



2024:DHC:7146



\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Reserved on: 09.09.2024***Pronounced on: 18.09.2024***+ **W.P.(C) 12049/2024 & CM APPL. 52550/2024****MICHAEL BUILDERS AND DEVELOPERS
PVT. LTD.**

.....Petitioner

Through: Mr. Mandeep Kalra, AOR,
Ms. Anushna Satapathy, Ms.
Chitrangada Singh, Ms.
Radhika Jalan, Mr. Yashas J.,
Ms. Kirti Arti, Advocates

versus

**NATIONAL MEDICAL COMMISSION
AND ORS**

.....Respondents

Through: Mr. T. Singhdev, Mr. Bhanu
Gulati, Ms. Ramanpreet Kaur,
Mr. Abhijit Chakraborty, Ms.
Anum Hussain, Mr. Tanishq
Srivastava and Mr. Aabhas
Sukhramani, Advs. for NMC.

Ms. Archana Pathak Dave, Sr
Adv, Mr. Raghunatha
Sethupathy B, Mr. S. Prabhu
Ramasubramanian, Mr.
Santhosh K, Mr. Pramod
Kumar Vishnoi, Mr. Baskar
Naidu and Mr. Adhi Narayana
Rao, Advocates for impleader.

+ **W.P.(C) 12029/2024****MICHAEL BUILDERS AND DEVELOPERS**



2024:DHC:7146



PVT. LTD.

.....Petitioner

Through: Mr. Mandeep Kalra, AOR,
Ms. Anushna Satapathy, Ms.
Chitrangada Singh, Ms.
Radhika Jalan, Mr. Yashas J.,
Ms. Kirti Arti, Advocates

versus

THE INDIAN NURSING COUNCIL
AND ORS.

.....Respondents

Through: Mr. T. Singhdev, Mr. Bhanu
Gulati, Ms. Ramanpreet Kaur,
Mr. Abhijit Chakraborty, Ms.
Anum Hussain, Mr. Tanishq
Srivastava and Mr. Aabhas
Sukhramani, Advs. for NMC.

Ms. Archana Pathak Dave, Sr
Adv, Mr. Raghunatha
Sethupathy B, Mr. S. Prabhu
Ramasubramanian, Mr.
Santhosh K, Mr. Pramod
Kumar Vishnoi, Mr. Baskar
Naidu and Mr. Adhi Narayana
Rao, Advocates for impleader.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****SWARANA KANTA SHARMA, J.**

1. By way of this common judgment, the above-captioned writ petitions shall be disposed of, since a common issue arises for adjudication in both these petitions on the basis of identical facts and contentions.



2. These writ petitions, filed under Article 226 of the Constitution of India, on behalf of the petitioners, seek the following identical prayers:

“I. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to refrain from granting any permission, recognition or approval to the proposed nursing college to be established by St. Alphonsa Trust on the Subject Properties.

II. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to cancel/revoke any permission, recognition or approval already granted to the said proposed nursing college, if any.

III. Issue a writ of mandamus or any other appropriate writ, order or direction to the Respondents to conduct an independent inquiry into the circumstances surrounding the grant of Essentiality Certificate dated 14.06.2024 to St. Alphonsa Trust.

IV. Grant an interim order restraining the Respondents from taking any action on the Essentiality Certificate dated 14.06.2024 or any application based on it, pending the final disposal of this petition...”

3. The petitioner i.e. Michael Builders and Developers Pvt. Ltd., on 01.11.2013, had entered into an agreement with St. Alphonsa Trust, represented by the Bishop of the RC Diocese of Kottar, Nagercoil, to construct buildings for a proposed medical college on certain properties located in Kadiappattinam Village, Kanyakumari, for a total consideration of Rs. 52,13,95,852/-. Upon completing the construction by 11.10.2016, the petitioner had raised a claim for Rs. 20,00,00,000/- as the balance amount due for the work. However, despite multiple requests, the Trust had failed to make the payment, leading the petitioner to initiate arbitration proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, before the District



Court, Nagercoil, *vide* A.R.O.P No. 11 of 2017. Thereafter, on 20.11.2017, the petitioner had filed an application under Section 11 of the Arbitration and Conciliation Act before the Madras High Court in O.P. No. 934 of 2017, seeking the appointment of an arbitrator, and vide order dated 06.02.2018, Justice Mr. R. Mala had been appointed as the sole arbitrator. Following this, an agreement of settlement was reached between the petitioner and the Trust on 13.03.2018, wherein the Trust had agreed to pay Rs. 15,95,00,000/- along with 18% GST and pending service tax, as full and final settlement. However, it is stated that the total outstanding liability was Rs. 26,00,00,000/-. The settlement agreement was then submitted to the arbitrator, who, on 27.06.2018, had passed a consent award directing the Trust to pay the aforementioned amount. However, the Trust failed to comply with the payment terms. As a result, the petitioner had filed an execution petition i.e. *E.P. No. 13/2023* on 07.03.2023 before the Principal District Judge, Kanyakumari, seeking execution of the arbitral award by attaching and selling the subject properties. It is averred that on 04.01.2024, after hearing both parties, the District Judge had passed an order for the attachment of the subject property. Subsequently, the Trust had made a part payment of Rs. 13,26,00,000/-, but approximately Rs. 13,00,00,000/- remained outstanding. However, the grievance of the petitioner is that in violation of the court's order, the Trust had applied for an Essentiality Certificate to commence a nursing and medical college on the attached properties. The petitioner had filed earlier writ petitions before the Madras High Court, including *W.P.*



(MD) No. 21372/2022 on 06.09.2022, seeking directions to the Secretary of the Government not to grant permission to the Trust. Another writ petition, W.P. (MD) No. 12635/2023, had been filed on 23.05.2023 seeking to restrain the Medical Council of India from submitting any report or recommendation before the National Medical Commission. Both petitions were eventually withdrawn on 16.08.2024.

4. In light of these events, the petitioner has now approached this Court, seeking a writ of mandamus to prevent the respondents from granting any permission, recognition, or approval for the establishment of a nursing college to the Trust on the attached subject property, and an independent inquiry into the circumstances surrounding the grant of the Essentiality Certificate dated 14.06.2024.

5. **Learned counsel appearing on behalf of the petitioner** contends that despite being aware of the order of attachment concerning the subject properties, the respondent authorities proceeded to issue the Letter of Permission (LOP) dated 10.08.2024 based on a fraudulent application. It is stated that the notice issued by them was ignored and not taken into cognizance by the authorities. It is further submitted that although a Show Cause Notice has been issued by the respondent authorities and the LOP has been suspended, this action does not rectify the initial issuance of the LOP, which was in clear violation of the National Medical Commission's rules and in contravention of the petitioner's notice. Thus, the petitioner is aggrieved by the respondent authorities' disregard for the law. It is also argued that the St. Alphonsa Trust does not play an



active role in these proceedings, as no dispute has been raised against them before this Court, nor has any relief been sought directly concerning them. The Trust is only consequentially affected by the reliefs being sought in these petitions. It is contended that although there is an ongoing civil dispute between the petitioner and the Trust, this is a separate cause of action and does not preclude the jurisdiction of this court. The petitioner submits that the ongoing dispute does not interfere with these proceedings in any manner, and thus, the court is not *forum non conveniens*. It is further submitted on behalf of the petitioner that although the High Court of Madras has stayed the attachment order, this stay is conditional. It is also argued that the challenge to the maintainability of the revision petition in which the stay order was passed carries merit, as noted by the High Court itself. It is argued that regardless of the stay on the attachment order, the permission granted to the Trust was based on an operative and enforceable order of attachment at the time. Therefore, the application submitted by the Trust is fraudulent and should be quashed on the grounds of suppression of material facts. The petitioner further contends that the impugned permissions allow for the commencement of a medical college on disputed land, in which the petitioner holds an interest. Moreover, it is submitted that fraud vitiates everything, and since the permissions were obtained based on a fraudulent application, they must be set aside. It is submitted that until the dispute concerning the subject property is resolved, no permissions should be granted, and any that have been granted should be quashed.



6. **On behalf of respondent nos. 1, 2 and 3** in *W.P.(C) 12049/2024*, It is submitted that the present petition filed by the petitioner is liable to be dismissed due on the ground of lack of territorial jurisdiction. It is stated that the entire cause of action has occurred within Tamil Nadu, and both the petitioner and the property in question are situated in Tamil Nadu only. Further, the petitioner had earlier approached the Madras High Court, Madurai Bench, seeking similar reliefs. However, after failing to secure a favorable order, the petitioner had withdrawn the petitions and has now approached this Court, contending that the head office of the respondent being located in Delhi grants jurisdiction to this Court. It is argued that the location of the respondent's office in Delhi does not automatically confer territorial jurisdiction upon this Court to entertain the petition. In this regard, the respondents have also placed reliance on several judgments of this Court, to support the contention that the mere location of an office in a particular territory does not suffice for invoking jurisdiction under Article 226 of the Constitution of India. Further, it is contended that the petitioner has engaged in forum shopping by choosing to approach this Court after being unsuccessful before the Madras High Court. It is also submitted that the petitioner failed to implead necessary parties such as St. Alphonso Trust and the counseling authorities situated in Tamil Nadu, which are essential for the adjudication of this matter. The respondents argue that this omission is deliberate and intended to misuse the jurisdiction of this Court. Moreover, it is submitted that the petitioner has no *locus standi* to invoke the public law remedy



under Article 226 in this case, as the dispute is of a private nature between the petitioner and the Trust. The petitioner has no legal interest or rights concerning the permissions granted by the respondents to the medical college in question. Thus, the petition is also liable to be dismissed on this ground. Additionally, it is argued that the petitioner has approached this Court with unclean hands, having suppressed material facts. The petitioner failed to disclose the issuance of letters of permission dated 04.07.2024 and 10.08.2024 to the Kanyakumari Medical Mission Research Centre, which were pivotal to the relief sought. Despite making submissions before the Madras High Court regarding these permissions, the petitioner had concealed these facts from this Court. The suppression of these facts warrants the dismissal of the petition. Finally, it is submitted that the petition lacks merit and should be dismissed with exemplary costs for forum shopping, lack of territorial jurisdiction, and suppression of material facts.

7. **On behalf of St. Alphonsa Trust**, which was allowed be impleaded as respondent in the present petitions, it is argued that the present writ petitions have been filed by the petitioner on the ground that the properties of the Trust were attached by the District Judge, Nagercoil, Kanyakumari, Tamil Nadu, which is now invalidated by the High Court of Madras *vide* order dated 02.09.2024, in *CRP (MD) No.1080/2024* wherein the said order has been stayed, and thus, the present writ petition is liable to be dismissed as infructuous. It is submitted that the present writ petition has been filed to constantly harass the Trust in order to extract monetary benefits in the name of



GST and taxes. It is further submitted that the petitioner had deliberately not made the Trust as a party in the present case with ill-motivated intents whereas the Trust had been added as respondent in the writ petition filed before the High Court of Madras. It is also argued that the present proceeding is initiated by the petitioner is to camouflage its incompetence of litigating the similar litigation before the High Court of Madras. Therefore, it is prayed that these writ petitions be dismissed on grounds of maintainability alone.

8. This Court has **heard** arguments addressed on behalf of the petitioner as well as respondents, and has perused the material placed on record.

9. Upon considering the facts and arguments presented before this Court, it is clear that the primary dispute in these cases is between the petitioner i.e. Michael Builders and Developers Pvt. Ltd. and St. Alphonsa Trust, which also revolves around the construction of buildings for a proposed medical college located in Kanyakumari, Tamil Nadu. Both the petitioner and the respondent Trust are situated in Tamil Nadu, and the properties in question are also located there. The cause of action, including the petitioner's claims for unpaid amounts and subsequent arbitration proceedings, arise out of events which took place in Tamil Nadu. Further, the orders relating to the property in dispute, including the attachment order and the arbitral award, have all been passed by the District Court in Nagercoil and the Madras High Court. The petitioner has previously approached these Courts for relief, and the orders passed by them directly pertain to the property in question and the execution of the arbitral award.



Thus, there is no justification for invoking the jurisdiction of this High Court when the Courts in Tamil Nadu have already been seized of the matter and have issued relevant orders.

10. In this background, it will be useful to refer to the judgment of Hon'ble Apex Court in case of *Kusum Ingots & Alloys Ltd. v. Union of India* (2004) 6 SCC 254. The relevant observations which are relevant to the facts of the present case are extracted hereunder:

“Forum conveniens

30. We must, however, remind ourselves that **even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.** [See *Bhagat Singh Bugga v. Dewan Jagbir Sawhney*, *Madanlal Jalan v. Madanlal*, *Bharat Coking Coal Ltd. v. Jharia Talkies & Cold Storage (P) Ltd.*, *S.S. Jain & Co. v. Union of India* and *New Horizons Ltd. v. Union of India.*”]

(Emphasis supplied)

11. Thus, as per the abovesaid judgment, in case a small part of cause of action arises within the territorial jurisdiction of a High Court, the same by itself may not be considered to be a determinative factor to compel that particular High Court to exercise its jurisdiction. Further, in appropriate cases, the Court may decline to exercise its discretion by invoking the doctrine of *forum conveniens*.

12. A similar view was also taken by the Hon'ble Apex Court in the case of *State of Goa v. Summit Online Trade Solutions (P) Ltd.* (2023) 7 SCC 791, wherein it has been held as under:



“14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a **High Court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle.** Bearing this in mind, we have looked into the petition memo of WP (C) No. 38 of 2017 and searched in vain to trace how at least part of the cause of action has been pleaded by the petitioning company, to have arisen within the territorial jurisdiction of the High Court.

15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. **The constitutional mandate of clause (2) is that the “cause of action”, referred to therein, must at least arise in part within the territories in relation to which the High Court exercises jurisdiction** when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories.

16. The expression “cause of action” has not been defined in the Constitution. However, the classic definition of “cause of action” given by Lord Brett in *Cooke v. Gill* [*Cooke v. Gill*, (1873) LR 8 CP 107] that “*cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court*”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. **However, in the context of a writ petition, what would constitute such “cause of action” is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed.**

17. **Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the High Court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support of the cause of action do constitute a**



cause empowering the High Court to decide the dispute and that, at least, a part of the cause of action to move the High Court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject-matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests”

(Emphasis Supplied)

13. It was argued primarily on behalf of the petitioner that since the National Medical Commission has its head office in Delhi, this Court should exercise jurisdiction. However, the mere situation of the head office of National Medical Commission or Indian Nursing Council in Delhi does not automatically confer jurisdiction upon this Court. These bodies have offices, and their legal teams, which function in every State across the country, including Tamil Nadu. Thus, the argument that National Medical Commission or Indian Nursing Council is based in Delhi is insufficient to justify the filing of a writ petition before this Court, especially when the cause of action has arisen, and the parties involved herein are located, in Tamil Nadu and have already approached the Courts situated in the State of Tamil Nadu and have contested and obtained orders from the said Courts.

14. In this regard, one can refer to the decision of Division Bench of this Court in case of *Smt. Manjira Devi Ayurveda Medical College and Hospital v. Uttrakhand University of Ayurveda LPA No. 894/2024*, wherein it was held as under:

“12. ...The mere presence by virtue of the location of their offices at Delhi would not, *ipso facto*, confer exclusive



jurisdiction upon this Court to exercise its jurisdiction under Article 226 of the Constitution of India. It is apparent that no cause of action at all has arisen within the local limits of the territorial jurisdiction of this Court.”

15. In case of ***Vemparala Srikant v. General Secretary, India Bulls Centrum Flat Owners Welfare Co-Operative Society, Hyderabad***, LPA No. 744/2024, the Division Bench of this Court while deciding the question as to whether an order passed by the National Consumer Disputes Redressal Commission against an order passed by the State Consumer Disputes Redressal Commission can be challenged before this High Court or has to be challenged before the respective jurisdictional High Courts, the Division Bench of this Court held that when the foundational facts giving rise to the cause of action to the appellant to approach the Consumer Fora arose within the State of Telangana, it would be absurd to allow the petitions against orders of NCDRC to be filed only in High Court of Delhi, which would mean that a consumer who is agitating for his rights in far of places like Assam, Manipur or any other distant part of the country would have to necessarily travel to Delhi for such redressal, which cannot be allowed in view of the doctrine of ‘*forum conveniens*’.

16. A Coordinate Bench of this Court in the case of ***Chinteshwar Steel Pvt. Ltd. v. Union of India*** 2012 SCC OnLine Del 5264, has held that in case of pan India Tribunals, or Tribunals/statutory authorities having jurisdiction over several States, the situs of the



Tribunal would not necessarily be the marker for identifying the jurisdictional High Court.

17. It is also crucial to note that the petitioner had previously filed two writ petitions before the High Court of Madras, which have already dealt with similar issues concerning the grant of permissions for the medical college. In *W.P. (MD) No. 21372/2022* filed before High Court of Madras, the petitioner had sought issuance of directions to the Secretary of the Government not to grant permission to the Trust. In *W.P. (MD) No. 12635/2023* filed before High Court of Madras, the petitioner had sought directions to restrain the Medical Council of India from submitting any report or recommendation before the National Medical Commission. In both these writ petitions, the respondents arrayed by the petitioner included National Medical Commission and Indian Nursing Council.

18. Further, though it has been averred in the present petition that aforesaid writ petitions were withdrawn by the petitioner with liberty to file fresh petition before the Court of appropriate jurisdiction, this Court notes that this averment in the petition is contrary to the records since no such submission has been recorded or liberty mentioned in orders dated 16.08.2024 *vide* which the aforesaid writ petitions were allowed to be withdrawn by the High Court of Madras.

19. The main ground on which the petitioner prays that permission should not be granted to St. Alphonsa Trust for starting a nursing and medical college is that the property in question has been attached by the District Judge, Nagercoil, Kanyakumari, Tamil Nadu. However, this Court's attention was also drawn towards an order dated



02.09.2024 passed by the Madurai Bench of High Court of Madras in *CRP(MD) No.1080/2024*, titled *St. Alphonsa Trust v. Michael Builders and Developers Pvt. Ltd.*, wherein the proceedings in execution petition i.e. *E.P. No. 13/2023* have been stayed, including the stay on attachment of properties.

20. Therefore, this Court is of the considered opinion that the ground on which the petitioner is seeking directions against the respondents, including Tamil Nadu Medical Council and Tamil Nadu Nurses and Midwives Council, to restrain them from granting any permission to St. Alphonsa Trust (situated in Tamil Nadu) to start nursing and medical college on the properties situated at Kanyakumari, Tamil Nadu, is the pendency of civil disputes in the courts of Tamil Nadu between the petitioner and the Trust. The petitioner previously has already invoked the jurisdiction of High Court of Madras for seeking similar reliefs.

21. This Court is thus of the opinion that the petitioner herein has engaged in forum shopping by seeking to invoke the jurisdiction of this Court after having withdrawn petitions from the appropriate forum in Tamil Nadu. Such conduct, where the petitioner attempts to choose a forum favorable to them after having already approached the appropriate forum, cannot be condoned.

22. In view of the above, the present petitions along with pending application stand dismissed solely on the ground of territorial jurisdiction, alongwith a total cost of Rs. 50,000/- (Rs.25,000/- in each petition), to be deposited with Delhi High Court Staff Welfare Fund within two weeks.



2024:DHC:7146



23. Needless to say, the petitioner would be at liberty to approach the appropriate Court of jurisdiction for redressal of its grievance, in accordance with law.

24. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

SEPTEMBER 18, 2024/ns