

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :19.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.828 of 2019

M/s. Serene Kshetra Owner's Association,
Rep. by its Secretary Mr.Shekhar Murthy,
having office at
No.R6-14, Serene Kshetra,
Natthapettai, Ayyampettai Post,
Kanchipuram - 631 601.

.. Petitioner

vs.

1.M/s. Serene Senior Care Private Ltd.,
Rep. by its Chief Executive Officer,
Mr.Mohit Nirula,Serene Adinath,
283/1, Ramakrishnan Street,
Chettiyar Thottam,
Vandaloor, Chennai - 600 048.

Also having office at:
Suite 904, Tower 2, 9th floor,
TVH Beliciaa Towers,
No.94, MRC Nagar, Chennai - 600 028.

2.M/s. Serene Senior Living Pvt. Ltd.,
No.31, Sayee, T2, Second Floor,
Rajamannar Street, T.Nagar,
Chennai - 600 017.

.. Respondents

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an arbitrator to resolve the dispute between the petitioner's Association and the 1st respondent and holding the 1st respondent liable for all the lost, expenses and fees payable to the Arbitrator proceedings as per the terms of the Service Agreement and to pass such further order or orders as it may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.Ralph Manohar

For Respondent No.1 : Mr.J.Ashok

For Respondent No.2 : Mr.S.Mothilal.

ORDER

Mr.Ralph Manohar, learned counsel on record for petitioner, Mr.J.Ashok, learned counsel for first respondent and Mr.S.Mothilal, learned counsel on record for second respondent are before this Court.

2. Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity and clarity) has been filed *inter alia* under Section 11 (6) of 'The Arbitration and Conciliation Act, 1996' (hereinafter 'A and C Act' for the sake of brevity) with a prayer for appointment of an arbitrator.

3. This Court is informed that there are service agreements with various individuals qua the first respondent company. Instant OP has been filed by an Association. This Court is informed that the petitioner association is a registered society, registered under the Tamil Nadu Societies Registration Act, 1975 and the registration number is 194/2017.

4. Technically, commencement of arbitration within the meaning of Section 21 of 'A and C Act' has to be by the individuals who have signed separate agreement with the first respondent, but learned counsel for petitioner submits that the petitioner association is espousing their common cause qua arbitrable disputes adumbrated in paragraph 7 of the petition which are being extracted and reproduced elsewhere infra in this order.

5. The question as to whether the petitioner would qualify as a party within the meaning of Section 21 of 'A and C Act' is left open in the instant case. In other words, it is not decided and it would not be raised before the Arbitral Tribunal also in the light of the very fair stand taken by learned counsel for first respondent.

6. The very fair stand taken by learned counsel for first respondent is to put the aforesaid technical objections aside, so that Arbitral disputes 'a to m' of paragraph 7 of the petition can be adjudicated upon.

7. For the sake of convenience and clarity, this Court extracts and reproduces paragraph 7 wherein arbitrable disputes have been adumbrated in sub paragraphs a to m which reads as follows:

'7) The members through their Association M/s.Serene Kshetra Owner's Association had made various representations to the respondent to modify and alter the terms of the agreement. The representations of the members had not been addressed by the first respondent for a very long time. The discussion between the representatives of the petitioner's Association and the first respondent had been going on since Jan 2017. The respondents were dodging to make alterations to the Service Agreement and were dragging the issue without any valid reason. Therefore, the Secretary of the petitioner's Association had sent an email dated 04.02.2019 listing out all the clauses in the agreement which were biased, and which required modification. The members of the Association were not satisfied with the following terms and conditions in the Services Agreement.

a) The Services Agreement is arbitrary and is not in

consonance with the Government Orders, which categorically stipulates that all Senior Citizen projects that features ownership of houses by Senior Citizens have to be mandatorily governed by RERA Act 2016. The Government Order issued by the Tamil Nadu Government-Social Welfare and Nutritious Meal Programme (SW 6(1)) Department in G.O.(Ms).No.83, dated 23.11.2016, which clearly states "Each establishment or a Group of Institution should provide a neutral third party intervention for grievance redressal".

b) The clause dealing with the formation of the Resident Committee and its function is irrelevant and the same is to be deleted.

c) The clause under the head commercial considerations which mentions about "bundled" and "unbundled" services has to be given further clarity and the clause as such as is unilateral and unacceptable.

d) The terms and conditions stipulated under the Common Amenities Area (CAM area) amenities, it is revealed that the CAM area assets were financed from the amount collected as deposits from customers/owners. But the first respondent service provider claims ownership of the CAM area which is unreasonable.

e) As and when the association was formed, the

CAM area ought to have been transferred to the Association and the service provided retaining the CAM area is in violation of the Government Order and the Act.

f) The powers and rights of the association to review and terminate the Services Agreement and the service provider earlier than the contracted period cannot be curtailed by the first respondent.

g) The service provider shall reveal to the owners/customers the manner in which the deposits paid by them had been utilized and the institutions where these deposits are held.

h) The service provider will not have the right to lay down any conditions or stipulations with regard to the right to of the owners/customers to sell his property.

i) The right of the first respondent to outsource its services should be subject to approval of the Association and not according to their own whims and fancies.

j) The first respondent self – appointing themselves as the exclusive service provider for an unquestioned period of ten years is unilateral and arbitrary.

k) The owners are tossed between first and second respondents, for the services to be provided to the owners. There is no transparency and the agreement entered into

and between the first and second respondent has not been shared with the owners, right from the stage of selling the property to the owners from Jan 2014.

l) The first respondent has illegally inserted a clause in the service agreement that the maintenance charges will be charges on the salable area, but the Act stipulates that the same should be on the carpet area.

m) The first respondent insisted for the service agreement to be signed by the owners and some official of the first respondent, who was not in employment of the first respondent, on the date when they presented the document to the owners for compulsory signature, to be eligible for staying in the house and availing services.

8. Petitioner counsel, on instruction, undertakes to produce the list of members of petitioner association i.e., certified copies of Forms VI and VII or any other certified copy from the jurisdictional registering authority (along with the respondents agreement) to show the list of members qua petitioner association as on 13.08.2019, which is the date of presentation of instant OP. The aforesaid exercise shall be done before the Arbitral Tribunal in the first sitting itself.

9. To be noted, learned counsel for second respondent submitted that his stand qua instant OP is in tune and tandem with that of first respondent.

10. In the light of the fair stand taken by both counsel, Hon'ble Mr.Justice K.N.Basha (Retd.), Former Judge of this Court is appointed as Sole Arbitrator and Hon'ble Mr.Justice K.N.Basha (Retd.) is requested to enter upon reference and conduct arbitration qua arbitrable disputes which have been extracted and reproduced supra in accordance with 'A and C Act' and pass an award as expeditiously as possible. The arbitration proceedings shall be conducted under the aegis of the Madras High Court Arbitration Centre, Chennai - 600 104, in accordance with The Madras High Court Arbitration Proceedings Rules, 2017 and The Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017. O.P. is disposed of. There shall be no order as to costs.

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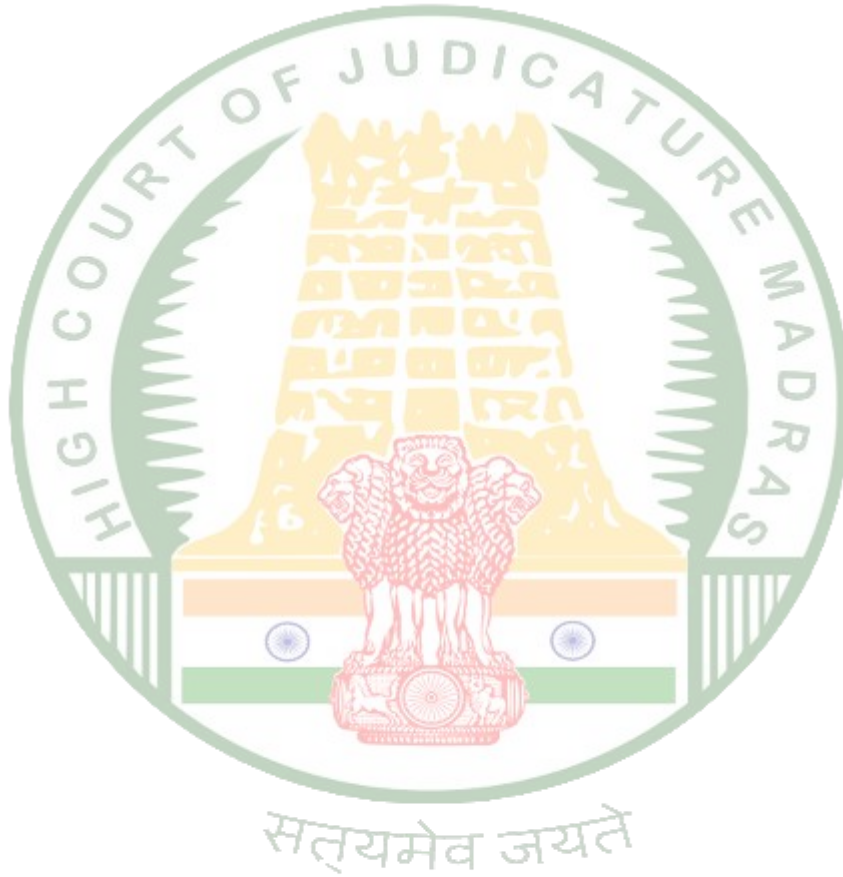
Speaking Order/Non-Speaking Order

Index : Yes/No

Internet: Yes/No

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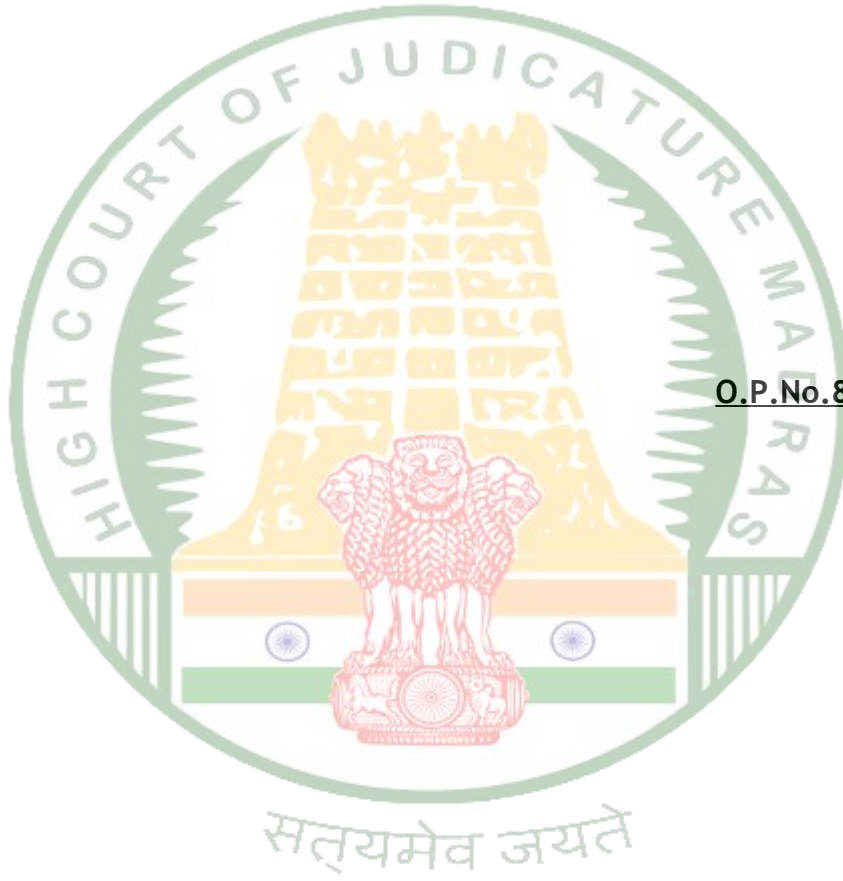
Registry is directed to communicate this order to
The Hon'ble Mr.Justice K.N.Basha (Retd.),
Flat No.F-1, "STAR", No.25/1,
Dr.Ambedkar Road (Old ICF Link Road),
North Thirumalai Nagar, Villivakkam, Chennai - 600 049.



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