IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.128 OF 2023

Shri Mahavir Developers & 10 Ors. ....Petitioners

Versus

Shri Mahavir Jaina Vidyalaya & 6 Ors. ....Respondents

Mr. Darius Khambata, Senior Advocate *a/w. Ish Jain, Rajan Yadav, Karan Rukhana, Aditya Pimple, Duj Jain, Krishma Shah, Naomi Ting, Deep Thakkar, i/b Kiran Jain & Co., for Petitioners.*

Mr. Dinyar Madan, Senior Advocate *a/w Ieshan Sinha, Dhruvi Mehta & Yajas Achal, i/b Wadia Ghandy & Co. for Respondent Nos. 1 to 5.*

CORAM : SOMASEKHAR SUNDARESAN, J.

RESERVED ON : March 16, 2026

PRONOUNCED ON : April 6, 2026

JUDGEMENT:

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") challenging an Arbitral Award dated October 1, 2019, as modified further on October 17, 2019 passed by a Learned Arbitral Tribunal comprising a sole arbitrator (***"Impugned Award"***).

AARTI GAJANAN PALKAR
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Aarti Palkar

2. Petitioner No.1, Shri Mahavir Developers (***"Developer"***) along with its Partners, Petitioner Nos.2 to 11 are aggrieved by the Impugned Award, which holds in favour of Respondent No. 1, Shri Mahavir Jaina Vidyalaya, a Public Charitable Trust (***"Trust"***) of which, Respondent Nos.2 to 5 are Trustees (***"Trustees"***). Respondent No.6 and 7 are former Partners of the Developer.

3. The Developer and the Trustees had executed a Memorandum of Understanding dated April 9, 2005 (***"MOU"***) followed by a Development Agreement dated April 30, 2007 (***"Development Agreement"***), by which, development rights were granted to the Developer over property owned by the Trust situated in Gowalia Tank, Mumbai (***"Subject Property"***). The Developer was to pay a consideration of Rs.3.69 Crores for grant of the development rights and contracted an obligation to construct a new Hostel Building (***"Hostel"***) and a Jain Derasar (***"Temple"***) with an area of not less than 32,000 square feet (***"Agreed Area"***) in place of the existing Hostel Building which includes six shops, and the Temple. The Developer was to also reconstruct three tenanted buildings located on the Subject Property. The parties had agreed that the development would be carried out under Regulation 33(7) of the Development Control and Promotion Regulations 2034 (***"DCR"***).

4. Clause 19 of the MOU allowed the Trust to terminate the MOU if the Developer were to breach the terms or were unable to construct and

develop the Subject Property. Clause 6.2 of the MOU also provided the Developer with a license and a right to enter upon the Subject Property in furtherance of the agreement between the parties. The Development Agreement, which elaborated the MOU in greater detail, recorded the Developer's obligation to construct the Hostel, including six shops, and the Temple having an area of not less than the Agreed Area, excluding staircase and lift area. The construction of the Hostel was to be given the highest priority and simultaneously the Developer could develop the three tenant occupied buildings without diluting the priority for constructing the Hostel. The Development Agreement made it clear that under no circumstances would the area of the Hostel building be reduced from the Agreed Area of 32,000 square feet.

5. Since the parties had agreed to further the development under Regulation 33(7) of the DCR, the parties also negotiated the framework by which they would handle the situation arising out of the rehabilitation area certified by the Municipal Authorities in lieu of the Hostel building falling below 32,000 square feet – this would affect the 50% incentive Floor Space Index (***"FSI"***) that the Developer would be entitled to. Therefore, the parties agreed that if the incentive area approved by the authority fell below 16,000 square feet, the consideration of Rs.3.69 Crores paid by the Developer to the Trust would be adjusted downwards, with a reduction being effected at the rate of Rs.2,500 per square foot of

the shortfall. Such amount would then have to be refunded by the Trust to the Developer.

6. The parties agreed that there would be no deviation from the Intimation of Disapproval (***"IOD"***) and the commencement certificate. Before submitting plans to the Municipal Authorities, the Trust would have a right to approve the same. Clause 28 provided that each party would be entitled to seek specific performance against the other and claim damages in the event of default on the part of the other party. Clause 29 provided that unless and until the premises are fully developed in all respects, the arrangement recorded in the agreement could not be brought to an end. In the event of any facet of the development not being explicitly covered by the Development Agreement, the parties agreed to fall back on the MOU to resolve such question.

7. While the MOU was executed in 2005 and the Development Agreement in 2007, nearly a decade later, the Trust terminated the relationship by a Termination Notice dated March 4, 2016 (***"Termination Notice"***). The termination was premised on the ground that the Developer failed to secure approval for construction of the Agreed Area i.e. 32,000 square feet for the new Hostel building since the IOD dated December 2, 2014 had been obtained for only 25,838 square feet (***"Reduced Area"***).

8. The Developer contended that the Trust was unable to prove the existence of the fifth floor, in view of which, the corresponding development potential could not be tapped. The Trust took the position that the fifth floor was in fact demolished by the Developer with requisite permissions from the Municipal Authorities and that the element of delivering at least the Agreed Area to the Trust was a non-negotiable fundamental condition of the redevelopment.

9. The difference between the Agreed Area and the Reduced Area in the entitlements flowing to the Trust under the Development Agreement was at the heart of the controversy between the parties.

10. The aforesaid dispute led to arbitration, with the Trust and Trustees being Claimants, and the Developer and its Partners being Respondents. The Trust sought declaration that the Termination Notice was valid; a direction that the Developer must hand over vacant and peaceful possession of the Subject Property to the Trust; and made a claim for damages. The Developer filed a counter-claim seeking declaration that the MOU and the Development Agreement were valid and subsisting; that the Termination Notice was illegal; a direction to the Trust to specifically perform the terms and conditions of the MOU and the Development Agreement *"as varied from time to time"*.

11. The allusion to the "variation" is based on the Developer's contention that the parties had consciously moved away from pursuing

the redevelopment under Regulation 33(7) of the DCR to redevelopment under Regulation 33(6) of the DCR. The difference between the two is primarily that under Regulation 33(7), incentive FSI would be available which would lead to the Developer's ability to exploit the enhanced FSI and earn returns on the redevelopment. On the other hand, under Regulation 33(6) of the DCR, what is permitted is simply reconstruction of the existing area without any incentive FSI.

12. According to the Developer, the parties had agreed to deviate from their agreement – to first apply for permission under Regulation 33(6) for reconstruction of the existing certified area of the Hostel, and deferring pursuit of a permission under Regulation 33(7) until such time the existence of the fifth floor was capable of certification, based on documentation. According to the Developer, it is the adoption of such a changed course of action that led to the IOD for construction being for the Reduced Area under Regulation 33(6), even while keeping pending, the application for permission that would lead to the Agreed Area, under Regulation 33(7).

13. The Learned Arbitral Tribunal analysed the evidence and the material before it, and directed that possession of the Subject Property be handed over to the Trust since it was found that the Developer had not complied with obligations under the Development Agreement. The Learned Arbitral Tribunal rejected the Trust's claim for damages and also

ordered refund of the amount paid by the Developer to the Trust with interest.

<u>Contentions of the Parties:</u>

14. It is against this backdrop, that the competing contentions of the respective parties need to be considered. I have heard at length, Mr. Darius Khambata, Learned Senior Advocate on behalf of the Developer and its Partners; and Mr. Dinyar Madan, Learned Senior Advocate on behalf of the Trust and the Trustees. For convenience, the two sides are respectively referred to in the collective terms of ***"Developer"*** and ***"Trust"***.

15. The matter was substantially heard last year and submissions were concluded. However, considering that there had been a significant efflux of time since judgement was reserved, it was put to the parties to consider their positions. Both sides unequivocally indicated that they have no objection to the Court proceeding to pronounce judgement. The matter was fixed for a refresher hearing. Mr. Karan Rukhana Learned Advocate on behalf of the Developer and Mr. Dinyar Madan, Learned Senior Advocate on behalf of the Trust made their submissions and judgement was reserved afresh.

16. The grounds on which the Impugned Award is challenged can be broadly classified under the following heads:

A] *The Impugned Award is purported to contain inherent contradictions, inconsistencies, and is thereby assailed as perverse.* In a nutshell, the contention is that the Learned Arbitral Tribunal had held that the Termination Notice was illegal because the Trust had no right to terminate the Development Agreement, and yet refused to grant either specific performance or damages to the Developer for such illegal termination. The contention is that if the termination were illegal, the corollary would be that the agreement would subsist. Therefore, the grant of relief of specific performance is contented to be an imperative, particularly since the Learned Arbitral Tribunal has held that the contract subsists to the extent of the Trust having transferred some interest in the Subject Property to the Developer;

B] *The Impugned Award is assailed as being perverse on account of pleadings being selectively read and vital pleadings being ignored, as indeed vital evidence being missed by the Learned Arbitral Tribal.* This contention is premised on the Developer's assertion that it was ready and willing to perform its obligations to deliver 32,000 square feet to the Trust but upon obtaining certification of the existing area having been 32,000 square feet and also upon obtaining incentive FSI under Regulation 33(7). The contention is also that the Developer has specifically pleaded his

readiness and willingness to develop the Subject Property on the terms and conditions contained in the Development Agreement between the parties as varied from time to time;

C] The Developer would also contend before this Court that the order dated September 23, 2014 passed by the Municipal Corporation of Greater Mumbai (*"MCGM Order"*) specifically notes approval for construction of 2880.58 square meters, which corresponds to 31006.56 square feet. Coupled with the Temple's area of 600 square feet, the alleged shortfall, if any, is contended by the Developer to be of a mere 393.44 square feet. The MCGM Order had also used the phrase *"at this stage"* in relation to the Reduced Area which would indicate that eventual and potential authentication of the legally valid pre-existence of the fifth floor had not been shut out. It is contended that the Trustees had lauded the Developer for having obtained the IOD for 2880.58 square meters by a letter dated November 25, 2014 (two years prior to the Termination Notice), thereby indicating that the Trustees had no quarrel with the reduction in the area since they had consented to changing tack from Regulation 33(7) to Regulation 33(6) even while keeping the application under the former pending with the Municipal Authorities. It is in this context that the Developer would contend that the Learned Arbitral Tribunal has failed to

import of the MCGM Order, which constitutes ignoring vital evidence, rendering the Impugned Award perverse and patently illegal;

D] *The Impugned Award is also assailed as being contrary to contract inasmuch as Clauses 28 and 29 of the Development Agreement record that the only remedy to a non-defaulting party is to enforce specific performance.* Yet, the Learned Arbitral Tribunal having denied the grant of specific relief and having directed delivery of possession of the Subject Property to the Trust, has committed a jurisdictional error.

E] *The Impugned Award is also assailed as being contrary to statutory jurisdiction in the matter vesting solely in the Small Causes court under Section 41 of The Presidency Small Cause Courts Act, 1882* (***"PSCC Act"***). The Developer would contend that the Development Agreement placed the Developer in the position of a licensee and that eviction of a licensee from possession by a landlord is exclusively vested in the Small Causes Court and therefore, the dispute is not arbitrable.

F] *Finally, it is also contended that the Trust did not have prior permission of the Charity Commissioner before invoking arbitration.* It is contended that this has totally eroded the

jurisdiction of the Learned Arbitral Tribunal to arbitrate the disputes between the parties.

17. In sharp contrast, the Trust would contend that none of the aforesaid contentions of the Developer are worthy of acceptance inasmuch as they do not conform to the contents of the record and indeed the plausible interpretation of the record by the Learned Arbitral Tribunal.

18. The contentions on behalf of the Trust may be summarised thus:

A] There are no inherent contradictions in the Impugned Award inasmuch as the Learned Arbitral Tribunal has interpreted the agreement to indicate that the parties had committed to specific performance and there is no right to terminate but that would not mean that the principles of law governing specific performance have no application. The Learned Arbitral Tribunal has returned logical and reasonable findings about the absence of readiness and willingness on the part of the Developer to perform under the MoU and the Development Agreement. The Developer has hedge about the essential and fundamental element of delivering at least 32,000 square feet of redeveloped area to the Trust, by linking such commitment to potential certification of the area that had been demolished. Therefore, the Impugned Award, insofar as it holds that the Developer is not entitled to specific relief cannot be faulted;

B] Whether the agreement was incapable of termination was a subject of the Learned Arbitral Tribunal's interpretation of contract and in particular Clauses 28 and 29 of the Development Agreement. However, whether the agreement was capable of specific performance was clearly also a subject matter of the Learned Arbitral Tribunal's adjudication. If that view is plausible, the Impugned Award cannot be displaced with a quest for finding inherent contradictions. The two findings are not incapable of reconciliation and therefore there is nothing perverse in a manner that cuts to the root of the matter for this Court to intervene under Section 34 of the Act;

C] The MGCM Order has been well appreciated by the Learned Arbitral Tribunal – perhaps not to the Developer's liking. The MCGM order itself indicates that the Developer failed to submit the authenticity of the pre-existing fifth floor, which is what led to the MCGM not considering the fifth floor for purposes of the FSI computation at that stage. Therefore, the Trust should point to the MCGM not validating the area corresponding to the fifth floor because of the Developer's shortcoming, demonstrating that the Developer was in default as asserted in the Termination Notice;

D] As regards the recovery of possession not being arbitrable in view of the provisions of the PSCC Act, the Trust would contend

that the license in the Development Agreement is incidental to and connected with the development rights conferred upon the Developer and not a standalone leave and license agreement of the manner that would fall within the protective jurisdiction of the PSCC Act. According to the Trust, at the highest, the license enjoyed by the Developer would be an accessory license under Section 55 of The Indian Easements Act, 1882, which is a license necessary for exercise of any right, which would be implied in the conferment of such right. Such right is the right to develop the Subject Property, and that too in compliance with the Development Agreement.

E] The Trust would reject outright, the contention that prior permission of the Charity Commissioner had not been obtained thereby undermining the jurisdiction to arbitrate. This issue was never raised before the Learned Arbitral Tribunal and is being raised for the first time in the Section 34 proceedings. This not being a facet of inherent lack of jurisdiction, it is not open to the Developer to raise it at this stage, never having tabled this issue earlier.

Analysis and Findings:

19. Having heard the parties in the context of the challenge mounted to the Impugned Award, it would be necessary to examine the specific grounds on which the arbitral award is impugned. At the heart of the

controversy lies the fact that the Learned Arbitral Tribunal did not grant specific relief to the Developer. The Learned Arbitral Tribunal has found that the Developer is not worthy of being granted specific relief, among others, on the premise that the foundational and essential feature of the agreement between the parties is that the Developer must deliver not less than 32,000 square feet of redeveloped area to the Trust. In this context, the key question to be asked is whether the Learned Arbitral Tribunal had riddled the Impugned Award with inherent contradictions of such a nature that its finding that the Trust could not have terminated is repugnant to the finding that specific relief cannot be granted.

20. Upon a careful reading of the Impugned Award and the material on record, I find that the Learned Arbitral Tribunal has not rendered findings that are inherently repugnant leading to the Impugned Award being rendered perverse. The Learned Arbitral Tribunal has indeed interpreted Clauses 28 and 29 in a manner that appealed the most to the Learned Arbitral Tribunal. The Learned Arbitral Tribunal is entitled to interpret these provisions – it has squarely held that the Trust was incapable of terminating the Development Agreement. Even while rendering such finding, the Learned Arbitral Tribunal has squarely stated that the issue of whether a case for grant of specific relief is made out has been dealt with separately that should also be read harmoniously.

21. On the denial of specific relief, in much the same way in which the Learned Arbitral Tribunal was entitled to interpret Clauses 28 and 29 of the Development Agreement, the Learned Arbitral Tribunal was entitled to interpret what was the essential feature of the agreement between the parties. The Learned Arbitral Tribunal has been satisfied that delivery of 32,000 square feet of redeveloped area is a fundamental and essential feature of the agreement between the parties, and that the Developer was not ready and willing to perform on this count. This is a clear, fair and reasonable finding that puts the Impugned Award beyond the realm of the implausible, for this Court to interfere with the Impugned Award. This is because of the sheer number of times the parties have reiterated the core element of their arrangement, namely, the delivery of 32,000 square feet of developed area. Not just that, the parties have also agreed on the consequences of there arising any shortfall in the exploitation of incentive FSI that had been envisaged for the Developer. There would have been an adjustment to the amount of Rs. 3.69 crores already paid by the Developer to the Trust, at a pre-agreed rate per square foot of shortfall, necessitating a refund of the amount received by the Trust to the Developer. The scheme of the agreement between the parties set out no means of a situation that the Trust would get lower area in the bargain.

22. Seen in this light, I am simply not satisfied that the Learned Arbitral Tribunal has indulged in any egregious error of the nature

canvassed by the Developer. The Learned Arbitral Tribunal has carefully examined the pleadings of the Developer and has quoted chapter and verse, how the Developer has, in its own affirmed pleadings, clearly indicated that the Trust should be happy with a lower area, and how delivery of less than the Agreed Area is justifiable. The justification flows from the legitimacy of the fifth floor of the hostel building, that was demolished, being in doubt. According to the Developer, the legitimacy of the fifth floor is not borne out in the property records, and therefore, it is not open for the Trust to claim performance of the delivery of the Agreed Area. Even taken at its highest, this would mean that the agreement was incapable of specific performance, which could at best, lead to a potential claim in damages.

23. The Developer would contend that the very finding that the Developer was not ready and willing to perform on the obligation to deliver 32,000 square feet was perverse. This is untenable since the very pleadings of the Developer in the arbitration proceedings indeed point to how the obligation to deliver the Agreed Area was no longer valid. The Developer indeed has contended that if certified by the municipal authorities, and it gets additional incentive FSI under Regulation 33(7) of the DCR, it would be open to delivering the Agreed Area. This would indicate that there is no precision of a clear executable nature in the

bargain sought to be enforced at the behest of the Developer as a matter of specific relief.

24. The Developer had indeed pleaded that the Trust cannot seek any area beyond what is approved and accepted by the planning authority. Therefore, it is rightly contented by the Trust that when the pleadings are read as a whole and the contemporaneous correspondence is examined, the finding by the Learned Arbitral Tribunal that the Developer was never ready and willing to provide a rehabilitated Hostel building of 32,000 square feet is not just a plausible and reasonable finding but an accurate finding. Indeed, as contended by the Trust, the phrase "ready and willing" is not a *mantra* to be peppered into pleadings in a mechanical and formulaic recitation without an actual and real depiction of how the actual readiness and willingness to perform an agreement is discernible from the record, and what precise obligation such party is ready and willing to perform.

25. Indeed, this calls for comment on the parties moving away from Regulation 33(7) to Regulation 33(6) as an interim measure to give the Hostel its priority as agreed by the parties. Whether the project was amenable to Regulation 33(7) at all and whether it was amenable to part processing under Regulation 33(6) and subsequently by migration to Regulation 33(7) is an issue that has remained at large. What the Learned Arbitral Tribunal has done, and fairly so, is interpret the

provisions of the agreement and the pleadings of the parties to examine whether specific relief can be granted. There is not a whisper of a provision or subsequent correspondence with the Trust having agreed to a lower bargain – of taking less than the Agreed Area for such movement across regulatory provisions under which the development would be pursued. That being so, it would not have been possible for the Learned Arbitral Tribunal to substitute the Agreed Area with the Reduced Area or any other area and to uphold that as the basis of specific performance.

26. Even in the proceedings before this Court, a more novel argument was made by the Developer, which only underlines the inchoate nature of the bargain of which specific performance was sought. The Developer would contend that the area allocated to the Temple may be added to the Reduced Area, which would in turn show that the shortfall was just about 393 square feet. While the Trust would stridently oppose this submission on the premise that this submission is being made for the very first time in the Section 34 proceedings, it must be said that the Developer's contention, while attractive at first blush (particularly when seen in the context of the consensual deviation from Regulation 33(7) of the DCR), it would still not constitute that the parties had consensus *ad idem* on what revised area the Trust had settled for. The fact remains that the IOD is for nearly 7,000 square feet lesser than the Agreed Area.

27. The Learned Arbitral Tribunal has rightly held that oral evidence and oral arguments have to be consistent with the pleadings. A holistic reading of the pleadings has been rightly interpreted to indicate that the Developer is not ready and willing to assuredly deliver the Agreed Area as contracted. The right to get 32,000 square feet was never made conditional on certification by any Planning Authority. Each party has sought to explain how the evidence must be interpreted. It is not for this Court to re-appreciate evidence. I must say that the reading of evidence as canvassed by the Developer falls in the realm of re-appreciation of evidence which this Court must not resort to. The overall reading of the evidence and the contemporaneous correspondence by the Learned Arbitral Tribunal would indicate that the finding of absence of readiness and willingness to perform is an eminently plausible view that does not call for interference.

28. Indeed, the Trust had delivered an approval from the Government of Maharashtra for development under Regulation 33(7) of the DCR, which informed the basis of the bargain between the parties. The Municipal Commissioner rejected this on the premise that the department that gave the permission was the wrong one (Housing Department instead of Urban Development Department), but then the parties had entered into the arrangement with eyes open and the Developer has also confirmed satisfaction with examination of all facets of

the matter when entering into the bargain with the Trust. The hurdle posed by the Municipal Commissioner rejecting the very basis of Regulation 33(7) being applicable, even when taken as a facet outside the scope of the parties' expectations and control, it would undermine the specific performance of the Development and not further the same. Indeed, the departure into Regulation 33(6) could be said to fall within the zone of consideration of acquiescence to the situation but it would still not point to a sharp and precise revised bargain that is amenable to specific performance.

29. The Learned Arbitral Tribunal has also examined the fact that there is a pointer to the fifth floor being legitimate from the records obtained under the law governing right to information. The Learned Arbitral Tribunal has fairly held that the Developer was aware of the project it was getting into and ought to have done its due diligence before executing a contract of which it is seeking specific performance.

30. The Termination Notice was issued two years after the Trust is contended to have lauded the Developer for managing to secure approvals for the Hostel, and indeed the Learned Arbitral Tribunal has held that the Termination Notice was illegal as being contrary to contract. However, to grant specific relief, the Developer would still need to have demonstrated readiness and willingness to perform on a precise, binding and committed revised contract and that is not discernible from the record – in itself, a

matter of adjudication and appreciation of evidence. Therefore, to my mind, the finding that the Termination Notice is "illegal" would at worst be a problematic finding but it is not a finding that presents a perversity of such a magnitude that it would go to the root of the matter of specific relief, for the Impugned Order to be interfered with.

31. I find that the Learned Arbitral Tribunal has instead adopted a practical, commonsensical and commercially logical interpretation even while holding that the Development Agreement was incapable of termination – that even the termination was not contractually envisaged (indeed the Learned Arbitral Tribunal terms the termination "illegal" a few times), the Development Agreement was not capable of specific performance. Therefore, specific relief could not have been granted for the asking in the teeth of the principles governing specific relief, which at the least, requires a specific committed obligatory element that can be enforced under supervision of the Court. That being the case, no fault can be found with the finding that specific relief was not worthy of being granted.

32. To reconcile the two positions, namely, that termination was illegal and yet specific relief could not be granted, it is apparent to me that the Learned Arbitral Tribunal has simply adopted the principle of restitution to place the parties in the respective positions that they were in before executing an apparently interminable contract that is incapable of specific

performance. The Learned Arbitral Tribunal rejected the competing claim for damages; directed that the Trust be put in possession; and directed that the Trust must return the amount of Rs. 3.69 crores paid by the Developer to the Trust, along with interest. The Learned Arbitral Tribunal has indeed reconciled the two positions presented as being inherently contradictory and to my mind there is no fatal contradiction or inconsistency in the analysis that flows through this issue in the Impugned Award.

33. The contention that the MCGM Order constitutes vital evidence that has been ignored also does not appeal to me. Each party has made submissions on how the MCGM Order helps its respective case, but suffice it to say, the Section 34 Court must resist the temptation of being drawn into interpreting the true import of this document and should instead examine whether that document contains any vital evidence that has been ignored. I find that the core elements and contents of the MCGM Order have indeed been analysed in the Impugned Order to factually arrive at a finding of a shortfall in the commitment of the Developer to deliver the Agreed Area and therefore, it cannot be said that any vital evidence has been ignored. At worst, the Developer could be said to be unhappy with the interpretation of the evidence by the Learned Arbitral Tribunal, but one cannot say that the Learned Arbitral Tribunal

failed to appreciate vital evidence to render the Impugned Award patently illegal.

34. For the foregoing reasons, in my view, the interpretation of Clauses 28 and 29 of the Development Agreement is not in foundational conflict with the finding that the core and essential term of the contract was delivery of Agreed Area to the Trust. Therefore, whether or not the Termination Notice is illegal, the finding that no case for specific relief has been made out cannot be faulted. Presented with this seemingly dilemmatic situation, the Learned Arbitral Tribunal has fairly and reasonably held that the parties need to put back in their respective positions, without any award of damages since both sides entered into the bargain with eyes open and ran the risk of the costs and damages they have respectively suffered. The Learned Arbitral Tribunal has fairly held that neither party deserves to be saddled with damages for a contract incapable of specific performance. Therefore, in my opinion, the Impugned Award does present a wholesome outcome that is plausible, logical and reasonable, and does not lend itself to interference under Section 34 of the Act.

35. This brings me to the contentions of the PSCC Act, namely, that the Developer is a licensee and is a protectee of the statutory tenant-protection provisions of that legislation and the ouster of forums other than the Small Causes Court from adjudication of a licensee eviction. The

Learned Arbitral Tribunal has examined this squarely, to return a finding that the license or the right to enter upon the property is incidental and inextricably linked to the right to develop the Subject Property. If the right to specific performance of the obligation to permit the Developer to develop the Subject Property is not found worthy of acceptance, it would follow that the incidental right to enter upon the Subject Property and develop it would come to an end.

36. In my view, the contention of the Developer that it is a statutory protectee of the PSCC Act is extreme and unreasonable. Provisions of beneficial and ameliorative legislation must be interpreted in the context of the objectives of the legislation. It is well settled that if more than one view is possible, the view that furthers the remedy and suppresses the mischief in the objective of the legislation would need to be adopted. The Developer is hardly a tenant or a licensee who has been given the right to use the Subject Property for a license fee. On the contrary, the Developer in the same breath claims an interest in the Subject Property with a right to exploit it and sell units from the free sale component, which itself stands undermined. The license to enter the Subject Property is an incidental and ancillary right and can simply not be elevated to a tenancy-protection right under the PSCC Act. No fault can be found with the Learned Arbitral Tribunal's analysis of this issue to reject the jurisdictional challenge.

37. Finally, the purported absence of permission from the Charity Commissioner to litigate should be stated to be rejected. This is another novel argument in the process of throwing the kitchen sink at the problems the Impugned Award poses to the Developer. While this may not have been raised before, it is evident from the record that the Charity Commissioner is not unaware of the litigation that the parties have been engaged in, and has postponed consideration of an extension of approval for the redevelopment, to await the outcome of the arbitration. This ground is based on the regulatory scheme relating to governance of charities. This is of no avail for a contractual counterparty to place reliance on, and that too after the arbitral proceedings have been concluded, of course, the outcome being unsatisfactory to such counterparty.

38. The Learned Arbitral Tribunal has also analysed the absence of consent from 70% of the tenants. However, I do not think it necessary to delve into the issue of tenants' consents not having been obtained since the Developer is not pressing anything related to this issue except in defence of the contentions of the Trust that invokes this issue. The analysis in this judgement, bearing in mind the scope of jurisdiction under Section 34 of the Act, is restricted to the grounds on which the Developer has assailed the Impugned Award.

Some Relevant Case Law Extracts:

39. Before parting, a word about the scope of review under Section 34 would be in order. Without intending to undertake a prolix reproduction from the numerous judgements that now well settle the standard, in the context of incoherence and inherent inconsistency being alleged by the Developer, the following extracts from ***Associate Builders***[1] would be appropriate (for ease of reference, the footnote in the judgement inserted in the extracted paragraph is also set out in the extract below):

> *It must clearly be understood that **when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected**. A possible view by the arbitrator on facts has necessarily to pass muster as **the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award**. Thus **an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score***
>
> *[Inserted Footnote – extracted below:]*
>
> ***Very often an arbitrator is a lay person not necessarily trained in law**. Lord Mansfield, a famous English Judge, once advised a high military officer in Jamaica who needed to act as a Judge as follows:*
>
> > *" General, you have a **sound head, and a good heart**; take courage and you will do very well, in your occupation, in a court of equity. My advice is, to **make your decrees as your head and your heart dictate, to hear both sides patiently, to decide with firmness in the best manner you can; but be careful not to assign your reasons, since your determination may***

1 Associate Builders v. Delhi Development Authority – (2015) 3 SCC 49

> *be substantially right, although your reasons may be very bad, or essentially wrong".*
>
> -
>
> *It is very important to bear this in mind when awards of lay arbitrators are challenged.*
>
> *[Emphasis Supplied]*

40. Indeed, the Sole Arbitrator manning the Learned Arbitral Tribunal is not a lay man and is a former Chief Justice of a High Court. However, I felt the need to extract the foregoing not because the Impugned Award reads like one by a layman but for emphasising the principle involved – where the reasons for two separate findings are logical and reasonable, and the two can be reconciled in a manner that does not make the findings mutually repugnant, if the outcome is just, logical and commonsensical, the arbitral award need not be interfered with. The reasons for which the Learned Arbitral Tribunal has held the Termination Notice to be "illegal" and the allusions to the Development Agreement subsisting to some extent may make the denial of specific relief illogical, but one cannot lose sight of the fact that the reconciliation of the two seemingly conflicting positions is quite commonsensical and logical. I have already given my reasons as to how the two positions are not inherently conflicting. Even if this reconciliation is contended as not being explicitly and expressly set out in the Impugned Award, it is also well settled that even implied reasons that are discernible and are capable of being inferred to support a just and fair outcome in arbitral awards

would make it appropriate not to interfere with arbitral awards. In this regard, the following extract from the decision of the Supreme Court in ***Dyna Technologies***[2] would be appropriate:

> *24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts. **We need to be cognizant of the fact that arbitral awards should not be interfered with** in a casual and cavalier manner, **unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award**. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. **The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.***
>
> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. **The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act**.*
>
> ***[Emphasis Supplied]***

Summary of Conclusions:

41. In the result, the points determined by me may be summarised thus:

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2 Dyna Technologies Private Limited v. Crompton Greaves Limited – (2019) 20 SCC 1

A] The finding that the Termination Notice is illegal for not being supported by Clauses 28 and 29 of the Development Agreement is plausible and falls within the realm of interpretation that the Learned Arbitral Tribunal is entitled to make;

B] Such interpretation on legality of termination is not inherently and necessarily inconsistent with the refusal to grant specific relief to the Developer in view of the other logical, reasonable and plausible finding that the obligation to deliver the Agreed Area of 32,000 square feet of redeveloped area is an essential term of the agreement between the parties;

C] The Learned Arbitral Tribunal has rightly found that there has been no revised area that had been agreed between the parties, for a Court-supervised enforcement of specific relief to be possible;

D] The refusal to grant specific relief is not irreconcilable with the finding that the Termination Notice was "illegal";

E] The objection on arbitrability on the ground of exclusive jurisdiction under the PSCC Act is untenable since the license granted to the Developer was incidental to the development rights conferred on the Developer. Once such development rights are not held as being amenable to enforcement by way of specific relief, the license would also become irrelevant. The Learned Arbitral

Tribunal's findings that the statutory tenancy protection provisions in the PSCC Act have no relevance to the Development Agreement cannot be faulted;

F] The objection on the ground of lack of approval for litigation by the Charity Commissioner is untenable for the reasons set out above. The Charity Commissioner has been aware of the litigation and even if regulatory action were to be contemplated, it would not have a foundational and jurisdictional basis to undermine the Impugned Award.

42. In the result, the Section 34 Petition is ***finally disposed of*** without any interference with the Impugned Award.

43. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]