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Arb O.P No. 72 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-09-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

**Arb O.P No. 72 of 2025 and
OA Nos.701 & 702 of 2025**

1. Dr.V. Kalanidhi

2. S. Thiruvengadam

Petitioner(s)

Vs

M.R.Sivakumar

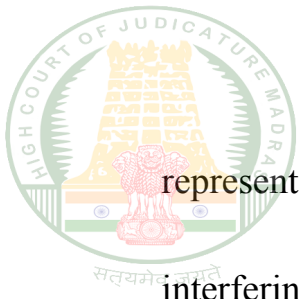
Respondent(s)

Arb O.P No. 72 of 2025

PRAYER: Petition filed under Section 11(5) of Arbitration and Conciliation Act, 1996, appoint Arbitrator(s) to decide the disputes and differences between the petitioners and respondent in terms of Agreement of Sale dated 10.05.2005 and Memorandum of Understandings dated 30.01.2020 and 06.11.2023.

OA No. 701 of 2025

PRAYER: Petition filed under Order XIV Rule 8 of OS Rules read with Section 9 (ii)(d) of Arbitration and Conciliation Act 1996 to issue an order of interim injunction restraining the Respondents/their men/



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representatives/nominees/agents/employees/any person on his behalf from interfering, disturbing intervening with possession and enjoyment of the Applicants over Schedule A Property.

OA No. 702 of 2025

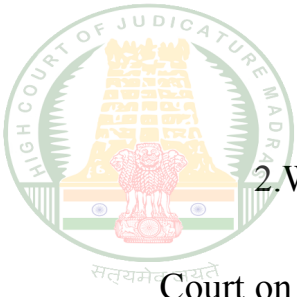
PRAYER Petition filed under Order XIV Rule 8 of OS Rules read with Section 9 (ii)(d) of Arbitration and Conciliation Act 1996 to issue an order of interim injunction restraining the Respondents/their men/ representatives/nominees/agents/employees/any person on his behalf from encumbering, creating a charge, transferring, alienating, disposing of or dealing with Schedule A Property.

For Petitioner (s): Mr.A.Abdul Hameed,
Senior Advocate for
Mr.M.L.Sripathi

For Respondent(s): Mr.W.M.Abdul Majeed

ORDER

O.A. Nos.701 and 702 of 2025 has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'the Act'] seeking for an interim order and Arb.O.P.No.72 of 2025 has been filed for appointment of an Arbitrator.



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2. When O.A. Nos. 701 and 702 of 2025 came up for hearing before this Court on 11.07.2025, this Court after hearing the learned Senior Counsel for the applicant, passed the following order:

O.A. No. 702 of 2025 has been filed under Section 9 of the Arbitration and Conciliation Act, seeking for an order of interim injunction to restrain the respondent from alienating/encumbering the property, morefully described in the schedule to the judges summons.

2. The applicants had entered into a Sale Agreement with the respondent on 10.05.2005 in respect of 45 grounds. They agreed to purchase a property from the respondent for a total sale consideration of Rs. 11.95 crores. Under the agreement, the respondent has agreed to remove the encroachers, who are occupying a portion of the property and thereafter have agreed to execute a Sale Deed in favour of the applicants. According to the applicants, the respondent did not fulfill the terms and conditions of the Sale Agreement dated 10.05.2005 by removing the encroachers. Thereafter, the applicants had entered into a



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Memorandum of Understanding with the respondent on 30.01.2020. Under the said Memorandum of Understanding as well, the respondent had agreed to clear all the encumbrances and convey the property of the applicants once again. Since the respondent did not fulfill the terms and conditions of the Memorandum of Understanding dated 30.01.2020, they once again entered into a Memorandum of Understanding dated 06.11.2023 with the applicants. Under the Memorandum of Understanding, the respondent has agreed to settle the claims of the third party, who is claiming right over the very same property and the same was the subject matter of the litigation pending before the Arbitrator.

3. According to the applicants, despite an undertaking given by the respondent under the Memorandum of Understanding dated 06.11.2023, the respondent failed to settle the claim of the third party for the very same property for which the respondent had agreed to sell to the applicants. Thereafter, the respondent sent a legal



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notice to the applicants on 12.06.2025 threatening to revoke the power of attorney that was executed in favour of the applicants for the sale of the property. A reply was also sent by the applicants to the respondent on 18.06.2025 to the same. Thereafter, the applicants sent another recall notice on 25.06.2025 to the respondent calling upon them to execute the sale deed to the property, morefully described in the schedule to the judges summons. Even though the respondent received the said notice, he did not sent any reply.

4.The applicants have already initiated arbitration in accordance with the arbitration clause contained in the Memorandum of Understanding dated 06.11.2023, which is the subject mater of dispute between the parties by issuing notice to the respondent on 26.06.2025 to comply with the requirements of Section 21 of the Arbitration and Conciliation Act. Despite receipt of the same, the respondent has chosen not to send any reply. As seen from the Memorandum of Understanding dated 06.11.2025, the applicants have paid a sale consideration of Rs.7.95 crores.



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5.Under the agreement of sale dated 10.05.2005, a total sale consideration of the property, morefully described in the schedule to the judges summons, was fixed at Rs.11.95 crores. The applicants claim that the respondent is attempting to further alienate/encumber the property. According to the applicants, if that is allowed to happen, they will be put to irreparable hardship as they have also invested huge amount of money for the purchase of the property.

6.Since a prima facie case has been made out by the applicant for the grant of an order of interim injunction as prayed for in O.A. No.702 of 2025 and this Court is also satisfied that the applicant has established balance of convenience and irreparable hardship, this Court is inclined to grant an order of interim injunction as prayed for in this application. Accordingly, an order of interim injunction is granted in O.A. No.702 of 2025 as prayed for.

Notice to the respondents returnable by 06.08.2025. Private notice is also permitted. Post the matter on 06.08.2025.



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3.Pursuant to the above order, notice was served on the respondent and the respondent has filed a common counter affidavit.

4.When the above applications were pending, petition under Section 11 has also been filed for appointment of an Arbitrator and the respondent has filed a separate counter statement in this petition also.

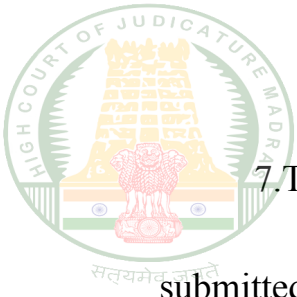
5.This Court heard Mr.A.Abdul Hameed, learned Senior Counsel for Mr.M.L.Sripathi, learned counsel for the petitioners and Mr.W.M.Abdul Majeed, learned counsel for the respondent and carefully considered the materials available on record.

6.The respondent has raised a serious dispute on the tenability of the very claim made by the petitioners and hence, the learned counsel appearing on behalf of the respondent vehemently opposed the continuation of the interim order passed by this Court on 11.07.2025. On a demurrer, the learned counsel



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for the respondent submitted that even if an order of injunction is passed in favour of the petitioners, it cannot cover the entire 45 grounds and at best, it has to confine to only 30 grounds as per the Memorandum of Understanding dated 06.11.2023. For this purpose, the learned counsel specifically relied upon schedule B & C that was allotted in favour of the petitioners. The learned counsel for the respondent also brought to the notice of this Court the order passed by this Court in ***W.P.No.14993 of 2023 dated 25.09.2023***, wherein, a portion of the land was acquired by Chennai Metro Rail Limited and there was a dispute insofar as the payment of compensation is concerned and as a result, this Court had directed the Commissioner of Land Administration to deposit the compensation amount in a Nationalised Bank in an interest bearing deposit scheme, till the issues are resolved between the beneficiaries. The learned counsel submitted that if the interim order is extended for the entire 45 grounds, it will have a bearing in the order passed by this Court with respect to the payment of compensation covering certain portions of the land acquired by Chennai Metro Rail Limited.



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7. The learned Senior Counsel appearing on behalf of the petitioners submitted that the property in question is an undivided land containing 45 grounds and specific portions have not been identified and therefore, the injunction must cover the entire extent of land, failing which, the petitioners will be put to irreparable loss.

8. Insofar as the appointment of Arbitrator is concerned, the counsel appearing on either side submitted that they will consent for appointment of Arbitrator by this Court in order to resolve the disputes between the parties.

9. In the considered view of this Court, the interim order was passed by this Court as early as on 11.07.2025 only in O.A.No.702 of 2025 where the respondent was enjoined from the laying/encumbering the properties. This interim order operates till date. The issue as to whether the injunction must apply to the entire 45 grounds or it must confine itself only to 30 grounds need not be gone into by this Court since this Court is inclined to appoint an Arbitrator and refer the dispute and also grant liberty to the parties to agitate



before the Arbitrator under Section 17 of the Act. This Court consciously did not go into the various issues raised on either side since the same is not material while deciding the application under Section 11 of the Act.

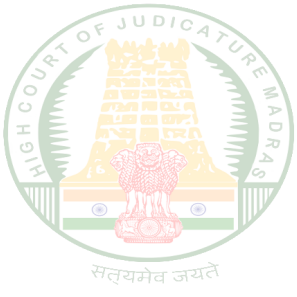
10. This Court while deciding the petition under Section 11 of the Act must bear in mind the legal principles that were succinctly elucidated by the Apex Court in ***BGM and M-RPL-JMCT (JV) .Vs. Eastern Coalfields Limited*** reported in ***(2025) 5 CTC 100*** and the relevant portion is extracted hereunder:

15. The legal principles deducible from the above decision qua the scope of Referral Court's power under Section 11 of 1996 Act are as follows:

(a) Section 11 confines the Court's jurisdiction to the examination regarding the existence of an Arbitration Agreement.

(b) The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination.

(c) Referral Courts only need to consider one



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aspect to determine existence of an Arbitration Agreement - whether the underlying contract contains an Arbitration Agreement which provides for Arbitration pertaining to the disputes, which have arisen between the parties to the Agreement. Therefore, the scope of examination under Section 11(6-A) should be confined to the existence of an Arbitration Agreement on the basis of Section 7. Such a legal approach will help the Referral Court in weeding out prima facie non-existent Arbitration Agreements.

(d) The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an Arbitration Agreement. However, the expression "examination" does not connote or imply a laborious or contested inquiry.

(e) The burden of proving the existence of Arbitration Agreement generally lies on the party seeking to rely on such Agreement. Only prima facie proof of the existence of an Arbitration



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Agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of Arbitration Agreement. The determination of the existence and validity of an Arbitration Agreement on the basis of evidence ought to be left to the Arbitral Tribunal.

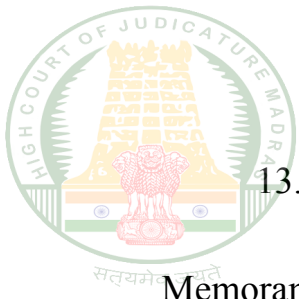
(f) Section 16 provides that the Arbitral Tribunal can "rule on its jurisdiction, including the existence and validity of an Arbitration Agreement. A "ruling connotes adjudication of disputes after admitting evidence from the parties. Therefore, when the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the Arbitral Award is bound by such a prima facie view. If a prima facie view as to the existence of an Arbitration Agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth.



11. It is clear from the above that Section 11 confines the Court's jurisdiction to the examination regarding the existence of an arbitration agreement and the use of the term examination confines itself to the existence of an arbitration agreement satisfying the requirements of Section 7 of the Act. It is not necessary for the Court to go into any other factual disputes.

12. In the facts of the present case, admittedly, the parties are governed by a Memorandum of Understanding dated 06.11.2023 and clause 14 of the Memorandum of Understanding reads as follows:

14.ARBITRATION:- Any dispute or difference between the parties arising out of this MOU, the same shall be referred to an Arbitrator to be decided mutually and this clause shall be deemed to be a submission within the meaning of Arbitration and Conciliation Act 1996 and statutory modification or re-enactment thereof in force from time to time.

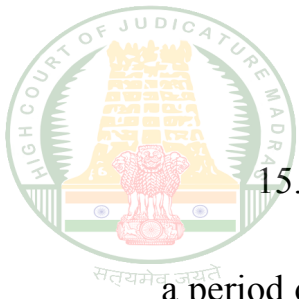


13. There is a serious dispute between the parties arising out of this

Memorandum of Understanding which has to be necessarily referred to the

learned Arbitrator.

14. In the light of the above discussions, this Court proceeds to appoint a sole Arbitrator. Accordingly, Hon'ble Mr. Justice P.N.PRAKASH (Retd), a former Hon'ble Judge, Madras High Court, with address for service at 'Lalithalaya', 32, First Cross Street, Kilpauk Garden Colony, Chennai 600010, Mobile No.9444395654, 044-6445731, godmouldsus@gmail.com is appointed as the sole Arbitrator and the Arbitrator is requested to enter upon reference qua the agreement of sale dated 10.05.2005 and Memorandum of Understanding dated 30.01.2020 & 06.11.2023, adjudicate the arbitral dispute that were arising between the parties by holding the sittings in any venue in Chennai to the convenience of all concerned and render an award. Fees of the sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC)(Administrative Cost and Arbitrator's Fees) Rules 2017.



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15.The interim order passed by this Court on 11.07.2025 will continue for a period of two weeks from the date of the learned Arbitrator entering reference after the receipt of notice. The parties are at liberty to approach the learned Arbitrator and the claim statement shall be filed. The interim application filed by the petitioners shall be placed before the learned Arbitrator and the learned Arbitrator shall hear both sides in this application and take a decision. It is left open to the learned Arbitrator to continue with the interim order till a final decision is taken in the interim application on merits and in accordance with law. The learned Arbitrator can deal with the interim relief under Section 17 of the Act and pass appropriate orders on its own merits and in accordance with law.

16.In the result all these applications are disposed of in the above terms.

There shall be no order as to costs.

08-09-2025

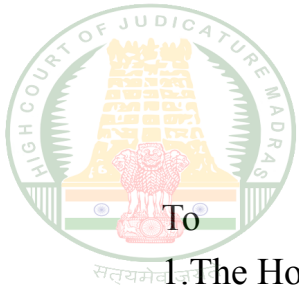
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

1. The Hon'ble Mr. Justice

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P.N.PRAKASH (Retd),

Former Hon'ble Judge,

Madras High Court,

'Lalithalaya', 32, First Cross Street,

Kilpauk Garden Colony, Chennai

600010, Mobile No.9444395654, 044-

6445731, godmouldsus@gmail.com

2. The Director

Tamil Nadu Mediation and Conciliation

Centre-cum-Ex-Officio Member

Madras High Court Arbitration Centre

Chennai - 104.



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N.ANAND VENKATESH J.
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AND OA NO. 701 OF
2025,OA NO. 702 OF
2025**

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