IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 107 OF 2015

M/s. Akshar Properties ...Petitioner

Versus

Jai Himgiri Co-operative Housing Society Limited ...Respondent

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Mr. Amit Dubey, *a/w. Adv. Eram Baig & Alex D'souza i/b Law Counsellors for the Petitioner.*
Ms. Sneha Phene, *a/w Nishi Naral i/b Amol K. Tembe, for Respondent.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**

DATE: **JUNE 12, 2026**

Judgement:

Context and Factual Background:

1. The Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***the Act***") challenging an arbitral award passed by a Learned Sole Arbitrator on August 28, 2014 ("***Impugned Award***"), whereby the claim made by the Petitioner, M/s Akshar Properties ("***Developer***") against the Respondent, Jai Himgiri Co-operative Housing Society Ltd. ("***Society***") was dismissed.

2. The disputes and differences between the parties pertain to a memorandum of understanding ("***MOU***") dated December 15, 2006 by which, the terms on which a Development Agreement towards redevelopment of the Society's property at Swastik Park, Chembur, Mumbai, was intended to be contracted between the parties. The Developer would contend that the MOU itself constituted a Development Agreement, vesting certain rights and interests in the Developer over the Society's property in the context of the redevelopment. The Society on the other hand, would contend that the MOU was merely an instrument recording the intention to execute a future Development Agreement which never came into being for nearly five years since the MOU was executed.

3. The Society's property comprised two buildings – Building A with 12 occupants and Building B with 16 occupants. The Society resolved on October 17, 2006 to appoint the Developer for purposes of carrying out the redevelopment of the Society's buildings. The intention was to erect two buildings to accommodate 28 flats for the existing members and further flats, shops and commercial premises for sale to third parties, by which the Developer would be compensated for undertaking the re-development. The consideration also entailed the Developer paying a sum of Rs. 42,00,000 to the Society as consideration, of which, Rs. 5,00,000 was paid upfront at the

time of execution of the MOU, with the balance Rs. 37,00,000 being payable on execution of the Development Agreement after obtaining a no objection certificate ("***NOC***") from the Additional Collector of Mumbai Suburban and Municipal Corporation of Greater Mumbai.

4. The NOC from the Collector was necessitated because the land on which the buildings of the Society stand belongs to the State. The land had been leased to the Society under a lease agreement dated May 11, 1983. According to the Society, the Developer had undertaken to secure the NOC from the State as part of his obligations to pursue the redevelopment, whereas the Developer would contend that his only obligation was to file the request for the NOC and the obligation of securing the NOC was that of the Society. On November 22, 2006, the Developer wrote to the Deputy Collector requesting for the NOC.

5. The MOU came to be extended from time to time but eventually, neither was the Development Agreement executed nor was the NOC from the Collector forthcoming. The parties did exchange drafts, but the entitlements were still under negotiation and until 2011, neither of the aforesaid two milestones was met. On February 27, 2011, the Society terminated the MOU and enclosed a cheque for the amounts received from the Developer and contended that the relationship between the parties was being brought to an

end. This led to disputes and differences between the parties being referred to arbitration under the arbitration clause contained in the MOU.

6. In the arbitration, the Developer sought declaratory relief that the MOU was valid and binding and that the resolution of the Society dated February 27, 2011 was invalid. The Developer sought specific performance of the MOU and a direction that the MOU should be registered to secure the interests of the Developer in the property created under the MOU. In the alternative, the Developer sought not only the refund of the money paid along with interest at the rate of 15% per annum, but also damages in the sum of Rs. ~14.13 crores.

7. The Society countered the claims by contending that the MOU was nothing but merely an indicative instrument of a conditional contract with a vital condition precedent, namely the NOC of the Collector for the redevelopment having to be met before it could become a binding agreement. It was contended that the general body had neither been presented with, nor had it reviewed, the draft of the MOU for the MOU to be elevated to the status of a Development Agreement. Plans had to be firmed up and they were still being negotiated. The execution of the Development Agreement would necessarily entail approval of the members of the Society. The Society contended that as a Class II occupant of government land, getting an NOC

from the government was a vital condition precedent, without which there could have been no redevelopment agreement.

8. The NOC from the State not having been secured, it was contended that the MOU was nothing but a mere arrangement to appoint the Developer to carry out construction activity for which consideration would be paid, all of which was provided the Development Agreement was executed in accordance with the finalized commercial terms, and the NOC was received. The Society also contended that the very fact that the MOU was extended from time to time would indicate that it was a temporary instrument and not an instrument that created any long term vested interest in the Developer for purposes of carrying out the redevelopment.

9. In the Impugned Award, the Learned Arbitral Tribunal held that the MOU was neither stamped nor registered and does not create any interest in the name of the Developer in the property. Even if the MOU were to be impounded for stamping (being a transaction relating to immovable property), for it to be treated as a Development Agreement, the absence of registration was vital from the perspective of specific performance.

10. That apart, the Learned Arbitral Tribunal held that it would have been impossible to have a conveyance of any interest in the land in favour of the

Developer considering that the Society was merely a Class II occupant of the government land and the Society only had ownership over the buildings erected on such land. The Learned Arbitral Tribunal found that the termination may have been opportunistic and driven by commercial motivations although it was effected after waiting for long, but it was necessary for any adjudication of the claim to examine whether it was legally tenable and feasible to award specific performance of the MOU.

11. The Learned Arbitral Tribunal examined the judgment of a Learned Division Bench of this Court in ***Chheda Housing***[1] to consider the claim of the Developer that the MOU entrusted the work of development with added rights to sell the constructed portion to flat purchasers, who would form a co-operative housing society to which the owner of the land is obliged to convey the constructed portion as also the land beneath the construction. This is one of the classifications of various types of development agreements articulated in ***Chheda Housing***, and the Learned Arbitral Tribunal found that this description did not fit the MOU. Considering that the underlying land was held by the Government and no NOC from the Collector had been forthcoming, the Learned Arbitral Tribunal held that it was impossible to construe the MOU as entailing an obligation on the owner of the land to

1. Chheda Housing Development Corporation Vs. Bibijan Shaikh Farid & Ors.- ***2007 (3) All MR 780***

convey interest in the land pursuant to the MOU. Indeed, that is why the MOU entailed only a payment of an initial sum of Rs. 5,00,000 and the balance amount was payable after the Development Agreement was executed and the NOC had been obtained.

12. Therefore, the Learned Arbitral Tribunal refused to grant specific performance. As regards damages, the Learned Arbitral Tribunal found that no evidence had been led to quantify and demonstrate the damages suffered by the Developer. That apart, the Learned Arbitral Tribunal found that even damages could not be awarded because only if a fit case for grant of specific performance was made out, and yet specific performance could not be granted, then would be scope for damages as an alternative. Therefore, the Learned Arbitral Tribunal repelled the claim for damages as well.

Analysis and Findings:

13. I have heard the Learned Advocates for the parties against this backdrop and with their assistance, examined the material on record. I have reviewed the Impugned Award from the perspective of the grounds of challenge pressed on behalf of the Developer.

14. To my mind, it is very difficult to accept the contentions of the Developer against the Impugned Award within the limited scope of

interference under Section 34 of the Act. The contention on behalf of the Developer, that the finding by the Learned Arbitral Tribunal that the MOU was not a binding and concluded contract that vested in the Developer, any interest in the Society's property is perverse and patently illegal, is not something that lends itself to acceptance. To begin with, in contrast with the contention made on behalf of the Developer, I find that the Learned Arbitral Tribunal has expressly articulated the reasons for which it chose not to grant relief.

15. The Learned Arbitral Tribunal has indeed noticed the key provisions of the MOU but has held that the very fact that the MOU did not translate into a Development Agreement and the parties were still negotiating and indeed the underlying land on which the redevelopment had to be carried out did not belong to the Society, the redevelopment of which still needed approval of the Government, the MOU was incapable of being specifically enforced. The arrangement of the structure of the Impugned Award may have interspersed findings and contentions but it is not possible to hold that reasons that have been arrived at by the Learned Arbitral Tribunal are not discernible.

16. To my mind, the finding on the inability to grant specific performance is a valid and reasonable finding and within the domain of the Learned Arbitral Tribunal. The interpretation of contract is squarely a matter for the

Learned Arbitral Tribunal to undertake, and unless the interpretation is of a nature where it would be impossible for any reasonable person to take such an interpretation, it is not open for the Section 34 Court to interfere with an arbitral award.

17. I also do not find any reason to find fault with the Learned Arbitral Tribunal's reading of the judgement in ***Chheda Housing***. Indeed, the MOU envisaged what would eventually need to be contained in the Development Agreement. But for the Development Agreement to come into being and for conveyance of the land to be made to various flat purchasers and purchasers of commercial premises after the redevelopment, at the first instance, the land would need to vest in the Society and the NOC in that regard would need to have been obtained. The Learned Arbitral Tribunal found that the Developer was well aware of this position even before executing the MOU and consciously struck this bargain. Therefore, the Development Agreement not having been executed and no NOC having been obtained, in the peculiar facts of this case, it would not be possible to treat the MOU as an instrument that for all purposes of law should be regarded as a Development Agreement.

18. Indeed, there are judgments of this Court that have pointed out that the nomenclature of the instrument is irrelevant and one must examine whether the instrument reduces to writing every material facet of the development that

needs to be carried out. That not being the case, and the parties themselves having consciously renewed the MOU from time to time, it was evident that the MOU was not a firm and conclusive Development Agreement for it to vest any interest in the underlying property, in favour of the Developer. Therefore, on this limb of attack to the Impugned Award too, I find that no case for interference is made out.

19. It is indeed true that the Society effected the termination after a change in the managing committee of the Society. However, that by itself would not turn the needle in favour of the Developer, inasmuch as the Learned Arbitral Tribunal has given due regard to the agreement between the parties, and returned findings in accordance with the agreement. The instrument between the parties being the MOU, which was being renewed from time to time, in my opinion, it would be very difficult for any reasonable review of the Impugned Award to hold that the Award is perverse or patently illegal for interference by this Court to be warranted.

20. I cannot lose sight of the scope of jurisdiction under Section 34 of the Act – it is well covered in multiple judgements of the Supreme Court including ***Dyna Technologies***[2], ***Associate Builders***[3], ***Ssangyong***[4], ***Konkan***

2 Dyna Technologies Private Limited v. Crompton Greaves Ltd – (2019) 20 SCC 1
3 Associate Builders vs. Delhi Development Authority – (2015) 3 SCC 49
4 Ssangyong Engineering and Construction Company Ltd v. National Highways Authority of India (NHAI) - (2019) 15 SCC 131

Railway[5], and ***OPG Power***[6]. Even implied reasons that are discernible, may be inferred by the Section 34 Court, to support the just and fair outcome arrived at in arbitral awards. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these judgements.

21. In the result, in my view, no case for interference with the Impugned Award within the scope of jurisdiction under Section 34 of the Act has been made out. Therefore, the Petition is ***dismissed***.

22. 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.]

*5 Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking – **2023 INSC 742***
*6 OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd. & Anr.– **(2025) 2 SCC 417***