
(2022) 09 UK CK 0136

In the Uttarakhand High Court

Case No : Arbitration Application No. 46 Of 2017

M/s Ski and Snow Resorts Private Limited

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 11(6)

Citation : (2022) 09 UK CK 0136

Hon'ble Judges : Vipin Sanghi, CJ

Bench : Single Bench

Advocate : Sudhir Kumar, J.C. Pande

Final Decision : Dismissed

Judgement

Vipin Sanghi, CJ

1) The present application has been filed under Section 11(6) of the Arbitration and Conciliation Act to seek appointment of an Arbitrator to adjudicate the disputes and claims between the parties in terms of the Arbitration Clause contained in the Standard Lease Deed Form, particularly, in Clause 3 thereof.

2) The case of the applicant is that the applicant obtained the land for setting up a resort from one Dr. Vijay Singh Pal and his nephew by means of registered sale deed for plot Nos. 15, 16 and 17, and a lease deed for plot No. 18. The land is situated in Village Auli Lagga Salurh Dugra, Tehsil Joshimath, District Chamoli. It is stated that the said land comprising of plot No. 18, measuring 30 Nali in Village Auli Lagga Salurh Dugra was granted by the respondent, i.e., the State of Uttarakhand to Sri Indra Singh, and a deed of grant was executed in his favour. It is this deed of grant which contains the Arbitration Agreement. The State claimed breach of the terms and conditions of the grant made in favour of the grantee, and a case bearing Case No. 2/2013-14, titled State of Uttarakhand Vs Vijay Singh and others, was filed before the Deputy Commissioner.

3) The applicant company claims that upon its learning of the said filing of the

case, the applicant moved an application and got itself impleaded in the said proceedings. The Collector, Chamoli, vide his order dated 09.03.2011, cancelled the grant and directed the applicant to vacate the land. The applicant's appeal preferred against the order of the Collector, Chamoli before the Commissioner, Garhwal Division, was rejected on 02.01.2013. A further appeal was preferred by the applicant before the Board of Revenue, which allowed the appeal vide order dated 05.07.2014, and remanded the matter back to the Collector for a fresh decision.

4) The applicant states that the deed of grant contains the Arbitration Agreement, and consequently, the applicant moved an application before the Collector, Chamoli, for deciding the issue of arbitration before entering into the merits of the matter. This request of the applicant was rejected by the Collector, Chamoli. The applicant then preferred writ petition, being Writ Petition (M/S) No. 1918 of 2017, titled M/s Ski and Snow Resorts Pvt. Ltd. Vs State of Uttarakhand. This Court vide order dated 10.08.2017, directed the Collector, Chamoli to decide the question of arbitration first, and decide the case on merits thereafter, if so required. The Collector heard the question of arbitration, and by order dated 13.09.2017, decided that the matter is not to be referred to arbitration on the application of the applicant company. The Collector vide order dated 20.09.2017, returned the finding with regard to the violation of the terms of the lease / grant, and consequently, cancelled the same, and directed taking over of possession from the applicant company.

5) The applicant then sought to invoke Arbitration by serving a notice on the respondent, and also moved an application under Section 9 of the Arbitration and Conciliation Act to seek interim measures vide a Civil Misc. Case No. 66 of 2017 before the District Judge, Chamoli, titled M/s Ski and Snow Resorts Pvt. Ltd. Vs State of Uttarakhand. The District Judge, vide order dated 15.12.2017, rejected the application moved by the applicant holding that the applicant is not a party to the Arbitration Agreement, and cannot file an application under Section 9 of the Arbitration and Conciliation Act, 1996.

6) Since the respondent has not appointed the Arbitrator, this application has been preferred.

7) I have heard learned counsels and perused the record.

8) Admittedly, the deed of grant was not made in favour of the applicant. The applicant, therefore, cannot step into the shoes of the grantee, i.e., Dr. Vijay Singh Pal. The order dated 15.12.2017 passed by the learned District Judge is a judicial order, which binds the applicant. In the face of the said order, the applicant cannot again assert a right to claim arbitration, when it is not a party to the Lease Agreement. The applicant, therefore, cannot invoke the Arbitration Agreement.

9) I find no merit in this application, and the same is, accordingly, dismissed.