

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 24TH DAY OF SEPTEMBER 2018

THE HON'BLE MR. JUSTICE C.SARAVANAN

O.A. Nos.212 & 213 of 2018

In the matter of Arbitration
and Conciliation Act 1996

and
In the matter of Joint
Development Agreement dated
09.09.2014 between applicant
and the respondents.

M/s.Vimal Housing,
rep. by its Proprietor, Mr.S.Mohanraj,
S/o.A.Swaminathan,
Plot No.54, Golden Avenue,
Ottiyampakkam, Chennai-600 048.

... Applicant

(in both the applications)

-Versus-

1. Mr.T.Govinda Rajan,
S/o.Late N.S.Thiruvangadasamy,
Ground Floor, No.12, 12th Street,
Sriram Nagar, Vyasarpadi Post,
Chennai-600 039.

2. Mrs.R.Shanthi,
W/o.Late A.Ravikumar,
Old No.4/188, New No.4/147,
4th Street, Pallavan Nagar,
Jalladianpet, Chennai-600 100.

3. Mr.D.Chitty Babu,
S/o.Mr.Dhamodaran,
No.2/88, Vanjamadai,
Kanagampalayam Panchayat,
S.V.Mill Puram Post, Udumalaipet,
Tirupur District.

... Respondents

(in both the applications)

O.A. No.212 of 2018:-

Original Application praying that this Hon'ble Court be pleased to grant an order of interim injunction restraining the respondents, their men, agents, servants, or any persons claiming under them from in manner dealing with the schedule mentioned property including creating any third party interest over the schedule mentioned property pending disposal of the arbitration proceedings for protection of the applicant's interest.

O.A. No.213 of 2018:-

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the respondents, their men, agents, servants, or any persons claiming under them from in any manner disturbing the peaceful possession or demolition of the superstructure in the schedule mentioned property by the applicant firm.

This Original Application coming on this day before this court for hearing the court made the following order:

The above applications have been filed to grant an order of interim injunction restraining the respondents their men, agents, servants or any persons claiming under them from in manner dealing with the schedule mentioned property including creating any third party interest over the schedule mentioned property pending disposal of the Arbitration proceedings for protection of the applicant's interest.

2.The case of the applicant is that by a Joint Development Agreement entered between the applicant and the

respondents, the applicant undertook to construct the building for the third respondent. The said Joint Development Agreement dated 09.09.2014 was signed between the applicant and the respondents. The respondents herein are the owners of the land. Under the agreement, the applicant undertook to develop, build and construction buildings within 24 months from the date of receipt of approval from the competent authority.

3. In this connection, the respondents had also executed Joint General Power of Attorney dated 30.06.2014 in favour of the petitioner represented by its proprietor Mr.S.Mohanraj to sale of 64% of the undivided portion of the land and to obtain necessary permission to execute relevant documents for undertaking the construction and for obtaining necessary permission in connection with the construction of the land belonging to the respondents. The applicant also obtained planning permit during November-December 2015, due to historical rain and consequential flood the building of the construction carried by the applicant got washed away. The applicant had spent about Rs.22 lakhs for development of the land for obtaining necessary permission from the statutory and development authorities. According to the applicant, Kavanur Panchayat had also sanctioned a plan on

10.10.2014 in bearing reference No.12/2014-2015 for construction of 16 row houses. The applicant submitted that he had spent about Rs.4 lakhs for obtaining the permission by engaging a licensed surveyor.

4.The applicant further submitted that constructed portion was completely vanished away due to rain and stagnation of flood water and thereafter, the applicant spent a sum of Rs.12 lakhs towards sand filling.

5.It is the case of the applicant that he had spent about a sum of Rs.45 lakhs for developing the property. However, in view of the stay granted by this Court to present the registration of unapproved layouts the applicant could not proceed further. The respondents having waited till 2018 terminated a Joint Development Agreement dated 09.09.2014 and also cancelled the Joint Power of Attorney vide cancellation of Power of Attorney dated 11.01.2018 and registered as Document No.272 of 2018 for SRO Guduvanchery.

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6.The dispute between the applicant and the respondents being arbitrable, the applicant now approached this Court for interim injunction to restrain the respondents from disturbing peaceful possession carried out for

superstructure in the schedule mentioned property and for other reliefs.

7.It is noticed that the applicant had secured an interim order on 05.03.2018, thereafter, which came to be extended from time to time. As per the Section 9 of the Arbitration and Conciliation Act, 1996, the applicant ought to have initiated arbitration proceedings. However, there are no records to show *bona fide* initiation of arbitration proceedings. Instead the applicant seek for further extension of interim injunction by way of arbitration proceedings.

8.The facts and circumstances of the case indicates that the respondents have cancelled the Power of Attorney executed in favour of the applicant and the applicant also has not obtained further extension for construction of the row houses. Further the fact that the applicant had not taken any steps to continue the construction of the buildings on record. The applicant has to work out his remedy before the arbitrator for appropriate relief if any.

9.The building plan obtained on 10.10.2014 also contemplates the work should be completed within a period of one year. Further, the applicant can also be prompted the construction of row houses even if the respondents want. In

view of the interim order dated 05.03.2018, passed by this Court the construction of the buildings was interrupted.

10. In view of the averments filed for interim injunction is set aside. The applicant is given liberty to approach the arbitrator within a period of one year from the date of receipt of a copy of this order to work out his remedy.

11. These applications are dismissed with the above observations.

Sd/- C.S.N.J

24.09.2018

//Certified to be a true copy//
Dated this the day of 2018.

DL/23.11.2018

COURT OFFICER

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

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