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Arb. O.P. (Com.Div.) No.443 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 21.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN**

**Arb. O.P. (Com.Div.) No.443 of 2024**

M/s.Jones Infrastructure Private Ltd.,  
Rep. By its Director Mr.M.Jones,  
No.2, Moovarasampet Main Road,  
Madipakkam,  
Chennai 600 091.

... Petitioner

Vs.

1. S.A.Bhima Raja  
2. M/s.Nibhi Realtors Private Limited  
rep.by its Directors  
1.Mr.S.Abhima Raja  
2.Mrs.Nirupa Bhimaraja

... Respondents

Petition filed under Section 11 (5) of The Arbitration and Conciliation Act, 1996 to constitute an arbitral tribunal consisting of a sole Arbitrator, seated in Chennai to decide all disputes under the Memorandum of Understanding dated 24.03.2022 and Supplementary Memorandum of Understanding dated 05.05.2022 respectively.

For Petitioner : M/s.C.Deepak Kumar



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For Respondents : Ms.M.Sandhiya

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### **ORDER**

This petition has been filed taking advantage of Section 11(b) of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to settle the disputes which has arisen between the petitioner and the respondents.

2. It is contended that the first respondent owned an extent of 19 acres and 22.25 cents of land and the second respondent owned an extent of 43 acres and 57 cents of land, totalling aggregating to an extent of 62 acres and 79.25 cents of vacant land comprised in various survey numbers at Veeraraghava Mudaliar Chatram Village (Vijayaraghava Mudaliar Chatram Village), Palayamkottai Taluk, Tirunelveli District. The petitioner is a builder and property developer. Naturally they both entered into an agreement, the respondents to sell the land and the petitioner to develop the land. The total consideration was determined at Rs.34,75,00,000/-.

3. A Memorandum of Understanding had been entered into between



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the petitioner and the respondents. It is claimed that the respondents had assured the petitioner to provide a clearly demarcated site with proper access from the abutting main road. They both measured the property jointly. A sum of Rs. 5,00,00,000/- had been paid by the petitioner to one T.S.Saravanan. It is contented that a Supplementary Memorandum of Understanding had also been executed on 05.05.2022.

4. It is contended on behalf of the petitioner that substantial amount has been invested but the respondents had not come forward to execute the sale deed.

5. Notice had been sent by the petitioner to the respondents on 26.02.2024 stating that within 15 days of the receipt of the said notice, the respondents should comply with the terms agreed in the MOU and Supplementary MOU failing which the petitioner would be constrained to invoke their right as contemplated under Clause 18 of the MOU.

6. The learned counsel for the respondents raised an objection by stating that though the notice indicated that the petitioner would be



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constrained to seek redressal of the dispute through arbitration, the petitioner had not named any arbitrator and no notice has been issued under Section 21 of the Arbitration and Conciliation Act.

7. However, it was the intention of the parties to determine the dispute before an arbitrator. If in the Memorandum of Understanding it had been clearly indicated that any dispute between them would be adjudicated through arbitration then the dispute has to be referred to an arbitrator for adjudication.

8. It would be relevant to extract Clause 14 of the Memorandum of Understanding.

14. Any dispute, controversy or claim arising out of or relating to this Memorandum of Understanding shall be adjudicated as per the Arbitration and Conciliation Act, 1996, by a Sole Arbitrator to be mutually appointed by the parties. The place of arbitration shall be at Chennai.

9. In the Supplementary Memorandum of Understanding only specific obligations in the MOU dated 24.03.2022 had been stated and it



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had been covenanted that it shall not be construed as superseding any other obligation in the MOU.

10. Since there is a dispute between the parties relating to the terms of the Memorandum of Understanding, it would only be appropriate if an Arbitrator is appointed to examine and adjudicate the disputes.

11. Accordingly, Mr.Suhrith Parthasarathy, Advocate, No.1, Jagathambal Colony, 2<sup>nd</sup> Street, Royapettah, Chennai 600 014 is appointed as Arbitrator to enter reference and examine the disputes between the parties and pass an award. The fees of the learned Arbitrator may be determined in accordance with schedule given to the Arbitration and Conciliation Act, 1996. The learned Arbitrator may endeavour to dispose of the petition within a period of nine months from the date when the respondent enters appearance.

12. With the above direction the petition stands disposed of. No costs.



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Index: Yes/No

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**C.V.KARTHIKEYAN, J.**

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