



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 21ST DAY OF OCTOBER 2021

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

C.S.No.664 of 2019

and

O.A.No.1039 of 2019

and

A.No. 8899 of 2019

and

A.No.898 of 2021

Ms. Eternity Developers Private Limited
No.11, Harley's Road,
Bangalore – 560 025
Represented herein by Mr. Avinash Prabhu
Authorised Signatory and Director

... Plaintiffs

-Versus-

1. Mr. V.V. Venkatesh
S/o. Late V.R. Viswanathan
No. 122 B (Old) New No. 61- 67,
Nelson Manickam Road,
Aminjikarai,
Chennai – 600 029.

2.Dr. Uma Ramesh
D/o. Late V.R. Viswanathan
W/o. Ramesh,
No. 122 B (Old) New No. 61- 67,
Nelson Manickam Road,
Aminjikarai,
Chennai – 600 029.

Respondents/Defendants

C.S.No.664 of 2019



(a). Pass a Judgment and Decree against the defendants jointly and severally to specifically perform their part of the agreement under the Joint Development Agreement dated 10.08.2009, the Supplemental Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 and the Supplementary Cum Space Sharing Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 in favour of the plaintiff in respect of the suit “B” and “D” schedule property;

(b). Pass a Judgment and Decree of Permanent Injunction restraining the defendants from in anywise alienating or otherwise dealing with the suit schedule A property or acting in a manner detrimental to the rights and interests of the plaintiff in applying for Planning Permission and Approval to construct vide PPA MSB/2013/00034 dated 01.04.2013 from the CMDA and against the terms of the Joint Development Agreement dated 10.08.2009; the Supplemental Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 and the Supplementary Cum Space Sharing Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 in favour of the plaintiff in respect of the entirety of the suit A schedule property and

(c). For costs of the suit.

**O.A.No.1039 of 2019**

WEB COPY

Original Application praying that this Hon'ble Court be pleased to pass an order of ad-interim injunction restraining the Respondents/defendants from in anywise alienating or otherwise dealing with the suit schedule A property or acting in a manner detrimental to the rights and interests of the plaintiff in applying for planning permission and approval to construct vide PPA MSB/2013/00034 dated 01.04.2013 from the CMDA and against the terms of the joint development agreement dated 10.08.2009, the supplemental agreement dated 12-12-2012 to the joint Development Agreement dated 10.08.2009 and the supplementary Cum Space Sharing Agreement dated 12-12-2012 to the Joint Development Agreement dated 10-08-2009 in favour of the plaintiff in respect of the entirety of the Suit A Schedule property pending disposal of the suit.

A.No.8899of 2019

Application praying that this Hon'ble Court be pleased to pass an order of ad-interim direction, directing the 2nd respondent/defendant to withdraw her revocation of consent letter dated 23.09.2019 given to CMDA Authorities, objecting the planning permission application, thereby maintaining status quo ante in respect of processing the planning permission application for schedule A-Property before CMDA authorities pending disposal of the suit.



A.No.898 of 2021

WEB COPY

Application praying that this Hon'ble Court be pleased to decide the suit on the following issues of law namely:

1. Whether on the admitted facts, the delay in processing the application for planning permission, gave a right in the hands of the 2nd defendant to unilaterally treat the contract as having come to an end?
2. Whether the 2nd defendant can unilaterally withdraw her consent to the CMDA for grant of planning permission vide planning permission Application in APJ No. MSB/2013/000344 dated 01.04.2013?
3. Whether the Suit Agreements, namely, the Joint Development Agreement dated 10.08.2009, the supplemental Agreement dated 2012 to the Joint Development Agreement dated 10.08.2009 and the supplemental Cum Space Sharing Agreement dated 12-12-2012 can be specifically enforced?
4. Whether the plaintiff has valued the suit correctly and had paid the proper Court Fee?
5. Whether the Plaintiff is entitled to the reliefs prayed for ?

This civil suit along with the applications having been heard on 01/10/2021 through video conferencing in the presence of Mr.A.

Gunaseelan, advocate for the plaintiff in C.S.No. 664 of 2019 and for the applicant in O.A.No. 1039 of 2019 and A.Nos. 8899 of 2019 and 898 of



2021 and Mr.M.Sridhar, Advocate for the 1st defendant in C.S. No. 664 of 2019 and for the 1st respondent in O.A.No. 1039 of 2019 and A.Nos. 8899 of 2019 and 898 of 2021 and Mr. Sathish parasaran, Senior Counsel for Mr. Rahul Balaji, advocates for the 2nd defendant in C.S.No. 664 of 2019 and for the 2nd respondent in O.A.No. 1039 of 2019 and A.Nos. 8899 of 2019 & 898 of 2021 and upon reading the plaint filed in C.S.No. 664 of 2019 and the Judges Summon and the affidavit of Avinash Prabhu filed in A.No. 898 of 2021 and the order dated 23/06/2021 made in O.A.No. 1039 of 2019 and A.No. 8899 of 2019 and the other exhibits therein referred to and upon persuing the evidence adduced therein and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and, this Court holds that the Joint Development Agreement dated 10.08.2009 and the supplement Agreement dated 12.12.2019 are not specifically enforceable in view of Section 14(b) of the Specific Relief Act, 1963 as amended by Act 18 of 2018, no decree can be passed against the second defendant to honour and enforce the said agreement, and had really the plaintiff carried any substantial interest in performance of the Joint Development Agreement in true spirit, he would not have caused such an inordinate delay in pursuing the application, therefore, the delay in processing the planning permission application is squarely attributable to



the plaintiff and not the second defendant and this Court finds no illegality in withdrawal of the consent. It is not prudent to encumber the property for no valuable consideration, the second defendant due to change in circumstance, in order to save her portion of the property from any encumbrance had withdrawn the consent which she is legally entitled and the inevitable inference available from the pleadings and conduct of the plaintiff is that, he had failed to show he was always ready this Court finds no evidence to show they delayed the project by non-cooperation after 12.12.2012, above all, the law as found in Section 14(b) of the Specific Relief Act, the contract of this nature are not specifically enforceable, since the terms in the agreement deals with performance which requires continuous duty and this court holds the valuation shown by the plaintiff to be accepted as proper value for the purpose of fixation of court fees.

it is ordered as follow:-

That the suit in C.S.No.664 of 2019, be and is hereby dismissed.

2) That these O.A.No. 1039 of 2019 and A.No. 8899 of 2019 and A.No, 898 of 2021 do stand dismissed.



WEB COPY

3) That the plaintiff herein do pay to the defendants herein the costs of the suit as and when taxed by the taxing officer of this court and noted in the margin thereof.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT OF MADRAS AFORESAID, THIS THE
21ST DAY OF OCTOBER 2021

sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



and

A.No.898 of 2021

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

WEB COPY

Reserved on : 01.10.2021

Pronounced on: 21 .10.2021

Coram:**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN**C.S.No.664 of 2019andA.No.8899 of 2019, A.No.898 of 2021 and O.A.No.1039 of 2019

Ms.***Eternity** Developers Private Limited,
No.11, Hayes Road,
Bangalore 560 025,
Represented herein by Mr.Avinash Prabhu
Authorised Signatory and Director

... Plaintiff

/versus/

1.Mr.V.V.Venkatesh

2.Dr.Uma Ramesh

... Defendants

Prayer:- Civil Suit has been filed under Order 7, Rule 1 of C.P.C., read with Order IV, Rule 1 of the Original Side Rules and Section 2(1)(c) (xi) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (Act No.4 of 2015), praying to:-

(a). Pass a Judgment and Decree against the defendants jointly and severally to specifically perform their part of the agreement under the Joint Development Agreement dated 10.08.2009, the Supplemental

*** Amended as per order dated
2/3/2022 in A.No.702/2022**

Sd./-**Assistant Registrar (Comm.Div.)**



Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 and the Supplementary Cum Space Sharing Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 in favour of the plaintiff in respect of the suit “B” and “D” schedule property;

(b). Pass a Judgment and Decree of Permanent Injunction restraining the defendants from in anywise alienating or otherwise dealing with the suit schedule A property or acting in a manner detrimental to the rights and interests of the plaintiff in applying for Planning Permission and Approval to construct vide PPA MSB/2013/00034 dated 01.04.2013 from the CMDA and against the terms of the Joint Development Agreement dated 10.08.2009; the Supplemental Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 and the Supplementary Cum Space Sharing Agreement dated 12.12.2012 to the Joint Development Agreement dated 10.08.2009 in favour of the plaintiff in respect of the entirety of the suit A schedule property and

(c). For costs of the suit.

For Plaintiff : Mr.A.Gunaseelan

For Defendants : Mr.M.Sridhar for D1
Mr.Satish Prarasaran, Senior Counsel for
Mr.Rahul Balaji for R2

J U D G M E N T

(This case has been heard through Video Conferencing)

<https://hcservices.ecourts.gov.in/hcservices/> The suit for specific performance filed by the promoter against the

land owners on the premise that Joint Development Agreement dated



10.08.2009 and Supplementary Agreement dated 12.12.2012 entered with the owners of the land on specific terms and condition to be complied by the defendants.

2. The case of the plaintiff in the nutshell:-

The plaintiff is engaged in the business of Real Estate promotion on his own or through Joint Development Agreement.

3. Mr.V.R.Viswanathan, (the deceased father of defendants 1 & 2) was the owner of the 'A' schedule property, which is land measuring about 32,727 sq.ft with building in 4200 sq.ft approximately. On 10.08.2009, the plaintiff negotiated with Mr.V.R.Viswanathan and entered into a Joint Venture Agreement to promote the said property. The plaintiff as Developer and Mr.V.R.Viswanathan, his wife Rajeswari, his son Venkatesh (first defendant) and daughter Uma Ramesh (second defendant) as owners, were all signatories to the agreement. As per the terms of Joint Venture Agreement dated 10.08.2009, the rear portion of the 'A' schedule property more particularly described in Schedule 'B' of the plaint to be developed as Residential Complex covering a super built up area of 52,000 sq.ft. The owners shall retain themselves 56% undivided share in the 'B' schedule land and 56% of the superstructure to be built upon the said area together with 56% of the total car parking space. The land to be retained by the owners



more fully described in 'C' schedule of the plaint. The remaining 44% of the undivided share in the land of 'B' schedule and 44% of the super built up in the residential complex together with 44% of the total car parking space to be conveyed to the plaintiff or his nominee being the developer as quid pro qua for the 56% of the superstructure. The share to be conveyed to the developer is more fully described in schedule 'D'.

4. In short, as per the terms of the Agreement, the rear portion of the 'A' schedule property described as 'B' schedule property to be promoted by the plaintiff as residential complex over which 56% of the share will be retained by the land owners and 44% will be conveyed to the developer.

5. The important terms in the said agreement are:-

(i). Clause 3 of the Joint Venture Agreement, which prescribes 24 months for completion of the proposed construction from the date of getting sanction from CMDA and construction permit from the local panchayat with the grace period of six months from the said 24 months period. (ii). Clause 7 cast obligation on the developer, the construction plan shall be drawn in consultation with the owners of the property so as to accommodate their requirement as far as the built up area earmarked for the owners. Apart from share in the built up area, 56% of the car park area shall be retained by



the owners. (iii). The developer/plaintiff also agreed to pay a sum of Rs.3 crores as interest free refundable deposit on the date of signing the agreement. (iv). Under Clause 12, in case of any delay in handing over the super built up area earmarked for the owners within the time prescribed, the plaintiff/developer shall pay to the owners/defendants a sum calculated at the rate of Rs.7.50 per sq.ft., per month for the delayed period as compensation, if the completion is delayed beyond the grace period. (v). The parties agreed that, the entire property described in schedule 'A' will be developed as a whole. While the 'B' schedule property will be developed by the plaintiff as residential complex, the 'E' schedule property shall be retained by the owners to be developed as a commercial complex.

6. The parties to the Joint Development Agreement considering the prevailing FSI Rules, if schedule 'B' or schedule 'E' of the properties were to be developed separately, then 18 meter access should be shown separately for each of the items of properties. Then the area for construction of the commercial complex will be shrunk. Therefore, for the purpose of planning permission and other statutory clearance, agreed the whole of the property was to be shown as the property to be developed by the owners.

The parties specifically agreed that the proportionate costs of planning, sanctions, deposits and approvals etc., pertaining to the 'E' schedule portion



of the Joint Ventured Agreement will be paid by the owners.

WEB COPY

7. The General Power of Attorney Deed dated 10.08.2009 was executed by V.R.Viswanathan in favour of the plaintiff. On receipt of refundable deposit of Rs.3 crores, the said Mr.V.R.Viswanathan discharged a pre-existing reverse mortgage loan with the State Bank of India. All original documents of title and parent document of title relating to the suit properties were kept in the locker at Indian Bank, Nungambakkam Branch to be jointly operated by V.R.Viswanathan and the plaintiff.

8. Soon after, the formalities of the Joint Ventured Agreement were completed, with the consent and the agreement of the owners, building plan approval was submitted to CMDA after protracted discussions and on executing two supplementary agreements dated 12.12.2012. One in respect of space sharing, earmarking the units and the super built up area of flats in the residential complex to be developed by the plaintiff in the suit 'B' schedule property including car parking and the access pathways leading to the Residential Apartment Complex as well as the Side Setbacks and the pathway area for the commercial complex to be developed by the owners in schedule 'E' property retained by them for development as a commercial

complex. Clause 5 of the supplementary agreement fixed 26 months from



the date of this agreement (i.e.,12.12.2012) as period for completion of construction with a grace period of 6 months and another supplement agreement deed was entered on the same day is in respect of Additional Interest Free Refundable Deposit of Rs.4 crores agreed to be paid by the developer/plaintiff to the land owners.

9. For want of traffic police clearance, the application for building plan approval got delayed with CMDA and therefore, a writ petition (W.P.No.20455 of 2014) was filed by land owner V.R.Viswanathan, seeking direction to the CMDA to grant planning permission for the multi-storied building in the suit schedule property. The said writ petition was allowed on 23.03.2015. Soon thereafter the land owner V.R.Viswanathan died at Chennai on 02.04.2015 leaving behind his surviving legal heirs defendants 1 & 2.

10. During his life time, on 20.01.2015 Viswanathan settled the suit schedule property to his son and daughter (Defendants herein). The rear portion to his son and front portion to his daughter. On the death of V.R.Viswanathan, defendants 1 and 2 joined together and executed a deed of reconstitution dated 21.05.2015 reconstituting the schedule A & B



schedule 'C' to the Deed of Reconstitution for the purpose of processing the Planning Permission as applied for treating the entire suit schedule 'A' property. A Joint Affidavit of Undertaking and an Authorization Letter dated 03.04.2018 was issued by the defendants to CMDA for granting approval for the proposed construction. The plaintiff followed up the above application with the Member Secretary, CMDA.

11. The case of the plaintiff is that, during the lifetime of V.R.Viswanathan, he has settled the rear portion of the property, which is B schedule property in the suit to his son (first defendant) and the front portion of the property to his daughter (2nd defendant). However, his wish to complete the project as per Planning Permission has been mentioned in the settlement deed. While so, the 2nd defendant due to difference of opinion with her brother (the first defendant), the plaintiff had unilaterally and arbitrarily withdrawn the consent for planning permission and requested the CMDA to reject the application as far as her land is concerned.

12. Based on her representation, the Member Secretary, CMDA vide his order dated 03.10.2019 has returned the application. Without amalgamation of the second defendant's property, the minimum width requirement for access to the rear portion to be developed as a residential



projects cannot be processed. The act of the defendants amounts to breach of terms of Joint Venture Agreement causing irretrievably injury to the rights of the plaintiff. Hence, the present suit for specific performance of the terms of agreement, as per the Joint Development Agreement dated 10.08.2009 and supplementary-cum-space sharing agreement dated 12.12.2012

13. The case of the defendants in nutshell:-

In the written statement of the 2nd defendant, the very enforceability of the contract being challenged. The agreement dated 10.08.2009 and supplement agreements dated 12.12.2012, which are sought to be specifically enforced consists of several minute details which depends on volition of parties. The nature of the contract is such that, the Court cannot supervise its enforcement. The contract in question involves performance of duties, which cannot be supervised by the Court. In short, the Contract is not enforceable specifically.

14. The plaintiff is incapable to complete the Joint Development Agreement. He has a bad reputation and criminal antecedent. He has failed to comply with statutory requirements and several complaints are pending against him before the Consumer Forum of Karnataka. Therefore, the 2nd

defendant is not inclined to involve her property in the project proposed by



the plaintiff. As far as her participation in the joint development agreement,

2nd defendant submits that in view of high respect, love and affection towards her father and her brother (the first defendant) she signed the papers on the promise from her father and brother that the joint development proposal will not affect her right in the front portion property settled in her favour. As per the joint development agreement dated 10.08.2009, the plaintiff should have completed the construction within 24 months from the date of getting sanctioned from CMDA. While all other builders in that locality were able to get sanction and complete the construction, the plaintiff herein was not able to get the planning permission even after 10 years. The plaintiff by his own conduct got exposed that he was not ready and willing to perform his part of contract. Under the supplement agreement dated 12.12.2012, he specifically agreed that he will complete the construction within 26 months from the date of executing the supplement agreement. The said period lapsed long ago and therefore, the plaintiff has lost right to specifically enforce the contract.

15. The first defendant in his written statement had prayed for decree in favour of the plaintiff, expressing confidence about the capacity of the plaintiff to complete the project.

16. Based on the pleadings, the following issues were framed:-



WEB COPY

(i) Whether the Joint Development Agreement dated 10.08.2009 and the Supplement Agreement dated 12.12.2012 is enforceable and bind the second defendant?

(ii) Whether the delay in processing the application for planning permission to be attributed to the second defendant or to the plaintiff?

(iii) Whether the unilateral withdrawal of the consent by the second defendant amounts to breach of agreement?

(iv) Whether the plaintiff was ready and willing to perform his part of contract?

(v) Whether the supplement Agreement dated 12.12.2012 is enforceable and valid on the date of filing the plaint?

(vi) Whether the suit is properly valued?

(vii) To what other relief, the plaintiff is entitled to?

17. On behalf of the plaintiff, two witnesses were examined and 30 Exhibits were marked. On behalf of the defendant, three witnesses were examined and 2 exhibits were marked.

Issue No.1:-

Whether the Joint Development Agreement dated 10.08.2009 and the supplement Agreement dated 12.12.2012 is enforceable and bind the second defendant



Ex.P-3 is the Joint Development Agreement (JDA) dated 10.08.2009. The recital of this Joint Development Agreement reads that Mr.Viswanathan, his wife Rajeswari, his son V.V.Venkatesan and his daughter Uma Ramesh jointly as 'owners' of the property had executed the deed in favour of the plaintiff M/s.Eternity Developers Private Limited as 'developer'. The parties have agreed to develop the land as commercial and residential complex morefully described in the Schedules A to E of the agreement. They have also agreed to share the land and building to be constructed in schedule B land in the ratio of 56% : 44% (Owners: Developer). Clause 2 of the agreement deals with the sharing of plinth area, which reads as below:-

"2. SHARING OF PLINTH AREA:-

The DEVELOPERS shall construct a multi storeyed residential complex at his cost as per specifications given in the annexure to this agreement and shall hand over to the OWNERS 56% of the total super built up area [inclusive of common area] and 56% of the total car parks in the proposed construction over the schedule B mentioned lands, morefully and particularly described in the Schedule "C" annexed hereunder, and the said 56% built up area to be earmarked proportionately for the OWNERS herein shall be finalised within 30 days of receipt of the approved planning permit issued by the CMDA/Local Panchayat unless agreed otherwise, both

the parties will share the constructed area on vertical sharing basis.”

The proposed construction was to be completed within 24 months from the date of getting the plan sanction from CMDA with additional grace period of 6 months. The time for completion is mentioned in clause 3 of the agreement which reads as below:-

“3. TIME FOR COMPLETION:-

The proposed construction is to be completed within 24 months from the date of getting plan sanction from CMDA and Construction Permit from Local Panchayat, and with a grace period of 6 months from the said 24 months period. Time is the essence of this Contract. However, in the event of any events that are beyond the control of the developers, suitable extension of time will be permitted. The DEVELOPER shall also obtain necessary certificates and approvals required from CMDA and/or any other Government agencies evidencing completion of the project.”

Nonetheless, there was no progress in the project till April 2012. The letter dated 04.04.2012 (Ex P-8) sent by the plaintiff to Mr. Viswanathan, reads that the planning permission application was sent in the month of March 2011 for approval, but was returned unapproved. In this letter, the plaintiff has alleged that he was not informed about the return of the application and Mr. Viswanathan failed to resubmit the application after



duly signing it. The plaintiff in its letter dated 23.04.2012 (Ex P-9) while acknowledging the reply letter dated 13.04.2012 of Venkatesan S/o.Viswanathan, had reiterated the allegation of non cooperation by the owner in getting the project to commence and complete within the stipulated time. In this letter the plaintiff has stated that,

“...right from the initial stage from the date of entering into Joint Development Agreement you are by frequently changing the plans of the commercial portion and with holding the final plans without assigning any reasons and delaying the project. Your act of avoiding phone calls, not replying to out repeated mails and not giving scheduled time to meet you to sort out the issue has resulted with rejection of our application for plan sanction and the same is within your knowledge.”

After exchange of letters blaming each other, the parties have entered into the supplemental agreement and supplementary cum space sharing agreement, both dated 12.12.2012, which are marked as Ex.P.10 and Ex.P.11 respectively. The plaintiff under the supplemental agreement (Ex.P.10) has agreed to pay Rs.4 crores as interest free refundable deposit through 20 cheques for Rs.20 lakhs each. The supplementary cum space sharing agreement (Ex.P.11) executed by the parties adding and modifying



certain terms and conditions found in the Joint Development Agreement (Ex.P.3). Particularly, the owners have agreed to sign all papers/drawings required for submitting plan sanction before CMDA and local panchayat within 7 days of receiving the same and in the event of any delay, the developer will be entitled for suitable extension of time to complete the project. The area for the respective parties were also de-marked subject to plan sanction. under clause 5 of Ex.P.11, the time for commencement and completion of the project specified as below:-

“Clause 5: Time for commencement & completion of the project

The Developer shall commence and complete the construction of the project proposed to be developed in Schedule B property within a period of 26 months from this date with a grace period of 6 months in terms of JDA.”

Thereafter also there was little progress in the project, since the conditions imposed by the Secretary to Government in his letter dated 12.07.2013 could not be complied. Though Viswanathan filed writ petition before the High court and succeeded, the NOC from traffic police was issued only on 24.07.2019. Mean time Viswanathan died on 02.04.2015 (Ex.P.18). About 3 months prior to his death, Viswanathan had settled the front portion of the suit property measuring about 12,941.98 sq.ft., to his



daughter (the 2nd defendant herein) under Ex.P.16 dated 20.01.2015. Even prior to that, under two release deeds marked as Ex.D.2 and Ex. D.3, Viswanathan and his son Venkatesan (the first defendant herein) had released their right in favour of the 2nd defendant in respect of the semi structured building and land to an extent of 9781.50 sq.ft., and passage in the suit land width of 15 feet to an extent of 4322.30 sq.ft.

After the demise of Viswanathan, the plaintiff through the defendants had pursued the building plan application. Ex.P.20 is the letter dated 03.04.2018 authorising one Shiyamalann to get NOC from Airport Authority. This letter is signed by both the defendants. Ex.P.21 is the letter dated 25.06.2018 by the defendants addressed to the Member Secretary, CMDA. In this letter the defendants as the legal heirs of late Viswanathan and the beneficiaries of the settlement deeds, have jointly requested the Member Secretary, CMDA to consider the planning permission application made by Viswanathan. In this letter, the order of the High Court to consider the planning application without insisting the NOC from the traffic police in the writ petition filed by Viswanathan also mentioned.

The Learned Counsel for the plaintiff submitted that, the defendants particularly the second defendant after getting the front portion of the suit property subject to the pending planning permission and having requested

the CMDA to expedite the process, cannot withdraw her consent. She is



estopped from retracting her promise. While so, after the traffic police issued NOC on 24.07.2019, the second defendant stopped responding to the phone calls and not ready to cooperate with the plaintiff to proceed with the project. In view of the difference of opinion with her brother (the first defendant), the second defendant had withdrawn her consent for the planning approval and written to the Member Secretary, CMDA objecting grant of approval involving her portion of land.

Developing the suit property is the wish of the late Viswanathan. The second defendant is bound to carry on her father's wish. Unilateral withdrawal of consent at this stage after the plaintiff has incurred huge expenses and investment will cause irreparable loss which cannot be compensated by money. Hence the JDA(Ex.P.3) dated 10.08.2009 and supplemented by Ex.P.11 dated 12.12.2012 has to be specifically enforced.

Per contra, the Learned Senior Counsel for the second defendant submitted that, the suit as framed is not sustainable. The Joint Development Agreement dated 10.08.2009 had lost its enforceability due to efflux of time. The second defendant with due reference to her father and brother reposing utmost faith in them and signed papers which they required. Having come to know that her portion of land is to be shown as part of the project to satisfy the FSI requirement and the bad reputation of the builder (the



settlement deed (Ex.P.16) is an unconditional settlement made *in praesenti* and the contention of the plaintiff counsel that the settlement is subject to the JDA is incorrect.

Till date the plan sanction from CMDA has not been obtained. The progress in the project as on the date of filing the suit freezed with the in-principle grant of approval by the Secretary to Government vide his letter dated 12.07.2013 for the construction of combined commercial and residential complex on compliance of certain conditions such as, the applicant should obtain revised plan approval rectifying the drafting errors and particulars as mentioned in Annexure to the order and NOC from Traffic Police. The conditions mentioned in this letter (Ex.P.14) not complied till date. Under Ex.P.3, the time for completion of the project was fixed as 24 months from the date of grant of planning permission. Later, this clause was revisited in the supplement agreement dated 12.12.2012 (Ex.P.11), and without reference to planning permission, the time for completing the construction fixed as 26 months from 12.12.2012 with a grace period of 6 months.

The basic ingredient to seek specific performance is ready and willingness. The conduct of the plaintiff who entered into agreement on 10.08.2009 but could not proceed with the project should be inferred as not ready to enforce the agreement. Further, the Joint Development Agreement



running to pages with minute details to perform cannot be enforced specifically.

Relying upon the Judgment of the Hon'ble Supreme Court in ***Sushil Kumar Agarwal –vs- Meenakshi Sadhu and others*** reported in **2019(2) SCC 241**, the Learned Senior Counsel for the second defendant submitted that, specific performance of a development agreement is non-grantable to a developer. For the relief of specific performance, the developer has to satisfy the twin conditions laid out in sub-clauses (i) and (ii) of Section 14 (3) (c) of the Specific Relief Act, 1963. In the instant case, the plaintiff does not satisfy the twin conditions, hence not entitled for the relief.

In response to this submission, the learned counsel for the plaintiff rebutted that the suit was filed after the amendment to section 14 of the Specific Relief Act, therefore the dictum laid in the Sushil Kumar Agarwal case is not applicable to the facts of this case.

Heard the Learned Counsels on either side. Documents perused and citations considered.

Before adverting to the issues, it is necessary to consider whether the property to the second defendant was settlement by Late Viswanathan with any condition or the reference of the Joint Development Agreement in the settlement deed cast any obligation on the settlee.



Viswanathan in favour the second defendant reads as below:-

WEB COPY

“...whereas the SETTLOR has entered into Joint Development Agreement on 10.08.2009 with Eternity Developers Pvt.Ltd., having its registered office at No.11, Hayes Road, Bangalore-560 025 and having its administrative office “Prestige Point” 1st Floor, No.47, Haddows Road, Nungambakkam, Chennai-600 034 and also entered into a supplementary agreement dated 12.12.2012 and WHEREAS in that two deeds SETTLEE has also signed as owner by way of abundant caution and whereas the Secretary, Housing and Urban Development UD-1 Department, by his letter dated 12.07.2013, has granted planning permission with certain conditions and whereas the SETTLOR is not keeping good health and also hospitalized for sometime. The SETTLOR has decided to execute this settlement Deed to his daughter Dr.Uma Ramesh the Settlee herein to whom the Settlor has got great love and affection and SETTLE the front portion in the “A” Schedule mentioned property measuring 12,941.98 Sq.ft., of vacant land together with an old building standing therein and which is not subject to the Joint Development Agreement (which is in green coloured in the sketch annexed and described in the B-Schedule) to his daughter-the SETTLEE herein absolutely free from encumbrance.”

The recital clearly de-mark the property settled to the second



defendant and specifically state that the land and building are not subject to the Joint Development Agreement. Therefore, the contention of the plaintiff counsel that there is an obligation on the second defendant to honour the Joint Development Agreement is both factually and legally not sustainable. The recital, in fact insulate the second defendant share from the joint development project. No doubt, the second defendant had subsequently written letters Ex.P.20 and Ex.P.21 which indicates that she is a willing party to the project. But then, the cloud and doubt raised over the free consent to give these letters cannot be brushed aside. The second defendant gains nothing in the Joint Development Agreement. Without any consideration, her share in the property is attempted to be shown as part of the building plan. The apprehension of the second defendant, that if the developer fails to honour his committed to third parties, her property will be at stake cannot be ignored as illusion.

Hence, this Court holds that, there is no semblance of right accrued to the developer to specifically enforce the agreement against the second defendant. Further, in view of the inordinate delay caused in carrying out the project, any order to enforce the Joint Development Agreement, dated 10.08.2009, which remains a non starter even after lapse of 10 years, will be unjust and inequitable. In addition, the Joint Development Agreement



mutually on the owners as well as the developers. Many of those terms are abstract and unspecific. Under clause 6 of JDA, the owners are mulcted with 10 obligations and under clause 7, the developer is equally mulcted with 10 obligations. By now already many of the obligations are breached by both the parties. The terms of the agreement involves the performance of continuous duty which the Court cannot supervise.

In this regard, it is relevant to refer section 14 of the specific relief Act as amended by Act 18 of 2018, which came into effect from 01.10.2018, which list out the contracts which cannot be specifically enforced.

“Section 14: Contracts not specifically enforceable:-The following contracts cannot be specifically enforced, namely:—

(a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;

(b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;

(c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and”



Section 14 (b) says contracts where the performance of continuous duty is involved, same cannot be specifically enforced. In the present case, the terms of agreements starts with handing over the vacant possession, then proceed to the stage of getting construction plan sanction approval, construction to the specification and conveying 44% of the land, building and car parking space to the developer. These are all obligations to be discharged by the parties, agreement terms cast continuous duty to be performed by respective parties. To enforce this agreement, the suit is filed nearly 10 years after the agreement when the planning permission itself so far not obtained.

The plan application was made in the year 2011. The second defendant had withdrawn her consent for plan approval only in the year 2018 after waiting for more than 7 years and when found that the plaintiff is not capable of completing the project, but there is all probability of her property getting encumbered. Therefore, this Court holds that the Joint Development Agreement dated 10.08.2009 and the supplement Agreement dated 12.12.2019 are not specifically enforceable in view of Section 14(b) of the Specific Relief Act, 1963 as amended by Act 18 of 2018. No decree can be passed against the second defendant to honour and enforce the said agreement.



WEB COPY Hence this issue is answered in negative.

Issue No 2:-

Whether the delay in processing the application for planning permission to be attributed to the second defendant or to the plaintiff?

The content of the letters dated 04.04.2012 marked as Ex.P.8 and dated 23.04.2012 marked as Ex.P.9, both emanated from the plaintiff and addressed to Viswanathan, clearly shows that, even in the beginning of the year 2012, there was issues between the parties in forwarding the planning permission letter to the authorities. That was sorted by way of the supplementary space sharing agreement dated 12.12.2012. (Ex.P.11). Under Clause 5 of Ex.P.11, the developer has agreed to complete the construction within 26 months. Thereafter, there is no evidence to show that there was any delay on the part of the owners in getting the building plan approval. Particularly, the second defendant's role in getting the plan approval never arose till the demise of her father Viswanathan on 02.04.2015. The plaintiff has not placed any evidence before this Court to show that he was diligently pursuing the agreement with the legal heirs of Viswanathan after his demise.



After 4 years, suddenly, both the defendants jointly had purported to have written the letter to the Member Secretary, CMDA on 25.06.2018 to revive the application made by their father. The genuineness of the signature is disputed by the second defendant. Even assuming that she along with her brother made the above request to the Member Secretary, CMDA through this letter, this letter or no other document give plausible reason as to why the developer who seeks specific performance of the agreement dated 10.08.2009 was silent for nearly 4 years in spite the order of the High Court in W.P.No.20455 of 2012 delivered on 23.03.2015 directing the CMDA to consider the planning permission application without insisting for NOC from Traffic Police. Had really the plaintiff carried any substantial interest in performance of the Joint Development Agreement in true spirit, he would not have caused such an inordinate delay in pursuing the application. Therefore, the delay in processing the planning permission application is squarely attributable to the plaintiff and not the second defendant.

Issue No 3:-

Whether the unilateral withdrawal of the consent by the second defendant amounts to breach of agreement?



The second defendant was admittedly made a signatory to the documents only on abandoned caution. She disputes her signatures in Ex.P.20 and Ex.P.21, but had not adduced evidence to prove that the signatures found in Ex.P.20 and Ex.P.21 are not her signatures. The 2nd defendant being an educated person, it is to be presumed that these documents were signed by her knowing its content. However, in view of this Court, the Joint Development Agreement dated 10.08.2009 and the supplemental agreement dated 12.12.2012 had lost its enforceability due to inordinate delay in getting the planning permission. Once, the terms of the contract got frustrated, it cannot be enforced specifically. The withdrawal of the consent by the second defendant is a natural consequence of a frustrated contract. This Court finds no illegality in withdrawal of the consent. It is not prudent to encumber the property for no valuable consideration. The second defendant due to change in circumstance, in order to save her portion of the property from any encumbrance had withdrawn the consent which she is legally entitled. Hence this issue is answered in favour of the second defendant.

Issue No. 4:

Whether the plaintiff was ready and willing to perform his part of contract ?



WEB COPY

The facts pleaded and proved do not disclose the ready and willing of the plaintiff at all time. One of the obligation on the developer under clause 7 (a) of the Joint Development Agreement is to arrange for getting construction plan sanction approval for the entire schedule “A” property for the proposed development of the property at his costs. We have seen from the conduct of the plaintiff that, except blaming the owners for non cooperation, he had not taken any effective steps to get the plan approved within reasonable time in spite of getting in-principle approval by the Government as early as 12.07.2013 (Ex.P.14). Under clause 2 of the Supplementary cum space sharing agreement dated 12.12.2012, the owners have agreed to sign all the papers required for plan approval within 7 days from the receipt of it. Further, this clause also gives right to the developer to get extension of time in the event of any delay on the part of the owners. The evidence before the Court reveals that the planning permission application was submitted to the authority i.e., CMDA during the life time of Viswanathan. However only after four years of his demise, the plaintiff has thought it fit to request the defendants to write a letter to the CMDA for considering the application. When it is the obligation of the developer to get the CMDA approval, the delay is attributable only to the plaintiff. His



always ready. After the JDA dated 10.08.2009, the plaintiff became active only in 2012. After gap of six years in 2018 started communicating with the owner and tried to revive the planning application. The silence of long gap in expressing his readiness either by conduct or in writing, remains unexplained. Knocking the doors of justice seeking the equitable relief after a lapse of 10 years from the Joint Development Agreement and 7 years after the supplementary agreement which specify the time for completion as 26 months plus grace period of 6 months *per se* not sustainable. If the delay was really due to the owners, then the plaintiff should have exercised his right to enforce the contract or in alternate sued the owners for breach of the obligation long before.

To fortify the above view, this Court relies upon below passage in the judgment of the Supreme Court in ***N.P.Thirugnanam -vs- Dr.R. Jagan Mohan Rao and others*** reported in ***1995 (5) SCC 115***.

“The continuous readiness and willingness on the part of the plaintiff is a condition precedent to grant the relief of specific performance. Right from the date of the execution till date of the decree he must prove that he is ready and has



WEB COPY

always been willing to perform his part of the contract. This circumstance is material and relevant and is required to be considered by the court while granting or refusing to grant the relief. If the plaintiff fails to either aver or prove the same, he must fail. To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.”

The inevitable inference available from the pleadings and conduct of the plaintiff is that, he had failed to show he was always ready.

Hence, this issue is answered in negative.

Issue No. 5:-

Whether the supplementary Agreement dated 12.12.2012 is enforceable and valid on the date of filing the plaint?



On 12.12.2012 the plaintiff and Viswanathan along with the defendants 1 and 2 had entered into two agreements. One captioned as ‘Supplemental Agreement to the Joint Development Agreement dated 10/08/2009 (Ex.P.10) and another captioned as ‘Supplementary cum Space Sharing Agreement to Joint Development Agreement dated 10.08.2009 (Ex.P.11). It is pertinent to note that these two agreements came to be entered between the parties after hiccup in implementing the Joint Development Agreement dated 10.08.2009 (Ex.P.3). The project failed to take off as expected, the reason are disclosed through the letters marked as Ex.P.8 dated 04.04.2012 and Ex.P.9 dated 23.04.2012. To get over the impediments parties have agreed to revisit the terms and conditions. Particularly about the cooperation expected from the owners by signing all papers within 7 days and the commitment of the developer to complete the construction within 26 months from the date of this supplementary agreement. Further, the space for car parking, allocation of the area, naming of the residential complex were all decided and reduced into writing through the agreement Ex.P.11. Whereas under Ex.P.10, the plaintiff has agreed to pay additional interest free deposit of Rs 4 crores.

We find by the time the plaint presented before this Court the terms of

the agreement in Ex.P.11 substantially breached. Subsequent to the sanction



letter dated 12.07.2013 from the Secretary to Government, no progress was shown in the project. The land owner after executing settlement deeds in favour of his son and daughter died on 02/04/2015. The application for building plan approval got struck with CMDA. The NOC from Traffic police got delayed despite order by the High Court. The Traffic Police gave the NOC only on 24.07.2019. After giving a letter (Ex P.21) along with the first defendant to grant building plan permission, the second defendant had withdrawn the consent raising objection. After enquiry, the Member Secretary CMDA, recording the statement of the second defendant and returned the application stating that, *“Considering the objection, the site under reference project for Multi-Storey Building (MSB) development will not qualify without amalgamating the petitioner’s (the second defendant herein) land. Since, as per the sketch enclosed with the registered settlement deeds, the passage for the rear portion of the site under reference belongs to the another land owner Thiru. V.Venkatesan (the first defendant herein) is 4.70 meters only. (As per the Development Regulations – Rule No 28 (1)(b) or TNCD & BR, 2019 – Rule No.39(2), the requirement of minimum passage width gain access from the public road for MSB development is 12m/15m/18m).”*



months from 12.12.2012, remained a non starter even after a lapse of 6 years and 11 months (i.e. 20.11.2019, the date of filing the plaint). To enforce this agreement specifically, the plaintiff must first prove his readiness and willingness, next the deliberation and intentional refusal of the defendant to perform their part of contract. Whereas, this Court has found that the conduct of the plaintiff does not establish his readiness and willingness. Next, as far as defendants or their father the original owner of the suit property, this Court finds no evidence to show they delayed the project by non-cooperation after 12.12.2012. Above all, the law as found in Section 14(b) of the Specific Relief Act, the contract of this nature are not specifically enforceable, since the terms in the agreement deals with performance which requires continuous duty. Therefore, this issue being corollary to issue No.1, the answer to this issue is in negative.

Issue No.6:-

Whether the suit is properly valued?

In the plaint, it is stated that the Joint Development Agreement and the subsequent supplementary agreement does not mention about the total consideration, hence the consideration for the contract is valued as Rs 5 crores and stamp duty of Rs.5,03,525/- paid. The main relief sought in the



suit is specific performance of the joint development Agreement. The deeds does not mention any specific value as consideration for the contract. The plaintiff on completion of construction on B schedule property, at his cost will be entitled for 44% share in the land, building and car park. There is no contra evidence lead by the defendants to dispute the valuation. Hence, this court holds the valuation shown by the plaintiff to be accepted as proper value for the purpose of fixation of court fees.

Accordingly, this issue No.6 is answered in affirmative.

Issue No.7:-

Since all other issues are held against the plaintiff, the suit has to be dismissed.

18. In the result, C.S.No.664 of 2019 is dismissed with costs. Consequently, the connected Applications are also dismissed.

Sd/- G.J.J

21.10.2021

List of witnesses were examined on the side of the Plaintiff:-

Mr.A.Vinash Prabhu (PW1)

Mr.R.Jamal Mohideen (PW-2)

**List of witnesses were examined on the side of the defendants:-**

Mr.V.V.Venkatesh (DW-1)

Mr.S.Kalyana Sundaram (DW-2)

Dr.Uma Ramesh (DW-3)

List of the exhibits marked on the side of the plaintiffs:-

Sl.No.	Exhibits	Dated	Description of documents
1.	Ex.P1	16.03.2007	The certified of Incorporation by the plaintiff company dated 16.03.2007
2.	Ex.P2	22.10.2019	The original Board Resolution dated 22.10.2019
3.	Ex.P3	10.08.2009	The original Joint Development Agreement entered into by Mr.V.R.Viswanathan, V.Rajeswari and the defendants to in the favour of the plaintiff company dated 10.08.2009.
4.	Ex.P4	14.08.2009	The original of the General Power of Attorney given by Mr.V.R.Viswanathan to and in favour of the Plaintiff's Company dated 14.08.2009.
5.	Ex.P5	14.08.2009	The letter given by the plaintiff to Mr.V.R.Viswanathan Regarding Refundable deposit of Rs.3 crores and confirmed by Mr.V.R.Viswanathan dated 14.08.2009.
6.	Ex.P6	14.08.2009	The undertaking letter given by Mr.V.R.Viswanathan to the plaintiff to retrieve the title documents reverse mortgage to SBI dated 14.08.2009.
7.	Ex.P7	20.11.2009	The locker understanding entered into by Mr.V.R.Viswanthan with the plaintiff's company dated 20.11.2009.
8.	Ex.P8	04.04.2012	The letter given by the plaintiff to Mr.V.R.Viswanthan regarding obtaining of Plan Sanction from CMDA dated 04.04.2012.
9.	Ex.P9	23.04.2012	The letter given by the plaintiff to Mr.V.R.Viswanathan claiming damages for non obtaining of Plan Sanction from CMDA dated 23.04.2012.
10.	Ex.P10	12.12.2012	The original of the Supplemental agreement to the Joint Development agreement dated 12.12.2012.
11.	Ex.P11	12.12.2012	The original of the Supplemental cum space sharing agreement to the Joint Development Agreement dated 12.12.2012.
12.	Ex.P12	11.05.2013	The e-mail from the plaintiff company to the first defendant dated 11.05.2013.
13.	Ex.P13	06.06.2013	The e-mail from the plaintiff company to RJ Architects enclosing



Sl.No.	Exhibits	Dated	Description of documents
			Minutes of Meeting of CMDA dated 06.06.2013.
14.	Ex.P14	12.07.2013	The letter (Ms)No.190 issued by Tamil nadu Housing and Urban Development (UDI) Dept dated 12.07.2013.
15.	Ex.P15	20.01.2015	The settlement deed dated 20.01.2015 executed by Mr.V.R.Viswanathan to the first defendant(Doc.No.215/2015)
16.	Ex.P16	20.01.2015	The Settlement deed executed by Mr.V.R.Viswanathan to the 2 nd defendant Doc.No.216/2015 dated 20.01.2015.
17.	Ex.P17	23.03.2015	The order passed in W.P.No.20455 of 2014 dated 23.03.2015.
18.	Ex.P18	02.04.2015	The death certificate of Mr.V.R.Viswanathan dated 02.04.2015.
19.	Ex.P19	08.2015	The legal heirship certificate of Mr.V.R.Viswanathan issued by Revenue Dept. dated ...08.2015.
20.	Ex.P20	03.04.2018	The Annexure -1A and Authorisation Letter given by the defendants 1 and 2 dated 03.04.2018.
21.	Ex.P21	25.06.2018	The letter given by the defendants 1 and 2 to CMDA requesting Planning Permission with signed plan dated 25.06.2018.
22.	Ex.P22	24.07.2019	The No objection letter given by the Traffic Police to CMDA dated 24.07.2019.
23.	Ex.P23	07.08.2019	The Whatsapp conversions by the plaintiff to the 2 nd defendant dated 07.08.2019.
24.	Ex.P24	26.08.2019	The letter given by the plaintiff to the defendants 1 and 2 dated 26.08.2019
25.	Ex.P25	04.09.2019	The letter given by the 2 nd defendant to the plaintiff company dated 04.09.2019
26.	Ex.P26	11.09.2019	The letter given by the plaintiff company to the 2 nd defendant dated 11.09.2019.
27.	Ex.P27	13.09.2019	The Whatsapp Conversions by the 2 nd defendant with the plaintiff dated 13.09.2019.
28.	Ex.P28	20.09.2019	The legal notice issued by the first defendant to the 2 nd defendant dated 20.09.2019.
29.	Ex.P29	25.09.2019	The letter given by the plaintiff company to the 2 nd defendant dated 25.09.2019.
30.	Ex.P30	30.09.2019	The letter No.C3(N)/5921/2013 issued by CMDA returning the Planning Permission as unapproved dated 30.09.2019.



WEB COPY

List of exhibits marked on the side of the defendants:-

Sl.No.	Exhibits	Dated	Description of Documents
1.	Ex.D1	23.05.2013	Release Deed Doc.No.1844 of 2013 dated 23.05.2013
2.	Ex.D2	23.05.2013	Release Deed Doc.No.1845 of 2013 dated 23.05.2013.

Sd/- G.J.J
21/10/2021

//Certified to be true copy//
Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



WEB COPY