

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde, M.A., LL.M.,
**LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru**

Dated this the 6th day of March 2021

COM.A.A.No.20/2020

Applicant

M/s. Landson Infrastructure,
A Partnership firm,
having its office
#76, 4th Main, 15th Cross,
Malleshwaram,
Bengaluru-560055.

Represented by its
Managing Partner
Sri.D.S.Ganesh,
S/o late D.N.Subbukrishna,
aged about 49 years.

[By Sri.K.V.M, Advocate]

/v e r s u s/

Respondent

M/s. Sri. Vinayaka Projects,
A partnership Firm,
having its office
at Chandrodaya Theatre,
Vidhyapeetha Circle,
Katriguppa Main Road,
Ashok Nagar,
Bengaluru-560050.

Represented by its
Managing Partner
Sri. A.Vijayaendra Kumar,
S/o late A. Rudrappa.

(Exparte)

ORDER

This application U/Sec.9 of the Arbitration & Conciliation Act 1996 is filed by the applicant praying to restrain the respondent from transferring, conveying or in any other manner alienating, encumbering or parting with possession of any part or whole of the petition schedule property to any third party pending decisions or disputes between the parties in arbitration and also to restrain the respondent from altering or changing the nature of the petition schedule property pending decision of the Arbitral Tribunal.

2. It is stated in the application that applicant is the registered partnership firm and is represented by its partner and respondent is also a partnership firm. It is stated that the respondent approached the applicant and stated that it identified lands with clear title and also that the respondent is holding certain lands for the purpose of formation of layout. The respondent also represented that it is proposing to form a layout and offered to sell the salable area in the layout to the petitioner. The lands proposed for development by the respondents are the properties bearing Sy.No.33 measuring 1 acre 39 guntas and another 1 acre 39 guntas in Sy.No.33, 1 acre 39 guntas in Sy.No.118, 2 acres in Sy.No.74/p1, another 1 acre 39 guntas in Sy.No.118, 2 acres in Sy.No.143, 4 acres

in Sy.No.74/306, and another 2 acres in Sy.No.74/306, situated in Bandikodigehalli village and these properties are shown in the application as schedule properties. By considering the proposal of the respondent, the applicant agreed on certain terms for purchase of salable area and the memorandum of understanding was entered on 24/8/2017 and the applicant has paid Rs.14,05,15,000/- to the respondent as on the date of agreement. It is stated that the applicant was liable to make payment as per clause-4 of the MOU only after the respondent obtained approval from BIAAPA. Still the applicant has made payment of Rs.5,50,50,000/- by RTGS. Several obligations cast upon the respondent as per the terms of the MOU and the applicant has waited for the respondent to complete and comply the terms of the MOU. The applicant has made funds available to the respondent, although he was not obliged to do so with a fond hope that the transaction could be completed at the earliest. The respondent has executed sale deed with respect to Sy.No.33 measuring 1 acre 39 guntas which is item No.1 of the petition schedule property on 22/9/2017 to the applicant and also executed an agreement of sale dated 16/12/2015 even earlier to the present MOU in favour of the partner of the applicant. The payment made in the MOU dated 24/8/2017 includes the payment shown in agreement of sale dated 16/12/2015 and deed of sale dated 22/9/2017. It is stated that the respondent went on assuring the applicant that they

would complete the transaction at the earliest, but the respondent has failed to complete the transaction and applicant was shocked to receive information from the reliable source that the respondent is attempting to sell the plots as DC Conversion Plots formed in the petition schedule to third parties without consent or knowledge of the applicant. As per clause 14 of the MOU the dispute between the parties is to be resolved through arbitration. It is a binding agreement between the parties and as such the applicant is entitled to invoke Section 9 of the Arbitration & Conciliation Act. It is stated that the applicant came to know about the breach of the terms of the MOU by the respondent on 20/2/2020, as the respondent has proceeded to sell the plots formed in the petition schedule property in order to cheat and cause loss to the applicant. It is stated that the applicant is having prima facie case and balance of convenience is in its favour and irreparable injury will be caused to the applicant, if order is not passed. With these averments, the applicant has filed this application.

3. After filing of the application, notice was issued to the respondent and in spite of service of notice, respondent has not appeared. Thereafter, again court notice was issued and though the notice is served, the respondent has again not appeared and then the respondent is placed *ex parte*.

4. Now the point that arise for my consideration are:

1. Whether the restraint order as prayed in the application U/S.9 of the Arbitration & Conciliation Act are to be granted?
2. What order?

5. Heard learned counsel for applicant. Perused the records.

6. My answer to the above points are:

Point No.1: Partly affirmative

Point No.2: As per final order for the following;

REASONS

7. **Point No.1:** The case of the applicant is that the respondent had offered certain properties for the purpose of development and MOU was entered into between the parties on 24/8/2017 and the respondent has received considerable amount as per the terms of MOU, but has not come forward to complete the transaction. According to the applicant, the respondent has executed sale deed in respect of one property i.e. item No.1 of the schedule property on 22/9/2017 and in respect of one more property even before the MOU an agreement of sale was executed on 16/12/2015, but the sale deed is not executed and even in respect of other schedule properties, the respondent is not coming forward to execute the document. According to the applicant now respondent is trying to sell the schedule property by claiming to be DC

converted plots and if the respondent alienate the properties and create third party rights, the applicant will suffer injury. The applicant also referred to the arbitration clause appearing in clause-14 of MOU for resolution of the dispute between the parties, the applicant has stated that he intends to initiate arbitration for resolution of the dispute and in the meantime, it is necessary to prevent the respondent from alienating the schedule property by creating the third party rights.

8. Inspite of service of notice by registered post and also the court notice, the respondent has not appeared and is placed exparte. Therefore the contention of the applicant remained undisputed and not controverted by the respondent. Copy of the MOU produced show that MOU contains arbitration clause at clause -14. Copy of this MOU show that it was entered on 24/8/2017. The respondent who is a first party has offered 38 acres with clear title for development to the applicant at a mutually agreed price mentioned in the MOU. Several properties in different survey numbers as mentioned in Sl.No.1 to 8 in the MOU are offered by the respondent to the applicant for the agreed price as per this MOU. It is also mentioned in the MOU that applicant has paid Rs.7,10,05,000/- as payment for absolute sale deed of 1 acre 39 guntas covered in Sy.No.33 of Bandikodigehalli and Rs.1,50,00,000/- towards the MOU of composite schedule of properties and the applicant has also paid

Rs.5,45,10,000/- in respect of schedule No.3 property. This disclose that considerable amount has been given by the applicant in respect of these transactions. The applicant has also produced the payment schedule which is part of MOU and the payment details along with the copies of bank statement. The respondent has executed one sale deed in respect of item No.1 of the petition schedule property on 22/9/2017. Except this property, in respect of other properties mentioned in the MOU, the respondent is stated to have not come forward to execute the document. In respect of one more property there was an agreement dated 16/12/2015 executed in favour of three persons. Absolute sale deed executed in favour of Vinayaka Projects by B.K.Gopalaiah and others in respect of Sy.No.74/311 is also produced by the applicant. Sy.No.74/311 is item No.4 of the petition schedule property. The applicant has produced copy of the layout plan which is said to have been now prepared by the respondent in which the properties covered by the MOU are also stated to be appearing. The applicant has also produced copy of the notice issued to the respondent on 11/3/2020, initiating arbitration and suggesting name of Arbitrator to resolve the dispute and copy of postal receipt and acknowledgement are also produced. E-Katha of item No.3,4 and 5 of the petition schedule property is also produced showing that they are standing in the name of Vinayaka Projects i.e. respondent of the present case.

9. On looking to all these documents, which are not contested and disputed by the respondent by appearing before the court, it is clear that out of the petition schedule properties, items No.3,4 and 5 are standing in the name of respondent at present. Though all the 8 properties are appearing in the MOU, item No.1 property is already sold to applicant, there are no documents to show that items No.2,6, 7 and 8 are standing in the name of respondent. According to the applicant, the respondent is trying to alienate item No.3,4 and 5 properties which are standing in his name, which is against the MOU entered into between the parties. The applicant intend to invoke the arbitration clause to resolve the dispute. In this connection, the applicant has already issued notice to the respondent on 11/3/2020 and the same has been served. The respondent though served with the notice of the present application has not appeared and raised any objection to the application. In the absence of any contention taken by the respondent by appearing before the court, there are no grounds to doubt the genuineness of the apprehension of the applicant. Since items No.3,4 and 5 properties are part of MOU dated 24/8/2017 entered into between the applicant and the respondent and the apprehension of the applicant is that the respondent is trying to create charge over the said property and may also alienate the same, it is proper to restrain the respondent from alienating or encumbering or parting with possession of item

No.3,4 and 5 properties of the petition schedule and to restrain the respondent from altering or changing the nature of the items No.3,4 and 5 of the petition schedule property. Since the application was filed in 2020 and notice was issued in March 2020 and sufficient time is already lapsed, it is proper to grant this order for a fixed period of 90 days, so that the arbitration can commence within the said period. Accordingly, point No.1 is answered partly in the affirmative.

10. Point No.2: In view of the discussion made above, I proceed to pass the following;

ORDER

Application filed under Sec.9 of Arbitration and Conciliation Act is partly allowed.

The respondent is restrained from alienating, encumbering or parting with possession of any part or whole of Item No.3,4 and 5 of the petition schedule property to any third party and from altering or changing the nature of the same for a period of 90 days from the date of this order or till passing of any order before 90 days by the learned Arbitrator to be appointed.

[Dictated to the Judgment Writer; transcript thereof corrected, signed and then pronounced by me, in the Open Court on this the **6th day of March 2021**]

[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.