

Unknown vs S.Ravichandran on 30 March, 2012

Author: D.Hariparanthaman

Bench: D.Hariparanthaman

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30 / 03 / 2012

CORAM

THE HONOURABLE MR.JUSTICE D.HARIPARANTHAMAN

C.S.NO.460 OF 2005

Himayam Engineers and Builders
Represented by its Proprietor
P.Ramana Reddy
(Amended as per order dated 05.02.2010
in Application No.553 of 2010)

.. Plaintiff

Versus

1.S.Ravichandran
2.S.Veeraraghavan
3.R.Jagadeesan

.. Defendants

PRAYER: Plaint filed under Order IV Rule 1 of Original Side Rules read with Order VII Ru

- (a) Granting specific performance of the development agreement dated 10.
- (b) For permanent injunction restraining the defendants from in any mann
- (c) Direct the defendants 1 and 2 to pay plaintiff jointly and severally
- (d) For costs of the suit.

For Plaintiff : Mr.R.Thiagarajan
For Defendants : Mr.S.Kasthuri Rangan
for M/s.Sampath Kumar Associates

J U D G M E N T

The present suit is filed for specific performance of the development agreement dated 10.09.2003 entered into between the plaintiff and the defendants 1 and 2 represented by their power of attorney agent, the third defendant herein. The plaintiff also prayed for permanent injunction restraining the defendants from in any manner interfering with the plaintiff from proceeding with construction in the suit property in accordance with the approved plan hereafter to be obtained from the Chennai Metropolitan Development Authority. Alternatively, the plaintiff prayed for direction to the defendants 1 and 2 to pay the plaintiff a sum of Rs.71,00,000/- (Rupees Seventy One Lakhs Only) towards damages for breach of development agreement and Rs.20,00,000/- (Rupees Twenty Lakhs Only) being the return of advance amount, in all a total sum of Rs.91,00,000/- (Rupees Ninety One Lakhs Only).

2.The averments made by the plaintiff in the plaint are as follows:

(a) The plaintiff entered into a development agreement on 10.09.2003 with the third defendant, who is the power of attorney agent of the defendants 1 and 2 to develop four plots of land in S.No.415, Mogappair Village, Saidapet Taluk, Chengalpet District. Out of the four plots, two plots belong to the first defendant and the same was shown as item nos.1(a) and 1(b) in the schedule to the plaint. The remaining two plots belong to the second defendant and the same was shown as item nos.2(a) and 2(b) in the schedule to the plaint. Pursuant to the development agreement, the defendants put the plaintiff in possession of the suit property.

(b) As per the development agreement, the plaintiff shall construct a multi-storeyed complex on the suit property exclusively at his cost as per the building plan as may be permitted by the authorities concerned.

(c) As per the development agreement, the plaintiff shall commence the construction of the building within 30 days of obtaining sanction for the building plan and complete the same within 18 months with a grace period of three months from the date of plan sanction.

(d) As per the development agreement, the plaintiff and the defendants shall share the constructed area upon the suit property in the ratio of 56:44, that is, 56 % for the plaintiff and 44 % for the defendants 1 and 2, being the owners of the property.

(e) After the defendants made available the patta, which is a necessary document to be submitted for plan sanction before the Chennai Metropolitan Development Authority (CMDA), the plaintiff submitted an application dated 23.01.2004 to the CMDA for plan approval.

(f) The CMDA informed the plaintiff that he shall produce a No Objection Certificate (NOC) from the Tamil Nadu Housing Board (TNHB) as the suit property comes

under the TNHB Land Acquisition Notification.

(g) The plaintiff informed the defendants about the said fact and the defendants agreed to apply for NOC from the TNHB.

(h) Accordingly, the defendants obtained NOC from TNHB and handed over the same to the plaintiff on 25.06.2004. The plaintiff immediately submitted the same to the CMDA.

(i) However, the said NOC was not accepted by the CMDA for the reason that the same was vague and not clear. The CMDA called upon the plaintiff to get a clear and fresh NOC from the TNHB.

(j) The plaintiff took lot of pains and obtained a fresh NOC from TNHB on 31.10.2004 and submitted the same to CMDA.

(k) According to the plaintiff, the delay of 13 months in submitting the NOC was caused entirely due to the defendants failure to produce NOC from TNHB.

(l) The plaintiff cleared bushes and demarcated the boundaries of the suit property as directed by the CMDA and also dug out a well for construction purposes.

(m) The plaintiff paid a sum of Rs.10,00,000/- to the defendants 1 and 2 as refundable advance on the date of development agreement and later, on the request of the defendants 1 and 2, the plaintiff paid a sum of Rs.4,00,000/- on 14.01.2004 and Rs.1,00,000/- on 23.03.2004 and a sum of Rs.5,00,000/- on 21.11.2004. In total, the plaintiff paid a sum of Rs.20,00,000/- to the defendants 1 and 2 as refundable advance towards the development agreement.

(n) When the plaintiff took all steps to obtain plan approval from CMDA and to commence the work from 15.01.2005, the plaintiff received a letter dated 15.12.2004 from the third defendant terminating the development agreement making false allegations.

(o) The plaintiff gave a detailed reply dated 27.12.2004 to the third defendant and informed him that he proposed to commence the construction work between January 15 and February 15, 2005.

(p) The third defendant sent a further letter dated 02.01.2005 confirming his earlier letter dated 25.12.2004 terminating the development agreement.

(q) Thus, the plaintiff caused a lawyer notice on 05.01.2005 to the defendants calling upon them not to interfere with the plaintiff from proceeding with the construction as per the development agreement.

(r) In the said circumstances, the plaintiff lodged a complaint on 06.01.2005 before the J.J.Nagar Police Station that the plaintiff's workers were assaulted when they were clearing bushes, by the third defendant and his henchmen.

(s) In these circumstances, the plaintiff filed a suit in O.S.No.30 of 2005 on the file of the District Munsif Court, Ambattur for a declaration that the alleged termination of development agreement by the defendants is illegal and invalid. The plaintiff also sought for permanent injunction restraining the defendants from interfering with the construction activities in the suit property. Pending the suit, the plaintiff filed an interlocutory application in I.A.No.144 of 2005 for temporary injunction. Notice was ordered in I.A.No.144 of 2005 on 08.02.2005 returnable by 23.06.2005.

(t) According to the plaintiff, he was always ready and willing to perform his part of contract. The plaintiff was waiting for the plan approval by CMDA to commence the construction, while so, the third defendant terminated the contract and also wrote to the CMDA withdrawing his application for plan approval and therefore, the plaintiff was not able to proceed with the construction work.

(u) Since the defendants were trying to develop the suit property by engaging some other property developers, the plaintiff was constrained to file the present suit on 02.05.2005 seeking the relief of specific performance, based on the development agreement.

3.This Court, on 18.05.2005, granted interim injunction in O.A.No.552 of 2005 in C.S.No.460 of 2005, restraining the defendants from alienating the suit property or engaging any other builder for development of suit property.

4.The defendants filed written statements separately denying the allegations made in the plaint by the plaintiff. The crux of the averments made in the written statements filed by the defendants is as follows:

(a)The first defendant is the owner of the land mentioned in item nos.1(a) and 1(b) of the schedule to the plaint and the second defendant is the owner of the land mentioned in item nos.2(a) and 2(b) of the schedule to the plaint. They executed a general power of attorney appointing the third defendant as their power agent, on 17.03.2003 in respect of the suit property.

(b)The third defendant, being the power agent of the defendants 1 and 2, entered into a development agreement on 10.09.2003 with the plaintiff in respect of the suit property.

(c)The defendants admitted that they shall share the constructed area with the plaintiff at the ratio of 44:56.

(d)The defendants admitted that they received a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) from the plaintiff as refundable advance without interest.

(e) According to the defendants, the development agreement was only an executory agreement and the plaintiff was to perform his part of contract under the executory agreement to claim anything under it. However, the plaintiff failed to perform his part of contract and the agreement was frustrated by the plaintiff due to his inaction coupled with fraud.

(f)The possession of the suit property remained with the defendants 1 and 2 and the plaintiff was only given a licence to enter the suit property for the purpose of construction and that he was not put in possession.

(g)The plaintiff informed the third defendant that he would get CMDA approval within 90 days and at any rate within 180 days, though it is not mentioned in the development agreement that the plaintiff would get the plan sanction within 90 to 180 days, it was one of the conditions based on which the development agreement was entered into. The same was made clear in the letter dated 01.06.2004 of the third defendant. The following passage from that letter is extracted in the written statement of the third defendant:

"It was principally agreed on both sides to commence the work within 6 months. But, even after 8 months, there is no specific information from your side about the commencement of work on 1.5.2004. I had informed you to take steps to start that at least before 31.5.2004. Otherwise I will have to get as per the advice of Land Owners."

(h)The defendants 1 and 2 obtained patta on 29.09.2003 while the plaintiff informed to get patta on 22.09.2003 and the patta was handed over to the plaintiff on 30.09.2003. But the plaintiff took four months time to file an application for plan approval to CMDA on 23.01.2004.

(i)According to the defendants, the CMDA had not asked for production of the NOC from TNHB. The plaintiff unnecessarily and with an intention to delay the matter, asked the defendants to produce NOC from the TNHB.

(j)However, the defendants approached the TNHB and obtained NOC and delivered the same to the plaintiff. Again the plaintiff insisted another NOC from TNHB. The defendants again approached the TNHB and obtained NOC and the same was handed over to the plaintiff.

(k)The plaintiff had not produced any letter from CMDA requiring the production of NOC from TNHB. It was only a hoax played by the plaintiff with a motive to defraud the defendants. Had the CMDA insisted for NOC, there should have been a letter from CMDA asking for NOC. Later, the defendants ascertained from CMDA that they did not ask for NOC from TNHB. Even in 1992, the acquisition proceedings were withdrawn and the same was known to CMDA and the said fact was

also known to the plaintiff even before the development agreement dated 10.09.2003 was entered into.

(l)The defendants waited from 10.09.2003 to 15.12.2004 expecting that the plaintiff would perform his part of executing the contract and when it was not done, the third defendant terminated the development agreement in his letter dated 15.12.2004. Even as on 15.12.2004, the plan was not approved by CMDA. The averment of the plaintiff, that he took all possible steps to obtain plan approval from CMDA and that he would commence the construction work on 15.01.2005, is totally false. The plan was not approved even on 15.01.2005. The papers were returned to third defendant on 17.02.2005 by the CMDA.

(m)The defendants denied the averment of the plaintiff relating to the removal of bushes and digging of well.

(n)The third defendant came to know when he approached the CMDA that the plaintiff forged the signature of the third defendant. Thus, the third defendant filed a complaint on 28.03.2005 before the Commissioner of Police, Greater Chennai regarding the forgery committed by the plaintiff and the same was taken on file in Crime No.359 of 2005 under Sections 406, 465 and 420 IPC, by the Central Crime Branch in the office of the Commissioner of Police.

(o)The defendants 1 and 2 are very poor people and their families were very much affected due to the delay caused by the plaintiff. The plaintiff was the sole cause for the delay and thus, the plaintiff has to pay damages to the defendants 1 and 2.

(p)The plaintiff had no money to construct the flats and he could not perform the contract without money. The question of negotiation for sale of flats would arise only on the issuance of completion certificate by the CMDA.

(q)The defendants were willing to refund the advance amount after getting the title deed relating to the land mentioned in 2(a) in the schedule of the plaint that was with the plaintiff.

(r)The defendants disputed the statement made by the plaintiff that he could have earned Rs.71,00,000/- had the development agreement was acted upon. According to the defendants, the plaintiff could have at the most earned Rs.6,72,000/- and not Rs.71,00,000/-, even if the flats were constructed, pursuant to the development agreement.

(s)According to the defendants, the claim of Rs.71,00,000/- by the plaintiff would be almost the cost of 50% of the suit property. Since the plaintiff did not come with clean hands, the plaintiff is not entitled to specific performance.

(t)The third defendant stated that the present suit is hit by Order II Rule 2 C.P.C., since the plaintiff filed a suit in O.S.No.30 of 2005 before the District Munsif Court, Ambattur, on the same cause of action.

5.The plaintiff filed reply statement denying the allegations made in the written statements filed by the defendants.

6.Based on the pleadings, the following issues were framed in the suit for consideration:

"1.Whether the plaintiff is entitled to get a decree for specific performance of contract on the basis of development agreement dated 10.09.2003 and to get a consequential order of permanent injunction as prayed for?

2.Whether the plaintiff is entitled to the alternative relief of Rs.71,00,000/- towards damages for breach of suit agreement and Rs.20,00,000/- being the return of advance amount?

3.Whether the suit land subjected to any land acquisition proceedings of the Tamil Nadu Housing Board?

4.Whether the plaintiff has failed to perform his part of the contract?

5.Whether clause 18 of the development agreement dated 10.09.2003 will be applicable?

6.Whether the plaintiff is entitled to claim any damages in spite of his inordinate delay in executing the contract?

7.Whether the plaintiff has any cause of action to file the suit?

8.To what relief, the plaintiff is entitled?"

7.On the side of the plaintiff, the plaintiff and one Mr.Raghavendra Rao, an Engineer, were examined as P.W.1 and P.W.1 respectively and 46 documents were marked as Exs.P1 to P46. On the side of the defendants, third defendant was examined as D.W.1 and 13 documents were marked as Exs.D1 to D13.

8.The plaintiff was examined as P.W.1 in chief on 28.03.2008 and the cross examination of P.W.1 was completed on 14.08.2008. The third defendant was examined as D.W.1 in chief on 04.11.2008 and his cross examination commenced on 06.01.2009 and completed on 09.03.2010 and the cross examination of D.W.1 took place on various dates in between.

9.After the evidence of defendants was closed on 09.03.2010, the plaintiff came with an application in A.No.1821 of 2010 on 15.03.2010 to reopen the evidence of the defendants that was closed on 09.03.2010. Another application in A.No.1822 of 2010 was also filed by the plaintiff in March 2010 to issue subpoena to the defendants 1 and 2 in the suit for rendering evidence. After hearing the learned counsel on either side, both the applications were dismissed by this Court by a common order dated 27.01.2011.

10.Arguments for the plaintiff was advanced before the Honourable Mr.Justice S.Palanivelu during February and March 2011 on various dates. Arguments for the defendants was also advanced on 07.03.2011. The matter was posted for the reply, by the plaintiff. While so, the plaintiff filed an application in A.No.1571 of 2011 on 11.03.2011 for letting in evidence on behalf of the plaintiff and this Court allowed the said application on 15.03.2011 with a cost of Rs.3000/-.

11.The plaintiff filed another application in A.No.1572 of 2011 on 11.03.2011 seeking permission to the plaintiff to examine an expert Engineer as his witness. It was stated in the said application that the expert Engineer Mr.P.Raghavendra Rao, who gave the report in Ex.P26 passed away and therefore, he was not able to be examined. The plaintiff wanted to examine another Engineer. The defendants filed counter affidavit opposing the application stating that the plaintiff could not now seek to examine an Engineer, when the counsel for the defendants advanced arguments, after the arguments of the plaintiff's counsel, pointing out that Ex.P26 could not be relied on since its author was not examined. However, the said application was allowed by this Court on 15.03.2011, on condition to pay a cost of Rs.3,000/-.

12.At this juncture, the plaintiff filed an application in A.No.1765 of 2011 on 23.03.2011 seeking permission of this Court to file additional documents and the report of the Architect / Engineer and to mark those documents through expert Engineer as his witness. In the affidavit filed in support of the said application, the plaintiff averred that the report dated 16.04.2007 of a reputed Engineer / Valuer was marked as Ex.P26, but the said Engineer, who gave that report was not examined, due to his demise. In these circumstances, the plaintiff was constrained to bring in some documents namely, a report dated 22.03.2011 of an Engineer along with the plans. He also wanted to produce some more documents. In the said application, the defendants filed a counter affidavit dated 23.04.2011 stating that the Engineer Mr.Raghavendra Rao who gave the report in Ex.P26 is alive and he is residing in the same address as stated in Ex.P26 and he is also available on the telephone at the same number. The defendants stated that the plaintiff made a false statement and misled this Court and thus, he is liable to be punished for perjury under Section 199 IPC for swearing to a false affidavit. The defendants, while seeking to reject the said application, prayed for prosecution of the plaintiff for perjury under Section 199 IPC for swearing to a false affidavit. In the said circumstances, the learned counsel for the plaintiff made an endorsement seeking to withdraw the application. Accordingly, the said application was dismissed as withdrawn on 29.07.2011.

13.The plaintiff also filed another application in A.No.2211 of 2011 on 18.04.2011 seeking to receive additional documents and to permit the plaintiff to mark those documents through the expert witness Engineer. This Court, on 29.07.2011, allowed the said application based on the endorsement made by the learned counsel for the defendants that the additional documents could be marked subject to proof and relevancy.

14.In the said circumstances, the defendants filed an application in A.No.2313 of 2011 on 25.04.2011 seeking direction to this Court to make a complaint through an authorised officer to prosecute the plaintiff for perjury under Section 199 IPC for swearing to a false affidavit. In the said application, the plaintiff filed a counter affidavit dated 06.06.2011 stating that his advocate informed him that the Engineer Mr.Raghavendra Rao was no more and passed away and he bonafidely believed the

said statement and he did not personally verified as to whether the Engineer, who gave the report in Ex.P26 is alive or not. The plaintiff also averred that there was absolutely no intention to mislead this Court. He also stated that after receiving the affidavit filed in support of the application, he personally visited the premises of Mr.Raghavendra Rao and found that he was very much alive and that he also agreed to give evidence on his request. The mistake was purely due to inadvertence and oversight. He tendered his unconditional apology for having made an incorrect statement. In view of the unconditional apology tendered by the plaintiff in the counter affidavit, this Court, closed the said application on 10.06.2011.

15.In these circumstances, Mr.Raghavendra Rao was examined as P.W.2 on 28.09.2011 and he was cross examined on 11.10.2011. Thereafter, the matter was argued before the Honourable Mr.Justice P.R.Shivakumar. Now, arguments were heard by me.

16.The learned counsel for the plaintiff strenuously contended that the plaintiff was always ready and willing to perform his part of contract and it was only the defendants, who sought to wriggle out of the contract. The learned counsel heavily relied on Ex.P9, the development agreement dated 10.09.2003 and submitted that the plaintiff could not be blamed for not commencing his construction before getting plan approval from CMDA. According to him, as per Ex.P9, the construction shall commence only after getting plan approval from CMDA and that there was no time limit stipulated in Ex.P9 that the plaintiff shall obtain plan approval from CMDA within a time frame. The plaintiff took all possible efforts to get the plan approved at the earliest and the delay was caused only due to the defendants, particularly when the defendants took a long time of 13 months to get NOC from the TNHB. The learned counsel further relied on Ex.P11, the letter dated 02.03.2004 of the CMDA. According to him, CMDA required NOC from TNHB as per Ex.P11. But the defendants produced NOC dated 25.06.2004 from TNHB wherein the name of the first defendant was wrongly mentioned as Ravindran instead of Ravichandran. Further, the NOC was not clear. Hence, fresh NOC was sought for by CMDA. The defendants took a long time to obtain NOC. The delay was solely due to the obtaining of NOC from TNHB belatedly and therefore, the third defendant was not justified in sending the termination letter dated 15.12.2004 Ex.P15. According to him, the plaintiff sent a reply dated 27.12.2004 Ex.P18 stating that he could commence the construction work between January 15 and February 15, 2005. The plaintiff pointed out in his reply in Ex.P18 that the delay was due to the defendants in getting the NOC from TNHB. The CMDA returned the plan and directed him to submit the revised drawings and accordingly, revised drawings were submitted to the CMDA.

17.The learned counsel for the plaintiff submitted that the plaintiff is a reputed builder and he relied on Exs.P1 to P7, P27 to P34 construction agreements entered into with various persons in other projects carried out by the plaintiff. The learned counsel submitted that the income tax returns in Exs.P35 to P37 and the balance sheet in Ex.P38 and the Bank statement of accounts in Ex.P39 would make it clear that the plaintiff was a person with means and he was ready and willing to execute the development agreement. But he was not able to commence the construction waiting for the plan approval and the delay in obtaining the plan approval from the CMDA was solely due to the defendants. He further submitted that the plaintiff entered into the construction agreements in Ex.P22 to P25 with the buyers of the flats to be built on the suit property. According to him, the

plaintiff satisfies Section 14(3)(c) and 16(c) of the Specific Relief Act, 1963. He therefore prayed for a direction to specifically enforce the contract so that the plaintiff could proceed with the construction.

18. Alternatively, the learned counsel for the plaintiff submitted that the plaintiff is entitled to Rs.71,00,000/- as damages and the details of which was worked out in the plaint itself. The learned counsel also sought for return of advance amount of Rs.20,00,000/- with reasonable interest. He relied on the following judgments in support of his contention, as given in his written submissions:-

(i) THAWARDAS PHERUMAL AND ANOTHER VS. UNION OF INDIA [AIR 1955 SC 468(1)]

(ii) GOVIND PRASAD CHATURVEDI VS. HARI DUTT SHASTRI AND ANOTHER [1977 (2) SCC 539]

(iii) GOBIND RAM VS. GIAN CHAND [2000 (7) SCC 548]

(iv) SWARNAM RAMACHANDRAN AND ANOTHER VS. ARAVACODE CHAKUNGAL JAYAPALAN [2004 (8) SCC 689].

(v) SURYGANDHI VS. LOURDUSWAMY [AIR 2004 MADRAS 8]

(vi) PANCHANAN DHARA AND OTHERS VS. MONMATHA NATH MAITY [2006 (5) SCC 340]

(vii) Mc DERMOTT INTERNATIONAL INC. VS. BURN STANDARD CO. LTD. AND OTHERS [2006 (11) SCC 181]

(viii) LINK INDIA HOMES PVT. LTD. AND OTHERS VS. JOE JOSEPH AND OTHERS [CDJ 2006 KER HC 729]

(ix) BANGALORE DEVELOPMENT AUTHORITY VS. SYNDICATE BANK [2007 (6) SCC 711]

(x) CHHEDA HOUSING DEVELOPMENT VS. BIBIJAN SHAIKH FARID AND OTHERS [CDJ 2007 BHC 024]

(xi) BALASAHEB DAYANDEO NAIK VS. APPASAHEB DATTARAYA PAWAR [2008 (1) CTC 530]

(xii) FAQIR CHAND GULATI VS. UPPAL AGENCIES PRIVATE LIMITED AND ANOTHER [2008 (10) SCC 345]

(xiii)EDEN REALTY VENTURES PVT. LTD. VS. M.A. CONSTRUCTION AND TRADING CO. PVT. LTD. AND ANOTHER [AIR 2008 (NOC) 2608 (CAL)]

(xiv)MADHYA PRADESH HOUSING BOARD VS. PROGRESSIVE WRITERS AND PUBLISHERS [2009 (5) SCC 678]

(xv)KONA KANTHAMMA VS. GUNTAMUKKALA SRINIVASA RAO [AIR 2009 (NOC) 1677 (A.P.) (xvi)LAXMAN TATYABA KANKATE AND ANOTHER VS. TARAMATI HARISHCHANDRA DHATRAK [2010 (7) SCC 717] (xvii)MAN KAUR VS. HARTAR SINGH SANGHA [2010 (10) SCC 512] (xviii)CITADEL FINE PHARMACEUTICALS VS. RAMANIYAM REAL ESTATES PRIVATE LIMITED AND ANOTHER [2011 (9) SCC 147]

19.On the other hand, the learned counsel for the defendants at the outset submitted that the development agreement shall not be specifically enforced. He heavily relied on the judgment of the Honourable Apex Court in VINOD SETH VS. DEVINDER BAJAJ AND ANOTHER [2010 (4) CTC 546] and a Division Bench judgment of this Court in K.ALAGAR VS. M.I.KUMARAN AND OTHERS [2009 (3) TNLJ 291 (CIVIL)] and a Division Bench judgment of the Calcutta High Court in VIPIN BHIMANI AND ANOTHER VS. SUNANDA DAS AND ANOTHER [AIR 2006 CALCUTTA 209].

20.Secondly, the learned counsel for the defendants submitted that the plaintiff is not entitled to the equitable relief of specific performance since he came to this Court with unclean hands. He cited the following instances in support of his contention:

(i)The plaintiff forged the signature of the third defendant in Ex.D7 that was submitted to the CMDA by the plaintiff.

(ii)He produced Exs.P22 to 25 agreements as if he entered into with the intending buyers of flats that could be built on the suit property, while those documents were fabricated, particularly since at the first page in Ex.P22 the date is shown as 29.04.2004 on the stamp paper and in the second page of the document it is shown as 29.04.2007. In addition to that, those documents were not produced along with the plaint and the alleged advance amounts paid under these documents were cash payments, while advance amounts in respect of other agreements in respect of the other projects of the plaintiff are in cheque payments.

(iii)The plaintiff approached this Court while he already filed a suit on the same cause of action before the District Munsic Court, Ambattur.

(iv)The plaintiff filed a false affidavit as if the Engineer who gave the report in Ex.P26 died, while he was very much alive.

(v)The plaintiff made applications after applications in view of the interim order against the land owners not to deal with the suit lands was in operation, so as to

protract the proceedings.

21.The learned counsel for the defendants submitted that though Ex.P9 development agreement did not prescribe any time limit for getting plan approval from CMDA, the plaintiff shall obtain the plan within a reasonable time. According to him, the plaintiff even failed to obtain plan approval as on 15.12.2004, when the third defendant terminated the contract. He further submitted that as per Ex.P40 dated 30.11.2004, the CMDA wrote a letter to the plaintiff directing him to submit the revised plan within seven days. But the plaintiff failed to prove by way of any evidence that he submitted the revised plan within seven days as directed by CMDA. Even as on 15.12.2004, the same was not done. According to him, till the CMDA sent the letter dated 08.02.2005 returning the papers pursuant to the request of the third defendant, the plaintiff failed to get any approval. The learned counsel submitted, relying on Ex.P40, that the plaintiff made an application to CMDA only on 22.06.2004 and not on 23.01.2004 as contended by the learned counsel for the plaintiff relying on Ex.P10, the receipt for payment of scrutiny fee.

22.The learned counsel for the defendants strenuously contended that CMDA never asked for production of NOC from TNHB and there is no iota of evidence to prove that CMDA sought for NOC from TNHB and the same was a ploy by the plaintiff to drag on the matter so as to gain advantage in the project. The learned counsel submitted that in Ex.P11, the CMDA did not ask for production of NOC from TNHB. It was his submission that had it been the demand of CMDA, there should have been a letter in that regard by CMDA directing the plaintiff to produce NOC. As far as the patta documents were concerned, the same was delivered by the defendants on 30.09.2003 itself, which is not disputed by the plaintiff, according to him. The learned counsel for the defendants submitted that it was true that Ex.P9 does not contain any time limit for getting approval from CMDA by the plaintiff. According to him, the plaintiff could not cite this as a reason for not obtaining the planning approval even after 14 months. Further, the learned counsel submitted that though time limit was not fixed, the plaintiff agreed to get planning approval within six months, though does not find place in Ex.P9. However, the understanding between the parties that the plaintiff shall get planning permission within six months was made clear by the third defendant in his letter dated 01.06.2004

Ex.D2. The third defendant stated in Ex.D2 that he requested the plaintiff on 01.05.2004 to commence the work before 31.05.2004, otherwise he would have to act as per the advice of the land owners. It was further stated therein that on 30.05.2004, the plaintiff met the third defendant in person and requested one-and-a half months time to commence the construction work. That is, the plaintiff stated that he would commence the work by 15.07.2004. The third defendant stated that he was extending time up to 15.07.2004 as requested by him and that could be the final date beyond which it could not be extended.

23.The learned counsel for the defendants heavily relied on Ex.D2 and submitted that Ex.D2 shall be read along with Ex.P9. He submitted that though the contract initially does not stipulate time limit, the defendants could by notice served on the plaintiff would fix the time limit and if that time was not adhered to by the plaintiff, the plaintiff could not find fault for terminating the contract. His submission was that though initially as per Ex.P9, time was not essence of contract, later in view of Ex.D2, time become essence of contract. The learned counsel relied on a decision of the Honourable Apex Court in GOMATHINAYAGAM PILLAI AND OTHERS VS. PALANISWAMI NADAR [AIR 1967

SC 868 (1)] in this regard.

24.The learned counsel for the defendants vehemently contended that the plaintiff committed forgery by putting the signature of the third defendant in Ex.D7 and that was the subject matter of criminal proceedings. In any event, the learned counsel submitted that whether the signature as found in Ex.D7 was the signature of the third defendant could be verified by the Court by comparing with the signature of the third defendant in Ex.P9 and in the written statement filed before this Court. In this regard, the learned counsel relied on Section 73 of the Indian Evidence Act and also the judgment of this Court in S.N.VIJAYAKUMAR VS. S.R.VELUSAMY [2005 (2) CTC 445], R.RAMASWAMY VS. SEETHAMMAL [1990 (1) MLJ 428] and S.MURUGESAN VS. V.VIJAY SAI AND OTHERS [2006 (5) CTC 560].

25.Thus, the learned counsel for the defendants submitted that the plaintiff is not only disentitled to the equitable relief of specific performance, but also not entitled to the damages. According to him, the plaintiff quantified the damages at Rs.71,00,000/-, but the same was not proved by letting in evidence in this regard. He submitted elaborately as to why Ex.P26 shall be rejected particularly based on the evidence of P.W.2. Since the plaintiff failed to prove that he suffered damages at Rs.71,00,000/-, the plaintiff is not entitled to the damages, which he sought for. As far as the return of advance is concerned, the learned counsel submitted that the prayer in the plaint is only for return of advance and no interest was sought for. Even in the proof affidavit filed by P.W.1, he did not seek for interest on return of advance. The learned counsel submitted that while the third defendant offered to return the advance with interest in his letter dated 15.12.2004 in Ex.P15, he wanted the return of document that was in possession of the plaintiff. The plaintiff did not come forward to accept the offer and no contract came into existence and therefore, the plaintiff is not entitled to interest. He relied on a judgment of the Honourable Apex Court in MAHABIR PRASAD RUNGTA VS. DURGA DATTA [1961 (1) MLJ 142] in this regard. The learned counsel submitted that the defendants are willing to return the advance amount without interest as sought for in the plaint and he requested this Court to give direction to return the document, that is in possession of the plaintiff. Ultimately, the learned counsel for the defendants sought for dismissal of the suit with exemplary cost for the conduct of the plaintiff.

26.I have considered the submissions made on either side and perused the materials available on record.

27.Since the defendants have specifically raised a plea in the written statements that the present suit is hit by Order II Rule 2 C.P.C., in view of the earlier suit filed by the plaintiff in O.S.No.30 of 2005 before the District Munsif Court, Ambattur, on the same cause of action, the same shall be an issue that has to be answered. But it was omitted to be framed. Hence, this Court frames the following issue as an additional issue in the suit for consideration:

"1. Whether the suit is liable to be dismissed, in view of the earlier suit filed by the plaintiff, on the same cause of action, in view of Order II Rule 2 C.P.C.?"

28.The plaintiff is a builder. The third defendant is the power of attorney holder for the defendants 1 and 2. The development agreement was entered into between the plaintiff and the third defendant, representing the defendants 1 and 2, on 10.09.2003 (Ex.P9). Ex.P9 contemplates construction of a multi-storeyed complex. As per the Ex.P9, the plaintiff shall commence the construction within thirty days from the date of getting plan approval from CMDA and the plaintiff shall complete the construction within 18 months thereafter. The main contention of the plaintiff is that Ex.P9 does not prescribe any time limit for getting plan approval from CMDA. The plaintiff shall commence the construction only after getting plan approval from CMDA. Since the plan approval itself was not obtained, the plaintiff shall not be blamed. In this regard, the learned counsel for the plaintiff relied on clause 3 of the development agreement (Ex.P9) and the same is extracted hereunder:

"3) The Developer shall commence the construction of the building within thirty days of obtaining sanction for the Building Plan and complete the construction within 18 months with a grace period of three months from the date of Plan sanction."

29.It is true that as per clause 3 of the development agreement, the plaintiff shall commence construction only after obtaining plan approval from CMDA. Admittedly, plan approval was not obtained till 15.12.2004 (Ex.P15) when the third defendant terminated the contract. According to the defendants, though time was not fixed expressly in Ex.P9 for obtaining plan approval from CMDA, there was an understanding between the parties that the plaintiff shall obtain plan approval, within six months. In this regard, the learned counsel for the defendants heavily relied on the letter dated 01.06.2004 (Ex.D2) sent by the third defendant to the plaintiff. In fact, in para 18 of the written statement filed by the third defendant, a passage from the said letter dated 01.06.2004 was reproduced and the same is also extracted in this judgment, while narrating the pleadings of the defendants. In the said letter, the defendants made it clear that there was an understanding that the plaintiff shall obtain plan approval within six months from CMDA. Further, it is stated therein that the third defendant met the plaintiff on 01.05.2004 and requested the plaintiff to commence construction before 31.05.2004, as otherwise, he would have to act as per the advice of the land owners, that is, defendants 1 and 2. It is further stated therein that on 30.05.2004, the plaintiff met the third defendant in person and requested 1 = months time up to 15.07.2004 to commence construction work. The third defendant also granted extension of time up to 15.07.2004 as requested by the plaintiff and made it clear that the said date was the final date.

30.It is relevant to note that the plaintiff also admitted the aforesaid version made in Ex.D2 during cross examination. It is also relevant to note that no reply was sent by the plaintiff to the letter dated 01.06.2004 of the third defendant.

31.As rightly contended by the learned counsel for the defendants, though initially as per Ex.P9, no time was expressly fixed, it was agreed upon later by the plaintiff himself that he would commence construction work atleast on 15.07.2004. In this regard, the learned counsel for the defendants relied on the judgment of the Apex Court in GOMATHINAYAGAM PILLAI AND OTHERS VS. PALANISWAMI NADAR [AIR 1967 SC 868 (1)], wherein it has been held as follows:

"It is true that even if time was not originally of the essence, the appellants could by notice served upon the respondent call upon him to take the conveyance within the time fixed and intimate that in default of compliance with the requisition the contract will be treated as cancelled."

The principle laid down by the Apex Court in the said judgment squarely applies to the facts of this case.

32.At this juncture, it is relevant to take note of clause 2 of the development agreement. As per this clause, the plaintiff shall apply to the CMDA for building plan approval at his own cost. Clause 2 of the development agreement is extracted hereunder:

"2) The Developer may at his own cost, apply to the local body or the CMDA for building plan sanction and for temporary service connections of electricity."

33.Further, reading the agreement in its entirety would make it clear that the responsibility is on the plaintiff to obtain plan approval from CMDA. But the plaintiff came with a plea that he applied for plan approval on 23.01.2004. The plaintiff was not able to state as to why he waited up to 23.01.2004, particularly when the patta documents were handed over to him by the defendants as early as on 30.09.2003.

34.But the defendants sought to argue that the plaintiff made the application for plan approval only on 22.06.2004, and this submission is based on the letter dated 30.11.2004 (Ex.P40) received from CMDA. In my view, the defendants are not correct in stating that the plaintiff did not apply for plan approval in January 2004, in view of the receipt dated 23.01.2004 (Ex.P10). The said receipt was given by the CMDA towards the payment of scrutiny fee. In my view, the application for plan approval was made by the plaintiff on 23.01.2004 and the same could have been returned and resubmitted in June 2004. Hence, I am not inclined to agree with the submissions made by the learned counsel for the defendants that the plaintiff made the application for plan approval only in June 2004.

35.However, the plaintiff sought to justify the delay in obtaining plan approval on the ground that NOC from TNHB as sought for by CMDA was not furnished by the defendants in time. The plaintiff averred in para 8 of the plaint that CMDA informed him that NOC from TNHB is required. In this regard, the learned counsel for the plaintiff relied on the letter dated 02.03.2004 (Ex.P11) of the CMDA in support of his case that there was a demand by CMDA for production of NOC from TNHB.

36.I have gone through Ex.P11. In my view, in Ex.P11, the CMDA did not require the plaintiff to produce NOC from TNHB for plan approval. Except this letter in Ex.P11, there is no other communication from CMDA requiring the production of NOC from TNHB. Furthermore, in the letter dated 25.06.2004 (Ex.P12), the TNHB stated that CMDA issued a letter dated 10.01.1992 withdrawing the acquisition. In these circumstances, there is no occasion for CMDA to ask for NOC from TNHB. The letters dated 25.06.2004 (Ex.P12) and 21.10.2004 (Ex.P13) of TNHB do not state that it was a NOC issued for planning permission. Therefore, the contentions of the learned counsel

for the defendants that it was a ploy of the plaintiff to get over the inordinate delay on his part, in obtaining planning permission, merits acceptance.

37.Furthermore, while CMDA issued the letter dated 30.11.2004 (Ex.P40) directing the plaintiff to submit revised plan within seven days, the plaintiff is not able to establish that he complied with the direction issued by the CMDA. When the defendants categorically came with a plea that the plaintiff failed to comply with the direction issued by the CMDA in the letter dated 30.11.2004 (Ex.P40) the plaintiff was not able to produce any piece of evidence to prove that he submitted revised plan / drawings and also with other requirements as contemplated in the said letter dated 30.11.2004 (Ex.P40). This is stated by the third defendant in his letter dated 15.12.2004 (Ex.P15) for terminating the contract.

38.Thus, after issuing the letter dated 01.06.2004 (Ex.D2), the defendants waited for the plaintiff to commence the work. According to the defendants, as per Ex.P15, he met the plaintiff on 21.11.2004 and the plaintiff told him that he would get approved plan within a week. But admittedly no plan approval was obtained. On the other hand, CMDA sought revised plan in the letter dated 30.11.2004 (Ex.P40). In these circumstances, nothing took place for about 14 months. Hence, the defendants sought to terminate the development agreement. Therefore, I do not find any fault with the defendants in terminating the contract particularly when the plaintiff was not able to obtain plan approval even after 14 months.

39.Further, it was the case of the plaintiff that he was always ready and willing to perform his part of contract, which has no sense without getting plan approval.

40.The learned counsel for the defendants submitted that the development agreement could not be specifically enforceable. He relied on the judgment of the Honourable Apex Court in VINOD SETH VS. DEVINDER BAJAJ AND ANOTHER [2010 (4) CTC 546]. The relevant passage in para 8.1 of the said judgment is extracted hereunder:

"8.1.....What will happen if DDA refuses to convert the property from leasehold to freehold? What will happen if the construction plan is not sanctioned in the manner said to have been agreed between the parties and the respondents are not agreeable to any other plans of construction? Who will decide the specifications and who will ensure the quality of the construction by the appellant? The alleged agreement being vague and incomplete, requires consensus, decisions or further agreement on several minute details. It would also involve performance of a continuous duty by the appellant which the court will not be able to supervise. The performance of the obligations of a developer/builder under a collaboration agreement cannot be compared to the statutory liability of a landlord to reconstruct and deliver a shop premises to a tenant under a rent control legislation, which is enforceable under the statutory provisions of the special law. A collaboration agreement of the nature alleged by the appellant is not one that could be specifically enforced....."

41.The learned counsel for the defendants relied on para 14 of the judgment of a Division Bench of this Court in K.ALAGAR VS. M.I.KUMARAN AND OTHERS [2009 (3) TLNJ 291 (CIVIL)] in support of his submission that development agreement cannot be specifically enforced and the same is extracted hereunder:

"14.Admittedly, the agreement, which formed the basis for all these suits is a profit making commercial venture of constructing and selling residential complexes to the public. The question as to whether such a commercial venture reduced in the form of development agreement can be specifically enforced came up for consideration in the cases of DEWAN CHAND SABBARWAL VS. UNION OF INDIA, (AIR (38) 1951 PUNJAB 426), UNION CONSTRUCTION COMPANY VS. CHIEF ENGINEER, EASTERN COMMAND (AIR 1960 ALLAHABAD 72) and in an unreported judgment of the Bombay High Court in the case of PANCHAMI MOOLOOR VS. NAMEDO PATIL AND OTHERS in Suit No.2607 of 1983 and was held that if an agreement under which both the parties have agreed to collaborate for the development of land which is purely commercial in nature, any breach of the agreement would not ordinarily be entitled to a specific performance of agreement."

42.In my view, in view of the aforesaid judgments, the development agreement could not be specifically enforced. In any event, I am of the view that the development agreement dated 10.09.2003 (Ex.P9) cannot be specifically enforced for the reason that it lacks the minuet details relating to construction of multi-storeyed complex, except stating that the plaintiff shall construct a multi-storeyed complex. That is, the minuet details of the same are not provided. In my view, the mere statement of multi-storeyed complex is not suffice. It is a very general term. The number of floors and the total area was not agreed to in the agreement. The only agreement is the sharing after construction. Thus, there is total lack of details about the nature of construction and various intrinsic details relating to construction. The judgment of the Apex Court in 2010 (4) CTC 546 and the Division Bench judgment of this Court in 2009 (3) TLNJ 291 (CIVIL) fortify the aforesaid conclusion.

43.At this juncture, it is relevant to extract Section 14(3)(c)(i) of the Specific Relief Act, which is as follows:

"14.(3) Notwithstanding anything contained in clause (a) or clause) or clause (d) of sub-section (1), the Court may enforce specific performance in the following cases.-

(a).....

.....

(c) Where the suit is for the enforcement of a contract for the construction of any building or the execution of any other work on land: Provided that the following conditions are fulfilled, namely:-

(i) the building or other work is described in the contract in terms sufficiently precise to enable the Court to determine the exact nature of the building or work;"

In my view, the contract sufficiently does not prescribe the details to enable the Court to determine the exact nature of the building or work. Hence, the contract cannot be specifically enforced.

44.Furthermore, the plaintiff is not entitled to the equitable relief of specific performance, since the plaintiff has not come with clean hands as contended by the learned counsel for the defendants.

45.Serious allegation is made by the defendants that the plaintiff forged the signature of the third defendant in Ex.D7, a reconstitution deed submitted by the plaintiff to the CMDA. I have perused Ex.D7. Ex.D7 is alleged to have been executed by the defendants 1 and 2. But it contains the signature of the third defendant. The submission of the same to the CMDA by the plaintiff is not in dispute.

46.The learned counsel for the defendants submitted that this Court could compare the signature of the third defendant that is found in Ex.D7 along with the admitted signature of the third defendant in Ex.P9 as per Section 73 of the Indian Evidence Act. In support of his submission, the learned counsel relied on the following judgments of this Court:

(i)S.N.VIJAYAKUMAR VS. S.R.VELUSAMY [2005 (2) CTC 445] (PARA 4)

(ii)R.RAMASWAMY VS. SEETHAMMAL [1990 (1) MLJ 428] (PARA 3)

(iii)S.MURUGESAN VS. V.VIJAY SAI AND OTHERS [2006 (5) CTC 560] (PARA 20)

47.I am in entire agreement with the submissions made by the learned counsel for the defendants. This Court could very well compare the signature of the third defendant. I have perused the signature of the third defendant that is found in Ex.D7, Ex.P9 and the written statement filed by the third defendant. There is no doubt that the signature in Ex.D7 is not that of the third defendant. In fact, even the signature of the third defendant in Ex.D7 itself does not tally one with other. The plaintiff is not able to explain about this discrepancy. It is a different matter that the plaintiff could or could not face criminal prosecution. But for his failure to explain this discrepancy, the plaintiff is not entitled to the equitable relief. The defendants made serious allegations through various letters and also in the written statement that forgery was committed by the plaintiff. It is surprising that the plaintiff nowhere deals with the same in the plaint. In these circumstances, I am of the view that the plaintiff is not entitled to the relief of specific performance.

48.The plaintiff approached the District Munsif Court, Ambattur on the same cause of action by filing O.S.No.30 of 2005. In fact, the prayer of permanent injunction as sought in O.S.No.30 of 2005 is almost same with the permanent injunction that is sought for in the present suit. The District Munsif, Ambattur, ordered notice in I.A.No.144 of 2005 in O.S.No.30 of 2005 on 08.02.2005 in the interlocutory application seeking temporary injunction and the matter was directed to be posted on

23.06.2005. In those circumstances, the plaintiff approached this Court in May 2005 during vacation and obtained interim order on 18.05.2005. The said conduct of Bench hunting by the plaintiff cannot be appreciated. The plaintiff approached this Court when the suit was still pending and he did not withdraw the suit and did not seek permission to file a fresh suit. When he was not successful in getting the interim relief, he cannot choose to file the present suit on the same cause of action before this Court. Even if he had withdrawn the suit without liberty, the same is not permissible under Order XXIII CPC. This is yet another circumstance that the plaintiff approached this Court with unclean hands dis-entitling him to the equitable relief.

49.Yet the following another circumstance make the plaintiff not entitled to equitable relief. The plaintiff has produced Exs.P22 to P25 as agreements said to have been entered into with the proposed buyers of the flats that could be put up on the suit property. Those agreements bear the date prior to the institution of the suit. But those agreements were not enclosed along with the plaint. More importantly, the first page of stamp paper (Ex.P22) bears the date as 29.04.2004, but on the second page of Ex.P22 bears the date as 29.04.2007. It is nothing but a fabricated document prepared for the purpose of this case. While the advance said to have been received as per Exs.P22 to P25 are in cash, the advance relating to other agreements are in cheques. Thus, the plaintiff has not come with clean hands.

50.Furthermore, the conduct of the plaintiff in filing one application after another and protracting the matter indefinitely, particularly after obtaining interim order also is one of the circumstances, for which, the plaintiff is not entitled to the equitable relief. I do not want to repeat as to how he protracted the proceedings, as the same is dealt in detail at paras 9 to 14 of this judgment.

51.Moreover, the plaintiff also made a false averment in the affidavit by stating that P.W.2 was no more and he sought permission to examine some other engineer. The defendants filed a counter affidavit stating that P.W.2 is very much alive and he is also available in the telephone number that is given in Ex.P26. Thereafter, the plaintiff tendered unconditional apology. Of course, this Court did not want to pursue the matter and closed the application of the defendants seeking prosecution of the plaintiff for committing perjury. But the plaintiff filed more than one affidavit stating that P.W.2 passed away while he is alive. Since the plaintiff made such a false averment in the affidavits filed before this Court, the plaintiff is not entitled to the equitable relief.

52.The learned counsel for the plaintiff relied on 18 judgments in support of his submissions and there is no quarrel over the propositions held in those judgments on the facts of those cases. However, none of those judgments are applicable to the present case on hand, as none of those judgments arose out of specific performance of development agreement. Those judgments are dealt one by one hereunder:

(i)THAWARDAS PHERUMAL AND ANOTHER VS. UNION OF INDIA [AIR 1955 SC 468(1) This judgment deals with a Government contract and it is not relating to development agreement. The matter is not relating to specific performance of contract. Further, the case arose out of Arbitration Act, 1940. Hence, this judgment is not applicable to the facts of this case.

(ii)GOVIND PRASAD CHATURVEDI VS. HARI DUTT SHASTRI AND ANOTHER [1977 (2) SCC 539] In this case, the plaintiff appellant was the tenant in the suit property, which the respondent purchased. Having failed to evict the appellant, the respondent agreed to sell the property to the appellant, for which purpose an agreement was entered into. The appellant filed suit for specific performance. The Trial Court decreed the suit. The High Court reversed the judgment of the Trial Court, holding that the time is the essence of the contract and in the facts of the case, the suit must fail. The Apex Court restored the judgment of the Trial Court and held that the respondent / defendant did not plead in the written statement that the time is the essence of contract and that therefore, no issue was framed in this regard. Thus, this judgment is of no use to the plaintiff. The aforesaid facts make it clear that the said case did not arise out of development agreement and the case was decided on its facts.

(iii)GOBIND RAM VS. GIAN CHAND [2000 (7) SCC 548] In this case, the appellant agreed to sell the suit property at Delhi for Rs.16,000/- (Rupees Sixteen thousand only). He wriggled out of contract. The suit filed by the respondent for specific performance was decreed by the Trial Court. While confirming the judgment of the Trial Court, the High Court directed the respondent to pay a further sum of Rupees One Lakh to the appellant. On further appeal, the Apex Court confirmed the order of the High Court, but directed to pay a further sum of Rupees Three Lakhs. This case is also not relating to development agreement. Thus, this case is of no use to the plaintiff.

(iv)SWARNAM RAMACHANDRAN AND ANOTHER VS. ARAVACODE CHAKUNGAL JAYAPALAN [2004 (8) SCC 689].

In the judgment itself, it was noted that the judgment was held on facts. It has been held that whether time is the essence of the contract is a question of fact and the real test is to discern the intention of the parties and also it depends upon the facts of each case. Thus, the said judgment could not be of any use to the plaintiff. Further, this case also does not arise out of development agreement and was relating to sale of immovable property.

(v)SURYGANDHI VS. LOURDUSWAMY [AIR 2004 MADRAS 8] This judgment is of no use to the plaintiff, since in this case, the purchaser kept silent for nine years and thereafter, asked the vendor to execute the sale deed. Based on such a conduct of the purchaser, the relief as sought for, was declined. Therefore, the said judgment is not applicable to the facts of the present case. Further, this case is also not relating to development agreement and arises out of sale of immovable property.

(vi)PANCHANAN DHARA AND OTHERS VS. MONMATHA NATH MAITY [2006 (5) SCC 340] In this case, it has been held that the vendor was at fault, as he failed to comply with the applicable statutory requirements. Further, it was held that in such a case, the vendor cannot be permitted to take advantage of his own wrong, so as to raise a plea of limitation. In the present case on hand, there is no statutory requirement that has to be fulfilled by the defendants. Further, the case

considered Article 53 of the Limitation Act and Sections 50 and 55 of the Contract Act. More importantly, the case is relating to agreement to sell immovable property and it is not relating to development agreement.

(vii)Mc DERMOTT INTERNATIONAL INC. VS. BURN STANDARD CO. LTD. AND OTHERS [2006 (11) SCC 181] The case arises out of Arbitration and Conciliation Act, 1996. The case does not arise out of suit for specific performance of development agreement. It is thus of no use. The learned counsel for the plaintiff relied on para 100 of the judgment, which is as follows:

"100.While claiming damages, the amount therefor was not required to be quantified. Quantification of a claim is merely a matter of proof."

There is no quarrel over the proposition laid down in para 100 of the judgment.

(viii)LINK INDIA HOMES PVT. LTD. AND OTHERS VS. JOE JOSEPH AND OTHERS [CDJ 2006 KER HC 729] The plaintiff in this case paid the entire sale consideration of Rs.19,85,000/- for the purchase of flat. When the defendants were not interested in handing over possession of the premises, even after receiving full consideration, the plaintiff filed the suit for specific performance of contract of sale as well as mandatory injunction for handing over possession of Flat No.14D. Suit was decreed. The High Court confirmed the decree of the Trial Court. I am unable to understand as to how this judgment is of any use to the plaintiff, as the case does not arise out of any development agreement.

(ix)BANGALORE DEVELOPMENT AUTHORITY VS. SYNDICATE BANK [2007 (6) SCC 711] This judgment arose under the Consumer Protection Act and therefore, the same could not be applied to the present case on hand.

(x)CHHEDA HOUSING DEVELOPMENT VS. BIBIJAN SHAIKH FARID AND OTHERS [CDJ 2007 BHC 024] This case arose out of an interim order. The Trial Court found that there was a prima facie case for granting interim order. The High Court confirmed the same. Thus, this judgment could not be relied on by the plaintiff.

(xi)BALASAHEB DAYANDEO NAIK VS. APPASAHEB DATTARAYA PAWAR [2008 (1) CTC 530] This judgment was decided on the facts of the case. The Apex Court found that the defendant did not bother to prove his claim on oath before the Trial Court that it was the plaintiffs, who avoided performing their part of contract. It was held that even when time is the essence of the contract, such a stipulation will have to be read along with other provisions of the contract and mere fixation of time does not make the stipulation as to time as the essence of contract. There cannot be a quarrel over the proposition that was laid down based on the facts of the case. In these circumstances, the Trial Court decreed the suit, but the High Court reversed the same. However, the Apex Court restored the judgment of the Trial Court in the aforesaid circumstances. The said case is not relating to development agreement. Therefore, this judgment is not applicable to the present case on hand.

(xii)FAQIR CHAND GULATI VS. UPPAL AGENCIES PRIVATE LIMITED AND ANOTHER [2008 (10) SCC 345] This judgment also arose out of Consumer Protection Act and therefore, the same is of no use to the plaintiff.

(xiii)EDEN REALTY VENTURES PVT. LTD. VS. M.A. CONSTRUCTION AND TRADING CO. PVT. LTD. AND ANOTHER [AIR 2008 (NOC) 2608 (CAL)] The entire judgment is not produced. I am not able to understand the facts from the notes of case produced.

(xiv)MADHYA PRADESH HOUSING BOARD VS. PROGRESSIVE WRITERS AND PUBLISHERS [2009 (5) SCC 678] This judgment arose out of Arbitration Act, 1940. Furthermore, the case was decided on its own facts. Thus, this judgment could not be of any use to the plaintiff.

(xv)KONA KANTHAMMA VS. GUNTAMUKKALA SRINIVASA RAO [AIR 2009 (NOC) 1677 (A.P.)] This was a case relating to the allegation of fraud, wherein the Andhra Pradesh High Court held that the same requires elaborate pleadings and evidence. Thus, the same is not applicable to the present case.

(xvi)LAXMAN TATYABA KANKATE AND ANOTHER VS. TARAMATI HARISHCHANDRA DHATRAK [2010 (7) SCC 717] In this case, there was an agreement to sell the land. The suit filed by the plaintiff was dismissed as far as specific performance was concerned. The first Appellate Court reversed the judgment of the Trial Court and the judgment of the first Appellate Court was confirmed by the High Court. The Apex Court confirmed the judgment of the High Court. Thus, this judgment is of no use to the plaintiff, since it does not arise out of suit for specific performance of development agreement and the case was decided on its facts.

(xvii)MAN KAUR VS. HARTAR SINGH SANGHA [2010 (10) SCC 512] This judgment was decided based on its own facts. In the said case, there were several power agents at several stages. In those circumstances, the Apex Court held that it is better that the Principal should have come to the box and examination of one of the power agents is not sufficient. In the instant case, only one power agent and he has been in the picture from the beginning to end. Thus, the reliance placed on, in this judgment, has no substance.

(xviii)CITADEL FINE PHARMACEUTICALS VS. RAMANIYAM REAL ESTATES PRIVATE LIMITED AND ANOTHER [2011 (9) SCC 147] In this judgment, the Apex Court held that time is the essence of the contract now-a-days, taking into account the escalation of prices of land in metropolis. Thus, this judgment also is of no use to the plaintiff, since the judgment does not deal with the suit arising out of specific performance of development agreement.

53.For all the aforesaid reasons, I am of the view that the plaintiff is not entitled to the relief of specific performance of the contract. Issue nos.1 and 4 are answered accordingly.

54.The alternative prayer of the plaintiff is for damages. He quantified the damages at Rs.71,00,000/-. In the plaint, he gave the calculation for Rs.71,00,000/-. The plaintiff sought this alternative relief based on Ex.P26. That is the only piece of evidence in support of his claim for

damages. Ex.P26 was issued by P.W.2. P.W.2 is the Superintending Engineer of Central Public Works Department. If the evidence of P.W.2 is closely read, the following facts emerge from the admission of P.W.2 during cross examination.

"I)His report holds good only for a Government contract and not for a commercial transaction like the suit transaction since he did not have any other data.

(ii)He had circulated the cost of construction according to CPWD norms.

(iii)Ex.P31 which has been produced by the plaintiff is an agreement entered into by him for the same period as of the period taken into account by PW2 for preparing Ex.P26 in calculating cost of construction. But the cost of construction according to Ex.P31 is more than double than the cost of construction worked out by PW2 according to CPWD norms. The profit arrived at by the PW2 may hold good only if the cost of construction is as per CPWD norms. The profit cannot be as arrived at in Ex.P26 if the cost of construction is more than double as per the Plaintiff's own document Ex.P31.

(iv)PW2 did not see any plan that the Plaintiff proposed to construct.

(v)PW2 did not verify whether four storied building, as stated in Ex.P26, was possible according to development control rules.

(vi)The total area to be constructed as stated in Ex.P26, i.e. 21,562 sq.ft was furnished to PW2 by the Plaintiff and PW2 did not verify whether this was possible under the development control rules.

(vii)PW2 does not know fully the development control rules of the CMDA.

(viii)When PW2 inspected the project on 15.04.2007 the project did not start at the suit property.

(ix)PW2 did not verify with the Plaintiff about when he applied for the planning permission or what happened to it."

In view of the aforesaid evidence of P.W.2, Ex.P26 could not be relied upon to award damages as claimed by the plaintiff. If Ex.P26 is taken out, there is absolutely no evidence in support of the claim for damages. Hence, I have no hesitation to reject the claim of the plaintiff for damages. However, I am of the view that the plaintiff is entitled to the refund of advance amount of Rs.20,00,000/-. The plaintiff neither in the body of the plaint nor in the prayer sought for interest on the refund of advance amount. The plaintiff also did not seek interest on the advance amount in the chief examination. But the learned counsel for the plaintiff sought for a reasonable interest as may be fixed by this Court. In my view, the plaintiff, having failed to pray for interest on the refund of advance amount, is not entitled to seek for interest.

55.While I am inclined to allow the prayer of the plaintiff as made in the plaint relating to return of advance, I am not inclined to order interest that was sought for during the argument of the learned counsel for the plaintiff. Thus, while the claim of the plaintiff as to the damages is negated, the claim for refund of advance is ordered. Issue Nos.2 and 6 are answered accordingly.

ISSUE NO.3

56.Admittedly, the suit property was not subjected to land acquisition proceedings of the TNHB at the relevant point of time. That is, there was no acquisition proceedings when Ex.P9 development agreement was signed. Issue No.3 is answered accordingly.

ISSUE NO.5

57.Clause 18 of the development agreement is extracted hereunder:

"18) The Owners and Developer agree and covenant with each other that they will be entitled to specifically enforce this agreement on a court of law."

This issue does not require any consideration for deciding the issues involved in the suit. Accordingly, issue No.5 is answered.

ISSUE NO.7 AND ADDITIONAL ISSUE NO.1

58.The plaintiff had the cause of action to file the suit. But for the same cause of action, he preferred a suit in O.S.No.30 of 2005 before the District Munsif Court, Ambattur. It is not in dispute. Exs.D3 and D4 are the plaint in O.S.No.30 of 2005 and affidavit and petition in I.A.No.144 of 2005 in O.S.No.30 of 2005 respectively filed before the District Munsif Court, Ambattur. Having filed a suit for the same cause of action before the District Munsif Court, Ambattur, the plaintiff is precluded from filing this suit on the same cause of action, in view of Order II Rule 2 C.P.C. In my view, the present suit is hit by the provisions of Order II Rule 2 C.P.C. and thus, the suit is liable to be dismissed on this score also. These issues are answered accordingly.

ISSUE NO.8

59.While rejecting the claim of the plaintiff for specific performance and the claim for damages, the prayer as to refund of advance amount is ordered with a default clause, as answered in issue Nos.II and VI. In view of my findings as to the conduct of the plaintiff, particularly for Bench hunting and for filing false affidavits, the plaintiff shall pay exemplary cost of Rs.1,00,000/- (Rupees One Lakh Only) to the defendants.

60.In the result, the suit is decreed in part so far as the claim for refund of advance amount is concerned and the defendants 1 and 2 are directed to refund the advance amount, within a period of three months from today, failing which, the defendants 1 and 2 shall pay interest at the rate of 9% per annum from the date of this order till actual payment is made. In all other aspects, the suit is

dismissed with a direction to the plaintiff to pay a cost of Rs.1,00,000/- (Rupees One Lakh Only) to the defendants.

TK

List of witnesses on the Plaintiff's side:-

P.W.1 - P.Ramana Reddy P.W.2 - P.Raghavendra Rao List of Exhibits marked on the Plaintiff's side:-

Exhibits Description of documents Date P-1 Construction agreement 18.04.1994 P-2 Construction agreement 06.03.1995 P-3 Construction agreement 16.09.1999 P-4 Construction agreement 12.07.2000 P-5 Construction agreement 17.09.2001 P-6 Construction agreement 26.08.2002 P-7 Construction agreement 07.03.2003 P-8 Photographs with C.D. (Negative) P-9 Development agreement 10.09.2003 P-10 Receipt 23.01.2004 P-11 Letter 02.03.2004 P-12 Letter from TNHB 25.06.2004 P-13 Letter from TNHB 21.10.2004 P-14 Acknowledgment of receipt 21.11.2004 P-15 Receipt 15.12.2004 P-16 Letter 25.12.2004 P-17 Letter 25.12.2004 P-18 Reply 27.12.2004 P-19 Letter 02.01.2005 P-20 Legal Notice 05.01.2005 P-21 Notice 01.03.2005 P-22 Construction agreement 29.04.2004 P-23 Construction agreement 30.04.2004 P-24 Construction agreement 06.05.2004 P-25 Construction agreement 06.05.2004 P-26 Valuation report 16.04.2007 P-27 Construction agreement 16.09.2004 P-28 Construction agreement 22.11.2004 P-29 Construction agreement 24.12.2004 P-30 Construction agreement 27.02.2005 P-31 Construction agreement 04.11.2005 P-32 Construction agreement 17.02.2006 P-33 Construction agreement 12.07.2006 P-34 Construction agreement 08.10.2007 P-35 I.T. Returns for the year 2005-2006 P-36 I.T. Returns for the year 2006-2007 P-37 I.T. Returns for the year 2007-2008 P-38 Balance sheet for the year ending on 31.03.2004 P-39 Bank statement of accounts for the period from 01.12.2004 to 10.03.2007 P-40 Letter 30.11.2004 P-41 Certified copy of complaint 28.03.2005 P-42 Certified copy of the FIR No.359 of 2005 20.05.2005 P-43 Letter 02.01.2007 P-44 Reasoning sheet from Forensic Sciences Dept. Chennai 4. 02.01.2007 P-45 Certified copy of the final report 14.02.2007 P-46 Development agreement 10.09.2003 List of witnesses on the Defendants side:-

D.W.1 - R.Jagadeesan List of Exhibits marked on the Defendants side:-

Exhibits Description of documents Date D-1 Copy of order in CrI.O.P.No.423/2007 11.01.2008 D-2 Xerox copy of the letter 01.06.2004 D-3 Copy of the plaint in O.S.No.30 of 2005 D-4 Copy of the affidavit along with petition in I.A.No.144/2005 in O.S.No.30/2005 D-5 General Power of Attorney in favour of D3 17.03.2003 D-6 General Power of Attorney in favour of D4 17.03.2003 D-7 Certified copies of forgery

of documents prepared by P.Ramana Reddy D-8 Police complaint 06.01.2005 D-9 Letter 09.01.2005 D-10 Letter 18.01.2005 D-11 Counter filed by the 3rd defendant D-12 Letter 14.02.2005 D-13 Technical report of Forensic Science of forgery documents 02.01.2007 TK