

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.08.2018

Pronounced on : 11.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

O.S.A. Nos.124 and 125 of 2018

and

C.M.P. Nos.7882 and 7883 of 2018

1.Tara Gulecha
2.Jinesh Kochar
3.Rooprekha
4.Deepak Kochar
5.Jayesh Kochar

... Appellants

Vs.

1.Idea Housing Corporation,
A registered partnership firm,
Having its registered office at
First Floor, 6/16, Bagavandas Street,
West Tambaram, Chennai-600 045.

2.M/s.Anmol Housing Corporation,
A registered partnership firm,
Having its registered office at
No.102, Lattice Bridge Road,
Adyar, Chennai-600 020.

... Respondents

Common Prayer: Original Side Appeals filed under Order XXXVII, Rule 1 of O.S.Rules r/w Clause 15 of Letters Patent and Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the order and decreetal order dated 14.02.2018 made in O.A.Nos.1030 and 1031 of 2016.

OP.605/2017:

Original petition praying that this Hon'ble Court be pleased to appoint an Arbitrator in terms set out in Sec.11(6) (a) of the Arbitration and Conciliation Act, 1996 to decide the disputes and claims between the petitioner and the respondents arising out of the Memorandum of Understanding dated 06.02.2016.

O.A.No.1030 of 2016

Original Application praying that this Hon'ble Court be pleased to pass an order of interim injunction restraining the Respondents, Respondents, their agents, representatives or any one claiming under them from alienating or otherwise encumbering the applicant Property mentioned in this Judges Summons.

O.A.No.1031 of 2016

Original Application praying that this Hon'ble Court be pleased to grant ad-interim injunction restraining the Respondents their men, agents, servants, representatives, heirs or persons acting on their behalf or claiming through them from in any manner disturbing, interrupting or otherwise interfering with the Applicant peaceful possession of the Petition Property mentioned in this Judges Summons pending disposal of the above petition.

For appellants : Mr.ARL.Sundersan, Senior Counsel for
(in both appeals) Mrs.AL.Ganthimathi

For Respondents : Mr.K.Bijai Sundar for R1
(in both appeals) Mr.Mukundan for R2

C O M M O N J U D G M E N T

C.SARAVANAN.J.,

The above appeals have been filed to set aside common order and decretal orders dated 14.2.2018 in O.A Nos.1030 and 1031 of 2016 and to allow the above appeal as prayed for.

2. The appellants herein are owners of several parcels of land and have executed Power of Attorney dated 19.6.2004 in favour of Mr.Alok Kumar Gulechha and Mr.S.JaiKumar (Donees).

3. The power of attorney has been given to these two Donees in their individual capacity. Incidentally, Mr.Alok Kumar Gulechha is the husband of the first appellant herein and the partner of second respondent herein.

4. The first Donee namely Mr.Alok Kumar Gulechha has signed a Memorandum of Understanding 6.2.2016 ostensibly pursuant to the said power of attorney on behalf of the appellants herein, on behalf of the second respondent herein of which he is the partner with the first respondent who is developer of property.

5. The second Donee namely Mr.S.Jaikumar has not signed the aforesaid Memorandum of Understanding.

6. Pursuant to the aforesaid Memorandum of Understanding, the first Donee Mr.Alok Kumar Gulechha has also received a sum of Rs.1, 85, 00, 000/- and has acknowledged the same on the letter head of the second respondent.

7. Disputes have arisen between the appellants on one side and the first respondent with whom the first Donee Mr.Alok Kumar Gulechha had signed the aforesaid Memorandum of Understanding. The 1st respondent herein filed O.P. No.605 of 2017 and O.A.Nos.1030 and 1031 of 2016.

8. On 27.3.2017, the court earlier had granted an interim order directing the appellants to maintain status quo in O.A.Nos. 1030 and 1031 of 2016.

9. By the impugned order the court has appointed Honourable Mr Justice K.P.Sivasubramaniam (Retired), of this Court as the Sole Arbitrator to enter upon reference and to adjudicate the dispute between the parties hereto.

10. The court has also extended the order dated 27.3.2017 until final award is passed by the Arbitrator.

11. On 22.3.2018 the present appeal came to be filed before this Court. After compliance with the objections from the Registry, these cases were listed for admission on 31.8.2018.

12. During the interregnum, pursuant to the impugned order, the Sole Arbitrator has also held the second meeting in presence of the counsel for the respective parties on 4.8.2018 and framed 13 issues.

13. In the present appeal the appellants are represented by Mr.ARL.Sundersan, Senior Advocate assisted by Mrs.A.L.Gandhimathi, Advocate. 1st respondent is represented by Mr.K.Bijaisundar, Advocate. Mr.Mukundan, learned counsel who appeared for 2nd respondent before the Court in Original Application was also present.

14. The Learned Senior counsel for the appellants has challenged the common order's dated 14.02.2018 of the single Judge and has raised objections during hearing regarding the jurisdiction of the Arbitrator to resolve the dispute. The main thrust of the appellants is that the status quo order cannot be extended as against the owners of the lands and therefore the impugned order is liable to be set aside.

15. It has been specifically argued that the appellants have not received any amount from the second respondent partnership firm represented by Mr.Alok Kumar Gulechha. It was further argued that the Arbitration Clause in the Memorandum of Understanding has been signed only by the first Donee namely Mr.Alok Kumar Gulechha and that payments were only made to the second respondent represented by Mr.Alok Kumar Gulechha is not binding on them. It is further submitted that the arbitration agreement in the Memorandum of Understanding is not binding on the appellants.

16. Per contra, the counsel for the first respondent submits that the partner of the second respondent namely Mr.Alok Kumar Gulechha who is one of the Donee of Power of Attorney and is the husband of the first appellant and it is he who orchestrated the entire transactions and therefore first respondent is entitled to demand security in respect of lands owned by the appellants as there is adequate consideration. But for the power given, the Memorandum of Understanding would not have been signed.

17. We have given our anxious considerations to the case. There is a registered General Power of attorney executed by the appellants herein in favour of the respective Donees namely Mr.Alok Kumar Gulechha and Mr.S.Jai Kumar.

18. Wide powers have been given under the Power of Attorney to not only effects sale, but also effect sale agreements, cancellation deeds, rectification deeds, exchange needs et cetera so as to bind them.

19. The Power of Attorney also gives them the power to apply for demolition of the existing building structures, super-structures and to obtain sanction thereof and also to demolish and alter the existing buildings, structures and to construct new buildings/modify the buildings in the schedule C to the Power of Attorney.

20. The said Power of Attorney dated 19.06.2014 has given rise to the Memorandum of Understanding dated 06.02.2016 signed by the respondents 1 and 2, which has an arbitration clause. The second respondent's partner Mr. Alok Kumar Gulechha is one of the Donees in the said Power of Attorney. He is the husband of the first appellant herein. The second respondent has also received consideration which according to the learned counsel for the first respondent has been duly accounted in the books of account of the first respondent.

21. The Learned Arbitrator has framed 13 issues. Issue nos. 6 and 12 read as under:-

"(6) Whether the General Power of Attorney dated 19.06.2014 is valid and binding on the parties? and

(12) Whether the respondents 1 to 5 were partners of the 6th respondent at the time of signing the MoU?"

22. These issues go to very root of the dispute and will determine of merits of the claim.

23. In view of the disputes raised in the present appeals questioning the appointment of the Arbitrator in the impugned order on account of manner in which the Memorandum of Understanding has been signed, we feel in the fitness of the case it would be appropriate if the learned Arbitrator decides the above two issues namely, issue Nos. 6 and 12 as preliminary issues under Section 16 of the Arbitration and Conciliation Act, 1996 before proceeding further.

24. The impugned order maintaining the status quo by the learned single Judge will continue until further orders are passed in the arbitral proceeding by the learned Arbitrator.

25. With these observations the Original Side Appeals are dismissed. Consequently, connected civil miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CS IV)

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Sub Assistant Registrar

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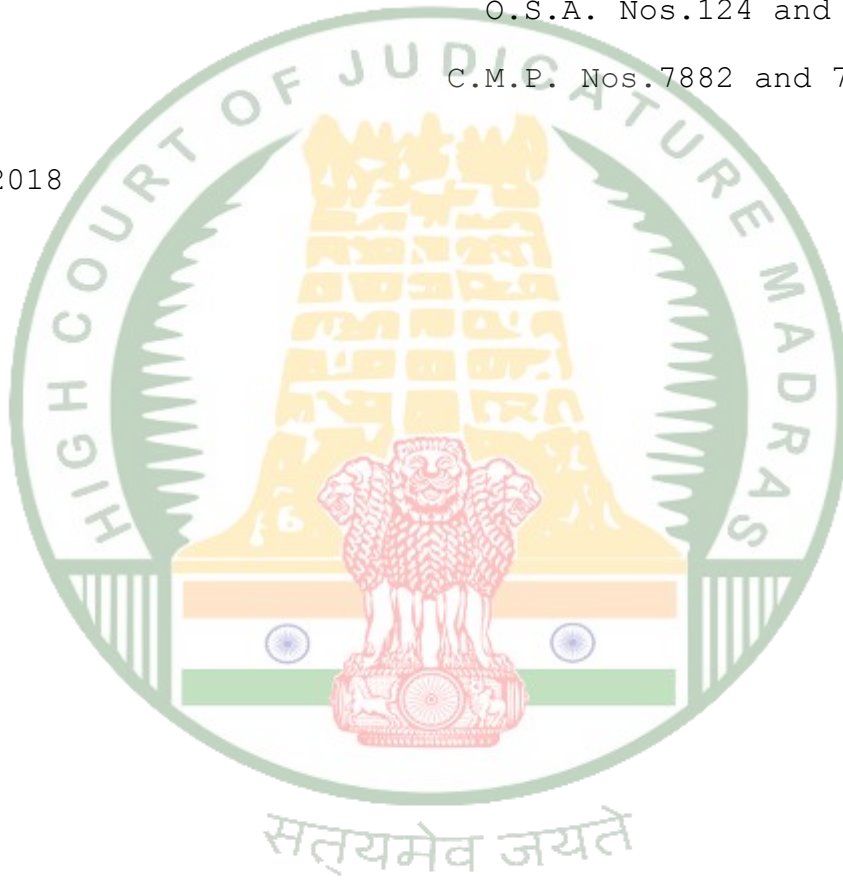
To:

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.K.Bijai Sundar, Advocate sr.no.63589
+1cc to Mrs.AL.Ganthimathi, Advocate sr.no.63787

O.S.A. Nos.124 and 125 of 2018
and
C.M.P. Nos.7882 and 7883 of 2018

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