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Arb.O.P.Nos.590,591 of 2023 & 34 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13/27.02.2024

PRONOUNCED ON : 01.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)Nos.590, 591 of 2023 & 34 of 2024
and Arb.A.Nos.209 to 211, 218 & 219,
316 to 320, 349 to 354 & 356 of 2023

Sivasankaran.S

... Petitioner in
Arb.O.P.No.590 of 2023

Muthupandi.P

.. Petitioner in
Arb.O.P.No.591 of 2023

Balamurugan.S

.. Petitioner in
Arb.O.P.No.34 of 2024

VS.

The Managing Director,
Indian Railway Welfare Organization (IRWO),
Railway Offices Complex,
Shivaji (Minto) Bridge,
Behind Shankar Market,
New Delhi 110 001.

... Respondent in all O.Ps.



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Common Prayer in Arb.O.Ps. Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to (a) Appoint a Sole Arbitrator to decide and adjudicate upon the dispute between the petitioner and respondents arising out of Brochure cum Agreement May 2006. (b) Direct the Sole Arbitrator so appointed with seat at Chennai shall be entitled to receive the fee and other expenses in terms of statutory provisions in this regard. (c) To pass such further or other order.

*In Arb.O.P.(C)Nos.590 & 591 of 2023 and
Arb.Applications:*

For Petitioner : Mr.Dr.A.E.Chelliah
Senior Counsel

For Respondent : M/s.S.P.Arthi

In Arb.O.P(C)No.34 of 2024

For Petitioner : Mr.K.Sendur Pandi
For Respondent : Mr.Arivazhagan

COMMON ORDER

The allottees of individual plots and house promoted by the respondent are having disputes with the respondent.



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2. The above applications and the Original Petitions have been filed

with the following parties :-

<i>Name of the petitioner</i>	<i>Name of the respondent</i>	<i>O.P</i>	<i>O.A</i>
S.Sivasankaran	Indian Railway Welfare Association	590 of 2023	211 of 2023
Muthupandi	- do	591 of 2023	210 of 2023
Balamurugan.S	- do-	34 of 2023	
Anandan.A	-do-		209 of 2023
Nagasundaram.V	- do-		210 of 2023
Amaresan.R	- do -		219 of 2023
V.Ganesh	- do-		316 of 2023
N.Udayakumar	- do-		317 of 2023
K.A.Manoharan	- do-		318 of 2023
C.Mani	- do-		319 of 2023
Balamurugan.S	- do-		320 of 2023
S.Raghunathan	- do-		349 of 2023
K.Mohan Babu	- do-		350 of 2023
S.Manian	- do-		351 of 2023
N.Indumathi	- do-		352 of 2023
S.A.G.Karunakaran	-do -		353 of 2023
Jolly M.C	- do-		354 of 2023
Venkataraman.R	- do-		356 of 2023

3. These applications have been filed under Section 9 of the Arbitration and Conciliation Act, 1996, for appointment of Arbitrator. The prayers are identical . Prayer in A.No.209 of 2023, reads as under:-



- (a) to direct the respondent to execute the sale deed of the respective plot of the dwelling unit in Rail Vihar, Ambattur in favour of the applicant.
- (b) to pass such further or other order.

4. These Original Petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 the prayers are almost identical.

Prayer in Arb.O.P.No.590 of 2023, reads as under:-

- (a) Appoint a Sole Arbitrator to decide and adjudicate upon the dispute between the petitioner and respondents arising out of Brochure cum Agreement May 2006.
- (b) Direct the Sole Arbitrator so appointed with seat at Chennai shall be entitled to receive the fee and other expenses in terms of statutory provisions in this regard.
- (c) To pass such further or other order.

5. These cases were heard at length on a previous occasion. Thereafter, the case was adjourned to facilitate the applicants to file suitable petition under Section 11 of the Arbitration and Conciliation Act, 1996.



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6. Thus, some of the applicants have filed the petitions under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of Arbitrator. These applications and petitions are primarily opposed on the ground that the Arbitration Clauses under the respective agreements contemplate the place of arbitration as New Delhi and therefore this Court neither has jurisdiction to entertain the application under Section 9 of the Arbitration and Conciliation Act, 1996 nor petitions under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator.

7. The learned counsel for the respondent has drawn attention to Clause 35 of the General Rules of the respondent which governs the applicants/petitioners who have been allotted individual plots/houses by the respondent. Relevant Clause reads as under:-

35.All dispute relating to registration, booking, allotment, refunds and such other matters as are incidental to these and are likely to affect the mutual rights, interest, privileges, claims of the allottee vis-a-vis the Organisation, may be referred to the Managing Director (IRWO) who shall appoint an arbitrator to adjudicate in the matter. The Award of the Arbitrator in the matter shall be final and



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binding on the allottee as well as the Organisation. For the purpose of Para 3 of Arbitration and Conciliation Act, 1996 the Arbitrator shall be considered to have entered into reference, when he has called upon the party seeking arbitration to file his 'Statement of Claims'. **Arbitration hearing will be held in Delhi only regardless of where property under dispute is situated.”**

8. The learned Senior counsel for the applicants/petitioners would submit that all the applicants/petitioners and the respondents on these applications and petitions are from Chennai. It is submitted that some of them are still serving employees of the Indian Railway while some of them have retired from Indian Railways and its ancillary departments. It is further submitted that entire cause of action has arisen within the jurisdiction of this Court for the purpose of Section 11 of the Arbitration and Conciliation Act, 1996.

9. On the other hand, the learned counsel for the respondent would submit that Clause 35 makes it clear that the place of arbitration is New Delhi and therefore this Court has no jurisdiction. That apart, it is submitted that the properties are located in Ambattur outside the jurisdiction



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of this Court and therefore these Applications/Original petitions are liable to be dismissed.

10. The learned counsel for the respondent has placed reliance on the following decisions :-

- i) **GMR Pochanpalli Express Ways Limited vs. National Highways Authority of India, O.M.P.(I) (COMM.)396/2020**
- ii) **M/s.Doon Caterers Dehradun Uttrakhand vs. UOI and Others, A.A.No.10 of 2022**
- iii) **Balapreetham Guest House Pvt.Ltd. Represented by its Authorised Signatory Arunjitkaurkohli vs. Mypreferred Transformation and Hospitality Pvt.Ltd., 2021 SCC Online Mad 1126**
- iv) **Hinduja Leyland Finance Rep.by its Authorised Representative R.Kumaran vs. Mr.Kailash Chandra Sethi Putibandh, Dhanupali Orissa 768 005**

11. The learned counsel for the respondent has referred to the decision of the Hon'ble Supreme Court in **Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Others, (2017)7SCC 678.**



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12. The learned counsel for the respondent would submit that the seat of arbitration being New Delhi only Courts in New Delhi can entertain this applications and Original Petitions. A reference was made to paragraph 9 as mentioned in the above decision of the decision of the Hon'ble Supreme Court in **Indus Mobile Distribution Private Limited vs. Datawind Innovations Private Limited and Others**, (2017)7SCC 678, wherein it was held that the neutral venue may not in the classical sense have jurisdiction – that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.

13. I have considered the arguments advanced by the learned counsel for the applicant/petitioners and the learned counsel for the respondent.

14. No doubt, an Arbitration clause contemplates, New Delhi as the place of arbitration. The applicants/petitioners are serving employees



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/retiring employees in Indian Railways and other Departments of the Indian Railways. The project in question is in Tamil nadu and therefore within the jurisdiction of this Court both for the purpose of Sections 11 of the Arbitration and Conciliation Act, 1996 and for determination of any rights under Section 9 of the Arbitration and Conciliation Act, 1996.

15. The respondent is at best headquartered in New Delhi while applications/petitioners are serving and retired employees from Chennai. The respondent is meant to cater to the housing needs of the serving and retired employees. The respondent cannot force them to go to Delhi. Neither the applications under Section 9 nor under petition Section 11 of the Arbitration and Conciliation Act, 1996 are barred. The remedy that has provided under the agreement cannot be rendered illusive or difficult to be exercised by driving the employees/retiring employees of the Indian Railways to New Delhi. The cost of litigation is also usurious and prohibitive in New Delhi.



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16. The Hon'ble Supreme Court in **Ravi Ranjan Developers Pvt.Ltd.**

vs. Aditya Kumar Chatterjee, 2022 SCC Online Sc 568 had dealt with a

somewhat similar situation observed as under :-

47. It is well settled that, when two or more Courts have jurisdiction to adjudicate disputes arising out of an arbitration agreement, the parties might, by agreement, decide to refer all disputes to any one Court to the exclusion of all other Courts, which might otherwise have had jurisdiction to decide the disputes. The parties cannot, however, by consent, confer jurisdiction on a Court which inherently lacked jurisdiction, as argued by Mr. Sinha.

17. In view from the above, to balance interest of the parties, the applications filed by the respective applicants/petitioners are closed with liberty to work out their remedy before the Arbitrator under Section 17 of the Arbitration and Conciliation Act, 1996 to meet the ends of justice

18. Since the dispute between the parties are arbitrable, this Court is inclined to appoint **Hon'ble Mr.Justice N.PAUL VASANTHA KUMAR (Retd.), (Former Chief Justice, High Court of Jammu and Kashmir** residing at No.24-A, 2nd Street, Kamaraj Avenue, Adayar, Chennai 600 020



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(**Mobile No.94443 90958**), as an Arbitrator to enter upon reference and adjudicate/resolve the dispute between the parties.

19. The learned Arbitrator may decide on the procedure and if required may conduct proceedings through Video Conference. Respondent is head quartered in New Delhi to reduce the cost involved. The applicants/petitioners shall jointly appear either in person or through his counsel before the learned Arbitrator and file their claim statement.

20. In the result, Original Petitions are allowed and the Applications are closed with above liberty.

.03.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

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C.SARAVANAN, J.

kkd

To

The Managing Director,
Indian Railway Welfare Organization (IRWO),
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Shivaji (Minto) Bridge,
Behind Shankar Market,
New Delhi 110 001.

Pre-delivery Common Order in
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