

M/S. Damodar Ropeways and Construction Co. (P) Ltd.

Vs

Christopher Martin Desgranges Martin and Others

I.A. No. 1 of 1989

(M. N. Venkatachaliah, Ranganath Misra JJ)

06.10.1989

ORDER

1. This civil appeal by special leave is at the instance of a builder who had entered into a contract with the Board of Governors of the La Martiniere School at Calcutta in respect of certain immovable property of the School to be taken by the builder on permanent lease.
2. Christopher Martin Desgranges Martin left behind a will which stipulated the setting up of a school for the benefit of the city of Calcutta and upon his death the will was probated and the executors set up the School. The Board of Governors of the School (hereinafter 'Board') among others has the reverend Bishop of the City of Calcutta as its Chairman and a retired Major-General of the Indian Army as a Member. The old Martinians Association (hereinafter 'Association') being a body of the old students of the School resisted the request of the School before the High Court when it applied for acceptance of the agreement of lease of 1981. A learned Single Judge while agreeing on principle to accord sanction asked for further details. The Division Bench made certain directions in an appeal taken to it by builder and the interim directions form the basis of subject matter of this appeal.
3. During the pendency of the appeal in this Court the builder and the School entered into a fresh agreement on September 12, 1986 to which the Association is also a party. Under the agreement more favourable terms for the School were stipulated, such as - (1) annual payment of ground rent of Rs. 22,000 during the period of lease; (2) as against a one-time payment of Rs. 31 lakhs in the 1981 agreement, a recurring annual payment of about Rs. 50 lakhs; and (3) built-in area of 60,000 square feet to enable expansion of the School and earning of rental income. Apart from these, it is stated that under the 1981 agreement the School had entered into arrangements with prospective lessees and had received a substantial sum of money by way of advance from them in respect of approximately 53,000 square feet to be constructed. The builder under 1986 agreement took the responsibility of dealing with the prospective lessees - either by refunding the money or providing leasehold are from out of its share.
4. It is not disputed that a total area of about 1,80,000 square feet would be available as a result of the construction agreed to be raised by the builder under the 1986 agreement. Parties decided to file an application for compromise before this Court in the pending appeal and the petition was duly drawn up on September 12, 1986. It was signed on behalf of the Board by the Chairman and Major General B. M. Bhattacharya, Anjan Dey in his personal capacity and as President of the Association and the builder. Mr. Anjan Dey's signature in his personal capacity was duly attested by Mr. P. L. Agarwal, his advocate and his signature as President of the Association was duly witnessed by Mr. Shankar Kar, Secretary of the Association. This application was, however, not presented in this

Court until some time in May 1989, for difficulties which have been attempted to be explained by the School. After this application was made the Association represented by Mr. Amit Bikram Roy resisted it. Rejoinders have been filed on behalf of the School and the builder to the objection. The original compromise petition has been produced. The builder has also placed on record the proceedings of the Board of the Association dated September 11, 1986 - a day before the compromise was signed. The resolution of the Association's Board reads thus :

"RESOLVED that in view of finalisation of pending case at Supreme Court of India regarding dispute arising out of property development at La Martiniere for Boys, Calcutta as petitioned by Developer/Contractor Damodar Ropeways & Construction Co. Pvt. Ltd. with one of the parties being Mr. Anjan Dey and old Martinians Association, Mr. Anjay Dey be and is hereby authorised to act on behalf of the Association for the compromise solution as drawn up by the Association's solicitors M/s. Khaitan & Co. and as already approved by all parties concerned subject to permission by the Hon'ble Supreme Court."

The proceedings were signed by Mr. Shankar Kar, General Secretary, Ms. Joyita Sen, Treasurer, Messrs Amit Bikram Roy, Vice-President, Ashoke Paul, Anjan Dey, President and Ms. Raktima Dutt.

5. Objection of the Association to the petition of compromise is mainly on two grounds - (1) lapse of three years between the date of signature of the petition by the parties and its filing; and (2) want of authority of Mr. Anjay Dey to enter into the compromise.

6. The delay in filing the compromise petition in court has been attempted to be explained on behalf of the School and the builder. If the compromise is genuine and lawful, the delay in presentation in court could at the most, if at all, be in the realm of equity and would not be otherwise material. The resolution of the Board of the Association of September 11, 1986, extracted above is a complete answer to the second ground as it clarifies the position that all parties had agreed to the compromise and it was intended to be presented before this Court for permission to enter into compromise. Mr. Anjan Dey had been authorised to associate himself for the purpose. It is not the contention of the Association that the whole or any part of the agreement is unlawful; nor is it the contention of any of the parties that the petition has not been signed by him or them. The compromise, is, therefore, in accordance with the provisions of Order XXIII, Rule 3 of the Code of Civil Procedure and can be acted upon.

7. Before the compromise is accepted it is for the court to be satisfied that the terms are in the interests of the Trust. Dr. Ghosh for the Association strenuously contended that the property was very valuable even as vacant site in view of the recent escalation of price of land in Calcutta and if a genuine attempt is made there is possibility of a higher offer being made and the interest of the School should, therefore, not be sacrificed by allowing it to enter into the compromise. When we suggested to Dr. Ghosh that the Association could provide a guarantee to accept and work out the terms in the compromise in the event of the response to the advertisement not being as favourable, he was not willing to do so. We do not think that it is in the interest of the School to reject the agreement on the representation of Dr. Ghosh that there was scope of receiving better offers if advertisement was made. A solemn agreement has been entered into. The builder has already spent substantial sums of money on the property. The plan has been sanctioned by the Corporation and we are told that under the changed regulations it would be difficult for the School to obtain a fresh sanction. Three years have now been lost on account of the compromise not having been placed

before the court and following the course suggested by Dr. Ghosh involves an element of uncertainty to which the School should not be exposed. Under the agreement forming the subject matter of compromise the School would have space available for expansion in the near future. Keeping these aspects in view, we have thought it appropriate that the compromise should be accepted but with certain variations.

8. As we have already stated, built-in area of 1,80,000 square feet would be available under the agreement and excluding about 50,000 square feet of built-in area which may be set apart for the purpose of meeting the prospective lessees (we express no opinion about the tenability of such claim) who had entered into arrangements with the School, 1,30,000 square feet would be available. Out of it the School has been given 60,000 square feet and the builder is to take 70,000 square feet. We suggested to Mr. Nariman for the builder that the constructed area of 1,30,000 square feet should be equally divided between the School and the builder and on instructions from his client (present in court) Mr. Nariman has fairly agreed to do so. Since the annual ground rent had been fixed at Rs. 22,000 three years back, we indicated to Mr. Nariman that the sum should be escalated and he has agreed to have it enhanced to Rs. 40,000 per year after receiving consent of his client. We are of the view that there should be an escalation clause in regard to the ground rent and once in every ten years escalation of 10 per cent in the annual ground rent beginning from 1990 should be provided. These three terms in our view sufficiently protect the interests of the School and the Trust. We accordingly accord permission to the Board of Governors to enter into compromise on behalf of the School. The civil appeal is disposed of and the terms of compromise with the three modifications indicated as to availability of extra area of 5000 square feet to the School, escalation of the ground rent of Rs. 40,000 from Rs. 22,000 and provision for automatic escalation of 10 per cent once in every ten years shall be incorporated in the decree while the other terms as agreed to by the parties shall also form part of the decree to be drawn up in the appeal.

9. We have not considered it in the interests of the parties to transmit the matter to the Calcutta High Court as that would protract the matter and the order of the Single Judge might be challenged in appeal and ultimately the dispute may again be brought before this Court. Another round of such litigation would be time-consuming and would not at all be in the interests of anyone.

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