



Arb.O.P.(Com.Div.) No.658 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	26.03.2024
Pronounced On	28.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.658 of 2022

and

A.No.5519 of 2022

M/s.Natesan Housing Private Limited,
Represented by its Director V.P.Seetharaman

... Petitioner

Vs.

1.G.Kalaiselvan

2.K.Geetha

3.K.Kaavya

... Respondents

Prayer: Original Petition is filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside the Award of the Sole Arbitrator in Arb.O.P.No.353 of 2021 dated 18.07.2022 and to direct the respondents to pay the cost and grant further reliefs.

For Petitioner

: Mr.A.K.Sriram
for M/s.A.S.Kailasam and Associates

For Respondents

: Mr.K.Doraisami
Senior Counsel
for Mr.Muthumani Doraisami



ORDER

This Original Petition has been filed under Sub-Section 2 to Section 34 of the Arbitration and Conciliation Act, 1996.

2. The petitioner was the claimant before the Arbitral Tribunal. The petitioner has suffered an adverse Award dated 18.07.2022 in the hands of the learned Arbitrator and is therefore before this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

3. By the impugned Award dated 18.07.2022, the learned Arbitrator has rejected the claim of the petitioner and has accepted the counter claim of the respondents by awarding a sum of Rs.13,23,06,392/- to the respondents. Operative portion of the impugned award reads as under:-

“7. Cost and Interest payable:

7.1 The cost of NaniPalkiwala Arbitration Centre charges paid by the respondent for the above sittings are Rs.1,01,392/-. The cost of the clerical' expenses incurred in drafting the proceedings other than one made by the Arbitration Centre and the expenses incurred in drafting and typing of the final award is fixed at Rs.20,000/-.

7.2 The cost incurred by the Claimant for the Arbitration Centre will be borne by the claimant alone.

8. For all the above reasons the claim petition as well as the



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*Additional Claim petition are dismissed and **the respondents counter claim is allowed as follows:***

i) The Counter claim amount	Rs. 13,01,85,000/-
ii) The Arbitration fee paid by the Respondents	Rs. 5,20,000/-
iii) Legal Expenses claimed by the Respondents	Rs. 15,00,000/-
iv) NaniPalkiwala Arbitration Centre Fee paid by the Respondent	Rs. 1,01,392/-
v) The Arbitrator fee, fee for the Centre fee paid by the Claimant	Borne by Claimant themselves

vi) Total Claim Awarded and payable by Claimant to the Respondent	Rs. 13,23,06,392/-

(Rupees Thirteen Crores, Twenty three lakhs, six thousand three hundred ninety two only)

9.The claimant is directed to pay the counter claim amount plus the expenses referred above totaling in Rs.13,23,06,392/-- (Rupees Thirteen Crores, Twenty three lakhs, six thousand three hundred ninety two only) to the respondents within two months from the date of receipt of this Award.

10. The claimants are liable to pay the above said amount with interest at the rate of 9% per annum from 15.09.2021, the date of filing the defense statement with a counter claim, till the date of payment within two months from the date of receipt of the award.”



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4. There is a checkered history to the litigation between the parties. There has been a proceedings before the Writ Court as also before this Court under Section 11 apart from criminal complaints, which lead to CrI.O.P.Nos.2638 of 2019 and 4920 of 2019 being filed under Section 482 of the Cr.P.C., 1973 before the Madurai Bench of this Court.

Brief facts of the case are as hereunder:-

5. The petitioner is a Company engaged in real estate business of developing properties. In this connection, Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 was signed between the petitioner and the first and second respondents. It was followed by another Agreement in the form of Ex.R3 Joint Development Agreement dated 10.07.2014, which was signed between V.P.Seetharaman, the Director of the petitioner in his personal capacity as a Proprietor of M/s.Natesan Estates and the first and second respondents.

6. The respondents had also executed Ex.C2/R5 Registered Power of Attorney dated 23.02.2015 in favour of the Director of the petitioner namely V.P.Seetharaman. Meanwhile, the parties decided to substitute the Ex.R3 Joint Development Agreement dated 10.07.2014 with Ex.C3/R7 Joint Development



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Agreement dated 06.12.2017 signed between the petitioner and the respondents.

7. Under Ex.C1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017, the petitioner was to develop the lands of the respondents measuring to an extent of 1.605 Acres (approximately 69,696 sq.ft of land) and hand over **39,450 sq.ft** of built up area in the form of **47** apartments to respondents.

8. Under Ex.C3/R7 Joint Development Agreement dated 06.12.2017, the arrangement was slightly altered. The Ex.C3/R7 Joint Development Agreement dated 06.12.2017 introduced to the third respondent herein, namely K.Kaavya, the daughter of the first and second respondents.

9. Meanwhile, the Director of the petitioner Company viz., V.P.Seetharaman executed Ex.C4/R8 Sale Deed dated 12.02.2018 in favour of the petitioner Company and transferred 44,045 sq.ft of land out of 69,969 sq.ft of land on which the petitioner was to develop apartments under Ex.C3/R7 Joint Development Agreement dated 06.12.2017. This was ostensibly on the strength of Ex.C2/Ex.R5 Power of Attorney dated 23.02.2015 executed by the



respondents in favour of V.P.Seetharaman, the Director of the petitioner

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10. A Sale Deed was registered on 12.02.2018 in favour of the petitioner Company. The Sale Deed was subject matter of a challenge before the Madurai Bench of this High Court in W.P.(MD).No.10433 of 2021 filed by the respondents for the following relief:-

“Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for records of the fourth respondent pertaining to the registration of the sale deed in Document No.656/2018, dated 12.02.2018 and quash the same as illegal and consequently direct the fourth respondent to remove the registration / encumbrance entries made qua the said sale deed in Document No.656/2018, dated 12.02.2018 from the books / register on the file of the fourth respondent within the time that may be stipulated by this Court.”

11. The Madurai Bench of this Court by its order vide Ex.R21 dated 22.06.2021 set aside the aforesaid Ex.C4/R8 Sale Deed dated 12.02.2018. The order vide Ex.R21 dated 22.06.2021 of the learned Single Judge of the Madurai Bench of this High Court was the subject matter of a challenge before the Hon'ble Division Bench at the behest of the petitioner in **W.A.(MD).No.1339 of**



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12. The Hon'ble Division Bench of the Madurai Bench of this Court in **W.A.(MD).No.1339 of 2021** was earlier pleased to pass an interim order of stay on 06.07.2021 of the order dated 22.06.2021 of the learned Single Judge in the above mentioned Writ Petition. It is during the interregnum, the impugned Award dated 18.07.2022 has been passed.

13. **W.A.(MD).No.1339 of 2021** has now been closed by the Hon'ble Division Bench of the Madurai Bench of this Court to await order of this Court in this proceedings challenging the impugned Award of the learned Arbitrator dated 18.07.2022.

14. The Award itself came to be passed pursuant to Ex.C26 order dated 18.08.2021 in O.P.No.353 of 2021 filed by the petitioner, wherein the Court taking note of the various agreements referred to supra, concluded that there was an arbitral dispute between the parties.

15. It may not be out of place to mention that the respondents herein had also earlier filed Ex.R11 criminal complaint dated 08.02.2019 before the



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jurisdictional Police Station in Trichy against the petitioner and its Director.

Ex.C5/Ex.R11 criminal complaint dated 08.02.2019 resulted in filing of Ex.C6
Crl.O.P.(MD).Nos.2638 & 4920 of 2019 by the petitioner herein along with its
Director before the Madurai Bench of this Court .

16. There the dispute was referred for Mediation wherein, Ex.R14
Settlement Agreement dated 15.07.2019 was signed between the parties.
Relevant portion of Ex.R14 Settlement Agreement dated 15.07.2019 reads as
under:-

“SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT entered into on 15/07/2019
between

V.P.Seetharaman

and 5 others

.. Petitioners in

Crl.OP(MD).No.2638/2019

V.Agoramoorthy

.. Petitioner in

Crl.OP(MD).No 4920/2019

and

1.The Inspector of Police,s

City Crime Branch, Trichy City, Cr.No.5/19

2.G.Kalaiselvan

.. Respondents in Both

the Petitions

WHEREAS

1. Disputes and differences had arisen between the Parties
hereto and Crl.OP(MD)Nos.2638/2019 and 4920/2019



were filed on 14/02/2019 and 29/03/2019 respectively before Hon'ble High Court.

2. The matter was referred to mediation / conciliation vide an order dated 22/02/2019 & 02/04/2019 passed by THE HON'BLE MR.JUSTICE N.SESHASAYEE.

3.The parties agreed that Mr.P Kumar would act as their Mediator.

4.Several meetings were held and during the process of Mediation/Conciliation from 04/03/2019 to 15/07/2019 and all the parties have with the assistance of the Mediator voluntarily arrived at an amicable solution resolving the above mentioned disputes and differences.

5.The parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediators.

6.The following settlement has been arrived at between the Parties hereto:

- i) Joint Compromise Petition for quashing the Criminal complaint is to be filed by the Petitioners and 2nd Respondent in CrI.OP(MD)Nos.2638/2019 and 4920/2019 on the file of this Hon'ble Court.
- ii) **Since M/s.Natesan Housing Private Ltd., the builder company and land owners agreed that the said company cannot continue the project due to present circumstances it has to handover the building project along with approval, from the DTCP Trichy to a different builder. Land owners and the new builder should enter into a new Joint Development Agreement (JDA) and register the same based upon the earlier J.D.A. and register the said agreement under the RERA Act 2016.**
- iii) The new builder shall start building operations within 2



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months from today and complete the building within 2 years and 6 months thence forthwith.

- iv) **M/s.Natesan Housing Pvt. Ltd., could receive 2 Crores and 40 lakhs from the new builder being the cost and expenses along with interest spent by the said company towards obtaining the approval.**
- v) ThiruG.Kalaiselvan shall handover 10,000 sq. feet of constructed that to ThiruV.P.Seetharaman or giving back him the sum of Rs.1,95,00,000/- (Rupees One Crore Ninety Five Lakhs only) being the money and interest that Mr.Kailaiselvan is liable to pay said V.P.Seetharaman;
- vi) ThiruG.Kalaiselvan should pay Rs.2,66,214/- (Rupees Two lakhs sixty six thousand two hundred and fourteen only) with interest rate 15% from 30.01.2018 to M/s.Natesan Housing Pvt. Ltd., being sum paid towards vacant land tax of the sites.
- vii) Immediately after receiving the money (Rs.2,40,00,000/-) spent by M/s.Natesan Housing Pvt.Ltd, for obtaining the approval from the new builder the said company should execute sale deed in respect of 44045 sq. feet in favour of the new builder
- viii) Time is essence of the Contract.
- ix) Identifying a new builder and subsequently handing over the project is the responsibility of **Mr.V.P.Seetharaman.**
- x) If the new builder fails to complete project and abandons it, M/s.Natesan housing Pvt. Ltd., would loose 50% of the money outstanding.
- xi) Contract between Mr.V.P.Seetharaman and Mr.G.Kalaiselvan herewith enclosed **(in Tamil version)**
- xii) M/s.Natesan Housing Private Ltd., resolution herewith enclosed.

7. By signing this Agreement all the Parties hereto state



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that they have no further claims or demands against each other with respect to CrI.OP(MD).Nos.2638/2019 and 4920/2019 and all disputes and differences in this regard have been amicably settled by the Parties hereto through the process of conciliation /Mediation.”

17. Meanwhile, O.P.No.353 of 2021 was filed by the petitioner on the strength of Ex.C3/R7 Joint Development Agreement dated 06.12.2017. This Court in Ex.C26 order dated 18.08.2021 in O.P.No.353 of 2021 appointed Hon'ble Mr.Justice P.Shanmugam, (Retd.) since deceased as the sole Arbitrator.

18. The case of the petitioner before the learned Arbitrator was that the previous contract in Ex.C3/R7 Joint Development Agreement dated 06.12.2017 faded with the signing of the Ex.R14 Settlement Agreement dated 15.07.2019 and therefore, the dispute between the parties has to be settled strictly under Ex.R14 Settlement Agreement dated 15.07.2019.

19. The petitioner states that in view of Ex.R14 Settlement Agreement dated 15.07.2019 there was a Novation of Contract under Section 62 of the Indian Contracts Act, 1872 and the parties agreed that the previous contracts could not be performed and hence it terminated all the previous contracts



between the petitioner and the respondents and therefore submits that the previous agreement signed between the parties were obliterated.

20. Before the Arbitrator, the respondents who are the land owners had made a counter claim for Rs.13.32 Crores which has been awarded by the Arbitral Tribunal. The principal ground of attack of the petitioner against the Award is that two issues were framed by the Arbitral Tribunal on 08.11.2021. However, while passing the impugned Award, the Arbitral Tribunal has framed five issues to which the petitioner was not put to notice and thus submits that the impugned Award is contrary to Section 18 of the Arbitration Act, 1996.

21. The issues framed by the Arbitral Tribunal on 08.11.2021 are as follows:-

- i. Whether the claim, is arbitrable and to what relief the claimant is entitled?
- ii. Whether the respondents are entitled for counter claim and to what relief if any they are entitled to?

22. However, in the impugned Award, following issues were framed by the Arbitral Tribunal:-

- “1. Whether the issues raised by the Claimant were Arbitrable?
2. Whether the issues raised by the Respondents were Arbitrable?



3. Whether the arbitration can be confined only to the Settlement Agreement entered between the parties before the Tamil Nadu Mediation and Conciliation Centre dated 15.07.2019?
4. What are the arbitrable disputes between the parties interse?
5. Whether the claim and counter claim can be allowed?
6. Cost and Interest if any payable?"

23. It is therefore submitted that the impugned Award passed by the learned Arbitrator has to go and the Award has to be set aside and the matter has to be remitted back for passing fresh Award.

24. It is the contention of the learned Senior Counsel for the petitioner that the Ex.C4/R8 Sale Deed dated 12.02.2018 had been declared to be null and void vide Ex.R21 dated 22.06.2021 passed in W.P.(MD).No.10433 of 2021. It is submitted that the said order had been stayed by the Hon'ble Division Bench of the Madurai Bench of this Court by its order dated 08.07.2021 in W.A.(MD).No.1339 of 2021.

25. It is therefore submitted that the learned Arbitrator committed a patent illegality in holding that the Ex.C4/R8 Sale Deed dated 12.02.2018 executed by the Director of the petitioner as a Power of Attorney holder of the respondent was not valid and exceeded the power by relying the decision of the



Hon'ble Supreme Court in **SubbaRao Vs. I.T. Commissioner**, AIR 1956 SC

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26. That apart, it is submitted that the finding of the Arbitral Tribunal that in Ex.R3/Joint Development Agreement dated 10.07.2014, signed between the Director of the petitioner Company in his individual capacity as the Proprietor of M/s.Natesan Estates, stipulating 30% ratio for the respondents and 70% for the petitioner is contradictory with the finding in subsequent conclusion as follows:-

“b) The JDA-1 dated 10.7.2014(R-3) contains an arbitration clause followed by issue of cheques given infavour of the respondents. Even though JDA-I is signed by M/s.Natesan Estates as Developer of 1.60.5 cents stipulating 30% ratio for the owners and 70% for the developer, the explanation given on behalf of the respondents that Mr.V.P.Seetharaman convinced the respondents that it will be better that JDA-I is in his individual capacity to deal with the Revenue as well as Registering authorities is acceptable.

(e) The sale deed dated 12.2.2018 (R-8) executed by Mr.V.P.Seetharaman as power attorney holder is not valid since it basically exceeds the power given. The Hon'ble Supreme Court in SubbaRao Vs. I.T.Commissioner AIR 1956 SC 604 held as follows in para 15. "It does not confer on person a right to act through agents. It presupposes that agent has the



authority to act on behalf of the principal, and protects acts done by him in exercise of that authority but in his own name. But where the questions is as to the existence of validity of authority, this section has no operations". The validity of authority is traced to GPA dated 23.2.2015(R-5). The relevant clause 5 is extracted as follows:

"5.To sell, convey and transfer the property detailed in Schedule B below as a whole or in parts, portions or undivided shares therein to parties interested in acquiring apartments and for the purpose of raising a group housing or special buildings or multi storied building thereon comprising of tenements fit for being used as dwelling apartments or for commercial purposes;"

(g) After all these agreements namely R-1 to R-7 the question of conveyance of undivided share by the power agent on the face of it cannot be accepted and sustained in law.

(i)For the above reasons documents Exs.1 to 8 and R-14 cannot be directed to be enforced. The General Power of Attorney R-5 which was subsequently cancelled. The JDA-II (R-7), Sale Deed(R-8) and Settlement Agreement (R-14) cannot be practical to be directed to enforce either jointly or individually. There is a flaw in every document so as to give different interpretations. As such none of those documents though raise a dispute can be directed to be enforced. The introduction of new builder, new JDA and different ratios will definitely change the



whole character of the Joint Development of the Land.”

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27. It is submitted that the counter claim is passed without any reason and therefore, there is patent illegality. That apart, no evidence was let in by the respondents for their counter claim and the respondents have in their written submission justified the aforesaid amount as compensation for breach of the Agreement in Ex.R3 Joint Development Agreement dated 10.07.2014.

28. It is submitted that since the ownership of the land has been restored back to the respondents, the question of awarding compensation/damages on the alleged value of the flat that was to be constructed cannot be countenanced.

29. The learned Senior Counsel for the petitioner submitted that at the time of signing of the Agreement, a sum of Rs.86,00,000/- (Rupees Eighty Six Lakhs Only) was paid.

30. On the other hand the learned Senior Counsel for the respondents submits that on the issue regarding the confining of Arbitration Proceedings only to Ex.R14, the Settlement in the Mediation, dated 15.07.2019, the Arbitral



Tribunal has held that the claimants submission that the Arbitration can be confined only to Ex.R14 Agreement are not sustainable as the dispute has to be resolved taking into account of all the documents in light of Section 7 of the Arbitration and Conciliation Act, 1996.

31. It is further submitted that the petitioner himself has filed Arb.O.P.No.353 of 2021 dated 09.01.2021 for the appointment of Sole Arbitrator on the strength of Ex.C3/R7 Joint development Agreement dated 06.12.2017 entered into between the petitioner and respondents earlier.

32. It is further submitted that Ex.R14 Settlement Agreement dated 15.07.2019 became infructuous as the petitioner failed to start the construction through a new builder of his choice within 2 months from the signing of Ex.R14 Settlement Agreement dated 15.07.2019 as agreed and is therefore submitted that as a result of breach of contract the question of novation on the part of the respondents does not arise.

33. It is further submitted that the stipulation in all the agreements that time was essence of the contract was flagrantly violated by the petitioner. It is submitted that there was a consequent delay of more than seven years and therefore, pointing out the above reasons the learned Arbitrator has passed the



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Award allowing the counter claim/the counter claim allowed by the Arbitral Tribunal is absolutely sustainable in law.

34. It is further submitted that none of the allegations leveled by the petitioner comes within the scope of Section 34 of the Arbitration and Conciliation Act, 1996 and the Award is in accordance with law and submitted that this Original Petition is not maintainable and is liable to be dismissed.

35. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned Senior Counsel for the respondents.

36. I have also perused the impugned Award dated 18.07.2022 passed by the learned Arbitrator. I have also perused the documents filed by the parties before the learned Arbitrator.

37. The arrangement between the parties hereto started with Ex.C1/R1 Memorandum of Understanding dated 24.02.2014, Ex.C2/R5 Registered General Power of Attorney dated 23.02.2015 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017. The rights and liability under the aforesaid agreement between the parties were delineated.



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38. However, the petitioner could not commence the construction as per Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C2/R5 Registered General Power of Attorney dated 23.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017.

39. Instead, the Director of the petitioner Company proceeded to exercise the right conferred in Ex.C2/R5 Registered General Power of Attorney dated 23.02.2014 to transfer 44,045 sq.ft of undivided share of lands on 13.02.2018 vide Ex.C4/R8 Sale Deed dated 12.02.2018.

40. Vide Ex.R21 order dated 22.06.2021 in W.P.(MD)No.10433 of 2021 as mentioned in the course of discussion, Ex.C4/R8 Sale Deed dated 12.02.2018 was set aside.

41. The arrangements in Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017 were later superseded by Ex.R14 Settlement Agreement dated 15.07.2019 pursuant to rival criminal complaints and proceedings that came before the



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Madurai Bench of this High Court under Section 482 of the Cr.P.C in

Crl.O.P.(MD)No.2638 of 2019 and Crl.O.P.(MD)No.4920 of 2019.

42. There are two versions of Agreement in Ex.R14 Settlement Agreements dated 15.07.2019 between the parties. One is in Tamil and the other is in English. Ex.R14 Settlements Agreement dated 15.07.2019 were signed by Mr.V.P.Seetharaman, the Director of the petitioner's Company and by all the respondents. Ex.R14 Settlements Agreement dated 15.07.2019 were also counter signed by the respective counsel who appeared for them in the proceedings before the Madurai Bench of this High Court under Section 482 of the Code of Criminal Procedure, 1973.

43. The Settlement Agreements have minor variations with each other. The Agreement in Tamil is more detailed while the Agreement in English is short. It does not reflect all the clauses that are available in Tamil version of Ex.C14 Settlement Agreement dated 15.07.2019.

44. Be that as it may, both the versions of Ex.C14 Settlement Agreements dated 15.07.2019 concluded that by signing the Settlement Agreements, all the disputes between the parties have been settled. English Version of the Settlement Agreement dated 15.07.2019 signed between the parties of



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Mediation and Clause I of the Tamil Agreement dated 15.07.2019 reads as

under:-

ENGLISH	TAMIL
7. By signing this agreement all the parties hereto state that they have no further claims or demands against each with respect to CrI.O.P(M.D)No.2638 of 2019 and CrI.O.P(M.D)No.4920 of 2019 and all disputes and differences in this regard have been amicably settled by the parties hereto through the process of Conciliation/Mediation.	நடேசன் உறவுசிங் பிரைவேட் லிமிடெட்-ன் நான்கு இயக்குநர்கள் மற்றும் திட்ட இயக்குநர் மேலும் விற்பனை ஆவணத்தின் சாட்சிகள் இருவர் ஆகியோர்கள் மீது தாக்கல் செய்த புகாரினை முதல் தகவல் அறிக்கை 5/2019 (திருச்சி மாநகர குற்றப்பிரிவு) இருதரப்பினரும் தமக்குள் ஏற்பட்ட சமாதானம் அடிப்படையில் மாண்புமிகு உயர்நீதிமன்றத்தில் நிலுவையில் இருக்கும் CrI.O.P(MD)No.2638 of 2019, CrI.O.P(M.D)No.4920 of 2019 ஆகிய மனுக்களையும் ரத்து செய்ய (quash) கூட்டாக மனு சமர்ப்பித்து உத்தரவு பெறுவது.

45. Though the Agreement in English is salient regarding the resolution of dispute between the parties, through Ex.R14 Settlement Agreement dated 15.07.2019 in Tamil stipulates that the counsels for either of the parties who appeared before the Court in the criminal proceedings in CrI.O.P(M.D)No.2638 of 2019 appointed themselves as the Arbitrators for the respective parties.



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Relevant portion reads as under:-

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“இருதரப்பினருக்குள் இந்த ஒப்பந்தத்தினை நிறைவேற்றுதலில் பூசல் அல்லது மனவேறுபாடு ஏற்பட்டால், ஆதனால் ஏற்படும் பிரச்சனைகளை உரிய முறையில் தீர்த்திட முதல் தரப்பினரின் வழக்கறிஞர் திரு.S.K.மணியையும் இரண்டாம் தரப்பு வழக்கறிஞர் திரு.K.பாலசுந்தரத்தையும் நடுவர்களாக நியமித்து, மேற்கண்ட பூசல் முதலான பிரச்சனைகளுக்கு தீர்வு காண்பது.”

46. The trigger for dispute between the parties appears to be execution of Ex.C4/R8 Sale Deed dated 12.02.2018 by the Director of the petitioner in his personal name, contrary to Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017 on the strength of Ex.C2/R5 Power of Attorney dated 23.02.2014. Apart from the land being transferred, the respondents have faced the heat from the Income Tax Department on account of deemed income from capital gains on account of Ex.C4/R8 Sale Deed dated 12.02.2018 by the Director of the petitioner Company without actually receiving any consideration, barring the amount that was paid by the petitioner as interest free loan security deposit to them earlier.

47. As per Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017, the petitioner



was entitled to transfer 44,045 sq.ft. UDS out of the total extent of 1.605 acres of land. The petitioner was to develop three complex consisting of 153 dwelling units out of which, the petitioner was entitled to retain 47 dwelling units apartments and the balance of 106 dwelling units of apartments were to be transferred in the name of the respondents herein.

48. Under Ex.R14 Settlement Agreement dated 15.07.2019, an obligation was cast on the petitioner to locate a new builder and the parties arrived at an understanding that the construction will be based on the permission to be obtained from Planning Authority and the Real Estate (Regulation and Development) Act, 2016.

49. The Ex.R14 Settlement Agreements dated 15.07.2019 also stipulates that the petitioner will be entitled to recover the amounts directly from the new builder to be located by it. The Agreements also stipulated that the petitioner will identify a new builder to undertake the construction under the changed circumstances.

50. It also stipulates that a Joint Development Agreement will be signed between the petitioner and the respondents with a new Builder within the period



arrangements in these two instruments/documents in Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017 was no longer available to either of the parties in view of Ex.R14 Settlement Agreement dated 15.07.2019. The parties substituted the arrangement in Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017 with a new arrangement. In view of Section 62 of the Indian Contracts Act, 1872, there was novation. Section 62 of the Indian Contracts Act, 1872, reads as under : -

“62. Effect of novation, rescission, and alteration of contract.—

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.”

54. The Hon'ble Supreme Court in **Ssangyong Engineering and Construction Co Ltd Vs. National Highway Authority of India**, (2019) 15 SCC 131, has held that an Award can be set aside on the ground of patent illegality under section 34 (2-A) of the Arbitration And Conciliation Act, 1996, where the illegality in the Award goes to the root of the matter. It further held that **erroneous application of law by an Arbitral Tribunal** or the re-



appreciation of evidence by the Court under Section 34 (2-A) of the Arbitration and Conciliation Act, 1996 is not available.

55. The Court held that the above ground is available where the view taken by the Arbitral Tribunal is an impossible view while construing the contract between the parties or where the Award of the Tribunal lacks any reasons. The Court further held that an Award can be set aside if an Arbitrator/Arbitral Tribunal decide(s) the question beyond the contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the parties.

56. In this case, the Award that has been passed by the learned Arbitrator while awarding counter claim to the respondents has clearly ignored the fact that Ex.C1/R1 Memorandum of Understanding dated 24.02.2014 and Ex.C3/R7 Joint Development Agreement dated 06.12.2017 stood obliterated by Ex.R14 Settlement Agreement dated 15.07.2019.

57. Reciprocal obligations have been cast on both the parties under Ex.R14 Settlement Agreement dated 15.07.2019. This aspect ought to have



been examined before awarding counter claim to the respondents. Thus, the Award passed by the learned Arbitrator suffers from patent illegality. Therefore, Court is left with no other option but to set aside the impugned Award dated 18.07.2022 under Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

58. Therefore, the impugned Award dated 18.07.2022 is liable to be set aside.

59. It is made clear that the issue has to be decided afresh and therefore, while setting aside the impugned Award dated 18.07.2022, the observation contains herein would not preclude the respondents to pray for a counter claim before the Arbitral Tribunal in the fresh round if the respondents desires to re-agitate the issue and makes a counter claim.

60. Therefore, the impugned Award dated 18.07.2022 is set aside with liberty for the parties to restart the arbitration proceedings afresh.

1. This Original Petition, is thus, Allowed with the liberty. No costs.

Connected Application is closed.



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2.
C.SARAVANAN, J.

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62. Needless to state, the time spent from the date of reference to the arbitration proceedings till the culmination of this order shall stand excluded for the purpose of computation of limitation under Section 43 of the Arbitration and Conciliation Act, 1996.

28.03.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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Pre-delivery Order in
Arb.O.P.(Com.Div) No.658 of 2022
and
A.No.5519 of 2022