IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 7TH DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.A. Nos.52 and 53 of 2018
in
C.S. No.43 of 2018

Mr.A.Viswanathan
S/o.Arumuga Gounder
No.19, Link Road
Guindy, Chennai - 600 032.

...Applicant/Plaintiff
(O.A.Nos.52 & 53 OF 2018)

Vs.

1.Madras Race Club,
a Company within the meaning of Section 8 of the Companies Act, 2013
having its registered office at
Race Course Road, Guindy, Chennai - 600 032
Rep. By its Secretary S.M.Karthikeyan

2.DLF Universal Limited,
(Formerly DLF Retail Developers Limited)
a Company Incorporated under the Companies Act 1956
Represent by its Director,
having its Southern Regional Office at
DLF Centre, No.17, Judge Jambulingam Street
Mylapore, Chennai 600 004

...Respondents/Defendants
(O.A.Nos.52 & 53 OF 2018)

O.A.No.52 of 2018:

Original Application praying that this Hon'ble Court be pleased to grant an order of ad interim injunction restraining the 1st Respondent Club, its Office bearers, men, agents, representatives, or any other person or persons from taking any decision on the Transfer of the Property at T.S.No.3, Block No.7, Venkatapuram Village, Mambalam-Guindy Taluk, Chennai District, which is more fully described in the Schedule to the application at the meeting of the Committee of the Management of the 1st Defendant's Club to be held on 18.01.2018 Thursday at 4.00P.M.

O.A. No.53 OF 2018:

Original Application praying that this Hon'ble Court be pleased to grant an order of ad-interim injunction restraining the 1st Respondent club from implementing the decisions likely to be taken in the meeting of the Committee of Management of the 1st Respondent Club scheduled on 18.01.2018 or any other date until the AGM is convened as per the directions of the National Company Law Tribunal.

These Original Applications coming on this day before this court for hearing and the court made the following order:

These Original Applications have been filed by the Plaintiff in CS.No.43 of 2018.

2. CS.No.43 of 2018 has been filed by the Plaintiff, A.Viswanathan, who has claimed to be a club Member of the 1st Defendant, Madras Race Club, which is a Company within the meaning of Section 8 of the Companies act, 2013. The Plaintiff has further claimed that he has been a Member of the Committee of Management of the 1st Defendant for the last 10 years. According to the Plaintiff, the 1st Defendant had a meeting of the Committee of Management on 7.1.2018. At the time of institution of the suit, the agenda for the meeting of the Committee of Management scheduled on 18.1.2018 had also been circulated. The Plaintiff has filed the suit, challenging both the minutes of the meeting dated 7.1.2018 and the agenda for the meeting dated 18.1.2018.

3. According to the Plaintiff, the property of the 1st Defendant had been given under lease to the 2nd Defendant, DLF Universal Limited (formerly DLF Retail Developers Limited) a Company, incorporated under the Companies Act, 1956, under a lease deed dated 29.12.2006, registered as Document No.709 of 2007 in the Office of the Sub Registrar, Adyar. This lease was with respect to land measuring 5.556 acres in TS.No.3, Block No.7, Venkatarpuram Village, Mambalam-Guindy Taluk, Chennai. The lease was for a period of 62

years on a monthly lease rental starting from Rs.1.3 crore. An advance of Rs.60 crores had been paid by the 2nd Defendant to the 1st Defendant. According to the Plaintiff, there had been default in payment of the lease rents. Thereafter, both the 1st and 2nd Defendants had entered into a Memorandum of Understanding on 5.2.2011 and the 2nd Defendant had agreed to purchase the land. One of the conditions was that the sale consideration should be a minimum of Rs.325 crores.

4. The Plaintiff has further stated that the terms of 8 of the Members of the Committee of Management expired by 13.9.2016 itself. There were also retirements of Members. According to him, the 1st Defendant was proceeding to conduct the sale without placing the same for consideration of the General Body. Since the Annual General Meeting had not been convened earlier, one of the Members had approached the National Company Law Tribunal in CP.No.31 of 2017 and there has been a direction to convene the Annual General Meeting on 26.2.2018 or on 19.3.2018. According to the Plaintiff, the decision to sell the land for a minimum sale consideration of Rs.325 crores is illegal and is liable to be set aside. In the mean while, there were also arbitration proceedings between the 1st and 2nd Defendants,

relating to default in payment of lease rentals. In the meeting held on 7.1.2018, a decision was taken to sell the property in favour of the 2nd Defendant for a maximum payment of Rs.300 crores. The Plaintiff was aggrieved with this decision. However, subsequently, the agenda for the meeting, which was scheduled to be held on 18.1.2018, was circulated and item (6) in the agenda also pertain to the discussion with the 2nd Defendant pursuant to such decision. The Plaintiff has claimed that the actual market price of the land would fetch approximately Rs.350 crores. According to him, the decision to sell the land for Rs.300 crores has to be interfered with by the Court. He has further stated that since the Annual General Meeting is scheduled at any rate on 26.2.2018 or on 19.3.2018 and since R.Subramanian has been appointed as the Chairman of the Annual General Meeting and the Hon'ble Mr.Justice K.P.Sivasubramaniam, former Judge of this Court, had been appointed as an independent Observer by the National Company Law Tribunal, the decision to sell the land must be taken only after consulting the members during the Annual General Meeting. It is under these circumstances that the Plaintiff has filed the suit for the following reliefs:-

a) declaration, declaring that the minutes of meeting dated 7.1.2018 held by the Committee of Management of the 1st

Defendant is illegal and in contravention of the Articles of Association of the 1st Defendant club.

b) declaration to declare the meeting of the Committee of Management of the 1st Defendant Club scheduled on 18.1.2018 Thursday at 4.00 p.m. is illegal and in contravention of the Articles of Association of the 1st Defendant Club.

c) permanent injunction, restraining the 1st Defendant Club from implementing the decisions likely to be taken in the meeting of the Committee of Management of the 1st Defendant Club scheduled on 18.1.2018 or any other date until the AGM is convened as per the directions of the National Company Law Tribunal.

d) permanent injunction, restraining the 1st Defendant Club, its Office bearers, men, agents, representatives, or any other person or person from taking any decision on the transfer of the property at TS.No.3, Block No.7, Venkatapuram Village, Mambalam-Guindy Taluk, Chennai District, which is more fully described in the schedule mentioned hereunder at the meeting of the Committee of the Management of the 1st Defendant Club to be held on 18.1.2018 Thursday at 4.00 p.m. or any other date.

e) for costs of the suit.

5. Along with the suit, the Plaintiff has filed the present applications. The relief sought in OA.No.52 of 2018 is as follows:-

"For interim injunction, restraining the 1st Respondent Club, its its Office bearers, men, agents, representatives, or any other person or person from taking any decision on the transfer of the property at TS.No.3, Block No.7, Venkatapuram Village, Mambalam-Guindy Taluk, Chennai District, which is more fully described in the schedule mentioned hereunder at the

> meeting of the Committee of the Management of the 1st Defendant Club to be held on 18.1.2018 Thursday at 4.00 p.m. or any other date."

The relief sought in OA.No.53 of 2018 is as follows:-

> "For permanent injunction restraining the 1st Defendant Club from implementing the decisions likely to be taken in the meeting of the Committee of Management of the 1st Defendant Club scheduled on 18.1.2018 or any other date until the AGM is convened as per the directions of the National Company Law Tribunal."

6. In the affidavits filed in support of the present applications, the Plaintiff has averred the very same facts as stated by him in the plaint.

7. These applications were moved as 'Lunch Motion' at the request of Mr.T.Mohan, the learned counsel for the Plaintiff, who made a mention at 10.30 a.m. on 18.1.2018. The matter was taken up in the afternoon on 18.1.2018. Mr.R.Parthsarathy, learned counsel took notice for the 1st Defendant and Mr.Jeyesh Dolia, learned counsel took notice for the 2nd Defendant. By the time the matter was heard, it was informed that the meeting, which was to commence at 4.00 p.m., was under way and this Court had made the following observations:-

> 8. In view of all these aspects, the 1st Defendant, who has convened the meeting today at 4.00 p.m. and which meeting, according to the learned counsel, is under way and the members, who have been invited to attend the

> meeting, can discuss the Agenda No.(6) and the individual views of the members can also be noted. The decision taken may also be noted. But, till a counter is filed and the matter is heard, it would be only appropriate that the decision is not given effect to.”

8. Thereafter, the 1st Defendant had filed a counter in these applications. The 1st Defendant, in their counter, sworn by the Secretary, has stated that the Plaintiff was a Committee Member of the 1st Defendant from 22.1.2011 when a decision had been taken to enter into a Memorandum of Understanding with the 2nd Defendant, agreeing to sell the property for a minimum price of Rs.325 crores. The Memorandum of Understanding was considered in the Executive General Body meeting of the Club held on 15.2.2011. The Plaintiff also participated. The decision of the Committee to entered into a Memorandum of Understanding was unanimously passed. There was no dissenting note. It was only thereafter that the Memorandum of Understanding was entered into between the 1st and 2nd Defendants. The Committee of Management again met on 15.2.2011 and authorised the Secretary to execute the Memorandum of Understanding. In this Committee meeting also, the Plaintiff participated, but did not raise any objection or dissent. However, disputes arose between the 1st and 2nd Defendants and consequently, arbitration proceedings were

commenced by the 2nd Defendant in the year 2015. Proceedings commenced and witnesses have been examined on both sides and the matter had been posted for final arguments. It was at that stage that the 2nd Defendant had proposed fresh settlement terms to amicably resolve the disputes. Consequently, the Committee Members met the Officers of the 2nd Defendant on 23.12.2017 during the hearing of the arbitration proceedings and held discussions.

9. The 1st Defendant has further stated that on 7.1.2018, a meeting of the Committee of the Management was called for. During the said meeting, the Plaintiff was present. The issue of terms of settlement with the 2nd Defendant was taken up and it was discussed. It was unanimously agreed by all the Committee Members that the proposed payment of Rs.300 crores, which was apart from Rs.60 crores already paid by way of security deposit, was acceptable. The Plaintiff never gave any dissenting note for such decision. Thereafter, another Committee meeting was called on 18.1.2018. Agenda (6) was with respect to the discussions with the 2nd Defendant. In the meeting on 18.1.2018, the Plaintiff did not choose to inform the Committee Members about the suit, which had been filed and did not object to any of the discussions or resolutions. It was

only later that the Plaintiff sent a dissent note by email on 20.1.2018 and by a hard copy to all the Members on 22.1.2018.

10. The 1st Defendant has further specifically stated that the applications have been filed with a mala fide intention to frustrate the genuine attempts being made to settle the long standing disputes between the 1st and 2nd Defendants. It has been stated that the Plaintiff was in the habit of filing such suits against the 1st Defendant. It has been stated that though four Members retired from the Committee, every year as stipulated in the bye laws, the Plaintiff had been participating in all the meetings from August 2016. He had also filed OS.No.3690 of 2017 before the 15th Assistant City Civil Court, Chennai, challenging the decisions taken in the meeting of the Committee of Management held on 12.7.2017. He had described himself in the said suit as a Committee Member for the past 10 years. The 1st Defendant has charged that the Plaintiff is abusing the process of Court.

11. With respect to the facts of the case, the 1st Defendant has stated that the property involved in the suit had been purchased by the 1st Defendant in 1926. It consisted of one bungalow with surrounding vacant land and was used as the residence of the

Secretary of the Club. However, the Committee of Management felt that putting the property to commercial use would fetch good income for the club. In October 2006, a lease agreement was entered into with the 2nd Defendant. This was for a period of 66 years. The lease agreement was entered into on 20.12.2006 and registered as Document No. 709 of 2007 in the Office of the Sub Registrar, Adyar. At the time of entering into the lease, the 2nd Defendant had paid a sum of Rs.60 crores as refundable security deposit.

12. The 1st Defendant further stated that the lease deed provided for resolution of disputes through arbitration. The 2nd Defendant was also put in possession. The 1st Defendant applied to the State Government for change of land use from 'institutional area' to commercial zone'. This was approved by CMDA on 26.3.2008. Subsequently, clearance for proposed development of the land was also obtained from Raj Bhavan and No Objection Certificate was also obtained from Airports Authority of India. This was in May 2010. The 1st Defendant also executed a gift deed in favour of CMDA, gifting 2110 sq.m of land out of 5.556 acres towards open space reservation. Planning permission was also issued for putting up commercial building in the property. However, there were defaults in

payment of rent by the 2nd Defendant. Consequently, disputes arose.

13. The 1st Defendant further stated that applications under Section 9 of the Arbitration and Conciliation Act, 1996 were filed by both the parties. Once again, an amicable solution was thought to be the best way to resolve the issues and consequently, a draft Memorandum of Understanding was prepared. The 1st Defendant agreed to sell the property to the 2nd Defendant for a minimum price of Rs.325 crores subject to valuation to be done by a Panel of International Realtors. A meeting of the EGM of the Club was called on 15.2.2011. As stated above, the Plaintiff participated in the Extraordinary General Body Meeting and did not raise any objections. A resolution was passed unanimously. Thereafter, the Committee of Management authorised the Secretary of the Club to execute a Memorandum of Understanding. It was also entered into on 15.2.2011. As mentioned above, the Plaintiff was also a participant during the meeting and did not raise any objection. The total sale consideration was fixed at Rs.325 crores. There was also arbitration clause. A fresh lease deed was entered into on 6.6.2011 for a period till 28.2.2013. Subsequently, the period of lease was extended till 31.8.2013 and another lease deed was entered into on 27.2.2013. The

period was extended up to 31.3.2015. A fresh lease deed was also entered into on 24.10.2013. Valuation reports of the property, by two international valuers, were also submitted. M/s.Cushman and Wakefield submitted a valuation report dated 27.11.2013, valuing the property at Rs.302.5 crores and M/s.CB Richard Ellis South Asia Private Limited submitted a valuation report, valuing the property between Rs.297.8 crores and Rs.313.2 crores. Since the 2nd Defendant wanted more time to complete the transaction, fresh arbitration proceedings had been initiated and are still pending. The reliefs in the said proceedings are as follows:-

a) Declaration that the termination of the agreement by the 1st Respondent/ Defendant is illegal.

b) Declaration that the time is not the essence of the contract.

c) Declaration that the letters from the 1st Respondent/ Defendant seeking surrendering of possession are invalid.

d) Declaration that the letters from the 1st Respondent/ Defendant calling upon the 2nd Defendant/ Defendant to re-negotiate the terms are illegal.

e) Specific performance directing the 1st Respondent/ Defendant to execute the sale deed and register the sale deed by re-fixing the sale consideration and taking into account the adjustment of rents paid till 31.03.2015.

f) Alternatively, refund of Rs.300 crores paid as rent by the 2nd Respondent/ Defendant and pay Rs.250 crores as damages due to opportunity loss.

14. The 1st Defendant has further stated that there were also orders from the High Court, restraining the 1st Defendant from terminating the Memorandum of Understanding. During the arbitration proceedings, there was an order against the 2nd Defendant to pay 50% of all arrears and to continue to pay 50% of the lease rentals. This has been paid continuously upto date. Subsequently, the matter was posted for arguments on 22.12.2017 and 23.12.2017. It was at that juncture that both the 1st Defendant and the 2nd Defendant met and agreed for sale of the property for Rs.300 crores, by also taking into account the Rs.60 crores paid earlier as security deposit. It has been stated that from December 2006 till November 2017, the 2nd Defendant had paid a sum of about Rs.310 crores by way of lease rentals. It was stated that a sum of Rs.360 crores was well over the minimum price of Rs.325 crores agreed in the Memorandum of Understanding. Thereafter, a fresh valuation report had been obtained fro M/s.Cushman and Wakefield, on 16.1.2018 and the present value of the property had been given at Rs.291.70 crores (+ or - 5%).

15. The 1st Defendant has further stated that the guide

line value at Rs.6365 per sq.ft. works out to Rs.155 crores alone. It has been further stated that the requisite quorum was available. It has been stated that the Plaintiff had not come to Court with clean hands. Effective settlement had been reached between the 1st and 2nd Defendants and the only intention of the Plaintiff is to put spokes in the wheel. It has been claimed that the applications should be dismissed with costs.

16. The 2nd Defendant has also filed a counter. According to the 2nd Defendant, they had entered into a lease with the 1st Defendant on 20.12.2006, which deed was registered as Document No.709 of 2007 in the Office of the Sub Registrar, Adyar, for taking on lease the land in paimash no.60 together with building erected thereon, known as Nawabs Gardens, formerly known as Hunt Lodge, in Vekatapuram Hamlet, Adyar, for a total extent of 4 cawnies and 13 grounds, measuring 5.556 acres. Since there were disputes, a Memorandum of Understanding had been entered into between the 1st and 2nd Defendants. The 2nd Defendant was to remain as tenant for a period of 18 months and thereafter, free to purchase the land. The period of Memorandum of Understanding was extended from time to time. The 2nd Defendant had taken all steps to obtain the requisite

approvals/sanctions from the Government Authorities. The 1st Defendant thereafter wrote a letter on 14.3.2015, directing the 2nd Defendant to either purchase the subject land or hand over physical and vacant possession or execute fresh lease deeds. Thereafter, in view of further differences, arbitration proceedings had been initiated and it was directed that the 2nd Defendant had to pay 50% of the rent during the pendency of the disputes.

17. The 2nd Defendant has further claimed that they had been regular in payment of rent and there was no due as on date. They had earlier paid Rs.60 crores as refundable deposit. Pending the transaction, the 1st Defendant had also gifted a portion of the land for open space reservation measuring 2110 sq.m under a gift deed dated 29.01.2010, registered as Document No. 494 of 2010 in the Office of the Sub Registrar, Adyar. A further portion of the land for road widening to an extent of 1475.51 sq.m had also been gifted under a registered gift deed dated 29.1.2010, bearing Document No.495 of 2010, in the Office of the Sub Registrar, Adyar. Both the gift deeds were in favour of CMDA. It has been further stated that an understanding was reached with the 1st Defendant that for payment of Rs.360 crores, the land can be purchased by the 2nd Defendant. This

amount also included Rs.60 crores paid earlier at the time of entering into the lease deed. According to the 2nd Defendant, the value offered is much higher than the market price and very much higher than the guide line value. It has been stated that this agreement had been entered into consciously and consequently, it has been stated that the suit had been filed only to frustrate the agreement.

18. The Plaintiff filed a common rejoinder. He denied that he was estopped from filing the suit merely because he attended the meeting. He claimed that he was aggrieved with the price fixed. He claimed that he was not aware of the disputes between the 1st and 2nd Defendants. He claimed that he had objected to sale of the property for Rs.300 crores. He claimed that arrears of lease rent was Rs.69 crores and if the security deposit of Rs.60 crores is adjusted, there would still be arrears of Rs.9 crores and consequently, the sale would only be for Rs.291 crores. According to him, in the meeting dated 18.1.2018, no decision was taken and it was closed within 15 minutes. It was stated that resolutions were not passed. It was stated that the minutes of the meeting dated 18.1.2018 were fabricated one. He claimed to be a member of the

General Body and he represented the Committee on behalf of the General Body. According to him, he was attending the meeting only on receipt of notice from the 1st Defendant. He further pointed out the valuation report of M/s.Cushman and Wakefield and stated that the value of INR 2917 Million was only an approximate value. He claimed that he had filed the suit immediately after receiving the agenda for the meeting of the Committee of Management scheduled on 18.1.2018. According to him, the Committee of Management cannot unilaterally decide the sale on the revised consideration. He claimed that the applications should be allowed.

19. This Court heard Mr.T.Mohan, the learned counsel for the Plaintiff, Mr.P.S.Raman, learned senior counsel for the 1st Defendant and Mr.R.Krishnamoorthy, learned senior counsel for the 2nd Defendant.

20. The 1st Defendant, Madras Race Club is a non profit recreation club, registered under Section 8 of the Companies Act, 2013. It has been in existence for a quite substantial period of time. It had purchased the property, which is incidentally the subject matter of this litigation in the year 1926. The property was originally called as “Nawabs Garden” and then called as “Hunt Lodge”.

It is situated in Venkatapuram, Adyar, Saidapet Taluk. It measures a total extent of 4 cawnies and 13 grounds, equivalent to 5.556 acres. The property was used as a resident of the Secretary of the Club.

21. On 20.12.2006, the 2nd Defendant had entered into a lease deed with the 1st Defendant, for taking on lease the said land. The lease deed was registered as Document No.709 of 2007 in the Office of the Sub Registrar, Adyar. Prior to offering the property to lease, the Committee of Management had circulated an information memo in October 2006. This information memo was prepared by M/s.CB Richard Ellis South Asia Private Limited. The proposal was to lease the land in as is where is basis for 66 years. The last date to close the transaction including documentation was 31.12.2006. The property has approximately 502 ft. frontage on the main road. The access to the road at that particular point of time was by an approximately 80 ft. wide road. Pursuant to this information memo, as stated above, a lease deed was entered into between the 1st and 2nd Defendants on 20.12.2006. The lease was for a period of 4 years from 1.1.2007 to 31.12.2007 with an option to renew the lease for a further period of not exceeding 62 years. The 2nd Defendant paid a sum of Rs.60 crores as refundable security deposit by a demand draft

no.424409, dated 19.12.2006 purchased from ICICI Bank Limited, Nungambakkam Branch, Chennai.

22. In the lease deed, it was agreed that the 2nd Defendant would be entitled put up a shopping mall/ commercial complex/ office space, etc. in the property at its own cost. Disputes were to be referred to arbitration for resolution. The 2nd Defendant was put in possession of the property. Subsequently, the 1st Defendant applied to the State Government for change of land use from 'institutional area' to 'commercial zone'. This was approved by CMDA after public hearing on 26.3.2008. Clearance for development was also obtained from Raj Bhavan. No Objection Certificate was also obtained from the Airports Authority of India. A gift deed in favour of CMDA, gifting 2110 sq.m of land out of 5.556 acres towards open space reservation, was executed on 29.1.2010 and registered as Document No.494 of 2010. Simultaneously, another extent of 1475.51 sq.m was gifted under a gift deed dated 29.1.2010 and registered as Document No.495 of 2010 in favour of CMDA for road widening purposes. It is pertinent to note that the Plaintiff was a Member of the 1st Defendant with Membership No.CMC.039. Even according to him, he has been a member of the Committee Management for the last 10 years.

23. Articles of Association of the 1st Defendant provides for a Committee of Management, which shall be 12 in number and who shall be elected and who can hold office only so long as they are club Members. In addition to the 12 Members, there shall be 4 members nominated by the State Government. They do not retire, but they do not have also any right to vote in any meeting. The Articles further provided that at an ordinary meeting every year, 1/3rd elected Members of the Committee of Management shall retire from Office.

24. It is an admitted position that as on date, out of 12 Members, by efflux of time and by vacancy caused due to retirement and simultaneously owing to non election, which was a direct result of non holding of General Body meeting, only 4 members are today functioning. However, the Members, who have retired also, attend the Committee of Management meetings. The Plaintiff has similarly attended all the meetings. This is very significant because he has raised issues which are to his direct knowledge as a Member of the Committee of Management either as a Member with right to vote or as an invitee. These issues pertain to issues which he had not objected when decisions were taken, but, which he has now claimed as illegal and should be interfered with by this Court.

25. As stated above, right from the time the property was leased out to the 2nd Defendant, the Plaintiff was a Member of the Committee of Management. The period of lease was extended from time to time. There were some differences of opinion and this necessitated entering into a Memorandum of Understanding between the 1st and 2nd Defendants on 15.2.2011. In this Memorandum of Understanding, a reference was made to the agreement for lease, which was originally entered into and which was subsequently extended and also to the fact that a security deposit of Rs.60 crores had been paid by the 2nd Defendant to the 1st Defendant. It was also mentioned that owing to disputes in payment of rent, applications under Section 9 of the Arbitration and Conciliation Act, 1996 had also been filed before the Madras High Court. It was also pointed out that from July 2010 onwards, the 2nd Defendant had stopped paying lease rent to the 1st Defendant. It was further pointed out that the 2nd Defendant had approached the 1st Defendant to amicably resolve the disputes. It was under these circumstances that the Memorandum of Understanding was entered into between the parties.

26. It was further agreed that the property shall be sold by the 1st Defendant to the 2nd Defendant to develop a residential

project. Till the date of actual sale, the 2nd Defendant shall continue to pay the lease rent at the rate of Rs.2.25 crores per month. The sale consideration shall be minimum of Rs.325 crores for the property. It was further agreed that the property shall be assessed and valued by two international reputed valuers out of M/s.Jones Lang La, Salle, M/s.CB Richard Ellis and M/s.Cushman and Wakefield. It has been specifically stated by the 1st Defendant in their counter affidavit and which has not been denied by the Plaintiff that an Extraordinary General Body Meeting of the 1st Defendant was called for this specific purpose on 15.2.2011. A resolution was also put to discussion and since there was no dissent note, the resolution was passed immediately. Thereafter, the Memorandum of Understanding with the above terms was executed on 15.2.2011.

27. It is the specific case of the 1st Defendant that the Plaintiff was a Member in all these proceedings. He did not object to any of the discussions or the decisions taken. The learned counsel for the Plaintiff also stated at this juncture that it is not the intention of the Plaintiff to call upon the Court to re-examine the terms of the Memorandum of Understanding. Subsequently, a

supplementary Memorandum of Understanding was entered into on 25.2.2013 extending the period. This was also further extended by a second supplementary agreement on 23.10.2013, extending the period for completion of the sale till 31.3.2015. A valuation report was also obtained from M/s.Cushman and Wakefield on 27.11.2013, who valued the property at Rs.302.5 crores and another valuation report was also obtained from M/s.CB Richard Ellis South Asia Private Limited, who submitted a valuation report, valuing the property between 297.8 crores and Rs.313.2 crores. But, however, since the 2nd Defendant sought further extension, the 1st Defendant sought to terminate the agreement. This lead to initiation of arbitration proceedings.

28. The Arbitral Tribunal consisted of the Honourable Mr.Justice, K.S.P.Radhakrishnan (former Judge of the Supreme Court), the Honourable Mr.Justice A.K.Patnaik (former Judge of the Supreme Court) and the Honourable Mr.Justice S.S.Nijjar (former Judge of the Supreme Court). It has to be pointed out, at this juncture, that the Arbitral Tribunal had recorded evidence from both the 1st Defendant and the 2nd Defendant and the matter had been posted to 22.12.2017 and 23.12.2017 for arguments. Before the Arbitral Tribunal, the

reliefs claimed by the 2nd Defendant in its claim petition were as follows:-

a) declaration that the termination of the agreement by the 1st Respondent/ Defendant is illegal.

b) Declaration that the time is not the essence of the contract.

c) Declaration that the letters from the 1st Respondent/ Defendant seeking surrendering of possession are invalid.

d) Declaration that the letters from the 1st Respondent/ Defendant calling upon the 2nd Defendant/ Defendant to re-negotiate the terms are illegal.

e) Specific performance directing the 1st Respondent/ Defendant to execute the sale deed and register the sale deed by re-fixing the sale consideration and taking into account the adjustment of rents paid till 31.03.2015.

f) Alternative, refund of Rs.300 crores paid as rent by the 2nd Respondent/ Defendant and pay Rs.250 crores as damages due to opportunity loss.

29. At this juncture, when the matter was posted for arguments, the 1^{st} and 2^{nd} Defendants thought it prudent to revisit the proposal offered and accepted by both of them and also thought it prudent that an amicable solution be presented before the Arbitral Tribunal. It must be kept in mind that the issues before the Arbitral Tribunal, included the issues of termination of the

agreement, specific performance to execute the sale and registration of sale deed by refixing the sale consideration and refund of the rental amounts paid. In view of the decision to explore possibility of a settlement, the Committee of Management met on 7.1.2018 and one of the items that was taken for discussion was the proposed settlement with the 2nd Defendant. This was agenda no.6. This was attended by the Plaintiff. He had affixed his signature marking his presence. He had not raised his objection during the meeting. There is no record to show that he raised his objections and that it was not noted. There are also no records to show that on any subsequent date, prior to the institution of the suit, he had conveyed objections. During the said meeting, the Committee Members unanimously agreed to have the property sold to the 2nd Defendant on payment of Rs.300 crores by one cheque. As a follow up to such decision, a team from the 1st Defendant visited the Office of the 2nd Defendant at New Delhi and an agenda was circulated to deliberate on 18.1.2018 the outcome of the discussions. It was at that stage that the Plaintiff had rushed to the Court.

30. According to the Plaintiff, the value fixed at Rs.300 crores was lesser than Rs.325 crores agreed during entering into the

Memorandum of Understanding on 15.2.2011. He stated that he is very much interested in protecting the property of the 1st Defendant and consequently, sought orders of injunction, ostensibly challenging the resolution of the meeting dated 7.1.2018 and the agenda for the meeting dated 18.1.2018, but actually holding a lever against the 1st Defendant with respect to Memorandum of Understanding entered into with the 2nd Defendant for sale of the land. If as a concept the Plaintiff has any grievance, he should have raised his objection right from the beginning. He has not done so. He has participated in the proceedings. As a Member of the Committee of Management, either with right to vote or with right to attend, he was in the knowledge of every policy decision taken by the 1st Defendant. The fact that he has come to Court at the very last minute shows that his intentions are not honest.

31. As a matter of fact, the Memorandum of Understanding by itself and its terms including termination and execution of sale deed, are under the active consideration of the Arbitral Tribunal. It is under the aegis of Arbitral Tribunal that the parties had decided to revisit the earlier proposal. Any proposal would have to be submitted to the Arbitral Tribunal for final approval. The Plaintiff

had not pointed out the fact that the 1st Defendant had been the beneficiary of Rs.60 crores which was received on 20.12.2006 nearly 11 years back. They directly benefited by the counter interest which accrued on the said amount for past nearly more than a decade.

32. It is also brought to the notice of this Court that the 2nd Defendant had paid rent amounting to Rs.300 crores from 2006 till date. This amount was paid for a property, which the 1st Defendant would not have exploited, had they even thought of commercially exploiting the same. It was used as a residential house for the Secretary of the 1st Defendant. The property is still vacant. Consequently, for a dead land, the 1st Defendant had gained about Rs.300 crores over a period of 10 years. It was not as if they were put to loss by the 2nd Defendant being put in possession in 2006. Moreover, the consideration now offered by the 2nd Defendant of Rs.300 crores which excluded the Rs.60 crores already with the 1st Defendant is far above the valuation report furnished by the valuers. It is in fact much higher than the guideline value.

33. However, arguments had been projected that the guideline value cannot be taken into consideration. Still it is the value to be taken into consideration and is actually termed as the

guideline value. The guideline value as on date is said to be Rs.6365 sq.ft. and the total guideline value for the land available is Rs.155 crores. At any rate, it is not for this Court to decide upon the price to be arrived at between the 1st and 2nd Defendants

34. The Plaintiff having participated in the meeting and having not raised any objection cannot turn around and point fingers at the 1st and 2nd Defendants because he himself was a party to the decisions, which he now claims are illegal. He is estopped from raising any such issue.

35. Prima facie case, at this juncture, lies with the 1st and 2nd Defendants because the 2nd Defendant had admittedly paid a sum of Rs.60 crores in December 2006, which amount also gained accrued interest for the past more than 10 years. The 2nd Defendant had also paid a total sum of about Rs.300 crores towards lease rental for the land which was used only for residential purposes of the Secretary of the 1st Defendant. Consequently, for a dead land, which the 2nd Defendant had also not exploited commercially, the 1st Defendant had received rentals of Rs.300 crores for the past 10 years. In addition to this, the 2nd Defendant has agreed to pay a sum of Rs.300 crores towards sale consideration. Unless this sale consideration

shocks the conscience, the Court cannot step in. This Court is not dealing with any issue of public interest litigation, but rather than a private lis raised by the Plaintiff.

36. The Plaintiff had given a dissent note after he instituted the suit and after this Court had passed orders on 18.1.2018. That can be of no relevance.

37. Irreparable hardship would be caused to the Defendants if this Court were to interfere with the agreement to convey the lands. The sale had been approved by the General Body. The contention of the learned counsel for the Plaintiff that once again the General Body must consider the proposal cannot be accepted since the General Body had given powers to the Committee of Management to take decisions.

38. The 1st Defendant is governed by its Articles of Association, since it is a Company under Section 8 of the Companies Act, 2012. Articles 25 and 26 stipulate that there shall be 12 elected members of the Committee of Management and four Members nominated by the Government of Tamil Nadu. Four Government Members would not have right to vote. It was further provided under Article 27 that 1/3rd of the elected Members shall retire by rotation every

year. Article 35(d) provides that the quorum in a meeting of the Committee of Management shall be 1/3rd of the total strength or two members, whichever is higher. This was in consonance with Section 287(2) of the Companies Act, 1956. This has been superseded by the Companies Act, 2013 and this provision is similar to Section 174 of the said Act. However, Section 462 of the Companies Act, 2013, gives power to the Central Government to issue notification to exempt or modify the application of any provision of 2013 Act. Accordingly, the Ministry of Corporate Affairs, Government of India had issued a notification dated 5.6.2015 and had stated that Section 174(1) has been modified and the quorum is 8 members or 25% of the total strength whichever is less.

39. It is further seen that out of 12 elected Committee Members, 1/3rd Members were required to retire by rotation. Consequently, there are only four Members and new Members have not been elected since Annual General Meeting had not been held and are scheduled to be held only on 26.2.2018 or on 19.3.2018. The total Members are 12 and with four Government nominees, total Members of the Committee comes to 16 and 25% of the same comes to 4 Members who are present and available today. It has therefore, been stated that

the resolutions passed in the meetings are perfectly valid and legal. As a matter of fact, the Committee of Management meeting on 7.1.2018 after giving notice, was attended by 8 persons, including the Plaintiff. Settlement with the 2nd Defendant was discussed in detail. It was decided to sell the property for a price of Rs.300 crores and also to take into account Rs.60 crores already received at the time of entering into the lease. Effective actual sale price was Rs.360 crores. Thereafter, a meeting was held at Delhi and to inform about the outcome of the said meeting at Delhi, another meeting was called on 18.1.2018.

40. Viewed from another angle, when the Arbitral Tribunal is examining the issues, it would be highly inappropriate on the part of this Court to cast aspersions on the arrangements reached between the 1st and 2nd Defendants.

41. The Plaintiff appears to have the sole intention of frustrating any decision taken by the 1st Defendant. The intentions of the Plaintiff are suspect and mala fide. The Plaintiff claims innocence and ignorance and seeks indulgence from this Court. The Plaintiff's action in instituting the suit at the last minute is akin to a football player, who finds his ball at his feet in the dying

minutes of the game and rushes backward in haste to score an own goal, challenging his own goal keeper. That is simply not done. Such an act cannot be permitted. In this instance, it is prevented. I hold that the case of Plaintiff has to be rejected and accordingly, the applications are to be dismissed, with costs.

42. In the result, these applications are dismissed with costs.

Sd./- C.V.K.J.

07.02.2018

//Certified to be true copy//

Dated at Madras this the th day of 2018.

COURT OFFICER (O.S.)

TPY/07.02.2018