



C.S.No.843 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on
28.09.2022

Judgment Pronounced on
04.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

C.S.No.843 of 2007

Sridhar Nagarajan
Proprietor
Shree Velan Properties
Alwarpet,
Chennai – 600 018.

... Plaintiff

..VS..

1. Indiabulls Real Estate Ltd.,
having branch office at
New No.27, New MGR Main Road
Taramani, Perungudi-Taramani By Pass Road
Kandanchavadi, Chennai – 600 096.

2. M/w.Selene Estate Private Limited
having branch office at
New No.27, New MGR Main Road
Taramani, Perungudi-Taramani By Pass Road
Kandanchavadi,
Chennai – 600 096.

... Defendants



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This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of CPC praying to pass the judgment and decree,

(i) directing the defendants to pay a sum of Rs.15,00,00,000/- (Rupees Fifteen Crores Only) as damages to the plaintiff, together with future interest at the rate of 12% p.a from the date of plaint till the date of realization.

(ii) for permanent injunction restraining the defendants, their men, agents, servants and representatives or anyone either through them or on their behalf from alienating the schedule mentioned property without settling the claim of the plaintiff.

(iii) for costs.

For Plaintiff : Mr.C.Manishankar
Senior Counsel
for
M/s.K.Krishnamurthy

For Defendants : Mr.E.Prabhu



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JUDGMENT

This Civil Suit is filed for,

(i) directing the defendants to pay a sum of Rs.15 crores as damages to the plaintiff together with future interest at the rate of 12% p.a from the date of plaint till the date of realisation;

(ii) for permanent injunction restraining the defendants, their men, agents, servants and representatives or any one either through them or on behalf of them from alienating the schedule mentioned property without settling the claim of the plaintiff; and

(iii) for costs.

2. The plaintiff is a proprietor of Shree Velan Properties. First defendant is Indiabulls Real Estate Limited and second defendant is M/s.Selene Estate Private Limited, which is a subsidiary of the first defendant.

3. The case of the plaintiff is that first defendant approached the plaintiff with a request to procure lands to an extent of 50



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acres in Survey Nos.1 to 16, 29 to 61, 72, 73, 77 to 82 at No.188, Jalladianpet Village, Tambaram Taluk, Kancheepuram District and the lands in Survey Nos.61/2A part, 61/2B part, 61/2C part, 62/2 part in the same village to promote a township. Plaintiff agreed to procure the lands to the extent of 50 acres at a price of Rs.4,60,00,000/- per acre inclusive of all costs. The price consists of sale consideration of Rs.2,75,00,000/- per acre and procurement charges of Rs.1,85,00,000/- per acre for the first 33 acres and Rs.1,50,00,000/- per acre for the last 17 acres. It was agreed between them that the front portion with a road consisting of 17.5 acres was to be registered first. First defendant in the name of second defendant entered into an agreement for procurement charges on 09.04.2007 with the plaintiff agreeing to pay a sum of Rs.1,85,00,000/- per acre for 15.9 acres and Rs.4,60,00,000/- per acre for 20.5 cents as procurement charges. The total sum amounts to Rs.30,35,80,000/-. Plaintiff procured 16 acres and 10.5 cents in front portion with the road and got the same conveyed to the subsidiary company, namely, the second defendant. Plaintiff joined in the sale deed as a confirming party. Various sale deeds were executed and registered



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on 09.04.2007 in favour of the second defendant. On the same day, a registered gift deed dated 09.04.2007 was executed in favour of Commissioner, St.Thomas Mount Panchayat Union, Chitlapakkam to an extent of 20.5 cents for the formation of 40 feet road.

4. Regarding the remaining extent of 34 acres, first defendant executed a letter of intent dated 09.04.2007 in favour of the plaintiff. Plaintiff made arrangements for the purpose of procuring 34 acres of land by holding negotiations with the villagers and entering into agreements of sale with the owners of the land by making payments to them. First defendant's legal advisor was one M/s.Rank Associates. As requested by the first defendant, plaintiff used to hand over the title deeds of the lands for the verification to the said legal advisor. First defendant changed the legal advisor from M/s.Rank Associates to Mr.Ravichandran, Advocate and informed the same to plaintiff on 26.07.2007. Plaintiff handed over the copies of the title deeds of the lands belonged to various land owners for the opinion of Advocate Mr.Ravichandran by a letter dated 28.07.2007. He had already handed



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over agreements of sale entered into with the owners of the lands for 103.5 cents and for 36 cents. In fact, he paid the entire sale consideration to certain landlords and obtained receipts and power of attorney.

5. Under the letter of intent dated 09.04.2007, a period of 120 days has been fixed. 120 days period expired on 07.08.2007. Time is not the essence of contract. Plaintiff wrote a letter dated 31.07.2007 informing the first defendant the various difficulties and circumstances which are beyond the control of the parties stating that the time for performance has to be extended by another three more months. Plaintiff is always ready and willing to perform his part of his obligation under the letter of intent dated 09.04.2007. He invested nearly Rs.4,50,00,000/- for purchasing the lands and advanced a sum of Rs.2,50,00,000/- to various land owners. He has to pay Rs.2,00,00,000/- to 3 previous land owners, who conveyed the lands to second defendant. That apart, he has to meet income tax liability. He spent Rs.3,00,00,000/- for surrender of land to the Commissioner, St.Thomas Mount Panchayat Union for forming a road.



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6. One Ms.Bharathi Ramanathan, in-charge of Chennai

Office of the defendants started behaving in highhanded manner, in breach of the terms of letter of intent dated 09.04.2007. Some one from Chennai office of the defendants had gone to the village and started to negotiate with the villagers. Plaintiff sent a fax on 28.07.2007 to the first defendant informing this fact. He also sent a letter dated 31.07.2007 to the first defendant stating the reasons for delay and the need for extending time by three months. It was followed by e-mails dated 02.08.2007 and 03.08.2007. The meeting was fixed with the Director of the first defendant at 7 p.m on 03.08.2007 at Hotel Le Royal Meridian and the plaintiff reached the hotel and called Ms.Bharathi Ramanathan over phone. She informed him that the Director had already left. On 29.08.2007, plaintiff sent a letter by speed post to the first defendant informing about the breach of contract and claiming damages of Rs.33,39,31,105/-. A vague reply dated 05.09.2007 was sent to him stating that there is no binding effect of contract between the parties after the expiry of 120 days. In the said circumstances, this suit is filed for the reliefs as stated above.



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7. The case of the first defendant is that the suit is neither maintainable in law nor on facts and is liable to be dismissed in limine on the sole ground that there is no legally concluded/executable contract between the plaintiff and the defendants. This suit has been filed by suppressing the material facts with false pleadings. There is no agreement as claimed by the plaintiff and in the absence of any agreement or infringement of contractual obligations, the question of payment of damages will not arise at all. The suit itself is speculative in nature. Plaintiff is a commission agent/real estate broker. Prior to suit letter of intent, he approached the second defendant with an offer that he is an agreement holder for 16 acres of land in Jalladianpet village and agreed to sell and convey 16 acres of land to the defendants along with developmental activities carried out at Rs.1,85,00,000/- per acre for 15.9 acres and Rs.4,60,00,000/- per acre for 20.5 cents. On payment of sale consideration to the land owners, sale deeds were executed in favour of second defendant for 16.105 acres. Plaintiff joined the sale deeds as a confirming party, since he is an agreement holder. The said transaction was completed on 09.04.2007 and on the same day, a procurement



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agreement was entered between the plaintiff and the second defendant evidencing the payment of procurement charges for 16.105 acres.

8. Plaintiff further represented to the first defendant that he will arrange for the purchase of vacant lands from the land owners measuring to an extent of 34 acres in various Survey Nos.1 to 16, 29 to 61, 72, 73, 77 to 82 at No.188, Jalladianpet Village, Tambaram Taluk in a contiguous manner adjoining 16.105 acres already purchased by the second defendant, on payment of commission in the name of procurement charges. First defendant decided to avail the services of the plaintiff and agreed to purchase the lands at the rate of Rs.2.75 crores per acre with specific condition that the lands should be contiguous in nature, the owners of the lands should directly execute the sale deeds in favour of the first defendant within a fixed period, and the plaintiff would be paid procurement charges for his services. Accordingly, first defendant issued a letter of intent dated 09.04.2007 setting out the terms and conditions for the performance of the service for procurement of 34 acres of land at Jalladianpet Village in the specified survey numbers in



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contiguous manner. Upon arranging the lands for procurement, subject to production of documents of the land owners for verification of the title and upon clearance of title by the defendants' advocate, the plaintiff should arrange and shall get the sale deed of the said lands in part or in whole executed by the owners in favour of the defendants, within 120 days from 09.04.2007. Only at the time of conveyance, the procurement agreement shall be entered and payment will be made to the plaintiff. 120 days expired on 07.08.2007 and the time is the essence for the completion of the transaction in its entirety, since the first defendant proposed to purchase the lands for the development project within a time frame.

9. Plaintiff could manage only to submit incomplete documents for 1½ acres for title verification on 28.07.2007. The lands are not contiguous. In the said circumstances, plaintiff expressed his inability to perform the contract within 120 days by letter dated 31.07.2007. He also stated that he could not convey even 10 acres of land at the first instance. Thus, it is clear that the plaintiff was not in a



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position to convey lands in 120 days. The extension of time of 3 months requested by the plaintiff was not agreeable to the first defendant. That request was turned down by the first defendant. On the expiry of 120 days, the letter of intent expired/extinguished and stand automatically terminated on 07.08.2007.

10. There is no privity of contract or relationship between the plaintiff and defendants thereafter. First defendant rejected the self serving letters of the plaintiff. There is no agreement for the purchase of 50 acres of land. Sale of land to an extent of 16.105 acres to the second defendant is an independent transaction and has nothing to do with the letter of intent issued by the first defendant for procuring 34 acres. The allegations made in the plaint are not true. Only on the performance of the terms of letter of intent on or before 07.08.2007, the plaintiff is entitled for procurement charges. The allegations made in the plaint that Rs.30,35,80,000/- would have been utilised for further procurement and in the absence of the same, it will be treated as income from capital gains making the plaintiff liable to pay Rs.9,03,29,174/- as



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income tax are all false and imaginary. This suit has no merits and is liable to be dismissed.

11. Second defendant filed a memo adopting the written statement filed by the first defendant.

12. Upon perusing the pleadings and documents, this Court framed the following issues:-

- 1) Whether the suit for damages filed by the plaintiff is maintainable in law ?*
- 2) Whether the plaintiff is entitled to the relief of damages as claimed in the suit ?*
- 3) Whether the plaintiff is entitled to permanent injunction as prayed for ?*
- 4) Whether the plaintiff is entitled to any other relief ?*

13. Plaintiff was examined as PW.1 and Exs.P1 to P34 were marked. Ex.C1 was also marked. Neither oral nor documentary evidence was produced by the defendants.



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14. **Issue Nos.1 to 3:-**

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Learned senior counsel Mr.C.Manishankar appearing on behalf of Mr.K.Krishnamurthy learned counsel for the plaintiff submitted that there is a contract for procurement for 50 acres of land in Jalladianpet Village, Tambaram Taluk, Kancheepuram District in specific survey numbers as detailed above between the plaintiff and defendants. 16 acres and 10.5 cents in a front portion was procured and sale deeds have been executed. Plaintiff had made efforts to procure the remaining 34 acres by holding negotiations, by entering into agreements with the land owners and he, in fact, paid the price. Because of the change of lawyer by the first defendant and delayed intimation about the change, there was a delay in obtaining legal opinion. That apart, there are other reasons, such as, hesitancy on the part of the villagers to enter into sale agreement in Aadi month and revenue authorities busy with other welfare measures. These reasons are beyond the control of the plaintiff and therefore, the procurement of 34 acres of lands could not be completed within the period of 120 days stipulated in the letter of intent dated 09.04.2007. Moreover, first defendant's office started approaching the land owners



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for direct purchase ignoring the contract with the plaintiff. This is also one of the reasons for not completing the procurement process. Time is never considered to be the essence of the contract. Therefore, plaintiff sought for 3 months extension for completing the procurement process. Plaintiff has produced relevant documents to show the efforts made by him for procurement of 34 acres of land. Thus, he proved his case for the claim of suit amount.

15. Per contra, learned counsel for the defendants 1 and 2 submitted that, first of all, there is no agreement for procurement of 50 acres of land. The procurement of 16.105 acres of land is an altogether different transaction. After procurement and execution of sale deeds for 16.105 acres the plaintiff was paid procurement charges. With that, that part of contract was concluded. There is yet another letter of intent dated 09.04.2007 executed for procurement of 34 acres of land in specified survey numbers contiguously. 120 days time was fixed from 09.04.2007 for completion of the procurement. The terms stipulate that only after the execution of sale deeds, the procurement agreement would be entered



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into with the plaintiff and the procurement charges will be paid. From the own admission of the plaintiff, it is clear that the plaintiff was not able to procure 34 acres of land within the time stipulated and thus, he committed breach of contract. On the basis of letter of intent and on the failure to comply with the terms of letter of intent, plaintiff cannot enforce any claim against the defendants. First defendant paid huge amount to the plaintiff as procurement charges only for the reason that the plaintiff could be in a position to perform his obligation within the time frame. Time is the essence of the contract. The documents produced by the plaintiff are created for the purpose of the suit. There is no contract, much less, executable contract and therefore, the plaintiff is not entitled for any relief.

16. From the rival submissions, we can gather that the main contention of the plaintiff is that there was an agreement between the plaintiff and the first defendant to procure lands to an extent of 50 acres, at a price of Rs.4,60,00,000/- per acre in Survey Nos.1 to 16, 29 to 61, 72, 73, 77 to 82 at No.188, Jalladianpet Village, Tambaram Taluk,



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Kancheepuram District and the lands in Survey Nos.61/2A part, 61/2B part, 61/2C part, 62/2 part in the same village to promote it as a township. In pursuance of this agreement, it is claimed by the plaintiff that 16 acres 10.5 cents in the front portion of the road was procured and conveyed to the second defendant, as per the direction of the first defendant. The plaintiff had taken steps for procuring the remaining 34 acres. However, this claim of the plaintiff is not accepted by the defendants and they contended that there was no agreement at all for procurement of 50 acres. Originally on the basis of the agreement entered between the parties, plaintiff procured 16.105 acres of land and sold to the second defendant and plaintiff was also paid procurement charges for the said 16.105 acres of land. Only thereafter, there was a letter of intent entered between the plaintiff and the first defendant for procurement of 34 acres. Both have no connection with each other and are independent transactions.

17. The documents produced by the plaintiff show that Ex.P1 is the letter of intent dated 09.04.2007, which is the bone of



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contention in this case. We will discuss about this document later.

Admittedly, there is no dispute regarding the fact that the plaintiff procured 16.105 acres of the land to the defendants and for the services rendered by the plaintiff, the plaintiff was paid procurement charges. The agreement for procurement charges is produced as Ex.P2. Plaintiff accepted the receipt of procurement charges of Rs.30,35,80,000/- as per the agreement. Exs.P3 to P10 are the xerox copies of the sale deeds executed in favour of the second defendant. In these sale deeds, plaintiff joined as a confirming party. Ex.P11 is the xerox copy of the gift deed executed in favour of Commissioner, St. Thomas Mount Panchayat Union, Chitlapakkam for the formation of road. Ex.P12 is the letter of Commissioner, St.Thomas Mount Panchayat Union, to the Member Secretary, Chennai Metropolitan Development Authority intimating the gift deed executed in favour of St.Thomas Mount Panchayat Union. Exs.P13 to P19 and P21 and P22 are the sale agreements said to have been executed by the plaintiff with the land owners for the purchase of lands to honour the terms of agreement under Ex.P1- Letter of intent. Ex.P23 is the copy of the FMB sketch showing the properties purchased



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and to be purchased.

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18. Ex.P1 is the sheet-anchor in this case. There is no dispute with regard to the execution of this document between the plaintiff and the first defendant. The reading of Ex.P1 shows that the plaintiff and first defendant entered into an agreement, whereby the first defendant intended to procure vacant lands measuring an extent of 34 acres or thereabouts comprised in Survey Nos.1 to 16, 29 to 61, 72, 73, 77 to 82 at No.188, Jalladianpettai Village, Tambaram Taluk, Kancheepuram District and in addition to the said land, the front portion of the said land measuring 93 cents or thereabouts comprised in Survey Nos.61/2A part, 61/2B part, 61/2C part, 62/2 part at mutually agreeable rate.

19. Plaintiff offered to sell the said lands at the rate of Rs.2,75,00,000/- per acre and the first defendant agreed to procure the lands in a contiguous manner as per the terms and conditions mentioned in the letter of intent. Some of the important terms and conditions are,



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(i) The total consideration for 34 acres, at the rate of Rs.2,75,00,000/- per acre, is Rs.93,50,00,000/-.

(ii) Plaintiff should obtain all the requisite permissions/ clearances/No Objection Certificates from the concerned departments / authorities to effect the marketable title of the said land before execution and registration of the sale deeds.

(iii) The said land shall be free from all the encumbrances, attachments, liens, charges, prior sale, mortgage, acquisition or notification etc.

(iv) It shall not be a financial asset of any bank or institution and no proceedings in respect of the said land shall be pending before any Debt Recovery Tribunal or any other Court or other Tribunal.

(v) There shall not be any order of attachment by the Income Tax Authorities or any other authorities or any notice under SARFAESI Act in respect of the said land.

(vi) No subsistent agreement to sell in respect of the said land or any other portion thereof shall exist.

(vii) There shall be no acquisition proceedings by any



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authorities on the said land.

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(viii) Procurement of the said land shall be in a contiguous manner as stipulated by the first defendant and shall be adjacent to the part of the said land for which already sale deeds were registered. The land should be classified as Prime Residential Zone by CMDA.

(ix) The rate for the procurement agreement for the said land is Rs.1,85,00,000/- for first 17 acres and Rs.1,50,00,000/- for the remaining 17 acres.

(x) The transaction in its entirety should be completed on or before the expiry of 120 days from the date of signing of the letter of intent.

20. The careful reading of this letter of intent, on the basis of which this suit is filed, shows that this letter of intent refers about the procurement of only 34 acres in the specified survey numbers referred above. Though the plaintiff pleaded in the plaint and it is the consistent case of the plaintiff that there is an agreement between the plaintiff and the defendants to procure 50 acres of the land in the specific



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survey numbers, even at the inception of the contract between the parties, the plaintiff has not produced any document to show that the parties have entered into an agreement for procurement of 50 acres of the land in the specific survey numbers. Therefore, this Court finds merit in the contention of the learned counsel for the defendants that the procurement of 16.105 acres is an entirely separate transaction and the letter of intent executed for procurement of 34 acres of contiguous land is an altogether different transaction. Therefore, the suit laid by the plaintiff claiming that there was an agreement between the plaintiff and the defendants for the procurement of 50 acres of land, out of which 16.105 acres of land were procured and sold to the second defendant and when the plaintiff was taking steps to procure and sell the remaining 34 acres of land, the sale could not be completed for the breach of contract committed by the defendants, in the considered view of this Court, is not correct.

21. We have seen that Ex.P1 – Letter of intent made stringent conditions with regard to the procurement of 34 acres of land. After knowing the stringent conditions only, the plaintiff had entered into



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an agreement with the first defendant. According to the defendants, the breach of contract was occasioned due to the fact that the plaintiff was not in a position to procure 34 acres of land contiguously within the stipulated time of 120 days from 09.04.2007. The reply to this contention by the plaintiff is that the plaintiff was not responsible for the delay. The delay had occasioned for the reason that certain factors, which are beyond the control of the plaintiff had intervened like fall of Aadi month and the hesitancy on the part of the land owners to enter into sale agreement in the month of Aadi and that the revenue authorities were busy with the implementation of various social welfare schemes implemented by the Government, resulting in delay in changing the revenue records. Apart from that, first defendant changed his legal advisor and that was intimated with delay and there is also delay in getting clearance from the legal advisor of the first defendant. In support of this claim, plaintiff has produced Ex.P20 – Letter sent to plaintiff's legal advisor Advocate Mr.Ravichandran and Exs.P24, 25, 27 and 28 – E-mails sent to the first defendant intimating these factors. It is claimed by the learned counsel for the plaintiff that there was no positive



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response from the first defendant. On the other hand, when the plaintiff sought for extension of three months time for completion of the procurement of lands, first defendant sent a letter dated 05.09.2007 in Ex.P30 informing that the plaintiff was not able to complete the transaction within 120 days and therefore, there is no binding effect of the letter of intent after the expiry of 120 days from 09.04.2007. Reading of this communication, of course, shows that the plaintiff expressed the difficulties in complying with the terms of the agreement under Ex.P1 – Letter of intent.

22. The aforesaid communications, especially the e-mail communication dated 11.07.2007 marked as Ex.P24, is sought to be relied by the defendants to show, it is the plaintiff who was not able to perform his part of the role by procuring 34 acres of land. It is pointed out that in Ex.P24, plaintiff admitted that he was suddenly faced with the difficulty of delivering 10 acres contiguously. According to the defendants, this admission of the plaintiff shows that he was not able to procure 34 acres required by the first defendant, in contiguous to the



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lands which were already purchased. It is also submitted that the plaintiff cannot feign innocence by stating that the month of Aadi intervened during the contractual period and he was not able to get necessary assistance from the revenue authorities for the reason that they were pre-occupied with other official duties. Plaintiff was paid huge amount as procurement charges. That offer was accepted with the conditions. It is for the plaintiff to take all necessary measures for performing his part of contract. Plaintiff has not only faulted to procure 34 acres of land contiguously, but the documents produced by him for certain extent of lands are not in complete form to verify the title. Therefore, the entire blame is on the plaintiff for the failure of the contract in terms of Ex.P1.

23. Learned counsel for the plaintiff relied on the judgment reported in **(2008) 4 SCC 464 (Balasaheb Dayandeo Naik (dead) through LRs and others ..vs.. Appasaheb Dattatraya Pawar)** for the proposition that the time is not the essence of the contract insofar as the immovable property is concerned and therefore, the defendants



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cannot repudiate the contract for the reason that the contract could not be completed within 120 days of execution of Ex.P1. It is observed in the judgment that,

“21. In Govind Prasad Chaturvedi v. Hari Dutt Shastri (1977) 2 SCC 539 following the above ruling it was held at pages 543-544: (SCC para 5) .

5. It is settled law that the fixation of the period within which the contract has to be performed does not make the stipulation as to time the essence of the contract. When a contract relates to sale of immovable property it will normally be presumed that the time is not the essence of the contract. [Vide Gomathinayagam Pillai v. Pallaniswami Nadar (AIR 1967 SC 868 (at p. 233).] It may also be mentioned that the language used in the agreement is not such as to indicate in unmistakable terms that the time is of the essence of the contract. The intention to treat time as the essence of the contract may be evidenced by circumstances which are sufficiently strong to displace the normal



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presumption that in a contract of sale of land stipulation as to time is not the essence of the contract. ”

24. It is seen from Ex.P24 that though the plaintiff alleged that a group claiming to represent the first defendant company approached the land owners directly and promised to register their lands even without an agreement to sell, there is no evidence produced by the plaintiff, in proof of this allegation. It is claimed in Ex.P26 that the documents produced by the landlords were incomplete and the plaintiff had asked the landlords to produce all the documents including those from the revenue authorities for conveying their lands to the first defendant with perfect title. It is also claimed that the owners are making arrangements with the respective authorities for necessary documents and this exercise will take some more time i.e., another three months. It is also informed that the plaintiff would convey an extent of 10 acres at the first instance and it is not ready for want of certain documents. It is also claimed that the procurement of balance lands is simultaneously happening. Saying all these reasons, plaintiff requested further three

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months time for completing the contract. However, it is clear from this letter that the plaintiff was not able to produce all the requisite documents in support of title of the land owners and that he was not even in a position to convey 10 acres of land, at the first instance. That is the reason why the first defendant through Ex.P30 letter dated 05.09.2007 stated that the plaintiff failed to keep up the commitments and was unable to deliver lands as per the terms of the letter of intent; the documents furnished by the plaintiff to the lawyer failed to meet the legal requirements; the time for procuring lands as per Ex.P1 was expired on 07.08.2007 and therefore, there is no binding effect of the same on either of the parties. Thereafter, the plaintiff issued Ex.P29 – email detailing the transactions and claiming a sum of Rs.33,39,31,015/- from the defendants.

25. It is seen from the evidence of PW.1 that he admitted that as per Ex.P1-letter of intent, the understanding was for the acquisition of lands contiguously. He admitted that he had procured only 10 acres of land and he stated in Ex.P24 that he suddenly faced with



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difficulty of delivering 10 acres of land contiguously. Remaining 24 acres of land are not contiguous. Though he claimed that he entered into sale agreement and paid consideration to the agreement holders, he admitted that he has not given the details of the land owners in the plaint and proof affidavit. The land owners have not filed any suit for specific performance against him. He stated that he has not filed any record to show that the defendants assured him to help in his tax planning. The liability for the assessment year 2007-08 was finalised and he did not remember what was paid as Income Tax for this transaction. He also stated that the purchase of immovable property is not a ground for deduction of income tax of Rs.9,03,29,174/-. He admitted that the contract become impossible of performance as on 11.09.2007. It is his evidence that there is no mention in Ex.P2, for the procurement of 34 acres of land. He also admitted that he has not produced any document to show that there is a contract between him and the first defendant to procure 50 acres of land. It is also his evidence that Ex.P32 is not a concluded contract and defendants 1 and 2 are not parties to Ex.P31 and P32. He also stated that he is not the owner of the property mentioned in



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Ex.P31. Exs.P33 is the certified (xerox) copy of the sale deed executed in favour of the second defendant. Ex.P34 is the certified copy of Encumbrance Certificate for 5 years from 01.01.2007 to 14.12.2011 in respect of S.Nos.81/5 & 81 of Jaladianpettai Village.

26. Ex.P21 shows that the stamp paper was purchased on 24.03.2007, but the agreement was written two days prior to the purchase of stamp paper.

27. Reading of oral and documentary evidence produced in this case shows that the plaintiff had entered into the letter of intent with the first defendant, through Ex.P1 for procurement of 34 acres of land, as per the terms in the letter of intent. The main terms are, 34 acres of land should be procured contiguously with the lands already purchased and that this process should be completed within 120 days from 09.04.2007. We have seen from the oral and documentary evidence that the plaintiff was not able to procure 34 acres of land contiguously within a period of 120 days as stipulated in Ex.P1. When the plaintiff



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entered into the letter of intent with the first defendant after knowing the rigorous of terms and conditions incorporated in Ex.P1, he cannot now say that the contract could not be completed for the reasons beyond his control. Ex.P1 shows that huge sum is offered to the plaintiff as procurement charges for procurement of lands and when that be the case, we cannot say that time is not the essence of contract in this case. The evidence would disclose that the plaintiff was responsible for the breach of contract between the parties. The claim of the plaintiff appears to be speculative and not supported by valid case and supporting evidence. Therefore, this Court is of the considered view that the plaintiff is not entitled for any relief for the reason that the suit filed by the plaintiff is not maintainable in law.

28. Learned counsel for the plaintiff submitted that the defendants have not given any evidence, oral and document in this case, and therefore, adverse inference has to be drawn against the defendants. In support of this proposition, he relied on the judgment reported in ***(1999) 3 SCC 573 (Vidyadhar ..vs.. Manikrao and another)***. It is



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observed in para-17 that,

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17. *Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct as has been held in a series of decisions passed by various High Courts and the Privy Council beginning from the decision in [Sardar Gurbakhsh Singh v. Gurdial Singh and Anr.](#) . This was followed by the Lahore High Court in [Kirpa Singh v. Ajaipal Singh and Ors.](#) AIR (1930) Lahore 1 and the Bombay High Court in [Martand Pandharinath Chaudhari v. Radhabai Krishnarao Deshmukh](#) AIR (1931) Bombay 97. The Madhya Pradesh High Court in [Gulla Kharagjit Carpenter v. Narsingh Nandkishore Rawat](#) also followed the Privy Council decision in [Sardar Gurbakhsh Singh's case \(supra\)](#). The Allahabad High Court in [Arjun Singh v. Virender Nath and Anr.](#) held that if a party abstains from entering the witness box, it would give rise to an inference adverse against him. Similarly, a Division Bench of the Punjab & Haryana High Court in [Bhagwan Dass](#)*



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v. Bhishan Chand and Ors. , drew a presumption under Section 114 of the Evidence Act against a party who did not enter into the witness box.

29. It is not, in all situations, adverse inference has to be drawn against the defendants for non examination. As a dominus litis, it is for the plaintiff to prove his case. Only if the plaintiff discharges the burden of proving the plaintiff's case, the duty is cast on the defendants to produce evidence in support of defendants' case. As already discussed, the very claim of the plaintiff that there was an agreement for purchase of 50 acres of land is negated, since by the own admission of the plaintiff himself, it is proved that the procurement of 16.105 acres and letter of intent for procuring 34 acres of land are two different transactions. It is also proved that the plaintiff miserably failed to perform his part of the contract as per the terms and conditions stipulated in Ex.P1. In such circumstances, this Court is of the view that non-examination of the defendants would no way affect the case of defendants. The plaintiff had miserably failed to prove his case. Therefore, plaintiff is not entitled for the relief of damages or for that



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matter, any other relief claimed. Accordingly, these issues are answered against the plaintiff.

30. **Issue No.4:-**

In view of the findings recorded in Issue No.1, this Court finds that the plaintiff is not entitled for any relief claimed in the plaint and the suit is liable to be dismissed and accordingly, dismissed. Considering the facts and circumstances of the case and also the fact that the plaintiff had made some efforts to perform his part of the contract, the parties are directed to bear their own costs.

mra

04.11.2022

List of witnesses examined on the side of the plaintiff:-

PW.1 - Mr.Sridhar Nagarajan

List of Exhibits marked on the side of the plaintiff:-

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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.P1	09.04.2007	Letter of intent given by first defendant to the plaintiff.
Ex.P2	09.04.2007	Agreement for procurement charges entered between the second defendant and the plaintiff.
Ex.P3	09.04.2007	Copy of sale deed (Doc. No.2961/07) executed in favour of the second defendant, wherein plaintiff is the confirming party.
Ex.P4	09.04.2007	Copy of sale deed (Doc. No.2963/07) executed in favour of the second defendant, wherein plaintiff is the confirming party.
Ex.P5	09.04.2007	Copy of sale deed (Doc. No.2962/07) executed in favour of the second defendant.
Ex.P6	09.04.2007	Copy of sale deed (Doc. No.2957/07) executed in favour of the second defendant.
Ex.P7	09.04.2007	Copy of sale deed (Doc. No.2964/07) executed in favour of the second defendant.
Ex.P8	09.04.2007	Copy of sale deed (Doc. No.2960/07) executed in favour of the second defendant.
Ex.P9	09.04.2007	Copy of sale deed (Doc. No.2959/07) executed in favour of the second defendant.
Ex.P10	09.04.2007	Copy of sale deed (Doc. No.2958/07) executed in favour of the second defendant.
Ex.P11	09.04.2007	Copy of the gift deed executed in favour of Commissioner, St. Thomas Mount Panchayat



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		Union, Chitlapakkam for the formation of road.
Ex.P12	27.04.2007	Letter of Commissioner, St.Thomas Mount Panchayat Union, to the Member Secretary, Chennai Metropolitan Development Authority.
Ex.P13	28.06.2007	Original Sale agreement executed between one T.Kasi and the plaintiff.
Ex.P14	21.07.2007	Original sale agreement executed between A.Dhanasekaran and the plaintiff.
Ex.P15	25.07.2007	Original sale agreement executed between R.Sambandhan and the plaintiff.
Ex.P16	06.08.2007	Original sale agreement executed between M.S.Ramasamy and the plaintiff.
Ex.P17	25.07.2007	Original sale agreement executed between Ramadoss and the plaintiff.
Ex.P18	11.07.2007	Original sale agreement executed between T.Kannappa Naicker & others and the plaintiff.
Ex.P19	10.01.2007	Original sale agreement executed between Neelakandan and the plaintiff.
Ex.P20	28.07.2007	Letter from Shree Velan Properties to Mr.Ravichandran, Advocate.
Ex.P21	22.03.2007	Original sale agreement executed between Durai & others and the plaintiff.
Ex.P22	15.05.2007	Original sale agreement executed between R.Narayanasamy and the plaintiff.



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.P23	----	Combined FMB sketch of No.188, Jalladianpettai Village, Saidapet Taluk, Kancheepuram District.
Ex.P24	11.07.2007	E mail sent by the plaintiff to the first defendant.
Ex.P25	24.07.2007	E mail sent by the plaintiff to the first defendant.
Ex.P26	31.07.2007	Letter from Shree Velan Properties to the first defendant.
Ex.P27	02.08.2007	E mail sent by the plaintiff to the first defendant.
Ex.P28	03.08.2007	E mail sent by the plaintiff to the first defendant.
Ex.P29	29.08.2007	E-mail Letter from the plaintiff to the first defendant.
Ex.P30	05.09.2007	Reply from the first defendant to the plaintiff.
Ex.P31	25.01.2007	Original Memorandum of agreement entered between Puravankara Projects Ltd., and Shree Velan Properties.
Ex.P32	19.03.2008	List of key terms of Joint Development Agreement (JDA) between the Indian Party M/s.Shree Aanjan Estates and the Foreign Party M/s.Sweet Success Private Ltd., Singapore.
Ex.P33	09.04.2007	Certified (xerox) copy of the sale deed (Doc. No.3361/07) executed in favour of the second defendant.
Ex.P34	15.12.2011	Certified copy of Encumbrance Certificate for 5 years from 01.01.2007 to 14.12.2011 in respect



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<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
		of S.Nos.81/5 & 81 of Jaladianpettai Village.

List of Exhibits marked and witnesses examined on the side of the defendants:-

NIL

Court Exhibit marked during the cross examination of PW.1 on 15.03.2022

<i>Exhibit</i>	<i>Date</i>	<i>Document</i>
Ex.C1		Application and affidavit in O.A.No.1096 of 2007 in this suit C.S.No.843 of 2007

Mra

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Internet: Yes

Index : Yes

Speaking order

G.CHANDRASEKHARAN, J.,

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