
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**PRIYA HIRANANDANI VANDREVALA VS NIRANJAN
HIRANANDANI & ANR.**

- Haripriya Bharadwaj¹

ABSTRACT

Land disputes are one of the most common types of clashes found in India. It affects over 7.3 million people in the country. Also, the number of killings that occur due to land dispute cases is on the rise. Thus, it becomes an important topic to understand. Regarding area, investments of over \$200 billion are affected due to disputed land. One such eminent land dispute case involving a family dispute for property in Mumbai in Maharashtra is to be analysed here. The case is to be understood in parts, i.e. first, the background followed by its legalities and then the ensuing decisions.

INTRODUCTION

In this case, the father(Niranjan Hiranandani) and the daughter (Priya Hiranandani Vandrevala) entered a business agreement to develop specific properties with an arbitration clause for disputes. The judgement for this case was delivered in May 2016. This is one of the most landmark cases in land dispute matters. Here, the daughter, Priya, filed a case against her father and brother for breaching the agreement they entered into for the joint construction-cum-development of the Indian real-estate sector.

BACKGROUND OF THE CASE

It is the case of the petitioner(Ms. Priya) that she entered into a contract with her father and her brother to jointly undertake construction-cum-development in the Indian real estate sector. The contract, i.e. Business Association Agreement (“BAA”), was executed on May 14, 2006. According to the petitioner, it set how the contracting parties would set up a

¹ Student at The Tamilnadu Dr. Ambedkar Law University-School Of Excellence In Law

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venture/corporate structure through which the business would jointly be undertaken. It is also seen that the BAA contained a narrow exception clause, by which specific expressly enumerated existing projects were excluded from the scope of the BAA and respondents were allowed to continue their projects outside the scope of the BAA.

INVOCATION OF ARBITRATION CLAUSE

Disputes between the parties began to emerge in the year 2009 when it came to her notice that the respondents were continuing to develop projects outside the BAA, even though these projects were part of the excluded projects mentioned in the BAA. The petitioner invoked the arbitration agreement by a February 5, 2010 notice of arbitration. In the draft final award, the parties determined, and the Tribunal accepted, that the liability phase costs and fees due to the claimant are approximately USD 7 million.

DISPUTE OVER THE ENFORCEMENT OF THE ARBITRAL AWARD

It is the case that recently, certain developments have created apprehension that the respondents are taking steps to restructure a part of their assets and business to shield them in a manner that would defeat the enforcement or execution of the final award. The respondents' efforts to protect assets have taken two broad forms of which the petitioner is aware: (a) restructuring of partnership assets and (b) sale of assets.

THE ALIENATION OF THE POWAI PROPERTY

The dispute deepened with the attempt of the respondents to alienate the property in the Powai area of Mumbai. This was highlighted by the petitioner, who, on March 30, 2016, noticed a report on the website moneycontrol.com, entitled "Hiranandani bags two bids worth \$1 billion for property in Powai", which stated that the Hiranandani brothers were preparing to liquidate their assets in Powai. It was also observed that the petitioner's counsel wrote to the respondent's counsel in the arbitration proceedings to explain how they would honour an arbitral award if these assets were being liquidated.

CONTENTION OF THE RESPONDENTS

The alienation of the Powai property was the reason behind the filing of this case. The Respondent's final jurisdictional argument is that the Powai partnership interest is not the subject matter of the arbitration and, consequently, cannot be the subject matter of injunctive

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relief. According to him, the petitioner aims to secure her position relative to the arbitration award. Being the court of the seat of arbitration, this Court is the appropriate forum for the petitioner to seek relief. The award was in the petitioner's favour that money would be awarded for breach of contracts. The petitioner is entitled to enforce that award against any assets of the Respondents and is not limited to the properties that were the breaching projects in the arbitration.

FINDINGS OF THE COURT

1. The Court found that in this petition filed under section 9 of the Arbitration & Conciliation Act, 1996, the dispute required a determination of possession of land and a direction for recovery of possession of land. Since the suit was outside the jurisdiction of the Bombay High Court, the Court held that the Bombay High Court was correct in invoking leave granted under Clause 12 of the Letters Patent. In the present case, the dispute is a money claim, i.e., for damages for lost profits under a contract. It arises out of a right of first refusal clause in the agreement, which the Respondents have violated. No relief is granted in the Draft Quantum Award, which impinges in any way on any interest in land, either at Powai or anywhere else.
2. It is the case of the petitioner in the written submission, as regards the new plea raised by Respondents in their now retracted Written Submissions filed post the hearing (and which was not argued at the oral hearing), Respondents claim that the partnership firms own the Powai property, and not the Respondents. The Respondents have not filed any documents to show the partnership assets, terms of the partnership agreement, or the proposed new corporate structure; this new plea is waived.
3. Allowing the respondents to convert their partnership assets to corporate assets and to alienate the Powai property would preclude the Petitioner's ability to protect her interests once the award amount was fixed. The Respondents must be enjoined from altering the extent of their share in the partnership or changing the nature of their interest. As partners in the firm, they are interested in the underlying property asset to the extent of their share in the partnership executable against them. Should the structure be corporatised, they would cease to have such interest. Therefore, to the extent the partnership firm continues to deal in partnership properties, apart from an

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injunction against alienation, such dealing must also be subject to fair valuation, and the accounts of all sale proceeds would be on par with the share of the respondents.

4. It was held that the present petition is not maintainable under Section 42 of the Arbitration and Conciliation Act. The petitioner would be free to file a petition in the Bombay High Court. The petition was dismissed.

AFTERMATH

The Bombay High Court, in an interim order, directed Mr Hiranandani to deposit ₹370 crores in cash and ₹149.5 crores in bank guarantees in six weeks as compensation to his daughter Priya Hiranandani Vandrevale for breach of trust and infringement of the terms of a business agreement.

CONCLUSION

Thus, this case was one of the landmark cases in land disputes. A family dispute for property established rulings for the entire area regarding land disputes by redefining the partnership rights and rights regarding the sale of assets subject to business agreements. It pronounced a method to enforce arbitration awards and analysed the failure situation.



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