

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.12.2016

Pronounced on :19.01.2017

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

C.S.No.214 of 2009

and

O.A.No.410 of 2009

A.M.Ponnuswamy

... Plaintiff

-Vs-

1. M/s.T.G.K.Global Consultants
Represented by its Proprietor
T.G.Krishnamurthy.
 2. M/s.Takata India Pvt. Ltd.,
Represented by its Authorised Signatore
S.Sarathy
Having Office at B-7/7, 2nd Floor
Safdarjung Enclave,
New Delhi - 110 029.
 3. M/s.Asia Investment Private Ltd.,
Represented by its Authorised Signatory
S.Sarathy, having office at
No.1, Sri Aurabindo Marg,
Hauzkhaza, New Delhi - 110 016.
- ... Defendants

PRAYER:

This Civil Suit filed under Order VII Rule 1 & 2 of C.P.C. and Order IV Rule 1 of O.S. praying for the following reliefs:

(1) Directing the defendants to pay to the plaintiff jointly severally and also personally a sum of Rs.2,40,65,000/- (Rupees Two Crores Forty Lakhs Sixty Five Thousand Only) together with interest at the rate of 18% per annum for the said sum from the date of the plaint till realization.

(2) Directing the defendants to pay cost of the suit.

For Plaintiff : Mr.P.Saravana Sowmiyan

For Defendant : Mr.S.R.Rajagopal
For Mr.R.Karthikeyan, For D1

JUDGMENT

The suit filed for a direction against the defendants to pay to the plaintiff jointly, severally and also personally a sum of Rs.2,40,65,000/- together with interest at the rate of 18% p.a from

the date of the plaint till the date of payment and for costs.

2. In the plaint, it had been stated that the first defendant claimed to be a consulting company rendering services like identifying properties for infrastructure development. They identified property to an extent of 110 acres in and around Thenur Village, within Kattankulathur Panchayat, Chengalpet District. The plaintiff was a person, on whom, the villagers had much respect. Consequently the first defendant approached the plaintiff seeking help for purchase of 110 acres of land in the said village. A memorandum of understanding dated 06.02.2008 was entered into between the parties. In the said memorandum of understanding, the plaintiff was made an agent of the first defendant for making arrangements for purchase of 110 acres of land belonging to various owners in Thenur and nearby villages. The sale consideration was fixed at Rs.35 lakhs per acre, out of which, the costs of the land was Rs.30 lakhs and development charges was Rs.5 lakhs per acre. A further sum of Rs.2 lakhs was agreed to be paid to the plaintiff as

liaisoning charges. In pursuance of the said agreement, the plaintiff took necessary steps with the owners for executing sale deeds in favour of the 1st and 2nd defendants. There were some differences, particularly, when the 1st defendant insisted that the lands in the front portion with access to the main road must be purchased first. The owners of the lands were not acceptable to this. The plaintiff intervened and renegotiated the price which was then fixed at Rs.55 lakhs per acre. The plaintiff was able to get registered sale deed for 1.77 acres on 17.03.2008 in favour of the 2nd and 3rd defendants. The defendants paid only a total sum of Rs.53,10,000/- and agreed to pay the balance. Further sale deeds for another extent of 3.16 acres was also registered and the plaintiff received Rs.9,48,000/-. The defendants agreed to pay the balance amount later. A further extent of 6.58 acres was sold by sale deed on 29.05.2008 and total consideration of Rs.1,64,50,000/- was paid. The defendant did not pay the balance amount as agreed at the rate of Rs.55 lakhs per acre. The first defendant paid Rs.25 lakhs on 04.06.2008 and then a further sum of Rs.87,15,000/- was paid. For the total extent of 11.51

acres, the plaintiff received Rs.3,92,40,000/-. The rate per acre being Rs.55 lakhs, the balance amount payable by the defendant was Rs.2,40,65,000/-. The 1st defendant did not pay the said amount to the plaintiff. On the other hand, the plaintiff had paid the balance sale consideration to the various vendors and had paid a sum of Rs.75,52,000/-. The defendant issued a notice dated 09.09.2008 and the plaintiff filed a police complaint dated 26.09.2008. The cheque dated 04.06.2008 for Rs.87,15,000/- was also dis-honoured. Claiming that the plaintiff had incurred huge of expenses of Rs.6,32,54,000/-, the suit has been filed for the balance sum of Rs.2,40,65,000/- together with interest and costs.

3. In the written statement filed by the 1st defendant, it had been stated that the 1st defendant had entered into a memorandum of understanding with the plaintiff on 06.02.2008 for purchase of 110 acres of land in and around Thenur Village and it was agreed, that the rate was Rs.30 lakhs per acre and Rs.5 lakhs to be paid as development charges. A further sum of Rs.2 lakhs per acre was to be

paid as liaisoning charges. Accordingly, the defendant paid to the plaintiff a sum of Rs.20 lakhs for purchase of 4.93 acres and a further sum of Rs.34,51,000/- towards development charges and liaisoning charges by cheque. The sale consideration was paid directly to the owners of the land. It had been stated that the plaintiff started to put pressure demanding increase in liaisoning charges. It was then orally agreed to pay a sum of Rs.45 lakhs in total per acre to the plaintiff inclusive of sale consideration, development charges and liaisoning charges. A further sum of Rs.25 lakhs on 05.03.2008 and Rs.10 lakhs on 12.03.2008 by cheques were paid to the plaintiff. Even though the memorandum of understanding was dated 06.02.2008, the plaintiff arranged for purchase only in the month of June 2008 to an extent of 6.58 acres and he was paid Rs.30 lakhs and Rs.15 lakhs towards development and liaisoning charges per acre. The plaintiff again began to give pressure on the 1st defendant and the 1st defendant issued a cheque No.402252 dated 04.06.2008 for a sum of Rs.87,15,000/- drawn in the Bank of India, Adyar Branch. The plaintiff assured that the cheque would not be presented for

payment. The 1st defendant paid a further sum of Rs.15,40,000/- by cheque for purchase of 6.58 acres and the plaintiff was to be paid Rs.83,30,000/- towards development and liaisioning charges. The plaintiff again began to demand higher amount. Consequently, the Memorandum of Understanding was terminated and since the 1st defendant had paid Rs.55 lakhs as advance, the 1st defendant agreed to pay a balance amount of Rs.28,30,000/-. The 1st defendant was ready for payment of said sum after deducting TDS and demanded return of the said cheque No.402252 dated 04.06.2008 for Rs.87,15,000/-. However, the plaintiff deposited the said cheque in the bank. The 1st defendant issued notice including a pay order for a sum of Rs.25,28,845/-, which the plaintiff received. Again, the plaintiff presented the cheque for Rs.87,15,000/- and the 1st defendant had to issue stop payment order. The 1st defendant denied all the allegations in the plaint and stated that the plaintiff attempted to extract money from the 1st defendant without any basis.

4. The 2nd and 3rd defendants chose to remain *exparte*. They did not file written statements challenging the case of the plaintiff and were set *exparte*.

5. On the basis of the above pleadings, this Court had framed the following issues :

1. Whether the contractual sale consideration between the plaintiff and the 1st defendant including the development and liaison charges was Rs.37,00,000/- or Rs.55,00,000/- per acre as claimed by the plaintiff?

2. Whether there is any default by the 1st defendant to the plaintiff in respect of MOU dated 06.02.2008?

3. Are defendants liable to pay jointly and severally a sum of Rs.2,40,65,000/- with interest at the rate of 18% per annum to the plaintiff for their breach of contract

committed by them?

4. Is the plaintiff entitled to get cost of the suit?

5. To what other reliefs the parties are entitled to?

6. Issue No.1 : During trial, the plaintiff examined himself as PW1 and in support of his claim in the plaint examined PW2, PW3, PW4, PW5 and PW6. The plaintiff also marked Exs.P1 to Ex.P10. The defendant examined one witness and marked Exs.D1 to D3.

7. The 1st defendant company wanted to purchase 110 acres of land in Thenur Village, Kattankulathur Panchayat, Chengalpet District. The plaintiff claimed that he was a respected person in the said village. He further claimed that the villagers would believe his words and if he gives assurance, then they will sell their lands. Consequently the 1st defendant approached the plaintiff for help to purchase 110 acres of land. For this purpose a Memorandum of Understanding was entered into between the plaintiff and the 1st

defendant. During trial, it transpired that this is the primary document in writing executed between the plaintiff and the 1st defendant. The Memorandum of Understanding dated 06.02.2008 was marked as Ex.P1. According to the said Ex.P1, the total price of land per acre was fixed at Rs.37 lakhs. This included the cost of land Rs.30 lakhs, development charges Rs.5 lakhs, and liaisoning charges Rs.2 lakhs. At the time of entering into Ex.P1 an advance of Rs.20 lakhs was paid to the plaintiff. The time fixed was three months to complete the contract, failing which, the agreement will be automatically terminated. The above are the main clauses in ExP1. It is claimed by the plaintiff, that the 1st defendant demanded purchase of lands in the front portion with access to the road. The land owners did not agree. Thereafter the plaintiff is said to have convinced the land owners to agree to higher price of Rs.55 lakhs and this was agreed, according to the plaintiff, by the defendant. The plaintiff paid the difference in amount between Rs.37 lakhs and Rs.55 lakhs by his own funds to the land owners and this amounted to Rs.72,52,000/- and secured 11.51 acres for the defendant. According

to the plaintiff, at the rate of Rs.55 lakhs, the total amount payable by the defendant for 11.51 acres was Rs.6,33,05,000/-. The plaintiff had received Rs.3,92,40,000/-. It is on that basis, the plaintiff has filed the suit for Rs.2,40,65,000/-. This contention has been disputed by the defendant stating that there was no agreement to pay Rs.55 lakhs per acre.

8. However in the written statement, the 1st defendant had stated that there was an agreement to pay Rs.45 lakhs per acre. The defendant purchased 6.58 acres at the rate of Rs.45 lakhs. It had been stated that the cheque for Rs.87,15,000/- was given in good faith to convince the owners to sale the lands regarding the *bona fide* intention of the 1st defendant. The plaintiff filed Ex.P3, which is a statement of account of his bank and according to the plaintiff he had settled the vendors out of his own funds and it has been stated that these statement was also spoken by PW2 to PW5. Their pass books were marked as Exs.P7 to Ex.P10. At this juncture, it must be stated that the sale deeds marked viz., Ex.P5 dated

10.03.2008 and Ex.P6 dated 17.09.2008 shows that the sale consideration in the said document was fixed at Rs.30 lakhs per acre. Section 91 of the Indian Evidence Act states that no evidence can be admitted as against a written document. In Ex.P5 and Ex.P6, when the sale consideration is shown as Rs.30 lakhs, the evidence of PW2 to PW5 stating that during evidence, that the sale consideration was Rs.55 lakhs cannot be given legal credence and will be of no assistance to the plaintiff. However, in the written statement, the defendant had agreed and admitted that the value per acre was refixed at Rs.45 lakhs. This admission has been made in the pleadings and this can be taken as admissible evidence against the 1st defendant. A comprehensive reading of the entire evidence and pleadings, reveals that the defendant had admitted to the revised price of Rs.45 lakhs per acre and consequently is liable for the difference between Rs.45 lakhs per acre and Rs.37 lakhs per acre viz., Rs.8 lakhs per acre. During cross examination on 25.06.2012, DW1 admitted : "I have paid Rs.45 lakhs per acre (Rs.15 lakhs per acre was paid by me and Rs.30 lakhs was paid by the purchaser to

the owner of the land)". Again during cross examination on 02.08.2012, he stated : "I agreed the rate of Rs.45 lakhs per acre in June 2008. In my absence my staff had discussed with the purchasers and accordingly they fixed Rs.45 lakhs per acre". This establishes that the revised price was Rs.45 lakhs per acre, increased from a total of Rs.37 lakhs per acre found in Ex.P1. The learned counsel appearing for the 1st defendant argued that the cost of one acre land was fixed at Rs.30 lakhs and consequently the 1st defendant was not liable to the plaintiff even to the said difference of Rs.8 lakhs per acre.

9. I disagree. For one acre of land the cost was Rs.30 lakhs. In an alien territory, land cannot be sold to a stranger purchaser without payment of development charges and liaisoning charges. Consequently, I hold that the amount of Rs.45 lakhs includes development charges and liaisoning charges and therefore the 1st defendant has to pay the balance of Rs.8 lakhs per acre. While

dealing with enforceability of agreements, the Court should look at equity. Agreements may be unhappily worded. But it is the essence which has to be determined. A plaintiff cannot be non-suited as technicalities.

10. Consequently with respect of Issue No.1, I hold that the contractual sale consideration between the plaintiff and the 1st defendant had been increased to Rs.45 lakhs per acre from Rs.37 lakhs and I further hold that it was not Rs.55 lakhs as claimed by the plaintiff. The issue is answered accordingly.

11. Issue Nos.2 & 3 : It is a fact that the 1st defendant had purchased lands at Thenur Village in the names of his nominees, the 2nd and 3rd defendants. It is a further fact that the villagers had executed the sale deeds in favour of the said nominees of the 1st defendant. This implies that the defendants had got title, interest and possession of the lands owned by the villagers. This was possible only because of the mediation efforts taken by the plaintiff.

Consequently, it is seen that the 1st defendant has benefited by the purchase of lands and for this, he has to pay consideration. This consideration must include not only the sale consideration to the land owners, but also to the person who facilitated such sale and in this case, the person who facilitated the sale, was the plaintiff. A perusal of Ex.P2 bank statement shows that the plaintiff had paid the vendors from his own funds. Even if the defendant is not liable for the amount claimed in the plaint, he is liable at the rate of Rs.45 lakhs per acre. Consequently I hold that the 1st defendant is liable and has committed default to the plaintiff in respect of the Memorandum of Understanding dated 06.02.2008 and the issue No.2 is answered in favour of the plaintiff. With respect to Issue No.3, the plaintiff has claimed the suit relief at Rs.55 lakhs per acre. However, I hold that the 1st defendant is liable to pay only a sum of Rs.45 lakhs per acre. Consequently, the 1st defendant has to pay to the plaintiff the difference between Rs.45 lakhs and Rs.37 lakhs per acre.

12. Accordingly I hold that :

For the first set of lands Amount payable: Rs.1,82,41,000
(Rs.37,00,000 x 4.93 Acres)

For the second set of lands Amount payable: Rs.2,96,10,000
(Rs.45,00,000 x 6.58 Acres)

	:	Rs.4,78,51,000
Amount received by the plaintiff	:	Rs.3,92,40,000
Balance Amount	:	Rs. 86,11,000
Dishonored Cheque Amount	:	Rs. 87,15,000

	:	Rs.1,73,26,000
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13. I therefore hold that the defendants are jointly and severally liable to pay to the plaintiff the said sum of Rs.1,73,26,000/-. I hold the rate of interest to be 6% and not 18% as claimed by the plaintiff.

14. Issue No.4 : I hold that the plaintiff is entitled to cost of the suit since, the suit has been decided on the basis of the admission of the defendants in the written statement and evidence.

The plaintiff had to wait for more than six years to obtain the decree and I hold that he is entitled to costs.

15. Issue No.5 : On analysis of the above findings, I hold that the suit is partly decreed for a sum of Rs.1,73,26,000/- however with interest only at the rate of 6% per annum from the date of plaint till the date of payment. Three months time is granted for payment. Accordingly, the suit is partly decreed with costs. Consequently, connected miscellaneous petition is closed.

19.01.2017

Index : Yes / No
Internet : Yes / No

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C.V.KARTHIKEYAN, J.
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