

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
30~07~2019	19~08~2019

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THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

Original Petition No.235 of 2008
and A.No.7797 of 2017 and O.A.No.1198 of 2018

1. J. Vengatesh
- 2.A.R.Gomathi
- 3.V.Annalakshmi

... Petitioners

Vs

1. M/s.Macro Marvel Projects Ltd.,
Rep.by its Director Mr.M.Ravikumar
GC "Gleneden Place"
No.813, Poonamallee Road,
Kilpauk, Chennai 600010.
No.21, Patullos Road,
Chennai 600002.
2. Thiru.S.Chockalingam
(Retired District and Sessions Judge)
Presiding Arbitrator
3. Thiru K. Natarajan
(Retired District and Sessions Judge)
Arbitrator
4. Thiru. Soundarapandian
(Retired District and Sessions Judge)

Arbitrator.

... Respondents

Prayer :- This Original Petition has been filed under section 34 of the Arbitration and Conciliation Act to set aside the Award dated 21.01.2008 passed by the Respondents 2 to 4 and consequently allow the counter claim.

For Petitioner : Mr.V. Ragavachari
for M/s.R.Veeramani [for P1 & P2]

Mr.PL.Narayanan for P3

For Respondent : Mr.T.R. Rajagopalan
Senior Counsel for
Mr.M.Rajaraman [for R1]

ORDER

Aggrieved over the order of the Three Member Arbitral Tribunal, directing the Respondents/Petitioners herein to execute the sale deeds in favour of the Claimant in respect of the remaining plots in the Schedule A to D in Manapakkam Village within a period of three months, in default the Tribunal nominate an Advocate to execute and to register sale deeds on the petitioners behalf and in favour of claimant or their nominees.

2. Brief facts leading to file this petition is as follows :

2.(a). One Mr.M. Arumugam Power Agent of the Petitioners has entered into an agreement for sale of land in favour of the Respondent/Claimant in respect of extent of land 12.72 Acres in various Survey Numbers. The claimant should promote a scheme of the plot of land should acquire, own and enjoy a specific house with the land. Sale consideration was fixed at Rs.3,85,000/- per CMDA approved land of 2400 sq.ft. The completion of the sale shall be 15 months commencing one month after the date of obtaining CMDA permission. It is also agreed that the power agent should obtain the permission for approval of layout from CMDA at his cost and expenses and he should arrange for survey and measurement of all plots for arriving at a total sale consideration. Initially to pay Rs.50 lakhs as adjustable advance to be adjustable in the proportion to the sale consideration of plots agreed. However, in pursuant to the agreement an advance of Rs.50 lakhs was paid on 03.12.2003, there was a delay in getting the approval of layout from CMDA.

2.(b) Similarly, Power of Attorney Mr.M.Arumugam has acquired a land from M/s.Ranganathan brick industries in the name of his son-in-law's and his wife second Petitioner herein and daughter 3rd Petitioner herein and also in favour of two sons Mr.K.R.Kumar and Mr.A.R.Thirumoorthy. P1 to P3 also gave a General Power of Attorney to Mr.M.Arumugam to do all acts. In pursuant to the Power of Attorney, an agreement dated 17.2.2004 with regard to 8.21 acres also came to be executed by the parties wherein the claimant also promote scheme whereby prospective purchaser of the plot of land should acquire, own and enjoy a specific house with the land. The sale consideration was fixed at Rs.3,85,000/- and adjustable advance of Rs.1 crore agreed to be paid by the claimant. The advance has been adjusted in proportion to the sale consideration of the plots at the time of registration of plots. The Petitioner also to pay interest for a sum of Rs.25,00,000/- at the bank rant of project finance. The Respondent also agreed to deposit the title deeds with the claimant's bankers for availing project finance, subject to the

terms and consideration to be mutually agreed between the parties.

2.(c) In pursuant to the agreement Phase-I sale was completed. However, in respect of Phase-II claimant marketed 60 plots by that time approval was obtained. At that time the Power Agent Mr.M.Arumugam increased the price of plots. Accordingly Phase II plot sale consideration was increased to Rs.5 lakhs. Phase II consisted of 96 Regular Plots 34 Economic Weaker Section Plots and 17 Roman letter Plots are to be retained for one year, the Government to acquire. The Claimant started construction of individual houses after entering into construction agreements in respect of plots sold and registered. At that time the Petitioner has cancelled the Power in respect of Mr.M.Arumugam. The above act was in collusion with Mr.Arumugam.

3. It is the contention of the Respondent/claimant that out of 147 plots only 49 plots remain unsold. The cancellation of the

power was an attempt to coerce just to get higher price. Similarly, termination of Contract is also illegal. Hence, the claimant has referred the matter to the Arbitration for seeking prayer for specific performance directing the Petitioners/Respondents to execute and register sale deeds in favour of claimant and or their nominees in respect of the remaining plots described in A to D schedule on or before 04.09.2007 as contemplated in the agreement and also damages and mandate injunction etc.,

4. The Petitioners denied the contention and submitted that there was a breach of trust by Mr.M. Arumugam. The Petitioners were not aware of the terms and conditions of the agreement entered by Mr.M.Arumugam. It is the contention that a sum of Rs.3 crore loan has been raised by the claimant by mortgaging the properties of the petitioners in collusion with the bank officials. The alleged adjustable advance is also not correct. Only Rs.80 lakhs was paid in respect of Phase II project, though Rs.3 crores loan was obtained by the claimant. The Claimant did

not pay any amount towards adjustable advance in respect of the first agreement and supplementary agreement. The claimant in fact sold plot 2400 sq.ft.at the rate of Rs.10,30,110/-. The Petitioners have incurred heavy expenditure to convert the agricultural land to residential zone. The Claimant is not entitled to any amount for loss of profit and the prayer for the specific performance cannot be maintained.

5. On the basis of the pleadings the following issues were framed:

1. whether the termination of the agreement of sale dated 17.2.2004 and the supplemental agreement dated 12.5.2004 by the respondents 1 to 3(Petitioners herein) is valid and binding?
2. Whether the Claimant was ready and willing to perform their part in respect of the agreements?
3. Whether the breach was committed by the claimant or Respondents (Petitioners herein)?

4. Whether the claimant is entitled for the relief of specific performance of the agreement of sale deed dated 17.2.2004 and supplemental agreement dated 12.5.2004?
5. Whether the claimant is entitled for damages as prayed for in para 30 (A), (B), (c) of the claim statement?
6. Whether the claimant is entitled for mandatory injunction as prayed for in para 30(D) of the claim statement?
7. Whether the Respondents 1 to 3(petitioners herein) are entitled to counter claim as prayed for in the reply statement?
8. To what relief are the parties entitled to ?

6. Additional issues were also framed on 19.11.2007 which are as follows

1. Whether the Claimant committed breach of trust in obtaining loan from the United Bank of India and in executing the memorandum

of deposit of title deeds pertaining to the property?

2. Whether the agreement of sale dated 17.2.2004 and supplementary agreement dated 12.5.2004 are vitiated on account of breach of trust?

7. The learned Three Members Tribunal after considering the entire materials has passed the Award in favour of the claimant and directed the Petitioners to execute sale deeds in favour of the claimant in respect of remaining plots within a period of three months and in default to comply with the above direction nominate Advocate Mr.R.N.Kothandaraman to execute, to register the sale deeds for and on behalf of the Petitioners in favour of the claimant. The above Award has been put into challenge in this petition.

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8(a). The learned counsel Mr.V. Ragavachari appearing for the Petitioner Nos.1 and 3 and the learned counsel Mr.PL.

Narayanan appearing for the Petitioner No.2 submitted that the Award is totally against the fundamental policy of India. Substantial provision of law has not been followed. The very agreement itself is unfair and not capable of enforcement. The very contract itself clearly indicate that the respondent is not the purchaser of the property, he is only an agent of the owners of the property to identify the buyers. It is their further contention that right from the inception, for obtaining the approval from the concerned authorities for laying out and making plots, every expenditure has incurred by the owners of the property. The only job of the Respondent is to identify the prospective buyers to sell the plots. It is his contention that no amount whatsoever invested by the buyer. Hence, the contention that merely because the nomenclature of the agreement shows that the Respondent is a buyer, the agreement cannot be treated as sale of properties. It is further contended that the properties have been mortgaged by the buyer and he availed loan to the tune of Rs.6 crores and advance allegedly paid to the buyer was also adjusted during the sale of every plots. Hence, it is their

contention that the agreement is totally unfair and inequitable to grant specific performance.

8.(b) The learned Arbitrators have not even looked into those aspects and Section 20 of the Specific Relief Act has totally violated. The learned Arbitrators not even found undue hardship that may be suffered by the owners. In fact the agreement give unfair advantage over the Respondents. Therefore, the contention that the substantial provision of law has not been considered. Learned Arbitrators have totally failed to consider those aspects and granted the relief of specific performance in utter violation of the fundamental policy of India. It is their contention that though Phase I of the contract was completed on the basis of the Power of Attorney executed by the petitioners in favour one Mr. M.Arumugam the remaining 49 plots remain unsold. At that time the contract has been rightly terminated by the Petitioners. Therefore, once the contract has terminated there cannot be any specific performance. Hence, it is the contention of the learned counsel for the petitioner that the

Award suffers from patent illegality and also violation of fundamental policy of India.

9. In support of his contention the learned counsel for the Petitioner relied upon the following judgments:

- 1. A.M.Gandhisan vs. Ayyasami [92 L.W.146]**
- 2. S.Sankaran Died & 4 others vs. N.G. Radha krishnan [1994-2-L.W.642]**
- 3. M.Chidambaram (deceased) & 4 others vs. S. Anthony Raj [2002(4) CTC 513]**
- 4. Garre Mallikharjuna Rao (dead) by Lrs. vs. Nalabothu Punniiah [(2013) 4 SCC 546]**
- 5. Shamsheer Singh & others vs. Rajinder Kumar & Others [(2015) 5 SCC 531]**
- 6. Ramesh Chand (dead) through legal heirs vs. Asuruddin (dead) [(2016) 1 SCC 653]**
- 7. Sushil Kumar Agarwal v. Meenakshi Sadhu & Others [(2019) 2 SCC 241]**

8. Security Printing & Others vs. Gandhi Industrial Corporation [(2007) 13 SCC 236]

9. ONGC Ltd., vs. Garware Shipping Corporation Ltd., [(2007) 13 SCC 434]

10. Sumitomo Heavy Industries vs. Oil & Natural Gas Corporation Ltd. [(2010) 11 SCC 296]

11. ONGC Ltd., vs. Western Geco International Limited [(2014) 9 SCC 263]

12. Associate Builders v. Delhi Development Authority [(2015) 3 SCC 49]

13. MMTCL Ltd., v. Vedanta Ltd., [(2019) 4 SCC 163]

14. SSAngeong Engineering and Construction Co. Ltd., v. National Highways Authority of India (NHAI) [(2019) 5 MLJ 7 (SC)]

15. Indian Oil Corporation vs. Bhagawan Balasai [2017 SCC Online Mad 37266]

16. Container Corporation of India Ltd., vs. Kandia Cargo Handlers [2019 SCC Online Bom.1245]

17. Ms.Gayatri Balaswamy vs. ISG Novasoft Technologies Ltd., [2014 - 5- L.W. 97]

18. A.M.Govindan v. Ayyasami [92 L.W.146]

10. Whereas the learned Senior Counsel Mr.T.R.Rajagopalan appearing for the Respondent submitted that the Contract is the sale agreement, the parties understood the contents, the substantial portion of the contract has been acted upon. 88 plots were already sold and the principal namely owners have ratified all the acts by the Power Agent. Their conduct itself clearly indicate that this agreement is nothing but sale agreement. The substantial part of contract as been performed. Therefore, it is his contention that the learned Arbitrators have considered the entire aspect the award cannot be interfered, merely because the view of the Arbitrators capable of some other interpretation.

11(a). It is further submitted that the Power Agent and principal have colluded together to terminate the contract having obtained the benefits and consented to sell the major portion of the properties. In fact the Petitioners have committed the breach of trust and contract. When the power agent sought to be made as a party to the arbitration proceedings the same was objected by the Petitioners. The above conduct also clearly indicate that they have committed breach of Trust and all these facts have been clearly considered by the learned Arbitrators. Documents filed by the Petitioner clearly indicate that the parties are aware that they intended to sell the properties and having received the consideration at the time of every sale. Now the contract has been terminated only due to the rise in the price in the locality. Above itself clearly indicate that the Petitioners have not come with clean hands.

11(b) The petitioner also given a fresh power of attorney wherein ratifying the acts of principal. All these facts clearly indicate the petitioners entire claim is baseless. The Contract

was implemented effectively. Therefore, it is his contention that when the petitioners have done the substantial acts based on the contract entered between the parties, the discretion has to be exercised in favour of the person who is seeking specific performance. Hence, his contention that admittedly 89 plots have already been sold, only remaining 49 plots were unsold. That being the position the contention of the Petitioners cannot be sustained. The Arbitrators have considered the entire aspects. Award cannot be interfered. This Court cannot re-appreciate the entire facts. Hence prayed for dismissal.

12. The learned counsel for the Respondent relied upon the following judgments on his side:

1. *Jai Narain Parasrampuria (dead) and others vs. Pushpa Devi Saraf and Others [(2006) 7 SCC 756]*

2. *Lalit Kumar Jain and Another vs. Jaipur Traders Corporation Pvt. Ltd., [(2002) 5 SCC 383]*

13. On a perusal of the records the dispute mainly pertains

to the agreement dated 17.12.2004 and 12.05.2004. It is not in dispute that the parties have entered into a contract and Phase-I has already been completed. In Phase-II the dispute has been referred, wherein 89 plots have already been sold and the remaining 49 plots remain unsold which was the subject matter of the dispute before the Learned Arbitrator. The dispute mainly with regard to seeking specific performance. The conduct of the parties from the very beginning indicate that they have entered an agreement for sale of certain properties, now it has to be seen whether the nature of agreement relied upon by the parties is capable of enforcement?

14. It is well settled that a grant of Specific Performance is governed by the specific provisions of the Specific Relief Act. Though the parties are entitled to specific performance such specific performance is not automatic. While enforcing the contract the Court has to look into the other aspects also as contemplated under Section 20 of the Specific Relief Act. The substantial provision of law governing the specific performance

has to be borne in mind while granting specific performance. When the agreement carefully seen, it is relevant to refer the agreement entered between the parties which are subject matter of the dispute. Agreement dated 12.05.2004, though styled as agreement for sale of land and the Petitioners classified as Vendors. Clause B of the agreement is read as follows:

"B. The DEVELOPER propose to promote a project for construction of Independent Residential Houses under a Scheme to be named by the DEVELOPER subsequently as per the sanctioned plans with such modifications as may be deemed necessary by the DEVELOPER and permitted by the concerned authorities (hereinafter called the scheme). Under the scheme a person interested in acquiring a specific divided right, title and interest in the land proportionate to the house by virtue whereof such person will be granted the right to acquire, own and enjoy a specific house in the said scheme for a consideration to be paid with all matters of common concern, sharing of amenities, facilities, liabilities etc., being looked after in terms of an overall scheme and upon the completion of the said scheme, the land

covered by house will be owned by the said person."

15. Clause 1.b of the agreement makes it clear that the vendors will obtain permission from CMDA for the usage of lands from Agricultural Zone to Primary Residential Zone and obtain layout approved from the CMDA as per the scheme worked out by the developers and form roads with trenches on both sides and make the individual plots mentioned in Schedule A as per the sanctioned plan of Chennai Metropolitan Development Authority. Besides they also arrange for survey. So from the agreement, the entire responsibility lies on the owners of the property to get necessary permission from the concerned authorities to change the zone of land also. Besides, though it is stated in the agreement as if the Developer agreed to pay a sum of Rs.1 crore, it is relevant to see Clause c and Clause 1.c.II of the agreement which is extracted as follows:

"1.c.II. A sum of Rs.65,00,000/- to be paid to the VENDORS and DEVELOPER at the time and mode mutually agreed when the DEVELOPER avails Project Finance from its Bankers on the security of the Schedule A Property. The Vendors agrees to pay

interest for a sum of Rs.25,00,000/- to the DEVELOPER at the bank rate of Project Finance till the said sum is adjusted as per clause 2(a) below."

16. The above clauses make it clear that even to purchase the property, amount has not been invested by the developers. The agreement indicate that the property of the vendors should be mortgaged by the developer and all the necessary documents should be executed by the owners of the property for availing loan from the concerned banks. It is undisputed fact that by mortgaging the property the developers have raised the loan of Rs.6 crores on the property of the owners. Further the agreement in entirety when read, clearly indicate that the only job of the developer is to identify the buyer and sell the plot of 2400 sq.ft. each and the consideration for the owners would be Rs.3,85,000/-. From the above covenant in the agreement makes it very clear though the nomenclature is appears to be a sale agreement the main job of the developers is to identify the buyer and sell the land and pay a consideration of Rs.3,85,000/- per plot and advance received by the owners also to be adjusted

at every sale. In fact, the agreement makes it clear that without investing any amount, ultimate beneficiary is only the developer, not the seller.

17. Be that as it may. The very terms of the contract is in fact inequitable and the developers in fact without making any huge investment, were asked to identify the buyers and pay only a paltry sum of Rs.3,85,000/-per plot to the owners. It is also established on record that the developers are also entitled to enter a construction agreement with the prospective buyers in respect of the same plots and sell the property. In nutshell, the entire agreement though styled as sale agreement, it is in fact gives undue advantage to the one of the parties viz., the developers. Before the Arbitrators it was also brought on record that they mortgaged the property and availed the loan also. Such agreement in view of this court is certainly inequitable. Such being the position, whether such agreement is capable of specific performance? No doubt by act of parties, the agreement has been acted upon for certain extent.

18. In this regard it is useful to refer a judgment of this court in **A.M.Govindan's case** (supra) wherein it is held that the agreement for sale is unfair. The terms are such which give the plaintiff an unfair advantage over the defendant and that it was entered into under circumstances which would make it inequitable to enforce specific performance.

19. In **S. Sankaran's case** (supra) this Court has held that the court is not bound to grant specific performance merely because it is lawful to do so. The motive behind the litigation should also enter the judicial verdict. The Court is bound to see that it is not used as an instrument of oppression to have an unfair advantage to the plaintiff. If specific performance is allowed, the plaintiff will be getting unfair advantage and held that such agreement cannot be enforced.

20. In **M.Chidambaram's case** (supra) it is held that the discretion shall not be exercised in arbitrary and unreasonable manner. The discretion can be exercised to deny relief of specific

performance if it is established that under terms of contract Plaintiff gets unfair advantage and defendant would be put to undue hardship.

21. In **Shamsher Singh's case** (supra) the Honourable Apex Court has held that in the terms of agreement of sale given unfair advantage to plaintiff over defendant and other facts specific performance cannot be granted.

22. In **Ramesh Chand's case** (supra) the Apex Court has held that where conditions or circumstances of contract give unfair advantage to plaintiff, decree for specific performance shall not be granted and under such conditions compensation as equitable relief in lieu of decree for specific relief may be granted.

23. In **Sushil Kumar's case** (supra) the Apex Court has held that when a pure construction contract entered into, the contractor has no interest in either the land or the construction which is carried out, the terms of agreement are crucial in

determining whether any interest has been created in the land or in respect of the rights in the land in favour of the developer and if so, the nature and extent of the rights. Admittedly in this case, even to pay the adjustable advance, the property of the vendors have been mortgaged for huge sum and adjustable advance also adjusted at the time of sale of every plot. Therefore, no investment whatsoever has been made by developer even to contend that he has paid price money, there is no evidence at all. The manner in which the amount has mobilised to pay advance by raising the loan clearly indicate that the so called buyer namely the Developer has not even paid the price money. Therefore, entire agreement clearly indicate that no interest whatsoever has been created by the developer.

24. In ***Security Printing and Minidng Corporation of India Limited's case*** (supra) the Apex Court has held that in the Arbitral Award Ex facie illegal or perverse the court can interfere with such award.

25. In **ONGC Ltd. vs. Garware Shipping Corporation Ltd case** (supra) the Honourable Supreme Court has held that if the award is erroneous the same can be interfered.

26. In **ONGC vs. Western Geco International Ltd., case** (Supra) the Apex Court has held that if the Award is not in compliance with fundamental policy of Indian Law as arbitrators failed to draw an inference that ought to have been drawn or an inference on the face of it is untenable resulting in miscarriage of justice, the Award can be set aside.

27. In **Associate Builders' case** (supra) the Apex Court has held that when the findings of arbitrator are arbitrary, capricious or perverse, or when conscience of court is shocked, or when illegality is not trivial but goes root of the matter the Award can be set aside.

28. In **Ssangyong Engineering and Construction Co. Ltd., case** (supra) in paras 24 and 30 the Honourable Supreme

Court are as follows:

24. *It is important to notice that the ground for interference insofar as it concerns “interest of India” has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the “most basic notions of morality or justice”. This again would be in line with paragraphs 36 to 39 of Associate Builders (supra), as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.*

30. *What is important to note is that a decision which is perverse, as understood in paragraphs 31 and 32 of Associate Builders (supra), while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.*

29. Learned Arbitrators have not considered the terms of

contract, they proceeded the issue as if the entire agreement is for sale, the terms of the contract has not been considered and discussed in the entire award. Similarly the learned Arbitrators have also not taken into consideration all the relevant substantial provision of law. Section 14 of the Specific Relief Act deals when the contracts cannot be specifically enforced. Section 14(1) of the Act is read as follows:

14.(1) The following contracts cannot be specifically enforced, namely:-

(a) contract for the non-performance of which compensation in money is an adequate relief;

(b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms.

(c) a contract which is in its nature determinable;

(d) a contract the performance of which involves the performance of a continuous duty which the Court cannot supervise.

Admittedly in this case, agreement for not to purchase the remaining plots in one time. The developer has to identify the prospective buyer and to sell the plots. It is difficult to find out buyers for all the 49 plots and it will take lot of time and depends upon the volition of the parties. For every execution of the sale deed cannot be monitored by the Court. Such being the position for finding the buyer for remaining 49 plots, the court cannot supervise except to appoint somebody to monitor the same. Therefore, such contract cannot be enforced in view of Section 14 of the Specific Relief Act.

31. Similarly, Section 20 of the Act has also not at all discussed by the learned Arbitrators. Section 20 of the Specific Relief Act deals with the discretion as to decreeing specific performance. Section 20(2) deals with cases where the court may properly exercise discretion not to decree specific performance:

20.(2)(a). Where the terms of the contract or the conduct of parties at the time of entering into the contract or the other circumstances under which the contract was entered into are such that the contract, though not voidable, gives the plaintiff an unfair advantage over the defendant.

20(2)(b) Where the performance of the contract would involve some hardship on the defendant which he did not foresee, whereas its non-performance would involve no such hardship on the plaintiff

20(2)(c) Where the defendant entered into the contract under circumstances which though not rendering the contract voidable, make it inequitable to enforce specific performance.

32. Admittedly the terms of the contract as discussed above clearly indicate that the developer has without making any investment and required to identify the buyers, all the expenses made by the Vendor for laying of plots, obtaining necessary permission which has not taken note of by the Arbitrators. Only small amount has been paid as consideration. Further, the developer is also entered into the construction agreement with

the prospective buyer for varied amounts. Such terms certainly will give unfair advantage to the developer if the specific performance is granted. Learned Arbitrators have not even taken note of all these facts while exercising discretion.

33. Therefore, merely because a part of the contract has been enforced by the parties, that cannot be a sole ground to enforce the remaining part of the contract. Therefore, this Court is of the view that the discretion has not been exercised properly by the Arbitrators strictly following Section 20 of the Specific Relief Act. Besides Section 14 also not taken into consideration by the learned Arbitrators while granting specific performance. Admittedly, enforcement of contract will give unfair advantage to the Respondent. The developer has not even invested any money. All the expenses have been made by the seller. Merely because the parties who are developers being the dominant position and obtained some contract which will give unfair advantage to them and some portion of the contract has already performed, that itself cannot be a ground to grant Specific

Performance in respect of the remaining part. Hence, the Award of the Arbitrators ignoring the substantial provision of law certainly violation of public policy of India.

34. During the arguments, it is submitted by the learned counsel for the Respondent that they are ready to give 25% of the remaining plots to the petitioner. Whereas the Petitioners submitted that they are prepared accept 50% of the remaining plots. However, the Respondent are not agreed on that. In view of the above, considering the fact that knowingly or unknowingly the petitioner entangled with the contract which is unfair and inequitable and having further fact that the respondent has not invested money from his pocket and raised loan by mortgaging the property and all along he has also depending upon the contract, this court is of the view that in order to give quietus to the litigation between the parties, this court is inclined to award reasonably. Though the scope of section 34 is limited, considering the nature of the litigation and dispute between the parties, this Court direct the Petitioner to pay a sum of Rs.50,00,000/-

(Rupees Fifty Lakhs only) to the Respondent. The same shall be paid within the period of six months from today. With the above direction the petition is allowed and the Arbitral Award is set aside.

35. In the result the Original Petition is allowed. The Award passed by the learned Arbitrators dated 21.01.2008 is set aside. The Petitioner is directed to pay Rs.50,00,000/- (Rupees Fifty Lakhs only) to the Respondent. The said sum shall be paid within six months from today (19.08.2019). Consequently, connected Application and Original Application are closed. No costs.

19.08.2019

Index : Yes

Internet : Yes

Speaking/Non-speaking Order

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Note: issue order copy on 26.08.2019

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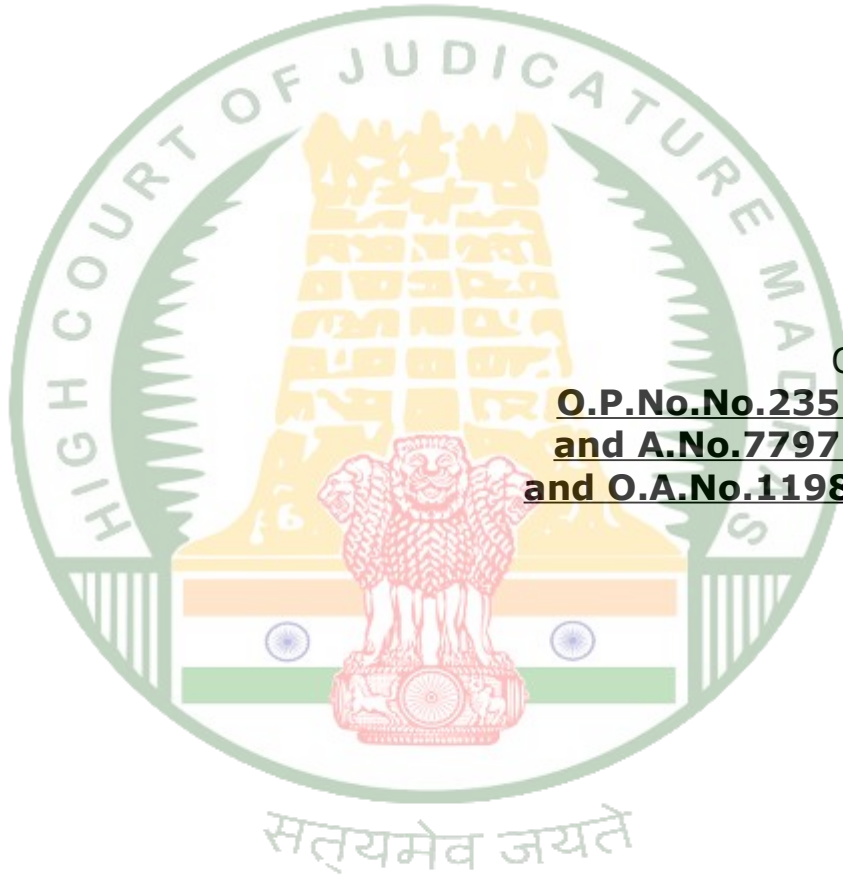
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