



GAHC010019252016

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3857/2016

OTTIS ASSOCIATION PVT. LTD.
A COMPANY REGD. UNDER COMPANIES ACT 1956 BEING REGD. AS
REGISTRATION NO.02-05139 OF 1997-98, SITUATED AT PICK ME BUILDING,
KAMARPATTY, GHY-1, DIST- KAMRUP METRO, ASSAM, REP. BY IT'S
DIRECTOR SRI SURESH KUMAR KASHLIWAL

VERSUS

THE ASSAM STATE CO-OPERATIVE HOUSING FEDERATION LTD.
HOUSEFED and ANR.
A STATE LEVEL CO-OP. SOCIETY REGD. UNDER ASSAM CO-OP. SOCIETIES
ACT.1949, REP. BY IT'S MANAGING DIRECTOR HEAD OFFICE- DISPUR, P.O.
SACHIBALAYA, P.S. DISPUR, DIST- KAMRUP METRO, GHY-6, ASSAM

2:THE DIRECTOR GENERAL
CISF
MINISTRY OF HOME AFFAIRS
REP. BY GROUP COMMANDANT
GROUP HQRS
CISF
GUWAHATI
BEHARBARI
NEAR A.G. COLONY
HOCKEY STADIUM ROAD
P.O. BASISTHA
DIST- KAMRUP
PIN-78102

Advocate for the Petitioner : MR.D GOGOI

Advocate for the Respondent : MR. B.K. BHAGAWATI, MR. M.R. ADHIKARY



**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**JUDGMENT & ORDER
(ORAL)**

DATE : 16-11-2023

The instant writ petition has been filed by the petitioner company seeking an amount of Rs. 16,81,750/- along with interest @ 16%, per annum, from the respondent No. 1 against its balance due.

2. The facts, which are discernible from the pleadings as well as the materials on record are that the Director of the petitioner company, one Mr. Suresh Kumar Kashliwal, was a power of attorney holder in respect of 4 Bighas 3 Kathas and 10 Lechas (1.52 Acre) of land (hereinafter referred to as "land in question"), covered by Dag No. 549(O)/1441(N) of K.P. Patta No. 123/8/1007(N) of village Saukuchi under Beltola Mouza in the district of Kamrup. On the basis, that the said Director of the petitioner company was holding a power of attorney in respect of the said land in question, a Project Agreement dated 06.09.2007 was entered into by and between the petitioner and the respondent No. 1, whereby the petitioner, who was the builder, agreed to transfer the right, title and interest of the project land, along with the infrastructure development done on the land in question, in favour of the respondent No. 1, free from all encumbrances, by executing a registered sale deed for the benefit of respondent No. 1. The total project cost was of Rs. 2,96,10,000/-.

3. From a perusal of the said Project Agreement dated 06.09.2007 it reveals

that the said payment was to be made in phase-wise manner and upon completion of the requirements as set out in Clauses 3, 4, 5, 8 and 9 of the said Agreement.

4. Prior to the said Project Agreement entered into by and between the petitioner and the respondent No. 1, the records reveals that certain correspondences were made by the respondent No. 1 with the respondent No. 2 for allocation of the plot/land for CISF residential complex. It reveals from the records that on 27.08.2002, the respondent No. 1 received an amount of Rs. 2,90,17,800/- from the respondent No. 2 as against the sale of 1.52 Acres of land at Sarusajai, Guwahati for construction of CISF residential complex. It is on the basis of the said amount so received, respondent No. 1 entered into with the said Project Agreement with the petitioner.

5. On the basis of the said agreement entered into between the petitioner and the respondent No. 1, a registered Deed of Sale bearing No. 2866/2007 dated 22.10.2007, was executed by the Director of the petitioner, in the capacity as attorney holder of Sri Khagen Boro, Haren Boro and Gobinda Boro, thereby conveying the plot of land in question to the respondent No. 1. Subsequent thereto, the Respondent No. 1, by a registered Deed of Sale bearing No. 3934/2008, dated 10.03.2008, transferred the land in question in favour of respondent No. 2.

6. The dispute, however, arose on account of non-receipt of Rs. 16,81,750/- by the petitioner, i.e. a part of the said consideration, which the respondent No. 1 had withheld from the total consideration so received from the respondent No. 2. The petitioner thereupon represented before the respondent No. 1 on various occasions for release of the said amount of Rs. 16,81,750/-, as can be seen from the documents annexed to the writ petition. However, as the respondent



No. 1 did not make payment of the said amount in spite of having received the amount from respondent No. 2, the instant writ petition has been filed by the petitioner seeking the relief, as already stated.

7. This Court issued notice to the respondents vide order dated 11.07.2016. Pursuant to the notice being issued, both the respondent No. 1 as well as respondent No. 2 have filed their affidavit-in-opposition. From perusal of the affidavit-in-opposition filed by respondent No. 1, it reveals that an amount of Rs. 31,81,750/- was withheld on account of the petitioner not performing the entire work as per the Project Agreement. It is further revealed from the said affidavit that an amount of Rs. 15,00,000/- was released pursuant to completion of certain development works. However, the balance amount of Rs. 16,84,250/- was withheld. The reason as to why the said amount has been withheld can be gathered from paragraph 13 of the affidavit-in-opposition of respondent No. 1, wherein it was stated that the plot of land, which was transferred by the petitioner in favour of respondent No. 1 vide registered Deed of Sale No. 2866/2007 dated 22.10.2007, was a plot of land belonging to the Assam State Bhoodan Board, which was allotted to one Pabitra Kachari and, thereupon, after the death of the said Pabitra Kachari, the said land in question was transferred to Khagen Boro, Haren Boro and Gobinda Boro, who were the Principals of the Director of the petitioner. It is the stand of the respondent No. 1 that the petitioner was well aware of this aspect of the matter. However, suppressing this fact, the petitioner sold the land to respondent No. 1. It has been further mentioned that in view of selling of the land in question by the petitioner to the respondent No. 1, which was a land allotted by the Assam Bhoodan Board, the concerned Circle Officer neither mutated the land in favour of respondent No. 1 nor mutated in favour of respondent No. 2 pursuant to the Deed of Sale bearing



No. 3934 dated 06.03.2008 executed by the respondent No. 1 in favour of respondent No. 2. It is further mentioned that it was the responsibility of the petitioner to get the land mutated in the name of respondent No. 1 so that the land subsequently could be mutated in the name of respondent No. 2, and the petitioner having failed to do so, the amount of 16,82,650/- was withheld. From the perusal of the said affidavit-in-opposition filed by the respondent No. 1, it also reveals that various correspondences were exchanged between the respondent No. 1 to the petitioner requesting the petitioner to get the land mutated in favour of respondent No. 1.

8. This Court has also duly taken note of the affidavit-in-opposition filed by the respondent No. 2, wherein it was stated that the respondent No. 1 executed the Deed of Sale in favour of the and respondent No. 2 for the land in question and, as per the terms of the said Deed of Sale, the entire consideration amount of Rs. 2,90,17,800/- was paid by the respondent No. 2 to the respondent No. 1 as far back as on 27.08.2007. It was further mentioned that the respondent No. 2 have not been able to get the land mutated in its name despite making several requests to respondent No. 1 to do the needful. It was also mentioned that the respondent No. 2 had nothing to do as regards the agreement entered into between the petitioner and respondent No. 1 and as such no writ ought to be issued against the respondent No. 2.

9. I have heard the learned counsel for the parties and have also perused the materials on record.

10. From the materials on record, it reveals that a Project Agreement was entered into by and between the petitioner and the respondent No. 1, whereby the petitioner agreed to transfer the right, title and interest of the project land and to carry out infrastructure development in favour of respondent No. 1. It

further reveals from the said Project Agreement that the legal right, title and interest over the project land would be transferred to the respondent No. 1 and the petitioner would also undertake development activities over the land in question. Clauses 2, 3, 4, 5 and 6 of the Project Agreement enumerates as to how the payment would be made by the respondent No. 1 in favour of the petitioner. It further reveals that pursuant to the said agreement, the land in question was sold in favour of the respondent No. 1 vide Deed of Sale bearing No. 2866/2007 dated 22.10.2007. From the said Deed of Sale, it further transpires that Director of the petitioner company, as the attorney holder of Sri Khagen Boro, Haren Boro and Gobinda Boro, covenanted, amongst others, that the purchaser would be entitled to apply for and obtain mutation of its name in the land records. There are similar covenants of the respondent No. 1 in favour of respondent No. 2 also in the said Deed of Sale bearing No. 3934/2008, dated 10.03.2008. The above would, therefore, show that for being entitled to the entire amount as per the Project Agreement dated 06.09.2007, which was entered into by and between the petitioner and the respondent No. 1, the petitioner was required to transfer the perfect title in favour of the respondent No. 1. However, the terms of the Project Agreement dated 06.09.2007 have not been complied with till date as both the respondent No. 1 and respondent No. 2 have not been able to get mutation of the land on account of some purported defects in the title.

11. In view of the above circumstances, this Court is of the considered opinion that this is not a fit case where jurisdiction under Article 226 of the Constitution ought to be exercised by issuing writ of mandamus upon respondent No. 1 to pay the remaining consideration of Rs. 16,81,750/- to the petitioner with interest. Accordingly, this Court, therefore, dismisses the instant



writ petition.

12. Before parting with the records, this Court, however, makes it clear that dismissal of the writ petition shall not prejudice the rights of the petitioner to claim the balance consideration amount from the respondent No. 1, pursuant to the mutation being duly effected in favour of the respondent No. 1.

JUDGE

Comparing Assistant