IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.11.2016

Judgment pronounced on : 22.11.2016

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.519 of 1998

National Bank for Agriculture
& Rural Development (NABARD)
rep. by its Chief General Manager, Chennai
.. Plaintiff

Versus

1. M/s. Gautham Construction and Fisheries, Company Ltd.
2. N.Ramesh
3. Narne Brmaramba
4. Ratakonda Ravi
5. Ratakonda Krishnamurthy
6. G.Krishnamurthy
7. Gudukondula Hanumantharao
8. V.V.Rama Rao
9. P.M.C.Kiron
10. K.Raghavendra Rao
11. M.Govindaraj
12. A.S.Raju
13. P.Shoba
14. Kodali @ Brahmam
15. G.Narasimha Rao
16. G.Sreenivasa Rao
17. G.Venkateswara Rao

[All are represented by their power agent
M/s.Gowtham Construction Company,
No.17, Thirumalai Pillai Road, T-Nagar, Chennai-17.
(Defendants 3 to 17 impleaded as per the order
dated 08.01.2015 in Appl.No.3114 7 3115/2001
and time extended as per order dated 28.01.2015)]
.. Defendants

The plaint is filed and numbered as Civil Suit under order IV Rule 1 of OS Rules r/w Order VII Rule 1 of CPC, praying for a judgment and decree:

a) directing the defendants to execute and register the sale deed in respect of the schedule mentioned property after obtaining the necessary statutory clearance as per the suit agreement.

b) in the event of failure on the part of the defendants to execute the conveyance deed, the Court may be pleased to direct an Officer of the Court to execute and register the sale deed after obtaining necessary statutory clearance for the same as per law.

c) awarding cost of the suit.

For Plaintiff : Mr.K.Sukumaran
For Defendants : No Appearance

JUDGMENT

This suit is filed for specific performance to direct the defendants to execute and register the sale deed in respect of the property, which is the subject matter.

2. The plaintiff is the Statutory Corporation established under an Act of Parliament called the NABARD Act, 1981. The first defendant originally was a partnership firm. Now, the firm has become a Company incorporated under the Companies Act. The plaintiff, in order to accommodate its employees at Chennai, entered an

agreement with the first defendant for construction and sale of the building with total built up area of 64,800 sq.ft., covering about 61 flats on a piece of land ad-measuring 16 grounds for total sale consideration of Rs.2,14,59,514.02. The defendants 3 to 17 are the original owners of the property. They have entered a General Power of Attorney in favour of the first defendant, besides entered a development agreement on 10.06.1983. As per the agreement, construction was completed by the 1st defendant company and entire sale consideration was paid on 15.10.1986. The plaintiff became absolute owner and had exclusive possession, exercising right over the property and paying all the necessary taxes.

3. However, despite repeated requests of the plaintiff to the defendants to execute the sale deed after producing necessary income tax clearance certificate, defendants did not come forward to execute the sale deed. In fact, they violated the terms of the conditions of the contract. Hence, the plaintiff has no other option but to file the suit for direction to the defendants to execute the sale deed.

4. The defendants remained ex-parte and they have not contested the suit nor filed a written statement.

5. On the side of the plaintiff, PW1 was examined and Exs. P1 to P30 marked. The Deputy General Manager of the plaintiff Bank in his evidence spoken about the manner of contract and various agreements entered into between the plaintiff and defendants. Ex. P-1A is the joint development agreement between the owners of the land and the 1st and 2nd defendants. The owner entered into an agreement with the developer for construction of the building and they also executed a Power of Attorney dated 14.06.1983. Based on that, the 1st defendant company entered into a sale agreement on 22.06.1983 under Ex. P3. It is not in dispute that as per the terms, entire construction and other flats were handed over to the plaintiff and their employees are in occupation. The plaintiff is paying necessary taxes. Only dispute that arose between the parties is the income tax clearance certificate at the relevant time. Now, such requirement is also not required and there is no dispute with regard to the agreement as well as the entire sale consideration. The only obligation put-forth before the defendants is to execute a document in favour of the plaintiff to confer a valid title.

6. The plaintiff is admittedly is in occupation and performed part of the contract, by paying the entire sale consideration. The defendants, having received the

sale consideration, are bound to execute the sale agreement. Though it appears from the letters that the delay was only due to getting income tax clearance, such delay cannot be attributed to the plaintiff. Such a ground cannot be a ground to refuse the specific performance. Therefore, in view of the fact that the plaintiff had paid the entire sale consideration and is in occupation of the land and building and as the defendant have also not contested the suit, taking into consideration of the nature of properties and flats which were built for the purpose of employees of the plaintiff company, this Court is of the view that this is a fit case where plaintiff is entitled to the relief of specific performance.

7. Accordingly, the suit is decreed. There will be a direction to the defendants to execute the sale deed in favour of the plaintiff in respect of the suit property within one month. However, considering the nature of dispute, parties shall bear their own costs.

EXHIBITS in C.S.No.519 of 1998

S.No.	**Exhibits**	**Description of documents**	**Date**
1	P-1	The authorisation letter given by the plaintiff in favour of PW1	--
2	P-1-A	The joint development agreement between the owners of the land the defendant	10.06.1983

S.No.	Exhibits	Description of documents	Date
3	P-2	The power of attorney	14.06.1983
4	P-3	The agreement of sale entered into between the defendant and the plaintiff	22.06.1983
5	P-4	The agreement of amenities	22.06.1983
6	P-5	The photocopy of the occupation certificate	08.10.1986
7	P-6	The photocopy of the No Objection certificate issued by the Income Tax Department	11.12.1986
8	P-7	The photocopy of the order of the Income Tax Department	11.12.1986
9	P-8	The letter of the defendant addressed to the plaintiff	27.09.1991
10	P-9	The letter sent by one Ravi to the plaintiff	24.08.1993
11	P-10	The letter sent by the defendant to the plaintiff	09.04.1994
12	P-11	The letter by the Income Tax Department to the defendant	11.08.1994
13	P-12	The letter by the defendant to the plaintiff	20.09.1994
14	P-13	The letter by the defendant to the plaintiff	20.09.1994
15	P-14	The letter from the Income Tax Department to the defendant	27.10.1994
16	P-15	The letter from the plaintiff to the defendant	30.11.1994
17	P-16	The letter from the plaintiff to the defendant	10.12.1994
18	P-17	The letter from the plaintiff to the defendant	09.01.1995
19	P-18	The letter from the plaintiff to the defendant	31.03.1995

S.No.	Exhibits	Description of documents	Date
20	P-19	The letter from the plaintiff to the defendant	20.05.1995
21	P-20	The letter from the defendant to the plaintiff	29.05.1995
22	P-21	The letter from the plaintiff to the defendant	02.06.1995
23	P-22	The letter from the plaintiff to the defendant	08.09.1995
24	P-23	The letter from the plaintiff to the defendant	20.09.1995
25	P-24	The letter from the plaintiff to the defendant	08.11.1995
26	P-25	The letter from the Income Tax Department to the defendant	08.12.1995
27	P-26	The letter from the plaintiff to the defendant	11.01.1996
28	P-27	The letter from the plaintiff to the defendant	10.02.1996
29	P-28	The Office copy of the lawyers notice sent to the defendant	25.09.1997
30	P-29 (series)	The acknowledgment cards received from the defendant	--
31	P-30	The reply from the defendant to the plaintiff	09.01.1998

sd/.N.S.K.J

22.11.2016

//Certified to be a true copy//

Dated this the day of 2017

R.s/18.01.2017 COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.