. The impugned order however discusses the nature of the dispute between the petitioners (also petitioners in the Trial Court) and the respondents and concludes that the dispute between the parties is not a commercial dispute and the Court accordingly has jurisdiction to entertain the petition.

3. We should clarify that the parties in the Civil Revision Petition have argued on the nature of the dispute, that is, whether the dispute is a "Commercial Dispute" as defined under the provisions of The Commercial Courts Act, 2015, and whether the Trial Court, not being a designated Commercial Court, had the jurisdiction to entertain the petitioners' application for addition of parties. In essence, learned counsel appearing for the petitioners argues that the learned 1st Additional District Judge, Ranga Reddy

District at L.B. Nagar, did not have jurisdiction to entertain the petition since it is not a “Commercial Court” as defined under sections 2(1)(b) and 3(1) of the 2015 Act, while learned counsel appearing for the respondents urges otherwise.

4. The issue of extension of the Arbitrator’s mandate under section 29-A of The Arbitration and Conciliation Act, 1996, as applied for by the respondent No.1/claimant was not the issue before the Trial Court. Counsel have mentioned this issue as a part of the back-story to the dispute.

5. We proceed to give our reasons only on the point of the nature of the dispute brought before the Trial Court.

What is a “Commercial Dispute”?

6. Whether a dispute qualifies as a ‘commercial dispute’ as delineated under section 2(1)(c) of The Commercial Courts Act, 2015, would essentially be a matter of interpretation of the Agreement. Section 2(1)(c) defines ‘commercial dispute’ as a dispute arising out of a wide array of agreements from ordinary transactions of merchants and bankers to export and import of merchandise, admiralty and carriage of goods, license agreements, JVAs, technological development agreements, intellectual property rights, insurance and contracts of agency. The Explanation to Section 2(1)(c) clarifies that an action for recovery of immovable

property or where one of the contracting parties is the State or a private body carrying out public functions may qualify as a commercial dispute. The range of agreements from (i) - (xxii) of section 2(1)(c) presumes that the agreements must have a commercial substratum i.e., a commercial flavour with regard to the understanding of the parties to the agreement and the impact of the agreement on trade and commerce as a whole.

7. In essence, a commercial dispute would be one where the nature of the agreement or the consequence arising therefrom would take the effect of the agreement beyond the private sphere of the contracting parties and create a ripple-effect of commercial movement beyond the main actors to the agreement. The specific nomenclatures of the agreements in section 2(1)(c) indicates that a dispute cannot readily be presumed to be a commercial dispute. The object and specific clauses of the agreement would always be the determinant of whether the source-agreement fits into 1 or more of the sub-clauses to section 2(1)(c) of the 2015 Act. The criterion is whether the parties to the agreement understood and envisaged the agreement as one falling under sub-clause 3 (i) - (xxii) to section 2(1)(c) and intended to treat the agreement as such.

8. Which begs the question: can each and every dispute automatically be categorized as a 'commercial dispute' under

Section 2(1)(c) of the 2015 Act? The answer to this question must be an emphatic “NO”.

The more relevant question would be: *Would every agreement with a measure of trade or commerce serve as the starting-point of a commercial dispute?*

The answer to this must also logically and invariably be in the negative. The reason for this view comes in the later part of this judgment.

The Development Agreement from which the dispute arises:

9. In the facts of the present case, the petitioners/landowners entered into a Development Agreement-cum-General Power of Attorney (DAGPA) dated 27.07.2007 with the respondent No.1 developer in the form of an Agreement of Sale of the land located at Ranga Reddy District in the State of Telangana. The respondent No.1 developer agreed to develop and sell the land to any prospective purchasers and execute Sale Deeds in favour of the purchasers as well as complete the registration of the Sale Deed on behalf of the Vendors/petitioners/landowners. The respondent No.1 further agreed to develop and divide the land into plots and lay roads and amenities by obtaining sanction from the concerned authorities. The petitioners and the respondents agreed to share the farm units on a 60% - 40% ratio, respectively.

10. Clause 6 of the DAGPA provides that the respondent No.1/developer agrees to develop the land according to the layout plan and physical possession of the land to the petitioners (landowners) within 12 months from the date of payment save and except completion of the Club House and other amenities. This forms the crux of the work which the respondent No.1/developer was to carry out for the petitioners/landowners. The construction activity which the respondent No.1/developer was to carry out includes construction of compound walls, BT roads, underground drainage pipes, main gate, security guard room and overhead tank.

The Stand taken by the Parties:

11. The petitioners argue that the dispute arising out of the DAGPA is a 'commercial dispute' since it falls under section 2(1)(c)(vi) of the 2015 Act i.e., 'Construction and Infrastructure Contracts, including tenders'. Learned counsel appearing for the petitioners supplements the argument with the claim statement filed by the respondent No.1/developer in the arbitration proceedings to urge that the respondent No.1 (claimant) sought for a direction on the petitioners to pay Rs.50 Lakhs with interest @ 24% p.a. and a further Rs.60.65 crores along with interest @ 24% p.a. Counsel submits that the respondent's Statement Of Claim read with Section 12 of the 2015 Act - Determination of Specified

Value – would qualify the dispute as “commercial” being in excess of Rs.1 crore; *Telangana State Tourism Development Corporation Limited Vs. M/s.A.A. Avocations Pvt. Ltd.*¹

12. Learned counsel appearing for the respondent No.1 on the other hand argues that the DAGPA is not a commercial contract and more specifically not a dispute arising out of a ‘construction and infrastructure contract’ and that the respondent No.1/developer only agreed to develop the land into farm plots. Counsel submits that the parties did not intend to put the farm plots to commercial use.

13. The question which therefore arises is whether the DAGPA can be slotted under section 2(1)(c)(vi) of the 2015 Act “*construction and infrastructure contracts, including tenders*”.

Case Law:

14. Contracts of this nature have received judicial attention in several decisions where the consensus is that the words “construction” and “infrastructure” cannot be seen disjunctively and that a contract must involve construction as well as infrastructure in its intention and performance :*Blue Nile Developers Private Limited Vs. Movva Chandra Sekhar*². To repeat,

¹ 2022 (4) ALT 238

² 2021 SCC OnLine AP 3964

the relevant question would be whether every agreement involving a measure of both construction and infrastructure would qualify as an agreement under section 2(1)(c)(vi) of the 2015 Act leading to a commercial dispute.

15. The adjudication of whether the dispute is a 'commercial dispute', more often than not, forms a preliminary issue in matters where the opposing party argues that the Suit is a regular one that is, a non-commercial Suit without the exacting regime of compliances required under the 2015 Act.

16. In fact it is much less of an arduous task to slot an agreement under any 1 of the 22 sub-clauses of section 2(1)(c) of the 2015 Act. The more difficult task is to consider the scope of the agreement and determine whether the agreement would qualify as the source of a commercial dispute under section 2(1)(c) of the said Act. The usual markers to this issue would be one of the parties being a developer with experience in construction/infrastructure; or that the contract has high stakes or involves sharing of profits running into lakhs and crores and finally that the agreement falls within the benchmark of section 12 of the 2015 Act i.e., involves a specified value over and above the designated amount as indicated in section 12(1) of the said Act.

The relevant provisions of The Commercial Courts Act, 2015:

17. The relevant sections of the Act of 2015 are required to be highlighted in this context. Section 2(1)(i) of the 2015 Act defines '*Specified Value*' as the value of the subject matter in respect of a Suit in relation to a commercial dispute as determined under Section 12 which is not less than Rs.3 lakhs or of a higher value as may be notified by the Central Government. The Specified Value of the subject matter in respect of a Suit involving a commercial dispute determines the forum, that is, whether the Suit would attract the jurisdiction of a Commercial Court or a Commercial Division of a High Court under sections 3 and 4 of the Act, respectively.

18. The first determinant is whether the dispute is a 'commercial dispute' by dint of arising out of any of the agreements/ transactions under section 2(1)(c)(i)-(xxii) read with the Explanation thereto. It is only on the satisfaction of the dispute being a commercial dispute within the meaning of section 2(1)(c) of the 2015 Act and having a Specified Value under section 2(1)(i) read with section 12 of the said Act that a Commercial Court or a Commercial Division of a High Court can assume jurisdiction over the dispute.

19. The above is qualified by Section 11 of the 2015 Act which imposes a bar on a Commercial Court or a Commercial Division from entertaining or deciding any Suit/Application/or proceeding relating to a commercial dispute where the jurisdiction of the civil Court is expressly or impliedly barred under any existing law. Section 11 operates notwithstanding any other provision of the 2015 Act.

20. In the present case, the petitioners submit that any value over and above Rs.1 Crore would satisfy the requirement of section 12 of the 2015 Act and would consequently bring it within the purview of a commercial dispute. The petitioners rely on the Statement of Claim filed by the respondent no.1/claimant in the arbitration being in excess of Rs.16 Crores.

21. We have dwelt on the above aspect only to clarify that the respondent's claim in the arbitration alone will not expand the financial implications of the DAGPA/Agreement to bring it within the definition of a 'construction and infrastructure contract'.

22. It is clear from a careful reading of the DAGPA that the Agreement is essentially of a private nature i.e., executed between the petitioners (landowners) and the respondent No.1 (developer) with a profit-sharing between the parties at an agreed percentage. In essence, the developer agreed to divide the land into farm plots

and develop the same in the form of agreed construction activity which included laying underground drainage pipes, roads, provision for lights and electricity supply and construction of overhead tank.

Section 2(1)(c)(vi) of the Act calls for a purposive construction:

23. We are however of the view that a commercial dispute arising out of a construction and infrastructure contract must necessarily have an impact which stretches beyond the contracting parties. “Infrastructure”, by definition relates to permanent or long-lasting structural changes and modifications which potentially affects a larger circle of beneficiaries. Similarly, the term “construction” should also extend beyond mere division of farm plots and developing the land for the use and benefit of the contracting parties, that is to say, the end product must have a commercial use and purpose. In other words, a construction and infrastructure contract must partake of a commercial character in terms of conception of the project, the performance of it and end with a commercial product – one that promises good exchange value in terms of profitability.

24. Even a cursory glance at sub-clauses (i) - (xxii) of clause (c) of section 2 of the 2015 Act would make it clear that the agreements mentioned therein contemplate creation of circles of influence

(phrase borrowed from social media) rather than an agreement which is simply executed between two parties for conducting a measure of development work on farm plots.

25. The eagerness of litigants (and lawyers) to put a tag of “commercial dispute” or an action involving a dispute can be related to the Statements of Objects and Reasons of The Commercial Courts Act, 2015 which pitches for speedy disposal of high-value commercial disputes and for an independent mechanism for their early resolution. Commercial Courts and Commercial Divisions are hence imbued with a sense of urgency and fast-tracking of matters.

26. It must however be kept in mind that the gateway to the 2015 Act is not necessarily a free-for-all entry where all kinds of disputes would find easy seating within the arena of section 2(1)(c) of the 2015 Act. Each of the 22 sub-clauses under section 2(1)(c) must strictly be construed and given a purposive meaning. The agreement in question must underscore an inclination to commerce and commercial activity in respect of a sizable section of persons.

27. It is also important to bear in mind that section 2(1)(c) presumes the dispute “*arising out of*” the agreements enumerated in (i) - (xxii) to be commercial in nature. Therefore, the base agreement must have commercial underpinnings so that any

dispute-formation out of that larger matrix would automatically be affixed with the tag of a ‘commercial dispute’.

28. In *Blue Nile Developers (2 supra)*, the transactions reflected development of a residential project in a phased manner within a gated community including setting up of a club in the common area of the project as well as deep-seated infrastructure changes. The Delhi High Court in *Raj Kumar Gupta Vs. Jagan Nath Bajaj*³ also found the Property Development Agreement to be in the nature of a Collaboration Agreement under Section 2(1)(c)(xi) of the 2015 Act. *Swastik Project Pvt, Ltd. Vs. City Enclave Pvt. Ltd.*⁴ considered the sanctioned plan of the project relating to immovable property for construction of a commercial building which was exclusively used for trade and commerce.

29. Notwithstanding the aforesaid decisions, categorization of a dispute under section 2(1)(c) of the Act depends on the particular facts of each individual case where the Court is called upon to decide whether the agreement in question can be treated as the starting-point of a commercial dispute. Indeed, there can hardly be a standardized formula for this assessment.

³ 2022 SCC OnLine Del 2995

⁴2021 SCC OnLine Cal 452

30. *Ambala Sarabhai Enterprises Vs. K.S. Infraspace LLP*⁵ considered the new regime brought in by The Commercial Courts Act, 2015 in respect of the fast-track procedure for deciding commercial disputes. The Supreme Court spoke in favour of a narrow interpretation of the expression 'commercial dispute' under section 2(1)(c) of the 2015 Act to mean agreements which are exclusively used in trade and commerce. Although the Supreme Court considered section 2(1)(c)(vii) in that decision, sub-clause (vi) - '*Construction and Infrastructure Contracts*' – would also call for a similar, that is, a purposive interpretation.

31. The order dated 03.04.2024, which is impugned in the present revision, held in favour of the respondent herein i.e., the dispute being non-commercial in nature. The primary reason for holding thus is that the agreement is for developing farm units. Since equating farm units with a non-commercial dispute may get entangled with Explanation (a) to section 2(1)(c) of the 2015 Act, we intend to uphold the impugned order on the reasons given in the foregoing paragraphs and essentially on the substance of the DAGPA.

32. We reiterate that the protracted arguments made on specification of the dispute i.e., commercial or otherwise, is only for

⁵(2020) 15 SCC 585

the purpose of designating the forum for extension of the arbitrator's mandate under section 29-A of The Arbitration and Conciliation Act, 1996. We have been informed that the respondent/claimant seeks an extension of the arbitrator's mandate which has been refused by the petitioners before us.

33. C.R.P.No.1622 of 2024 is accordingly dismissed by confirming the impugned order and holding that the dispute between the parties is not a commercial dispute as defined under Section 2 (1)(c) of The Commercial Courts Act, 2015. All connected applications are disposed of in terms of this order.

There shall be no order as to costs.

MOUSHUMI BHATTACHARYA, J

M.G.PRIYADARSINI, J**July 16, 2024***BMS*