



O.A.No.493 of 2021

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M.SUNDAR.J.,

Captioned application has been presented in this Court on 05.08.2021, primarily under Section 9 of 'The Arbitration and Conciliation Act, 1996 [Act No.26 of 1996]' (hereinafter 'A and C Act' for the sake of convenience and clarity). The prayer is for an interim injunction restraining the respondent qua alienation and encumbrance of scheduled mentioned properties. To be noted, there are three items of properties in the schedule to the Judge's summons and the same shall hereinafter be collectively referred to as 'said properties' for the sake of convenience and clarity.

2.An agreement dated 30.10.2007 which is a Joint Development Agreement between the applicant and respondent (Builder and Land Owner) is followed by a Memorandum of Understanding dated 13.06.2008, supplemental Joint Development Agreement dated 28.02.2012, all these three agreements shall be read together, will form the subject matter of arbitration qua matter on hand and shall be collectively referred to as 'said agreements' for convenience and clarity.



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3. Today, Mr.G.Rajagopalan, learned Senior Advocate instructed by Mr.S.T.Raja of M/s.Om Sai Ram (Law Firm) on behalf of the lone applicant and Mr.T.V.Ramanujun, learned Senior Advocate instructed by Ms.R.Ramya, counsel on record for the lone respondent are before this Court in this hybrid hearing.

4.In the captioned application, Hon'ble predecessor Judge has granted an interim injunction in the listing on 28.09.2021, which reads as follows:

'Post on 27.10.2021. Till such time, there shall not be any further alteration. In the meantime, parties are directed to mediate the matter.'

5.The aforementioned interim order made by Hon'ble predecessor Judge has been extended from time to time and it is operating now. Be that as it may, Mr.T.V.Ramanujun, learned Senior Counsel appearing on behalf of the learned counsel on record for the land owner (respondent in captioned O.A) submits that as on date of the aforementioned interim order i.e., as on 28.09.2021, item nos.1 and 2 properties mentioned in the judges summons qua captioned O.A had



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already been alienated and therefore, the above interim order will apply only with regard to item no.3 property qua schedule to the judges summons. This argument is noticed but as would be evident from operative portion infra, all questions are left open for Hon'ble Arbitral Tribunal to decide. On the same note, it is also made clear that it is open to the parties to add pleadings if the same/similar interim prayer as in captioned O.A is made before the Arbitral Tribunal under Section 17 of the A and C Act.

6.From hereon, for the sake of convenience and clarity, the applicant Company shall be referred to as 'Builder' and the respondent shall be referred to as 'land owner'. Owing to the trajectory the matter is taking today, it is not necessary to dilate on facts and it will suffice to say that disputes between the builder and land owner have erupted qua said agreements. There is no disputation or disagreement before this Court that Covenant 3(f) of one of the said agreements captioned 'Arbitration' serves as an arbitration agreement between the Builder and Land Owner i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.



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7.To be noted, aforementioned clause 3(f) reads as follows:

'3(f) Arbitration:

*In the event of any dispute with the **PARTIES**, the matter will be settled by mutual negotiations, failing which it is will be settled by an arbitrator as may be mutually agreed upon. If there is no agreement on arbitrator, the **OWNER** and **DEVELOPERS** will each appoint one arbitrator and the decision of the arbitrators shall be final. In the event of any difference between the two arbitrators, the decision of the referee as may be agreed by the arbitrators will be treated as binding on the **PARTIES** on points of referred differences. In all other respects the provisions of Arbitration Act and the provisions of Indian Contract Act will apply.'*

8.As there is no disputation or disagreement about the existence of arbitration agreement between Builder and Land Owner i.e., applicant and respondent in the captioned OP, both learned Senior counsel, on instructions, from their respective counsel on record who in turn, on instructions, from their respective litigants / clients submit that they are agreeable for appointment of Hon'ble Mr.Justice K.Ravichandrabaabu (Retd.), a former Judge of Madras High Court, residing at 1D, Crescent Castle, 13/6 II Cresnet, Park Road, Gandhi Nagar, Adyar, Chennai-600



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020 (Mobile: 94980 33336, 94440 11433) as Sole Arbitrator to enter upon reference, adjudicate upon the arbitrable disputes that have erupted qua said agreements between the applicant and respondent i.e., between Builder and Land Owner. Therefore, the following order is passed:

a) Hon'ble Mr.Justice K.Ravichandrababu (Retd.), a former Judge of Madras High Court, residing at 1D, Crescent Castle, 13/6 II Crescent, Park Road, Gandhi Nagar, Adyar, Chennai-600 020 (Mobile: 94980 33336, 94440 11433) is appointed as sole Arbitrator to enter upon reference, adjudicate upon the arbitrable disputes that have arisen between the parties qua said agreements;

b) Hon'ble Arbitrator is requested to conduct arbitration at 'Madras High Court Arbitration Centre under the aegis of this Court' ['MHAC'];

c) Hon'ble Arbitrator is requested to conduct arbitration in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and learned Arbitrator's



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fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees), Rules 2017;

d) The above mentioned interim order dated 28.09.2021 (made by Hon'ble predecessor Judge) extended from time to time, the same is operating now and it shall continue to operate till the first sitting of the Hon'ble Arbitral Tribunal.

e) It is open to the applicant to make the same / similar prayer as in the captioned application before the Hon'ble Arbitral Tribunal (AT) *inter alia* under Section 17 of A and C Act and though obvious, it is made clear that Hon'ble AT shall decide the same on its own merits and in accordance with law and uninfluenced by any observation made in this order.

f) All questions and issues are left open.

Captioned application is disposed of with aforesaid directives.

There shall be no order as to costs.



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24.02.2022

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Note: Registry is directed to communicate a
copy of this order forthwith to

1.Hon'ble Mr.Justice K.Ravichandrabaabu (Retd.),
1D, Crescent Castle,
13/6 II Cresent, Park Road, Gandhi Nagar,
Adyar, Chennai-600 020
(Mobile: 94980 33336, 94440 11433)

2.The Director
Tamil Nadu Mediation and conciliation Centre
-cum-
Ex Officio Member,
Madras High Court Arbitration Centre
Madras High Court, Chennai – 600 104.



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