



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 5<sup>TH</sup> DAY OF MARCH, 2025**

**PRESENT**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**AND**

**THE HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR**

**WRIT PETITION NO. 15658 OF 2024 (GM-RES)**

**BETWEEN:**

MR. RAMU NAGABATHINI  
AGED ABOUT 44 YEARS  
F-103, MANTRI PARADISE  
BANNERGHATTA ROAD  
OPP. RELIANCE MART  
AREKARE SIGNAL  
BANNERGHATTA ROAD  
BANGALORE-560 076

...PETITIONER

(BY SRI. DHANANJAY V. JOSHI, SENIOR COUNSEL FOR  
MS. KRUTIKA RAGHAVAN, ADVOCATE)

**AND:**

1. DEVELOPER GROUP INDIA PRIVATE LIMITED  
F6 BASEMENT  
LAJPAT NAGAR 3, NEW DELHI - 110 024  
REPRESENTED BY ITS AUTHORISED SIGNATORY

2. MSK SHELTERS  
NO.2, MSK SQUARE  
CT BED EXTENSION  
BANASHANKARI 2<sup>ND</sup> STAGE  
BANGALORE-560 070  
REPRESENTED BY ITS MANAGING DIRECTOR

...RESPONDENTS

(BY SRI. PRASHANTH V.G, ADVOCATE FOR R1;  
SRI. C.M. NAGABHUSHAN, ADVOCATE FOR  
SRI. ANANDA H.C, ADVOCATE FOR R2)





THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECLARE THAT THE ARBITRATION PROCEEDING BEARING ARBITRATION CASE NO.211/2021 PENDING BEFORE THE SOLE ARBITRATOR, HON'BLE (RETD.) JUSTICE A. CHANDRASHEKAR, BEFORE THE ARBITRATION AND CONCILIATION CENTER - BANGALORE, DOMESTIC AND INTERNATIONAL, IS ONE WITHOUT JURISDICTION AND PASS AN APPROPRIATE WRIT/DIRECTION THEREBY DISCONTINUING WITH THE AFORESAID ARBITRATION CASE NO.211/2021 PENDING BEFORE THE SOLE ARBITRATOR, HON'BLE (RETD.) JUSTICE A. CHANDRASHEKAR BEFORE THE ARBITRATION AND CONCILIATION CENTER - BANGALORE, DOMESTIC AND INTERNATIONAL AND SETTING ASIDE ALL THE ORDERS PASSED IN THE SAID MATTER TILL DATE AND ETC.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT  
AND  
HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR

**ORAL ORDER**

(PER: HON'BLE MR JUSTICE RAMACHANDRA D. HUDDAR)

The petitioner has approached this Court under Articles 226 and 227 of the Constitution of India with a prayer to:

- 1) "Declare that the arbitration proceedings bearing Arbitration Case No.211/2021 pending before the sole Arbitrator, Hon'ble (Retd) Justice A.Chandrashekar, before the Arbitration and Conciliation Centre -*



*Bengaluru, Domestic and International, is one without jurisdiction;*

- 2) Pass an appropriate writ/direction, thereby continuing with the aforesaid arbitration case No.211/2021 pending before the sole Arbitrator, Hon'ble (Retd) Justice A. Chandrashekar before the Arbitration and Conciliation Centre - Bengaluru, Domestic and International and setting aside all the orders passed in the said order till date;*
- 3) Declare that all concerned parties are free to approach the Civil Court of competent jurisdiction to pursue any legal remedy concerning the subject dispute and*
- 4) Pass any other order in the interest of justice and equity."*

2. The brief facts of the case stated by the petitioner in the petition are set out as under:

The petitioner is the third party purchaser of the plots in the "North Gardens Project". The said "North Gardens Project", a real estate development project at Chikkasagarahalli, Nandi Hills, involves respondent No.1 (the developer) and respondent No.2 (the land owner/land aggregator). It is stated that the petitioner, along with



other third party purchaser has invested substantial amount in purchasing plots in the project. Third party rights, including mortgages in favour of banks and financial institutions, have been created over the plots.

3. It is specifically stated by the petitioner that recently he discovered that a private arbitration proceeding, undisclosed to him, is going on between respondent Nos.1 and 2. The arbitration concerns the validity of the development agreement between the respondents, in which respondent No.2, whose claim was terminated in the year 2017. The Hon'ble Arbitrator has passed an interim order under Section 17 of the Arbitration and Conciliation Act, 1996, restraining respondent No.1 from further selling plots in the said project. The order so passed by the Arbitrator has far reaching consequences for third party stakeholders, including the petitioner, who were neither informed nor given an opportunity to participate in the arbitration.



4. It is further alleged that the arbitration, which was initially a personal dispute between the respondents, has now acquired non-arbitrability due to the creation of third-party rights over the years. Thus the dispute has transformed into a matter in rem, affecting the rights of numerous third parties, who are not bound by the Arbitration Agreement. It is specifically stated that the arbitration cannot bind the third parties, and the matter should be adjudicated by the Civil Court where all stakeholders can be heard.

5. It is further alleged that, the arbitration is being conducted in collusion between respondents *inter se* to defeat the rights of the third party purchasers. The Arbitrator's interim order has created uncertainty regarding the validity of Sale Deeds executed in favour of third-parties, including that of the petitioner, and thus has disrupted the project's development. The petitioner further states that, the said arbitration involves non-arbitrable subjects such as mortgage and securitization, which falls outside the scope of arbitration. It is stated



that, therefore, now the petitioner has invoked the extraordinary jurisdiction of this Court under Articles 226 or 227 of the Constitution, raising significant questions of law, including whether a matter originally arbitrable can become non-arbitrable due to subsequent events, and whether a private arbitration can adversely affect the rights of third-parties, who are not part of the Arbitration Agreement. Therefore, the petitioner has approached seeking the aforesaid reliefs to protect his constitutional and legal rights, which are being jeopardized by the ongoing arbitration. It is stated that, when the matter involves rights of the third-party and non-arbitrable subjects, it must be adjudicated by the Civil Court. It is contended that, if there is a continuation of the Arbitration Proceedings, thereby denies natural justice to the third-party stakeholders and leaves them without an effective remedy. Therefore, for all these reasons to protect the rights of the third-party purchaser and ensure their investment in the said project be safeguarded, this



petition is filed. Therefore, it is prayed by the petitioner to grant the relief so claimed in the petition.

6. All the respondents appeared through their respective counsels. It is respondent No.2 alone resisted the petition by filing detail objection, which are set out as below:

The respondent No.2 is the absolute owner and developer of the property in question. The present writ petition so filed by the petitioner is not at all maintainable under Articles 226 or 227 of the Constitution of India. The petition is based on disputed facts, which require in-depth evidence and cannot be adjudicated in writ jurisdiction. It is contended that, the petitioner has no statutory or constitutional rights to maintain the writ petition, as his claims are based on fabricated and unenforceable rights. The petition suffers from non-joinder of necessary party who are actively participating in the Arbitral Proceedings. It is contended that petitioner is a stranger to respondent No.2 and has no legitimate rights in the property. The claims of the petitioners are based on a fabricated



allotment letter produced at (Annexure - E), which was allegedly issued by an unauthorized person claiming to represent MSK Shelters. Respondent No.2 denies that, he had knowledge about the said allotment letter. It is contended that the petitioner has failed to verify the authority of the person dealing with him. It is further contended that, the petition is riddled with contradictions, as the petitioner is claiming to be the purchaser in one instance (as per para-3 of the petition), but however, admits that his rights are still be created (as per para-9 of the petition). It is further contended that, the project is yet to be fully developed, and the layout is incomplete. Thus respondent No.2 undermines the petitioner's claims.

7. It is further contended that, though the petitioner's assertion of having two unregistered plots as in para-20 too demonstrate lack of any enforceable rights. The development agreement (Annexure-B) clearly states that, the property was already developed by respondent No.2, contradicting the petitioners claims that the project is still under development. The allegation of the petitioner





regarding water supply from property No.2 to property No.1 are all false. The petitioner has not seen the layout and now filed this petition misrepresenting the facts. It is contended that, the Arbitration Proceedings which are in progress are emanated from the orders passed in CMP.No.91/2019 by this Court vide order dated 01.07.2021 as per Annexure-R1 so produced by respondent No.2. The said proceedings are being conducted under the supervision of the Court. Thus, the allegation of the petitioner that, the said Arbitration Proceeding is a private arrangement is false and misleading.

8. It is further contended that, the development agreement in between respondent Nos.1 and 2 (Annexure - B) was terminated on 10.05.2017 (Annexure-R2), and respondent No.1 had accepted the termination through a reply notice dated 16.06.2017 as per Annexure-R3. Therefore, the petitioners claims, based on transactions occurred after the termination, are invalid. The petitioner has no independent right to challenge the Arbitral



Proceedings, as his rights, if any, are derived from respondent No.1, whose authority was terminated.

9. It is further contended that, legal submission of the petitioner are untenable. The petitioner made an attempt to mislead the Court by raising outdated theories of non-arbitrabilities, deliberate and unfounded. It is further contended that, by filing this writ petition, the petitioner is attempting to circumvent the Arbitral Tribunal's order restraining further alienation of the property. Respondent No.1 has lost his challenge to the interim order in Com.M.A.No.3/2023, and the present writ petition appears to be an indirect attempt to nullify the Arbitral Tribunal's decision. It is further contended that, the delay in obtaining the interim order under Section 17 of the Arbitration Act was due to respondent No.1's tactic of filing multiple applications to delay the proceedings. Thus, it is contended that, the petitioner has no legal rights to maintain this petition and the allegations so made in the petition are baseless and motivated. Thus, it is prayed to dismiss the petition.



10. We have heard the arguments of Sri. Dhananjay V. Joshi, learned Senior Counsel for Ms. Krutika Raghavan, learned counsel for the petitioner and Sri. Prashanth V.G, learned counsel for respondent No.1 and Sri. C.M.Nagabhushan, learned Senior counsel for Sri. Ananda.H.C., learned counsel for respondent No.2. Perused the records.

11. The learned counsel for the petitioner in addition to narrating the facts of the case as well as objection of respondent No.2 would submit that, in view of the legal pleas taken up in the writ petition as per the judgment in ***Booz Allen Hamilton v/s. SBI Home Finance Limited<sup>1</sup>*** and ***Vidya Drolia and Others v/s. Durga Trading Corporation<sup>2</sup>*** when disputes involve third party rights and non-arbitrable subjects, it is submitted that, it must be adjudicated by Civil Court. He would submit that, continuation of the arbitration denies natural

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<sup>1</sup> AIR 2011 SC 2507

<sup>2</sup> (2021) 2 SCC 1



justice to third-party stakeholders and leaves them without an effective remedy.

12. Whereas the learned counsels for respondent Nos.1 and 2 would contend that, the present writ petition so filed by the petitioner is not maintainable under Articles 226 and 227 of the Constitution of India as this petition is based on disputed fact which require in-depth evidence and cannot be adjudicated under writ jurisdiction. It is contended that, the petitioner has no statutory or constitutional rights to maintain this petition as his claims are based on fabricated and unenforceable rights. It is contended that, petitioner is a stranger to respondent No.2 and he has no legitimate rights in the property. The arbitral proceedings are conducted as per the orders passed in CMP.No.91/2019 dated 01.07.2021 passed by this Court. The said proceedings are conducted under the supervision of this Court. The petitioner is well aware about the said proceedings and it is not a private arrangement as alleged by the petitioner. Such assertion and allegation is false and misleading. The learned



counsel for the respondents also relied upon the judgment in ***N.N.Global Mercantile Private Limited V/s. Indo Unique Flame Limited and Others***<sup>3</sup> and contend that any challenge in arbitral award can be made under Section 34 of the Arbitration and Conciliation Act, 1996. The whole petition is misleading and by filing this petition, there was an indirect attempt made by the petitioner to nullify the Arbitral Tribunal's decision.

13. We have given our anxious consideration to the submission of both the sides.

14. In view of the rival submission, the core issue before this Court is:

*"whether the arbitration proceedings between respondent Nos.1 and 2 can continue in light of the creation of third party rights, and whether the petitioner, as a third party purchaser, can challenge the arbitration proceedings under Article 226 and 227 of the Constitution of India?."*

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<sup>3</sup> (2021) 4 SCC 379



15. The petitioner's primary contention is that the arbitration, which was initially a dispute in pursuance between the respondents, has now acquired non arbitrability due to the creation of third party rights over the years. It is submitted by the counsel for the petitioner that the dispute has transferred into a matter in rem, affecting the rights of numerous third parties, who are not bound by the arbitration agreement. The learned Senior counsel for the petitioner in support of his submission placed reliance on the judgment of the Supreme Court in ***Booz Allem Hamilton and Vidya Drolia supra*** and specifically contended that, the disputes involving third-party rights and non-arbitrable subjects must be adjudicated by a Civil Court. So far as meaning of *actio in rem*, he relies upon the dictionary meaning wherein it is stated that "in the civil and common law, an action for a thing, an action for a recovery of a thing possessed by another which was available against all the world, not in any special sense against individual should, until he



violated it". The learned counsel for the petitioner further submits that, as respondent Nos.1 and 2 without the knowledge of the petitioner ventured to get an appointment of Arbitrator behind his back in collusion with each other and if they succeed in the same, these respondents will defeat the rights of third-party purchasers. He would also submit that, the interim order passed by the Arbitrator has created uncertainty regarding the validity of the sale deed in favour of third party, including that of the petitioner and his act of the respondents has disrupted the project development.

16. Whereas respondent No.2 contention is that, he is the absolute owner and developer of property in question and now the dispute is refer to the Arbitrator as per the orders of this Court in CMP.No.91/2019 dated 01.07.2021. Therefore, the petitioner can very well challenge the said arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996. The present petition under Articles 226 and 227 of the constitution is not maintainable.



17. During the course of arguments, the counsel for respondent No.2 is fair enough to file a memo stating that:

*"Undersigned counsel for respondent No.2 - MSK Shelters submits that in the arbitration proceedings this respondent will not invoking Section 5 of the Arbitration and Conciliation Act, further undertakes that he will not execute the Arbitration award which may be passed by the Arbitrator."*

18. Even the learned Senior counsel for respondent No.1 also submits in similar terms that, respondent No.1 will not invoke Section 5 of the said Act as well as, will not execute the arbitration award.

19. After carefully considering the submissions of both the parties, this Court finds that the petitioner challenge to the arbitration proceedings is not maintainable under Articles 226 or 227 of the Constitution of India. The facts so stated in the petition are based on disputed facts that require in-depth evidence and cannot be adjudicated in writ jurisdiction. The petitioner has not





demonstrated any statutory or constitutional rights to maintain the writ petition, and his claims are based on alleged rights based upon so called sale deeds of himself and third parties, which are yet to be fully established. More so, as per the contention of respondent No.2, the said arbitration proceedings between respondent Nos.1 and 2 are being conducted under the supervision of this Court, and any challenge to the arbitral award can be made under Section 34 of the Arbitration and Conciliation Act, 1996. Therefore, if at all the petitioner intends to get his rights declared as prayed in the writ petition, he can rely upon the provision of Section 9 of Code of Civil Procedure, 1908 and file a civil suit before the Civil Court and get his grievance redressed in accordance with law. In this regard, it is relevant to rely upon the judgment of the Apex Court in ***Dhulabai vs. State of Madhya Pradesh***<sup>4</sup>.

20. As respondent No.2 has filed the memo of undertaking not to proceed with Section 5 of the

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<sup>4</sup> AIR 1968 SC 78



Arbitration and Conciliation Act and also respondent No.1 undertakes in the same manner, as the said memo and submission is voluntarily and knowledgeably to the effect that, petitioners suit against adverse award / proceeding, if any, shall not be negated by invoking Section 5 of the said Act. In view of the submission made by both the sides, a direction is to be issued to the Courts that may be approached by the petitioner with a lawful cause, not to non-suit him by invoking the Section 5 of the Act, in respect of subject matter of the petition. Further, if all the contentions of the parties are kept open, it would meet the ends of justice. Therefore, there is no merit in this petition and is liable to be ***disposed of*** on the following terms:

- i. If there is going to be an adverse award/proceedings to the interest of the petitioner, he will not be bound by it and he can have his recourse under the conventional law namely the CPC. More particularly, Section 9 as widely



construed by the Constitutional Bench judgment in ***Dhulabai*** (*supra*).

- ii. Learned counsel appearing for second respondent - owner of the property in question has filed a memo voluntarily and knowledgeably to the effect that petitioner's suit against adverse award/proceedings, if any, shall not be resisted by invoking Section 5 of the Arbitration and Conciliation Act, 1996.
- iii. We also injunct the Courts that may be approached by the petitioner with a lawful cause, not to non-suit him by invoking Section 5 of the Act in respect of subject matter of the petition.
- iv. This order shall not come in the way of petitioner working out his remedy even under Arbitration and Conciliation Act, 1996, provided the same is admissible.
- v. All contentions of the parties are kept open
- vi. Impleading application in the shape of I.A.No.3/2024 and other pending IAs, if



any, do not survive for consideration as the main petition itself is disposed of.

- vii. Interim order passed in this petition stands dissolved.
- viii. Cost made easy.

**Sd/-  
(KRISHNA S DIXIT)  
JUDGE**

**Sd/-  
(RAMACHANDRA D. HUDDAR)  
JUDGE**

SK/AM  
List No.: 1 Sl No.: 9