

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
THE HON'BLE MR. JUSTICE C.V. BHASKAR REDDY**

AA NO. 169 OF 2022

08.01.2024

Sri Athelli Mallikarjun and others

... Petitioner

v.

S.S.B Constructions, Registered Partnership Firm, Secunderabad and another

... Respondent

Arbitration and Conciliation Act, 1996 — Appointment of Arbitrator under §. 11(5) & (6) — Time-barred claims — Development Agreements dated 07.12.2012 for completion within 18 months — Construction allegedly finished in 2014-2015 with possession taken without objection — Notice invoking arbitration only on 19.05.2022 — No dispute raised in the interim period — Held, claims ex facie time-barred under Article 137 of the Limitation Act — Application dismissed.

Limitation Act, 1963 — Appointment of arbitrator — Residual limitation period under Article 137 is three years from accrual of right to apply — Mere negotiations do not postpone cause of action — Applicants silent for seven years after taking possession — Claim held time-barred — Application dismissed.

Scheme of Appointment of Arbitrators, 1996 — Appointment of Arbitrator — Time-barred Claim — Applicants alleged delayed and substandard construction — Respondents contended timely completion and prolonged possession without objection — Claims invoked after several years — Held, claims barred by limitation under Article 137 of the Limitation Act — Application dismissed.

FACTS. The applicants and the respondents entered into Development Agreements-cum-General Power of Attorney on 07.12.2012 for construction on the applicants' properties. Under these agreements, construction was to be completed within eighteen months, including a grace period. The applicants allege that the respondents delayed the project, used substandard materials, and did not secure an occupancy certificate. They took possession in 2015 but did not invoke arbitration until 2022. The respondents assert that they completed the construction in 2014-2015 and handed over possession, maintaining that any claim is time-barred. The applicants have approached the Court under Section 11(5) and (6) of the Arbitration and Conciliation Act, 1996, requesting the appointment of an arbitrator.

PRAYER. This application, under Section 11(5) & (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act") read with Para (3)(i)(d) of Scheme of Appointment of Arbitrators, 1996, is filed by the applicants seeking to appoint sole

Arbitrator to adjudicate the differences and disputes between the applicants and the respondent.

ISSUES OF LAW.

Whether the arbitration clause remains valid and enforceable; whether the claims are time-barred; whether construction deficiencies and delays warrant arbitration under the agreements.

SUMMARY. The applicants entered into development agreements with the respondents for constructing certain properties. They allege delayed and substandard work, while the respondents contend that construction was completed on time and that possession was handed over without objection for years. When the applicants finally sought arbitration, the respondents argued that any claim was barred by limitation under Article 137 of the Limitation Act. The court ultimately dismissed the application as time-barred.

HELD. The court dismissed the arbitration application as time-barred, emphasizing that the applicants failed to invoke the arbitration clause within the statutory three-year period.

FINAL STATUS. Dismissed.

CASES REFERRED

BSNL vs Nortel Networks (India) (P) Ltd. [2021 SCC OnLine Ker 2375]
Bharat Sanchar Nigam Limited and another vs Nortel Networks (India) Private Limited [(2021) 5 SCC 738]
CLP (India) (P) Ltd. vs Gujarat Urja Vikas Nigam Ltd. [(2020) 5 SCC 185]
Nortel Networks (India) (P) Ltd. vs BSNL [2020 SCC OnLine Ker 18662]
S.S. Rathore vs State of M.P. [(1989) 4 SCC 582 : 1990 SCC (L&S) 50]
Union of India vs Har Dayal [(2010) 1 SCC 394]

COUNSELS

Sri Prabhakar Sripada, Senior Counsel (for Applicants)
Sri Vijay B. Paropakari (for Respondents)

Judgment Pronounced on 08.01.2024