



O.A.Nos.387& 393 of 2022

O.A.Nos.387& 393 of 2022

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M.SUNDAR, J

This common order will now dispose of the captioned two applications.

2. This Court made an interim order dated 14.07.2022 in captioned O.A.No.387 of 2022 and another interim order dated 15.07.2022 in captioned O.A.No.393 of 2022, which read as follows:

'Proceedings dated 14.07.2022 in OA.No.387 of 2022

Captioned application has been presented in this Court on 08.07.2022 inter-alia under Section 9(1)(ii)(d) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

2. Mr.P.Raghu Raman, learned Senior counsel instructed by Mr.A.Umashankar along with Mr.Anupam Raghuraman, Mr.Gautam S. Raman and Mr.Gokul S. Ravi of M/s.Raman and Associates (Law Firm) on behalf of applicant is before this Court.

3. Learned Senior counsel submits that the nucleus of the matter is a 'Joint Development Agreement dated 04.05.2011 between the applicant-Company and six respondents besides a registered Power of Attorney dated 04.05.2011 executed by respondents in favour of the applicant-Company' [hereinafter collectively be referred to as 'primary contract' for the sake of convenience and clarity]. To be noted, wherever it becomes necessary 'registered Power of Attorney dated 04.05.2011' shall be referred to as 'POA' and 'Joint Development Agreement dated 04.05.2011' shall be



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referred to as 'JDA' for the sake of convenience and clarity.

4. Learned Senior counsel submits that primary contract is essentially for development of a large extent of land admeasuring 6,22,777 sq.ft or thereabouts comprised in / constituted by about 101 different contiguous parcels of land situate in No.105, Sriperumbudur Village, Sriperumbudur Taluk, Kancheepuram District, bearing Patta Nos.314, 2510, 2511, 2513, 2551, 2626, 2272 and 2273 (hereinafter 'said land'). This translates to little over 15 acres and over 250 grounds.

5. At the outset, attention of this Court is drawn to clause 20 of JDA which reads as follows:

'20. All disputes, differences, claims and questions whatsoever which may arise during the continuance of this Agreement between the parties hereto touching these presents or the construction, meaning effect or application thereof or any clause or thing contained in this Agreement or in respect of any account, or as to any act of omission of either party or as to any other matter in anywise relating to or arising out of or touching this Agreement or the rights, duties and liabilities of either party under this Agreement shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications or enactment thereof for the time being in force, by sole arbitrator having the ranking of a retired High Court Judge residing at Chennai. The arbitration proceedings shall be held at Chennai and Courts in Chennai alone shall



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have the jurisdiction.'

6. Aforementioned clause serves as an Arbitration Agreement between the applicant-Company and six respondents i.e., 'Arbitration Agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned Senior counsel's say. It is also submitted by learned Senior counsel that this is not only a development agreement but it is also a case of power coupled with a sale agreement, i.e., primary contract.

7. Be that as it may, suffice to say that primary contract is for development of said land. JDA does not set out the nature of development with specificity but this means that it takes under its umbrella all conceivable kinds of development including sale of portions of said land as plots is learned senior counsel's say.

8. As can be culled out from pleadings and submissions, primary contract was operated over a period of time and in the course of operation of primary contract, in addition to Rs.6 Crores as advance / part sale consideration at the time of execution of primary contract, a sum of Rs.9 Crores has been paid to respondents by the applicant-Company representing 20% of proceeds qua development. It is submitted that more than Rs.78.77 Crores has been put into this project for development thus far and that all these add up to Rs.100 Crores.

9. There are two other interesting and intriguing aspects of primary contract. One is there is no exit clause. Second interesting aspect is, it does not set out the nature of development with specificity as already alluded to supra.



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10. Be that as it may, under the aforementioned circumstances, post primary contract, for the first time the applicant-Company received an electronic mail communication from the respondents on 20.06.2022. This electronic mail says that a signed copy of notice will be delivered and it was ultimately delivered a little later. The signed copy of the notice is dated 13.06.2022 is learned Senior counsel's say. The concluding paragraph of this notice calls upon the applicant-Company to rectify alleged non-compliances i.e., complete development of projects within one week and goes on to say that in the event of failure to do so and handing over unsold plots to respondents without encumbrance, the primary contract will be cancelled. Learned Senior counsel submits that this has led to eruption of arbitrable disputes between the parties and therefore, the applicant-Company replied vide a notice dated 07.07.2022 through counsel inter alia responding to the allegations, suggesting nomination of a former Hon'ble Judge of this Court to act as sole Arbitrator and calling upon the respondents to consent for the same. This 07.07.2022 notice is trigger notice i.e., notice invoking arbitration agreement is learned Senior counsel's further say. This Court is informed that this trigger notice was mailed on 08.07.2022 and the respondents 1 to 5 i.e., noticees 1 to 5 have received the same on 09.07.2022 and sixth respondent, i.e., noticee No.6 has received the same on 11.07.2022 but they have not responded.

11. This Court is therefore of the prima facie view that the petitioner has demonstrated manifest intention to arbitrate qua aforementioned Arbitration Agreement. Therefore, this Court is inclined to look at the prayer in the captioned Section 9 application



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which is before Arbitration i.e., pre-arbitration Section 9 application. As regards the prayer, it is in two parts. In other words, there are two limbs to the prayer. One limb of the prayer is for interdicting, i.e., injuncting the respondents restraining them from interfering with or disturbing the applicant's developmental activities in said land. The other part of the prayer or in other words, the second limb of the prayer is to interdict the respondents from cancelling / revoking the POA and JDA. As regards the first limb, this court is of the view that the applicant company should maintain status quo if the second limb or second part of it is to be acceded to. This is to balance the rights of the parties. As regards the second limb of the prayer, as there is no exit clause in the JDA as already alluded to supra, interim injunction will be qua POA only.

12. Before writing the operative portion infra, it is deemed appropriate to write that prima facie case has been made out in the light of narrative thus far, balance of convenience is in favour of acceding to the interim prayer (to the extent and in the manner indicated above) at this juncture as irreversible legal injury is likely to occur if there is unilateral revocation of POA as the respondents have already put the petitioner on notice about the intention to cancel the POA which coupled with sale agreement in the form of a JDA with no exit clause. As regards the developmental activities, the petitioner shall maintain status quo as of today between now and next listing which shall be a fortnight hence.

13. To state with specificity, there shall be a limited interim order restraining the respondents from revoking / cancelling POA dated 04.05.2011, registered as Document No.868 of 2011 on the file



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of Sub-Registrar Office, Sriperumbudur and the petitioner shall maintain status quo regarding the developmental activities in said land, i.e., land admeasuring 6,22,777 sq.ft or thereabouts comprised in / constituted by about 101 different contiguous parcels of land situate in No.105, Sriperumbudur Village, Sriperumbudur Taluk, Kancheepuram District, bearing Patta Nos.314, 2510, 2511, 2513, 2551, 2626, 2272 and 2273 till the next listing.

14. To be noted, the object of granting injunction would be defeated by delay if there is revocation of POA pending captioned application / pending intended arbitration. Therefore, this interim injunction is being granted at the time of directing notice on captioned application to the respondents. Reasons for doing so have been recorded supra in the preceding paragraphs. The applicant shall also send by registered post immediately a copy of injunction application together with typed set of papers that have been relied on. An affidavit stating that such copies have been sent shall also be filed in this court. To be noted, this is akin to Order XXXIX Rule 3 proviso thereto and Order XXXIX Rule 3(a) of 'The Code of Civil Procedure, 1908' (CPC).

*15. Issue notice to respondents returnable by 28.07.2022.
Private notice permitted.*

16. List on 28.07.2022.'

'Proceedings dated 15.07.2022 in OA.No.393 of 2022

Captioned application has been presented in this Court on 11.07.2022 inter-alia under Section 9(1)(ii)(d) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].



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2. *Mr.P.Raghu Raman, learned Senior counsel instructed by Mr.A.Umashankar along with Mr.Anupam Raghuraman, Mr.Gautam S. Raman and Mr.Gokul S. Ravi of M/s.Raman and Associates (Law Firm) on behalf of applicant is before this Court.*

3. *Learned Senior counsel submits that the nucleus of the matter is a 'Joint Development Agreement dated 04.05.2011 between the applicant-Company and six respondents besides a registered Power of Attorney dated 04.05.2011 executed by respondents in favour of the applicant-Company' [hereinafter collectively be referred to as 'primary contract' for the sake of convenience and clarity]. To be noted, wherever it becomes necessary 'registered Power of Attorney dated 04.05.2011' shall be referred to as 'POA' and 'Joint Development Agreement dated 04.05.2011' shall be referred to as 'JDA' for the sake of convenience and clarity.*

4. *Learned Senior counsel submits that primary contract is essentially for development of a large extent of land admeasuring 7,91,609 sq.ft or thereabouts comprised in / constituted by about 171 different contiguous parcels of land situate in No.105, Sriperumbudur Village, Sriperumbudur Taluk, Kancheepuram District, bearing Patta Nos.314, 2510, 2511, 2513, 2551, 2626, 2272 and 2273 (hereinafter 'said land'). This translates to little over 18.17 acres.*

5. *At the outset, attention of this Court is drawn to clause 20 of JDA which reads as follows:*

'20. All disputes, differences, claims and questions whatsoever which may arise during the continuance of this Agreement between the parties hereto touching these presents or the construction, meaning effect or application thereof or



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any clause or thing contained in this Agreement or in respect of any account, or as to any act of omission of either party or as to any other matter in anywise relating to or arising out of or touching this Agreement or the rights, duties and liabilities of either party under this Agreement shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications or enactment thereof for the time being in force, by sole arbitrator having the ranking of a retired High Court Judge residing at Chennai. The arbitration proceedings shall be held at Chennai and Courts in Chennai alone shall have the jurisdiction.'

6. Aforementioned clause serves as an Arbitration Agreement between the applicant-Company and six respondents i.e., 'Arbitration Agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned Senior counsel's say. It is also submitted by learned Senior counsel that this is not only a development agreement but it is also a case of power coupled with a sale agreement, i.e., primary contract.

7. Be that as it may, suffice to say that primary contract is for development of said land. JDA does not set out the nature of development with specificity but this means that it takes under its umbrella all conceivable kinds of development including sale of portions of said land as plots is learned senior counsel's say.

8. As can be culled out from pleadings and submissions, primary contract was operated over a period of time and in the course of operation of primary contract, in addition to Rs.7.15 Crores as



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advance / part sale consideration at the time of execution of primary contract, a sum of Rs.1.60 Crores has been paid to respondents by the applicant-Company representing 20% of proceeds qua development. It is submitted that more than Rs.78.77 Crores has been put into this project for development thus far and that all these add up to around Rs.100 Crores is learned counsel's further say.

9. There are two other interesting and intriguing aspects of primary contract. One is there is no exit clause. Second interesting aspect is, it does not set out the nature of development with specificity as already alluded to supra.

10. Be that as it may, under the aforementioned circumstances, post primary contract, for the first time the applicant-Company received an electronic mail communication from the respondents on 20.06.2022. This electronic mail says that a signed copy of notice will be delivered and it was ultimately delivered a little later. The signed copy of the notice is dated 13.06.2022 is learned Senior counsel's say. The concluding paragraph of this notice calls upon the applicant-Company to rectify alleged non-compliances i.e., complete development of projects within one week and goes on to say that in the event of failure to do so and handing over unsold plots to respondents without encumbrance, the primary contract will be cancelled. Learned Senior counsel submits that this has led to eruption of arbitrable disputes between the parties and therefore, the applicant-Company replied vide a notice dated 09.07.2022 through counsel inter alia responding to the allegations, suggesting nomination of a former Hon'ble Judge of this Court to act as sole Arbitrator and calling upon the respondents to consent for the same. This 09.07.2022 notice is



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trigger notice i.e., notice invoking arbitration agreement is learned Senior counsel's further say. This Court is informed that this trigger notice was mailed on 11.07.2022 and the respondents 1 to 5 i.e., noticees 1 to 5 have received the same on 12.07.2022 and sixth respondent, i.e., noticee No.6 has received the same on 13.07.2022 but they have not responded.

11. This Court is therefore of the prima facie view that the petitioner has demonstrated manifest intention to arbitrate qua aforementioned Arbitration Agreement. Therefore, this Court is inclined to look at the prayer in the captioned Section 9 application which is before Arbitration i.e., pre-arbitration Section 9 application. As regards the prayer, it is in two parts. In other words, there are two limbs to the prayer. One limb of the prayer is for interdicting, i.e., injuncting the respondents restraining them from interfering with or disturbing the applicant's developmental activities in said land. The other part of the prayer or in other words, the second limb of the prayer is to interdict the respondents from cancelling / revoking the POA and JDA. As regards the first limb, this court is of the view that the applicant company should maintain status quo if the second limb or second part of it is to be acceded to. This is to balance the rights of the parties. As regards the second limb of the prayer, as there is no exit clause in the JDA as already alluded to supra, interim injunction will be qua POA only.

12. Before writing the operative portion infra, it is deemed appropriate to write that prima facie case has been made out in the light of narrative thus far, balance of convenience is in favour of acceding to the interim prayer (to the extent and in the manner



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indicated above) at this juncture as irreversible legal injury is likely to occur if there is unilateral revocation of POA as the respondents have already put the petitioner on notice about the intention to cancel the POA which coupled with sale agreement in the form of a JDA with no exit clause. As regards the developmental activities, the petitioner shall maintain status quo as of today between now and next listing which shall be a fortnight hence.

13. To state with specificity, there shall be a limited interim order restraining the respondents from revoking / cancelling POA dated 04.05.2011, registered as Document No.869 of 2011 on the file of Sub-Registrar Office, Sriperumbudur and the petitioner shall maintain status quo regarding the developmental activities in said land, i.e., land admeasuring 7,91,609 sq.ft or thereabouts comprised in / constituted by about 171 different contiguous parcels of land situate in No.105, Sriperumbudur Village, Sriperumbudur Taluk, Kancheepuram District, bearing Patta Nos.314, 2510, 2511, 2513, 2551, 2626, 2272 and 2273 till the next listing.

14. To be noted, the object of granting injunction would be defeated by delay if there is revocation of POA pending captioned application / pending intended arbitration. Therefore, this interim injunction is being granted at the time of directing notice on captioned application to the respondents. Reasons for doing so have been recorded supra in the preceding paragraphs. The applicant shall also send by registered post immediately a copy of injunction application together with typed set of papers that have been relied on. An affidavit stating that such copies have been sent shall also be filed in this court. To be noted, this is akin to Order XXXIX Rule 3 proviso thereto and



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Order XXXIX Rule 3(a) of 'The Code of Civil Procedure, 1908' (CPC).

15. Issue notice to respondents returnable by 28.07.2022.

Private notice permitted.

16. List on 28.07.2022.'

3. Today Mr.P.Raghu Raman, learned Senior counsel instructed by Mr.A.Umashankar along with Mr.Anupam Raghuraman, Mr.Gautam S. Raman and Mr.Gokul S. Ravi of M/s.Raman and Associates [Law Firm] for the applicant-company in both captioned applications and Mr.V.P.Sengottuvel, learned counsel who has since entered appearance on behalf of all the six respondents in both the captioned applications are before this Court.

4. Learned counsel for respondents brings to the notice of this Court that a common counter affidavit dated 27.07.2022 [to be noted, deponent is respondent no.3] has been filed.

5. Be that as it may, there is no disputation regarding the existence of arbitration agreements between the parties i.e., Clauses 20 in the primary contracts being JDAs dated 04.05.2011. To be noted, short forms, abbreviations and short references used in the earlier orders dated 14.07.2022 and 15.07.2022 continue to be used in the instant order also for the sake of convenience and clarity.



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6. As there is no disputation about the existence of arbitration agreements, it is only appropriate that all disputes that have arisen between the parties qua two JDAs are now adjudicated upon by a sole Arbitrator to be appointed by this Court.

7. Learned counsel for respondents adverting to aforementioned common counter affidavit of respondents, more particularly paragraph 22 thereof submitted that the applicant-company has taken a loan of Rs.50 crores on 28.04.2017 and this has not been brought to the notice of this Court. This is refuted by learned senior counsel for applicant-company by saying that this has been set out in paragraph 15 of support affidavits qua captioned applications. In the light of the order I propose to make today (to be noted, there will be appointment of a sole Arbitrator infra), I deem it appropriate to not to express any view or opinion on this and all other disputations.

8. In the aforementioned back drop, learned counsel on both sides have filed a Joint Memo dated 28.07.2022 and a scanned reproduction of the same [together with docket] is as follows:



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O.A.Nos.387 & 393 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

O.A. Nos. 387 & 393 of 2022

M/S. LANCOR HOLDINGS LIMITED

... Applicant

Versus

M/S. EVERSHINE GARDEN CITY P.LTD., and 5 Ors.

... Respondents

JOINT MEMO FILED BY THE PARTIES

Both the Applicant and the Respondents respectfully submit as follows:

1. All the parties in the above matter are agreeable to resolve all their disputes, including the above Applications under Section 9 of the Arbitration and Conciliation Act, 1996 hearing O.A.Nos. 387 and 393 of 2022, before the learned Sole Arbitrator to be appointed by this Hon'ble Court.
2. The Pleadings in the above O.A. Nos. 387 and 393 of 2022 and the respective Typed Set filed by both the parties may be duplicated and filed before the learned Sole Arbitrator to be appointed by this Hon'ble Court and be treated as an application under Section 17 of the Arbitration and Conciliation Act, 1996, preserving the right to the parties to file further pleadings, if any.

It is therefore prayed that this Hon'ble Court may be pleased to record this memo and pass such necessary order or further order as it deems fit and proper and thus render justice.

Dated at Chennai on this the 28th day of July, 2022


(Counsel for Applicant)


(Counsel for Respondents)



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O.A.Nos.387 & 393 of 2022

IN THE HIGH COURT OF JUDICATURE
AT MADRAS

(Ordinary Original Civil Jurisdiction)

O.A. Nos. 387 & 393 of 2022

M/S. LANCOR HOLDINGS LIMITED

... Applicant

Versus

M/S. EVERSHINE GARDEN CITY P
LTD., and 5 Ors.

Respondents



JOINT MEMO FILED BY THE
PARTIES

M/s. RAMAN & ASSOCIATES

Counsel for Applicant

M/S. V.P. SENGUTAVEL

Counsel for Respondents



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9. In the light of the aforementioned Joint Memo, this Court would now appoint a sole Arbitrator. Before doing that, it is deemed appropriate to record that learned counsel on both sides on instructions submitted that the expression '..... a retired High Court Judge residing at Chennai' can be construed as 'a retired Judge not below that of a High Court Judge who would hold sittings and conduct arbitration at Chennai' and it would be a choice of this Court. This common submission is recorded. Photo copies of captioned two applications together with photo copies of the counter affidavit and the supporting typed set of papers of both sides shall also be placed before Hon'ble Arbitrator with a request to treat the same as applications under Section 17 of A and C Act. Hon'ble Arbitrator [to be appointed infra] shall deal with the same on their own merits and in accordance with law notwithstanding any view or for that matter the contents of the aforementioned two judicial orders as they are only *prima facie* views for the limited purpose of grant of interim order.

10. In the light of the narrative thus far, Hon'ble Mrs.Justice R.Banumathi (Retd.), former Judge of Hon'ble Supreme Court of India at No.C20, Ground Floor, Defence Colony, New Delhi-110 024, (Mob: 7042955477 and 7397329476, e-mail:banumathir1955@gmail.com) is appointed as sole Arbitrator. It is made clear that it is one Arbitrator but two



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Arbitral Tribunals are being constituted as there are two JDAs both dated 04.05.2011. Hon'ble Arbitrator is requested to enter upon reference qua two primary contracts i.e., JDAs dated 04.05.2011 between the parties, adjudicate upon all disputes/arbitrable disputes that have arisen between the parties and render an award by holding sittings at 'Madras High Court Arbitration Centre under the aegis of this Court' (MHCAC) in accordance with Madras High Court Arbitration Proceedings Rules 2017 and fee of Hon'ble Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017 for each of the two Tribunals.

11. Interim orders dated 14.07.2022 and 15.07.2022 already granted in O.A.Nos.387 of 2022 and 393 of 2022 respectively shall continue to operate till the first sitting of Hon'ble Arbitrator.

12. Both captioned applications disposed of in the aforesaid manner. There shall be no order as to costs.

28.07.2022

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28.07.2022