$~J

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Judgment reserved on: 17.09.2025*
*Judgment pronounced on: 06.12.2025*

\+ **O.M.P. 548/2008**

SMT. KESHAR AND ANOTHER .....Petitioners

Through: Mr. I.S. Dahiya, Adv.

versus

SHRI SANDEEP LAKRA AND ANOTHER .....Respondents

Through: Mr. K Solanki, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE JASMEET SINGH**

**JUDGM E NT**

**1.** This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to challenge the Arbitral Award dated 08.03.2008 passed by the Arbitral Tribunal ("***Tribunal***") in the matter of "***Sh. Sandeep Lakra v. Smt. Keshar & Anr.***" The original petition was filed by the petitioner Nos. 1 and 2, i.e. Smt. Keshar and her son Shri Raj Singh, who were respondents before the Arbitrator. The respondent No.1 was the claimant before the Arbitrator. During the pendency of present petition, the petitioner No. 1 died on 26.12.2023. The same was duly recorded *vide* order dated

22.03.2024. Therefore, petitioner No. 2 ("***petitioner***") is the only contesting party in the present petition.

**FACTUAL BACKGROUND**

**2.** In 1972, the entire village abadi of Nangal Dewat **("*village*"),** measuring approximately 700 bighas, was notified for compulsory acquisition for the expansion of the airport. The acquisition was undertaken under Section 4 of the Land Acquisition Act, 1894 *vide* Award No. 16/1985-86.

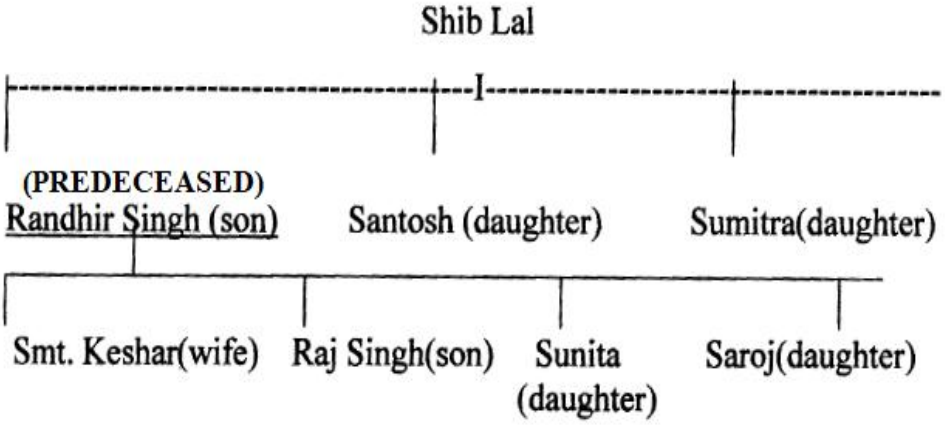
**3.** A writ petition was filed by the villagers challenging the acquisition of the residential sites located in Lal Dora Abadi and Extended Lal Dora Abadi before this Court bearing Writ No. 481 of 1982, which was later withdrawn upon an assurance from the Government and the Airport Authority of India that the villagers would be rehabilitated.

**4.** An area of 700 bighas in Revenue Estate of Village Rangpuri, Delhi was acquired by the Airport Authority of India for rehabilitation of evictees, which later came to be known as village Rangpuri. The Delhi Development Authority ("***DDA***") was assigned the task of development of said area and allotment of the plots to eligible persons.

**5.** On 06.10.2005, DDA held a draw of lot for allotment of plots to 308 eligible persons. Sh. Shib Lal, predecessor-in-interest of the petitioner and Smt. Keshar, also had his residential home in the village. He got allotted an alternative residential plot under the rehabilitation scheme, being Plot No. 44, Block C measuring 550 square meters in village Rangpuri, Delhi. ("***subject property***").

**6.** Sh. Shib Lal died on 06.12.2002 intestate, leaving behind two daughters, one son of the predeceased son, two daughters of the

predeceased son along with the widow of the predeceased son. The family chart is reproduced as below:-




(Smt. Keshar and Raj Singh are petitioners here)

**7.** The subject property was allotted to Sh. Shib Lal *vide* letter No. F-18(270)/2005/LSB(R)/799 dated 19.01.2007. Since there were relinquishment deeds dated 01.05.2006 and 07.11.2006 already in the favour of the petitioner, DDA *vide* its letter dated 01.08.2007 bearing No. F.18/2702005/LSB/7681 sanctioned the mutation of the said subject property in his favour. Thereafter, through allotment letter dated 06.08.2007 bearing No. F18/(270)/2005/LSB(R)/7795, the DDA formally allotted the said subject property to petitioner. Subsequently, possession of the same was handed over.

**8. <u>Facts as per the petitioner:-</u>**

**8.1** In November 2005, Smt. Keshar went to visit her ailing brother in Jhajjar, Haryana and remained there for a period of two months.

**8.2** Subsequently, in the month of May/June 2006, Sh. Sis Pal who was a property dealer in the village informed the petitioner that his mother had sold her share in the subject property (i.e. half of the

subject property), but, upon inquiry, Smt. Keshar denied the same. However, she informed that Sh. Bhim Singh, nephew of Smt. Keshar, had asked her to put her thumb impression on several stamp papers, blank as well as typed papers.

**8.3** The petitioner reported the acts of Sh. Bhim Singh and Sis Pal to Superintendent of Police, Jhajjar, Haryana and got an FIR registered being FIR No. 160/2006 under Section 420,467,468 and 471 of Indian Penal Code, 1860 ("***IPC***") with the police station in Bahadurgarh, Haryana. During the investigation Sh. Bhim Singh admitted his guilt and it was confirmed that he had obtained the thumb impressions of Smt. Keshar on blank papers in lieu of getting old age pension and he also admitted that he had received an amount of Rs. 2 lakhs from Sh. Sis Pal and Sh. Iqbal Singh, local property dealers.

**8.4** Sh. Bhim Singh, Sis Pal and Iqbal Singh assured the petitioner that no action would be taken in pursuance of the said Agreement executed and upon this assurance only the proceedings under IPC were not pressed.

**8.5** The petitioner and Smt. Keshar got intimated about the alleged transaction having taken place in November, 2005 through notice of execution of this Court sent in September, 2008.

**9. <u>Facts as per the respondent:-</u>**

**9.1** The respondent No. 1 disputing the claims alleges that the Smt. Keshar approached the respondent No.1 and represented herself to be a legal heir of Late Randhir Singh who was a sole legal heir of Late Shiv Lal Singh, the original allottee of the subject property

allotted by the DDA. She asserted that she held one half share in the subject property along with the petitioner. It was mentioned by Smt. Keshar that she was in dire need of funds and therefore she was willing to sell her right title and interest for Rs. 45,000 per square meter. Subsequently, an Agreement to Sell was executed between the parties for a total consideration of Rs. 1.23 crores. The respondent No. 1 paid an advance to the tune of Rs. 7,00,000/- out of which Rs. 4 lakhs were paid in cash and Rs. 3 lakhs were paid *vide* cheque No. 230348 which was duly encashed by Keshar. As per the said Agreement, delivery of possession was to be effected as soon as the physical possession was obtained from the DDA.

**9.2** The petitioner lodged an FIR alleging fraud on the part of the respondent No. 1. However, the investigation revealed that no fraud has been committed by the respondent No.1. The Investigating Officer filed an application seeking to close the FIR which was allowed by the Court of competent jurisdiction. Therefore, no irregularity was found in the transaction between Smt. Keshar and the respondent No. 1.

**9.3** In June of 2007, the respondent No. 1 approached Smt. Keshar for the performance of obligations under the Agreement to Sell but she refused the same and unilaterally increased the sale consideration and demanded to Rs. 65,000 per square metre which was contrary to the agreed terms. Smt. Keshar declined to honour her commitments under the Agreement to sell. Following this, the respondent No. 1 learnt from the local residents that Smt. Keshar had relinquished her share in favour of the petitioner, which was

duly verified from the Sub- Registrar's office.

**9.4** Since the petitioner was acting with dishonest intent and was trying to create 3rd party rights, the respondent No. 1 issued a notice dated 18.07.2007 to the petitioner invoking arbitration and referring the dispute to Shri S.P. Sharma, the learned Arbitrator. The Arbitrator *vide* Impugned Award dated 08.03.2008 directed specific performance of the Agreement to Sell dated 19.11.2005.

**SUBMISSIONS ON BEHALF OF PETITIONER**

**10.** Mr. I.S Dahiya, learned counsel for the petitioner, argues that the Award dated 08.03.2008 is bad in the eyes of law as it is illegal and arbitrary and has been passed without application of judicious mind.

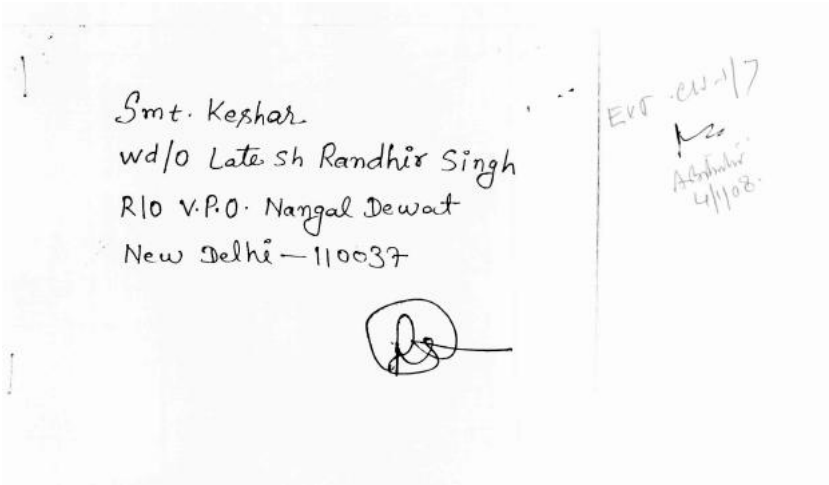
**11.** Mr. Dahiya has challenged the Award both on merits as well on the ground as being *ex parte*. He states that no notice under Section 21 of the 1996 Act was received by the petitioner. Additionally, he also states that no notice of the arbitration proceedings was ever served upon the petitioner.

**12.** He states that since the eviction programme pertaining to the village had been published in the newspaper and it was within the public knowledge that the petitioner and Smt. Keshar were not available at their given address. The respondent No. 1 intentionally initiated arbitration proceedings at that point in time when the petitionerand Smt. Keshar had to arrange for a temporary accommodation till the site allotted to them was being rehabilitated. Hence, the service of notice sought to be effected at the address of the petitioner and Smt. Keshar was returned unserved.

**13.** The learned counsel points out that on 21.08.2007, the Arbitrator

directed the respondent No.1 to furnish fresh address of the petitionerand Smt. Keshar. Upon furnishing fresh address, notices were again issued, which were returned back with the remark "*bar bar jane par praptkarta nahi milta, attah vapis*" indicating that the recipient was not available at the address and the respondent No.1 made an application for substituted service. The publication in 'Nav Bharat Times' was effected on 06.11.2007 which was also not seen by Smt. Keshar, being an illiterate lady, and the petitioner.

**14.** He also states that Ex.-CW-1/7, being Acknowledgement Due Card for notice dated 18.07.2007, is a procured and a manufactured document. The same has been reproduced below:-




**15.** He draws my attention to the signatures marked as "RS" and argues that they appear to be those of a well-educated person while the petitioner was only educated upto class 9th or the 10th standard. The admitted signatures of Mr. Raj Singh on petitioner's affidavit and on vakalatnama show complete variance. Moreover, the signatures were never identified by any hand-writing expert.

**16.** *On merits*, he states that the Agreement to Sell is based on fraud and

misrepresentation and the Agreement to Sell is a doctored document.

**17.** He further points out that the very fact that the Agreement to Sell notes the share of Smt. Keshar as half is incorrect and shows her fallacy of the document. The share of Smt. Keshar is 1/12$^{th}$ and not half as per the entitlement under Hindu Succession Act, 1956. The husband of Smt. Keshar, i.e. Sh. Randhir Singh had 1/3 share in subject property. Upon his death, he left four legal heirs namely-

**i.** Smt. Keshar (wife)

**ii.** Sh. Raj Singh (son)

**iii.** Smt. Sunita (daughter)

**iv.** Smt. Saroj (daughter)

Since Sh. Randhir Singh died intestate, his share was divided into four parts. Each of legal heirs became entitled to 1/12$^{th}$ share in the subject property.

**18.** Admittedly, Smt. Keshar does not know English or Hindi which is evident from the fact that she uses her thumb impression. The document does not contain any declaration that the contents have been read over and explained to her in vernacular language.

**19.** He, additionally, contends that the attesting witness to the agreement is one Kumar Ashish who is a resident of Dakiyana, Patna, Bihar and not a person residing in Delhi, where the said Agreement was executed. This circumstance casts serious doubts on genuineness of the said Agreement and demonstrates that it is the result of fraud and misrepresentation as the attestation was by an unknown individual who was not in any position to identify the parties.

**20.** It was urged by the learned counsel that the amount paid by cheques

to Smt. Keshar credited to her account in OBC Bank at Bahadurgarh, Haryana were illegally withdrawn by Sh. Bhim Singh.

**SUBMISSIONS ON BEHALF OF RESPONDENTS**

**21.** *Per Contra*, Mr. K Solanki, learned counsel for the respondent No.1, supports the Award and submits that the contentions of the petitioner are wholly incorrect.

**22.** Mr. Solanki, learned counsel, states that the petitioner cannot dispute the service of notice as the address reflected in the arbitral proceedings namely Plot No. 44, Block-C, Rangpuri, New Delhi is the very same address furnished by petitioner in the present petition as well as in the execution proceedings in which they admittedly received notices. He also states that initial notice of arbitration was duly received at this address and the initials of the petitioner were there acknowledging receipt on behalf of himself and Keshar. This clearly indicates that petitioner was deliberately evading service at an address consistently used by them across proceedings.

**23.** It is additionally urged that the petitioner was fully aware of the Agreement to Sell, as they themselves had lodged an FIR against the respondent No.1 at PS City Bahadurgarh, District Jhajjar, Haryana, in the course of which the respondent No.1 appeared and his statement was recorded, following which the FIR was closed. Despite having knowledge of the agreement, the petitioners never initiated any steps for its cancellation or revocation at any stage. Accordingly, it is submitted that the petitioner cannot now dispute the execution of the Agreement to Sell or the rights accruing to the respondent No.1 thereunder in respect of the subject property in question. Even the

averment of the petitioner that the existence of the Arbitral Award came to the knowledge of the petitioner only when notice under execution petition No. 304 of 2008 was received, is also baseless as they were living on the same address where the notice of Arbitration was served. The petitioner and Smt. Keshar were trying to evade the legal proceedings throughout.

**24.** He further argues that the petitioner has falsely portrayed that he lacks understanding of the English language. The petitioner has signed in English in some pleadings and in Hindi Language in others. List of documents reads as under:-

- In present OMP the supporting Affidavit on Page No.3 has been signed in Hindi.
- In Present OMP the main petition on Page No.17 has been signed in Hindi.
- In present OMP Annexure P-1 on Page 20 & 21 bears the signatures in English.
- In present OMP Annexure P-3 (Relinquishment Deed) again contains the signatures in Hindi.
- In Execution Petition No. 304/2008 the Petitioner No. 2 filed a supporting affidavit Page no. 9 which is a hand-written Affidavit in Hindi, which is deliberately filed totally in Hindi just to give an impression to the executing Court that the Deponent cannot understand English at all.
- In Present OMP Smt. Raj Rani w/o Sh. Raj Singh (Petitioner No.2) has filed a Power of Attorney purportedly

executed by the Petitioner No.2 in her favour (Page 29) which bears the Signatures of Petitioner No.2 in English.

- In Arbitration proceedings Exh. CW1/7 i.c. the AD Card also beras the initials of the Petitioner No.2 in English.

**25.** On merits, learned counsel states that the petitioners were well aware of the transaction between Smt. Keshar and respondent No. 1. This becomes more evident as an FIR was lodged by the petitioner regarding the fraud in Agreement to Sell in 2006 in Bahadurgarh, Haryana. However, the petitioners never served the respondent No. 1 with any notice of revocation qua the Agreement to Sell nor filed any suit for cancellation before the competent Court. Therefore, it is apparent that the petitioner was well aware of his obligations under the Agreement to sell.

**26.** It is stated that Smt. Keshar received Rs. 7 lakhs from the respondent No. 1 towards sale consideration out of which 4 lakhs were received in cash and 3 lakhs were received through cheque bearing no. 230348. He further states that petitioner and Smt. Keshar were well aware of the sale consideration credited to the account in lieu of the Agreement to Sell, as numerous transactions dated 15.04.2006, 15.04.2006, 03.07.2006, 06.01.2007, 03.07.2007, 04.01.2008, 16.04.2008, 16.04.2008 and 05.07.2008 were undertaken through the said bank account and Smt. Keshar was continuously operating and was utilising the sale consideration deposited by the respondent No.1.

**27.** He states that the averment that the petitioner is suffering from Schizophrenia and depression is not supported by any medical certificate. Moreover, the petitioner has never denied the signatures

over CW1/7 i.e. the AD card of the service of notice under Section 21 of the 1996 Act in the arbitration proceedings. Therefore, the contentions raised by the petitioner are without any factual or legal foundation.

**ANALYSIS AND FINDINGS**

**28.** I have heard the learned counsel of the parties and perused the material on record. Before dealing with the rival contentions, it is important to set out the scope of interference under Section 34 of the 1996 Act.

**29.** The scope of interference is limited. The Court while adjudicating a challenge against an Award under Section 34 of the 1996 Act does not sit as a Court of appeal. The Court cannot reappreciate the evidence nor can it interfere with the findings of the Arbitrator, if the same are plausible. It is not upon the Court to interfere with the findings of the Arbitrator even if there is a different view possible. The Arbitrator is the final authority on findings of fact as long as they are borne out from the pleadings and documents on record.

**30.** An Arbitral Award can be set aside under Section 34 of the 1996 Act if it falls within specific grounds under therein. These grounds have been discussed in catena of judgments by this Court and Hon'ble Supreme Court. I do not intend to multiply the authority, therefore reliance has been placed on ***Consolidated Construction Consortium Limited vs. Software Technology Parks of India***[1]**.**

**31.** Having set out the scope of Section 34 of the 1996 Act, I shall now deal with the challenges raised to the Arbitral Award in the present

[1]*2025 SCC OnLine SC 956 decided on 28.04.2025, ref. paragraphs 44-47*

case.

**32.** It would be apposite to mention that since the Award was ex-parte the petitioner could not make any contentions before the Arbitrator. The Award was based on the averments made by the respondent No. 1 in the statement of claims without the petitioner getting any opportunity to oppose the same. The relevant portion of the findings of the Arbitrator reads as under:-

> *"In view of the claim being uncontested by the respondents and further in view of the conduct of the respondents in remaining absent throughout the arbitration proceedings despite acknowleging the letter of intimation dated 18.7.07 from the claimant about the matter of dispute having been referred for arbitration and not even trying to know the fate of the proceedings by the respondents at any point of time clearly and manifestly proves that the respondent have developed malafide intentions and ulterior motives subsequent to the execution of the said agreement to sell dt. 19.11.2005 by the respondent no. 1 with the claimant. As such the respondents have definitely avoided to fulfill the obligations on their part and the delay is directly attributed to the respondents' conduct…"*

**33.** With regards to the service of notice, the Arbitrator observed that the respondent No.1 initiated the arbitration *vide* legal notice dated 18.07.2007. Thereafter, in the arbitration proceedings, notice dated 20.07.2007 was issued by the Arbitrator to the parties to appear on 21.08.2007. The petitioner did not appear before the Arbitrator on the

said date as the notice could not be served. Subsequently, fresh notices were served upon the petitioner dated 25.09.2007 on Bagdola address and Rangpuri address. Both notices were returned unserved. The respondent No.1 applied for substituted service before the Arbitrator which was thereafter effected by publishing a public notice in Nav Bharat Times (Hindi Edition). The Arbitrator, thereafter, proceeded *ex-parte* against the petitioners.

**34.** The Arbitrator, on merits, passed an *ex-parte* Award directing the following:-

> *"In view of my findings as above I hold that the claimant is entitled to the relief as per para 3 of prayer clause in the claim statement and the relief (s) claimed by him. As such I direct the respondents to comply with the terms of the agreement to sell dated 19.11.2005 and complete their/her part of the obligations of the same by handing over the actual possession of the plot no. 44, Block-C, Rangpuri, New Delhi to the claimant in terms of the agreement to sell dated 19.11.2005 and to execute and get register the sale deed / title documents in respect of his share in the said plot in favour of the claimant within 15 days from the receipt of the Deed of Conveyance from the DDA and further to receive the balance sale consideration if any from the claimant."*

**35.** The petitioner has broadly classified his challenge to the Award on 3 following grounds:-

**A.** No notice under Section 21 of the 1996 Act was served, which is a sine qua non for initiating the arbitration proceedings;

**B.** The Award is an *ex-parte* award and the petitioner was never served in the arbitration proceedings;

**C.** The Agreement to Sell is based on fraud and cheating which is evident from the fact that the respondent No. 1 was not even aware of the correct factual matrix.

**36.** The cause of action paragraph in the Statement of Claims filed by the respondent No. 1 reads as under:-

> *"12. That the cause of action firstly arose in favour of the claimant and against the respondent on 15.11.2005 when the respondent approached the claimant with offer to sell her share in the said plot to the claimant. The cause of action further arose on 19.11.2005 when the respondent entered into the agreement to sell in respect of her share in the said plot with the claimant and received advance consideration as mentioned above. The cause of action further arose on 1.5.2006 when the respondent no. 1 executed a relinquishment deed in favour of the respondent no. 2. The cause of action further arose in the month of June 2007 when both the respondents put new condition to increase the rate of the consideration to be paid by the claimant @ Rs.65,000/- per sq. mtrs. The cause of action further arose when the claimant requested this Hon'ble Tribunal to invoke the Arbitration clause in the said*

*agreement and initiate the arbitration proceedings for resolving the dispute."*

**37.** The purported notice under Section 21 of the 1996 Act was sent to only Smt. Keshar on 18.07.2007. The same reads as under:-

*"To*
*Smt. Keshar*
*Wd/o Late Sh. Randhir Singh*
*New Delhi-110037*

*INTIMATION FOR SENDING THE REFERENCE IN THE MATTER IN DISPUTE TO THE NAMED ARBTIRATOR SH. S.P. SHARMA, ADVOCATE R/O FLAT NO. 4, HOUSE NO. 59/9, KISHAN GARH, VASANT KUNJ, NEW DELHI-70.*

*Dear Sir,*

*Please be informed: -*

*1. That you had executed an agreement to sell dated 19.11.2005, wherein the terms and conditions had been specifically laid down to execute the necessary and proper documents conveying the right, title and interest in favour of the undersigned or his nominee(s).*

*2. That the undersigned approached you to perform your part of the obligation(s) and the undersigned is also ready and willing to perform his obligation. But since you have been demanding the consideration to or increased much more than the agreed consideration. You have committed the breach of the terms and conditions in the agreement to sell dated 19.11.2005. Hence the dispute has arisen between you and the undersigned.*

*3. The undersigned is thus invoking the arbitration clause in the agreements to sell dated 19.11.2005 and refer the matter*

*in dispute to the Arbitrator Sh. S.P. Sharma for resolving the dispute arisen between you and the undersigned.*

*UNDERSIGNED*

*Dated: 18, July 07* *(Sandeep Lakra)*
*S/o Sh. Jai Narain Singh*
*R/o VPG Mundka, Delhi-41*"

**38.** This notice under Section 21 of the 1996 Act was never served upon the petitioner and Smt. Keshar. As far as Smt. Keshar is concerned, there is no acknowledgment due card or proof of service carrying her thumb impression. Admittedly, Smt. Keshar was an illiterate woman and the notice under Section 21 of the 1996 Act is in English. Therefore, it cannot be assumed that she had knowledge of the commencement of Arbitration proceedings. Even though, as per cause of action paragraph, the respondent No.1 was aware that on 01.05.2006, Smt. Keshar had executed the deed in favour of petitioner and that the petitioner was a veritable party to the arbitration proceedings, yet, no notice under section 21 of the 1996 Act was served upon the petitioner. However, petitioner was impleaded as respondent No. 2, for the first time, in the arbitration proceedings.

**39.** It is also pertinent to mention that the address in the notice invoking arbitration dated 18.07.2007 is shown as "VPO Nangal Dewat, New Delhi". On the said date, the village of Nangal Dewat had already begun to be evacuated for the acquisition by Airport Authority of India pursuant to an order dated 15.06.2007, passed by the office of ADM/LAC (South West), New Delhi. The same is reproduced below:

115

OFFICE OF THE ADM / LAC (SOUTH WEST)
ROOM NO12, OLD TERMINAL TAX BUILDING, KAPASHERA,
NEW DELHI-37.

**PUBLIC NOTICE**

The Hon'ble High Court of Delhi in Writ Petition No. 775/2007 titled Jaipal Vidyalankar & others Vs DDA and others vide Order dated 30.5.2007 has directed that the vacation of acquired land in village Nangal Dewat will begin on **01.07.2007** and end on **31.7.2007.**

In compliance of the Order of Hon'ble High Court, the land & structures acquired vide award No. 16/86-87 in village Nangal Dewat will be handed over to Airport Authority of India as per the programme below:

| ***Date*** | ***Programme*** |
|---|---|
| ***02.7.07*** | ***Handing over of acquired land of Gaon Sabha*** |
| ***10.7.07*** | ***Handing over of land & structures under commercial use*** |
| ***18-21.7.07*** | ***Handing over of land & structures falling in Extended Abadi Area*** |
| ***25-28.7.07*** | ***Handing over the land & structures falling in Old Lal Dora Area*** |
| ***30-31.7.07*** | ***Handing over possession of acquired land recorded in the name of communities.*** |

All the owners/residents & occupiers of above land and structure are hereby informed to vacate the premises before the date mentioned above.

(K.K. DAHIYA)
ADM/LAC(SW)

Dated 15th June 2007
Copy to:

1. Chairman, AAI, Rajiv Gandhi Bhawan, New Delhi.
2. Vice Chairman, DDA, INA, Vikas Sadan, New Delhi
3. Dy. Commissioner (SW): for information please
4. DCP (South west): for information and necessary action
5. Dy. Secy (L&B), Land & Building Deptt, , New Delhi
6. Managing Director (DIAL, IGI Airport, for wide publicity
7. C.O.O. (BSES), Nehru Place, New Delhi
8. SDM (Vasant Vihar)/ Tehsildar (Vasant Vihar)
9. Notice Board /NT (LA) for wide publicity in the village

**40.** Once the entire village was evicted for the purpose of acquisition by the Airport Authority of India, it cannot be said that petitioner could have been served at the said address and hence, *prima facie* the AD card seems to be a fraudulent document. Additionally, the respondent No.1 did not examine any handwriting expert to prove the signatures of the petitioner on exhibit CW1/7.

**41.** In the view of above facts, I have no hesitation in coming to the conclusion that the purported letter dated 18.07.2007, invoking arbitration, was neither served on Smt. Keshar nor the petitioner.

**42.** At this juncture, it will also be relevant to mention ***Adavya Projects (P) Ltd. v. Vishal Structurals (P) Ltd.***[2] which while partially setting aside the judgment of this Court in ***Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd.***[3] has upheld the said judgment on the point that without a notice under Section 21 of the 1996 Act, no arbitration proceedings can commence. Therefore, a notice under Section 21 of the 1996 Act operates as a sine qua non for the initiation of arbitral proceedings and constitutes a mandatory condition precedent to the commencement of the said proceedings. The absence of such notice strikes at the root of the arbitral process, as it deprives the respondent of a fair opportunity to be heard. Consequently, any arbitral proceedings initiated without issuance and service of a valid notice under Section 21 of the 1996 Act would be vitiated and cannot be sustained in law, as it fails to meet procedural requirement mandated by the statute. The operative portion reads as under:-

[2] *2025 SCC OnLine SC 806 decided on 17.04.2025.*
[3] *2017 SCC OnLine Del 7228 decided on 28.02.2017.*

*"45. The decision in Alupro Building Systems has been relied on by the High Court in its impugned order to hold that the notice under Section 21 is a mandatory requirement before a person can be made party to arbitral proceedings.*

*46. While we agree with the decision in Alupro Building Systems insofar as holding that the notice under Section 21 is mandatory, unless the contract provides otherwise, we do not agree with the conclusion that non-service of such notice on a party nullifies the Arbitral Tribunal's jurisdiction over him. ……"*

**43.** As per Section 34 (2)(a)(iii) of the 1996 Act, the Award can be set aside if the party making the application did not get proper notice of the appointment of an arbitrator or of the arbitral proceedings. The relevant portion of the said Section reads as under:-

*"34.* ***Application for setting aside arbitral award***

*….*

*(2) An arbitral award may be set aside by the Court only if—*

*(a) the party making the application 1 [establishes on the basis of the record of the arbitral tribunal that]—*

*….*

*(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;"*

**44.** In the light of the above analysis, it cannot be said that the notice invoking arbitration under Section 21 of the 1996 Act was effectively served upon the petitioner or Smt. Keshar. Smt. Keshar, was an illiterate lady. No proof of service has been placed on record to demonstrate that the notice was served upon Smt. Keshar, or even that any attempt was made to effect such service. The notice is not addressed to the petitioner and hence the alleged AD Card stated to have been signed by the petitioner is also of no assistance to the respondent No. 1. It is also pertinent to highlight that on the date of the notice, the entire village was being evacuated. Hence, there is no effective service of notice invoking arbitration either upon Smt. Keshar or upon the petitioner.

**45.** Another factor that weighs with me is that as per the cause of action paragraph of the Statement of Claim, the respondent No. 1 was aware that Smt. Keshar had executed a relinquishment deed in favour of the petitioner and hence the petitioner was a veritable party to the dispute. Despite that, neither any notice invoking arbitration was served or attempted to be served upon the petitioner nor any valid explanation been given for not doing so.

**46.** It will be relevant to deal with another aspect of the matter, the purported Agreement to Sell dated 19.11.2005. On the said date of Agreement to Sell, the share of Smt. Keshar in the subject property was $1/12^{th}$. The registered document, i.e. the relinquishment deed

shows the share of Smt. Keshar to be 1/12$^{th}$. It shows that Sh. Shib Lal had 3 legal heirs, being, Smt. Santosh, Smt. Sumitra and a predeceased son Sh. Randhir Singh. Sh. Randhir Singh had 4 legal heirs and hence share of each legal heir was 1/12$^{th}$. The same is reproduced below:-

27

भारतीय गैर न्यायिक

पचास रुपये

रु.50

भारत

INDIA

FIFTY RUPEES

Rs.50

INDIA NON JUDICIAL

दिल्ली DELHI

Shri Randhir Singh (pre-deceased son) survived by following persons as his legal heirs:-

| | | | |
|---|---|---|---|
| (i) | Smt. Kesar | Widow | Releasors |
| (ii) | Smt. Saroj | Daughter | |
| (iii) | Smt. Sunita | Daughter | |
| (iv) | Shri Raj Singh | Son (Grand son of Shri Shib Lal) | Releasee |

No other legal heir was left by the deceased other then aforesaid persons and he died in testate.

Whereas it is submitted that Shri Shib Lal was having agricultural land in village Sahupur, Delhi, comprising in Khasra No. 137(4-16), 157(4-16), 162(4-16), 210/2(2-8), 211(4-16), 212(4-16), 227(4-16) & 228(4-16) total measuring 36 bigha to the extent of 1/6th share, which stand acquired by the Govt. under the LA Act, vide Award No. 17/1986-87 of village Sahupur, Delhi. Now, the Hon'ble High Court on the appeal of predecessor in interest Shri Shib Lal Versus Union of India, being RFA No. 163 of 1993, has fixed the market value of the above land @ Rs. 47,224/- per bigha, with all statutory benefits. The execution arise out of above judgment of the Hon'ble High Court being Ex. No. 365 of 206, is pending disposal in the Court of shri Rakesh Sidharath, Additional District Judge, Delhi.

Whereas in the above execution, the above stated LR's above namely shri Raj singh to the extent to 11/12th share, Smt. Sunita to the extent of 1/12th share has already been substituted. However, it will not be out of place to state

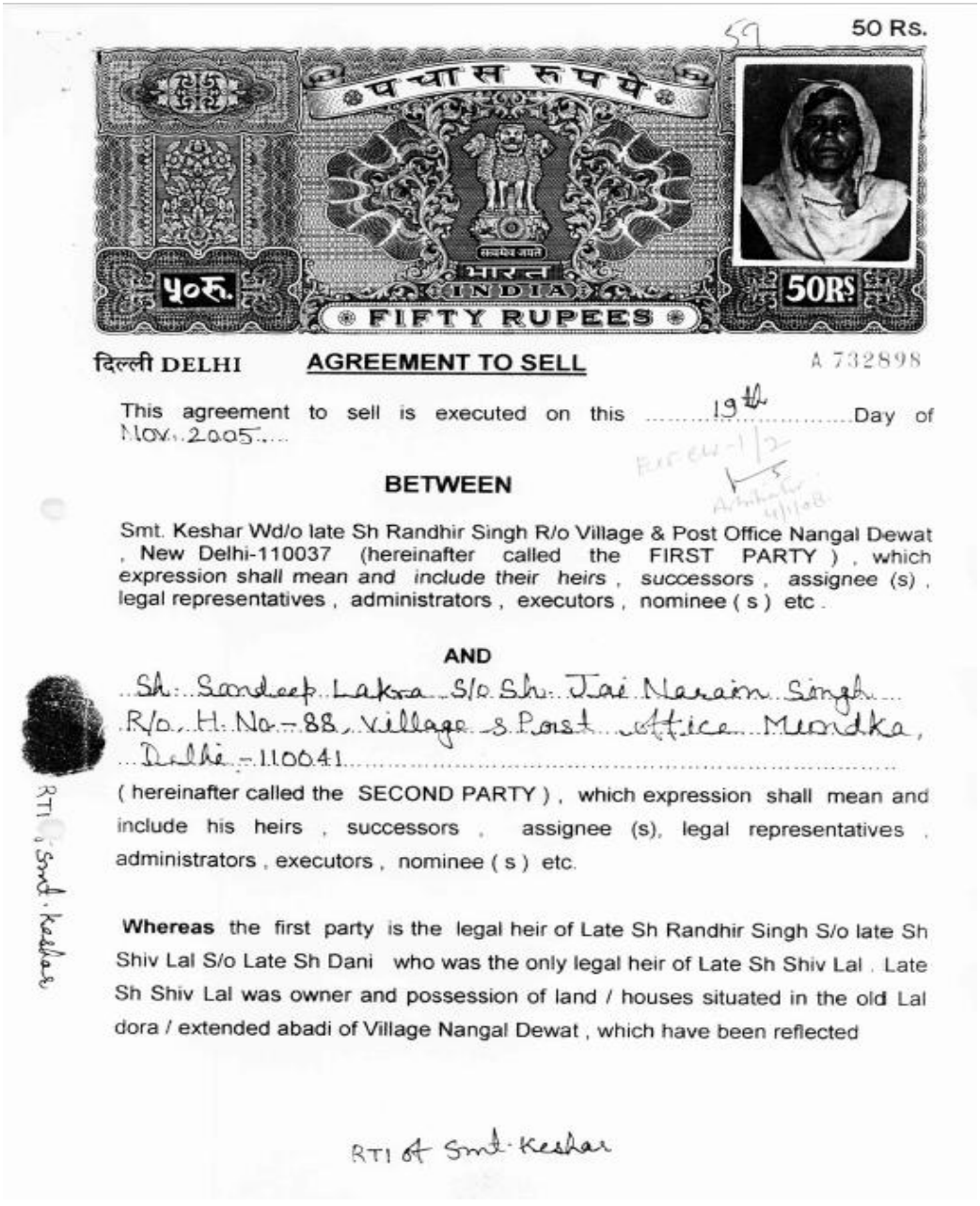
सुनीता सरोज राजसिंह

**47.** The order passed by the learned ADJ, Dr. T.R. Naval, in Ex. 186/01, dated 26.03.2004, also assumes relevance. The said order records that the compensation payable to Sh. Shib Lal was to be disbursed to his legal heirs in equal proportions. It further notes that the legal heirs of Sh. Shib Lal had relinquished their respective shares in favour of Sh. Raj Singh. Consequently, it stands established that the shares of all the legal heirs were equal, namely 1/12$^{th}$ each. The operative portion reads as under:-

> *"Smt. Santosh, Smt. Sumitra and Smt. Saroj relinquished their shares in favour of Shri Raj Singh on 11.7. 2003. Death certificate was also filed and proved on record by Shri Raj Singh. Smt. Kesar is also present. Her statement is recorded separately. She also relinquished her share in favour of her son, Raj Singh.*
>
> *In view of above discussion, it is held that amount of compensation, which was payable to late Shri Shiblal, was payable to his LRs. Smt. Santosh, Smt. Sumitra and LRs of late Shri Randhir Singh in equal manner. The amount of compensation which was payable to late Shri Randhir Singh, will be payable equally to Shri Raj Singh, Smt. Sunita, Smt. Saroj and Smt. Kesar. As Smt. Kesar, Smt. Saroj, Smt. Santosh and Smt. Sumitra relinquished their amount of share of compensation in favour of Shri Raj Singh so their amount of compensation be paid to Shri Raj Singh. Application stands disposed of with the observation that all of them were entitled to be subsituted in place of*

*Shib Lal but share of compensation will be payable to Shri Raj Singh and Smt. Sunita."*

**48.** A perusal of Relinquishment Deed and the order dated 26.03.2004 shows that at best Smt. Keshar had 1/12th share in subject property and at no point in time it was one half. On the contrary the Agreement to Sell reads as under:-



50 Rs.

पचास रुपये

भारत INDIA

FIFTY RUPEES

५०रु. 50Rs

दिल्ली DELHI

**AGREEMENT TO SELL**

A 732898

This agreement to sell is executed on this 19th Day of Nov. 2005.

**BETWEEN**

Smt. Keshar Wd/o late Sh Randhir Singh R/o Village & Post Office Nangal Dewat , New Delhi-110037 (hereinafter called the FIRST PARTY ) , which expression shall mean and include their heirs , successors , assignee (s) , legal representatives , administrators , executors , nominee ( s ) etc .

**AND**

Sh. Sandeep Lakra S/o Sh. Jai Narain Singh R/o H.No-88, Village & Post office Mundka, Delhi-110041

( hereinafter called the SECOND PARTY ) , which expression shall mean and include his heirs , successors , assignee (s), legal representatives , administrators , executors , nominee ( s ) etc.

**Whereas** the first party is the legal heir of Late Sh Randhir Singh S/o late Sh Shiv Lal S/o Late Sh Dani who was the only legal heir of Late Sh Shiv Lal . Late Sh Shiv Lal was owner and possession of land / houses situated in the old Lal dora / extended abadi of Village Nangal Dewat , which have been reflected

RTI of Smt. Keshar

RTI of Smt. Keshar

64

at S.I No. ....114.....of the consolidated list of entitled persons for allotment of rehabilitation Plot which has been submitted by the Nodel Officer / Land Acquisition collector Sh. S.S. kanawat before the Hon'ble High Court of Delhi on 16-12-2004 and at S.I. No. ..112.....of the list of 308 persons submitted by the Airport Authority of India to the DDA for holding the draw of lots for the allotment of alternative plot under the Rehabilitation scheme of village Nangal Dewat , New Delhi. After the death of Sh Randhir Singh the estate left behind by him has devolved upon the first party named above and his son namely .....Sh. Raj Singh..... both having ½ share each respectively being the legal heir of Late Sh Randhir Singh .

**Whereas** the above descripted land has been acquired by the Land Acquisition Collector at the instance of the Airport Authority of India for the purpose of extension of the Indira Gandhi International Airport and Palam Airport . The residents of Village Nangal Dewat challenged the said acquisition proceeding before the Hon' ble High Court of Delhi in cwp No . 481 / 82 titled as Daryao Disposed of the writ petition with the direction to the Airport Authority of India to rehabilitate the residents by the land acquisition Collector at an alternative site . The Airport Authority of India has acquired the land for the purpose of rehabilitation of Villagers of Nangal Dewat and the scheme is being formulated and the proceeding for rehabilitation of the residents of the Village are in progress . All the residents whose land situated in the lal dora / abadi of village Nangal Dewat has been acquired are to be allotted alternative plots in lieu of their acquired land at the place, where the residents of the village are to be rehabilitated.

**Whereas** on 6.10.2005 the DDA has hold a draw of lot for the allotment of the alternative plots in respect of 308 persons an and alternative plot plot being no. 44, Block/Pocket – C , measuring 550 sq mtrs situated in the Revenue Estate of Village Malikpur Kohi//Rehabilitation site of village Nangal Dewat (heireinafter

RTI & Smt. Keslar

62

called the said plot ) has been allotted in the name of Late Sh Shiv Lal S/o Sh Dani under theRehabilitation scheme of village Nangal Dewat , New Delhi in leiu of the acquired land / house owned and possessed by him situated in the lal Dora / extended abadi of village Nangal Dewat. The first party has ½ share out of the total 550 sq mtrs.

**Whearas** the first party is desirous to sell the said plot / shares of the said plot which has been allotted under the rehabilitation scheme of village Nangal Dewat along with all the future rights , claims and entitlement in respect of the said plot of the said party in order to satisfy sum monetary needs and requirements . The first party wants purchase a plot in sum other locality , other than the locality where the said plot is situated as the size of the said plot is not sufficient for providing the proper accommodation to the first party , therefore , the first party wants to purchase some other land / plot at a place which is suitable for the first party and the family of the first party as preference , requirement and wishes . The first party has also located some plot at the desired place which is available at cheaper rates and also larger in size than the said plot the first party has consulted the family members in respect of the sell of the said plot and the family members has assured the second party that the family members of the first party have agreed with the first party .

**Whereas** the first party for the aforesaid reasons has agreed to sell all their right , title and interest in the said plot for the same purpose the first party has contacted the second party is also intending to purchase some property at the place / the locality where the said plot is situated and thus the first party has agreed to sell and the second party has agreed to purchase the same . The first party has agreed to sell all the right , title and interest in respect of the said plot to the second party for a sell consideration @ Rs. 45,000/- per sq mtrs. and the total sale consideration for the ½ share of the first party comes to Rs.....1,23,75,000/-.....and a sum of Rs. .....7,00,000/-.....has been paid by the second party to the first party towards the advanced / part payment regarding the same

**49.** The subject matter of the said Agreement to Sell is shown to be one half of the subject property, which cannot be the case in light of the abovestated. The very fact that the share of Smt. Keshar is shown to be half in the subject property shows that the said Agreement to Sell is a fraud and manipulated document. The respondent has neither clarified the same in his pleadings nor during arguments as to how and in which possible way Smt. Keshar was the owner of the one half of the subject property.

**50.** The respondent No.1 in the reply and even the arguments has been unable to dispute this position or otherwise. This clearly shows that the respondent No.1 was not aware of the factual position while making the agreement and had obtained the thumb impression of Smt. Keshar through fraud and concealment.

**51.** Additionally, even, hypothetically, if I presume the Agreement to Sell to be a genuine document, the very fact that Smt. Keshar executed the same by putting her thumb impression, shows that she is an illiterate lady. Such a document needs an endorsement that the contents of the document were read over and explained to her in vernacular language, which is missing. The same further fortifies my conclusion.

**52.** It is evident that Smt. Keshar did not know the nature of document she was putting her thumb impression on and the respondent No. 1 was obviously not aware of the correct factual position and hence, it is clear that the respondent No. 1 had fabricated the said Agreement to Sell. The respondent had the burden of establishing that the contents of the said Agreement to Sell were read over and explained to Smt. Keshar and the thumb impression was appended after Smt. Keshar had

understood and agreed to the contents of the purported Agreement. The same has not been discharged by the respondent before the Arbitrator or this Court. The Hon'ble Orissa High Court, Cuttack Bench, in ***Damodar Sahoo & Others v. Natabar Sahoo & Others***[4] held as under:-

> *"21. As such, when due and proper execution of the sale deed Nos.5066 and 5067 vide Exts. A and C dated 30.06.1981 by an old, ailing and illiterate vendor i.e. plaintiff in favour of the defendant Nos.1 and 2 has remained under challenge on the allegation against the defendants that, they (defendants) have managed to execute the same from him (plaintiff) by practising fraud and misrepresentation and when it is the case of the old, ailing and illiterate executant i.e. plaintiff that, he (plaintiff) has not executed the said deeds with his intention and knowledge of execution thereof, then in these nature of allegations and counter allegations, the burden of proof lies upon whom has already been clarified by the Hon'ble Courts in the ratio of the following decisions:-*
>
> *(i) In a case between* ***Sankirtan Sha & Others Vrs. Jaya Krushna Patel reported in (2003) CLR 780 in Para No.8*** *that, the principle applicable to a pardanashin lady is in pari materia application to an illiterate person. The person, who relies on a document to sustain a transaction entered into with an illiterate*

[4]*SA No.144 of 1987 decided on 16.05.2025.*

*person has to establish that, the said document was executed by him (illiterate person) only after clearly understanding the nature and character of the transaction. The burden unless is discharged physical signing of the document cannot be treated as the mental act of the author.*

*(ii) In a case between* ***Smt. Sarada Sawalka Vrs. Swatantra Kumar Agarwal reported in 2014 (Supp.II) OLR 744 in Para No.10.2*** *that, protection applicable to a Pardanashin woman can be extended to an illiterate and rustic village woman or to* ***documents made by old, invalid, infirm and illiterate persons.***

*(iii) In a case between* ***Smt. Hiramani Swain (died) Chaitan Swain & Others Vrs. Ramesh Chandra Senapati & Others*** *reported in* ***2001 (1) OLR 648*** *that, when a document is executed by an illiterate pardanashin lady, she need not prove fraud. It is the person, who depend upon the document is to prove that,it had been read over and explained to the executant and she signed the same after understanding the contents thereof.*

*(iv) In a case between* ***Maguni Charan Dey Vrs. Ujaimani Dei & Others*** *reported in* ***2018 (II) CLR 503 in Para No.10*** *that, one who wants to rely on a document executed by an illiterate person must be able to establish that, the contents of the said documents*

*were read over and explained to that person and the signature or thumb mark was appended to it by the executant after understanding the purport and/or the contents of the document.*

*(v) In a case between* ***R.J. Gounder Vrs. V.T. Elaiya*** *reported in* ***AIR 1972 Mad. 336*** *that, onus of proof relating to executions by illiterate person. Burden of proving that, document was properly explained and interpreted to illiterate person before he affixed his marks thereupon is on the party relying on the document.*

*(vi) In a case between* ***Somanath Mishra Vrs. Narahari Das*** *reported in* ***AIR 1977 NOC 304 (Orissa)*** *that, an illiterate person cannot read the contents of the documents and so one who wants to rely on such a document must establish that, the illiterate person knew the contents and purport of the document before affixing his or her left hand thumb impression or mark to that document. Merely on the proof of the signature or thumb impression of such an illiterate person on such a deed, a court cannot hold that, the said document was duly executed, as due execution of a deed does not merely mean singing on or putting one's mark to a deed without knowing the contents of the same.*

*Due execution of a document must always indicate that, the mind of the executant did concur with the contents of the document and with such concurrence he/she put her signature or thumb impression on the deed. So long, that is not done, it cannot be said that, document was duly executable.*

*Law Courts, therefore, consider it desirable and necessary that, one who wants to rely on a document executed by an illiterate person must be able to establish that, the contents of the said document were read over and explained to that person and the signature or thumb mark was appended to it by the executant after understanding the purport and/or the contents of the document.*

*(vii) In a case between* ***Makha Bewa Vrs. Bimbadhar Kandi*** *reported in* ***41 (1975) CLT 978*** *that, no certificate in the deed to the effect that, the illiterate executant executed the deed after understanding the contents of the same, but, merely stated that, the deed was read over and explained to the executant is not sufficient."*

**53.** Further, reliance is also placed on ***Krishna Mohan Kul v. Pratima Maity***[5] wherein it was held that the principles of equity mandate that where the circumstances raise a presumption of influence whether by reason of relationship, mental or physical infirmity, illiteracy, or

[5]*(2004) 9 SCC 468 decided on 09.09.2003.*

inability to comprehend the nature of the act the beneficiary must establish that the transaction represents the conscious and voluntary act of the executant. This requirement extends beyond the mere physical act of signing or affixing a thumb impression and obliges the beneficiary to demonstrate the mental act of understanding and assent. The relevant portion reads as under:-

> *"13. In judging the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donee/beneficiary under a document to prove due execution of the document in accordance with law, even dehors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before the court."*

**54.** The Arbitrator derives its jurisdiction from a valid and enforceable agreement between the parties. A document which is vitiated by fraud strikes at the very foundation of the Agreement, being consensus ad idem, which is the cornerstone of any contract. Where any contract is founded on fraud going to the root of transaction, the existence of the Agreement itself becomes questionable. In such a case, the fraud goes to the root of the entire contract and also renders agreement to arbitration void. Accordingly, any document tainted by fraud becomes

incapable of being the subject matter of the Arbitration.

**55.** Reliance is placed on ***Vidya Drolia v. Durga Trading Corpn.***[6]The relevant paragraph has been reproduced below:-

> *"73. A recent judgment of this Court in Avitel Post Studioz Lid. v. HSBC PI Holdings (Mauritius) Ltd., (2021)4 SCC 713, has examined the law on invocation of "fraud exception" in great detail and holds that N. Radhakrishnan as a precedent has no legs to stand on. We respectfully concur with the said view and also the observations made in para 34 of the judgment in Avitel Post Studioz Lid., which quotes observations in Rashid Raza v. Sadaf Akhtar, 2019 8 SCC 710(Rashid Raza case, SCC p. 712, para 4)*
>
> > *"4. The principles of law laid down in this appeal make a distinction between serious allegations of forgery/fabrication in support of the plea of fraud as opposed to "simple allegations". Two working tests laid down in para 25 are: (1) does this plea permeate the entire contract and above all, the agreement of arbitration, rendering it void, or (2) whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain."*
>
> *to observe in Avitel Post Studioz Ltd.: (SCC para (35)*

[6]*(2021) 2 SCC 1 decided on 14.12.2020.*

> *"35.... it is clear that serious allegations of fraud arise only if either of the two tests laid down are satisfied and not otherwise. The first test is satisfied only when it can be said that the arbitration clause or agreement itself cannot be said to exist in a clear case in which the court finds that the party against whom breach is alleged cannot be said to have entered into the agreement relating to arbitration at all. The second test can be said to have been met in cases in which allegations are made against the State or its instrumentalities of arbitrary, fraudulent, or mala fide conduct, thus, necessitating the hearing of the case by a writ court in which questions are raised which are not predominantly questions arising from the contract itself or breach thereof but questions arising in the public law domain."*

*74. The judgment in Avitel Post Studioz Ltd. interprets Section 17 of the Contract Act to hold that Section 17 would apply if the contract itself is obtained by fraud or cheating. Thereby, a distinction is made between a contract obtained by fraud, and post-contract fraud and cheating. The latter would fall outside Section 17 of the Contract Act and, therefore, the remedy for damages would be available and not the remedy for treating the contract itself as void.*

***xxxxxx***

*78. In view of the aforesaid discussions, we overrule the ratio in N. Radhakrishnan, 2010 1 SCC 72, inter alia observing that allegations of fraud can (sic cannot) be made a subject-matter of arbitration when they relate to a civil dispute. This is subject to the caveat that fraud, which would vitiate and invalidate the arbitration clause, is an aspect relating to non-arbitrability…."*

**56.** Keeping in mind the above discussion, it is evident that the Agreement to sell has been executed by fraud which goes to the very root of the agreement. Therefore, the Agreement to Sell falls within the definition of fraud under Section 17 of the Indian Contract Act, 1872. Since the agreement to sell fails, the arbitration clause itself fails thereby rendering the subject matter non-arbitrable.

**57.** The argument raised by the respondent No. 1 on the point of encashment of the contract amount to Rs. 3,00,000/-, I am of the view that Smt. Keshar never got a chance to oppose the same before the Arbitrator and as the Agreement to Sell itself is a fraudulent document, I need to dwell in this argument any further.

**58.** In the view of my opinion above that the Agreement to Sell itself falls within the definition of fraud, any steps taken to legitimise the fraud cannot be sustained. Therefore, issue No. 2 also does not survive for consideration.

**CONCLUSION**

**59.** For all the aforesaid reasons, the impugned Award dated 08.03.2008 passed by the Arbitrator cannot be sustained in law and hence, the

petition is allowed and the impugned Award dated 08.03.2008 is set aside.

**60.** Petition along with pending applications stands disposed of.

**JASMEET SINGH, J**

**DECEMBER 06, 2025/ (MU)**