

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2015

DATE OF DECISION : 26.03.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI

AND

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1632 of 2014
and
M.P.Nos.1 and 2 of 2014

1. The Regional Deputy Director,
Director of Town and Country Planning,
Chengalpet Zone,
13, Varadarajanar Street,
Vedachalam Nagar,
Chengalpet.
2. The Director of Town and Country Planning,
No.807, Anna Salai,
Chennai-600 002.
3. The Government of Tamil Nadu,
rep by its Secretary to Government,
Housing, Rural and Urban Development Dept.,
Chennai-600 009.

... Appellants/ Respondents 2 to 4
in WP.6725/11 on the file of this court

Vs.

1. L&T Arun Excello Realty Pvt. Ltd.,
rep by its Managing Director,
Mr.P.Suresh,
Bhattad Towers,
18, West Cott Road,
Royapettah,
Chennai-600 028.

2. The Commissioner,
Maraimalai Nagar Municipality,
Maraimalai Nagar,
Chengalpet Taluk.

... Respondents/Petitioner and
1st Respondent in WP.6725/11

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 15.4.2013 made in W.P.No.6725 of 2011 filed under Article 226 of the Constitution of India, praying for a Writ of certiorari to call for the records of the second respondent relating to letter Na.Ka.No.2552/ 2007/Se.Ma.3 dated 9.2.2011 and letter Na.Ka.No.2552/2007/Se. Ma.3 dated 15.2.2011 and quash the same.

For Appellants : Mr.AL.Somayaji, Advocate General
assisted by
Mr.P.S.Sivashanmugasundaram, Spl.G.P.

For Respondents : Mr.P.S.Raman, SC
for Dr.P.Vasudevan for Caveator/R-1

JUDGMENT
SATISH K. AGNIHOTRI, J.

The instant intra-court appeal arises from the order dated 15.4.2013 passed in W.P.No.6725 of 2011.

2. The genesis of the case to filing of the instant writ petition is that the first respondent / writ petitioner (for short "the petitioner") is engaged in the business of property development and connected activities. The petitioner made an application dated 10.8.2006 to the first appellant for grant of approval for construction of residential apartment consisting of several blocks in S.No.25/2D (part) etc. situated in Potheri Village, Chengalpattu Taluk, Kanchipuram District.

3. The Regional Deputy Director - the first appellant sent a recommendation to the second appellant for approval. The second appellant, i.e., the Director of Town and Country Planning, vide communication dated 26.3.2007, granted approval for the construction of Block A - Stilt (Vehicle parking place) plus Ground Floor plus three floors, total 60 blocks and Block B - Stilt (vehicle parking

place) plus Ground Floor plus three floors, total eight blocks, totalling 1,568 apartments in S.No.25/2 etc. in Vallancheri Village, Chengalpat Taluk, Kanchipuram District, with certain conditions for an area of 1,83,720 sq. mtrs. Thereafter, vide order dated 28.3.2007, the Deputy Director, Town and Country Planning, conveyed the approval dated 26.3.2007 to the Executive Officer, Maraimalai Nagar, Municipality, advising the local body to confirm compliance to approved building drawing and compliance of other conditions as stated in the said communication, without any infrastructure and amenity charges.

4. Subsequently, vide G.O.Ms.No.191, Housing and Urban Development Department dated 1.6.2007, the Government decided to impose infrastructure and basic amenity charges (for short "the charges") at different rates on different types of buildings. It was reiterated by G.O.Ms.No.4, Housing and Urban Development Department dated 4.1.2008 granting three instalments for payment of the charges. The Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, (for short "the Rules, 2008") were framed incorporating the rates as under and also the payment in instalments :

Sl. No.	Type of building	Minimum rates per square metre Rs.	Maximum rates per square metre Rs.
1	Multistoreyed buildings accommodating residential or commercial or Information Technology or industrial or institutional or combination of such activities	500	1,000
2	Commercial building, Information Technology building, Group development and Special building (not covered under Sl.No.1)	250	500
3	Institutional building (not covered under Sl. No.1)	100	200
4	Industrial building (not covered under Sl. No.1)	150	300

5. Subsequently, by G.O.Ms.No.161, Housing and Urban Development Department dated 09.09.2009, on consideration of the representation made by the Confederation of Real Estate Developers' Associations of India, the charges for different categories in different areas were reduced as under :

Sl. No.	Type of Building	Chennai Metropolitan Development Authority	Commissioner of Town and Country Planning			
		Chennai Metropolitan Area	Chengalpattu Region	Coimbatore, Tirupur and Kurichi	Other areas	
1.	Multi Storeyed Building or commercial Information Technology or Industrial or Institutional or Combination of such activities.	500	500	375	250	
2	Multi Stroeyed residential	250	250	250	250	
3	Other than Multi Storeyed Building Commercial building, Information Technology building, Group Development and Special Building.	250	250	190	125	
4	Institutional building (not covered under S.No.1)	100	100	75	50	
5	Industrial building (not covered under S.No.1)	150	150	112.50	75	

6. During the currency of the planning permission, on 24.10.2007, the petitioner submitted a request to the first appellant for Multi Storeyed Building (for short the "MSB") area declaration for a residential project to be developed in Vallancheri and Potheri Villages, stating therein that the planning permission had already been granted for Ground plus 3 floors in the month of March, 2007. The petitioner subsequently applied for construction of an additional area of 1,17,940 sq.mtrs. and submitted a revised plan for 3,01,660 sq.mtrs, comprising 1,903 units in a complex of 17 blocks of a basement plus 18 floors. By communication dated 18.11.2008, the proposal was approved with certain conditions. Thereafter, a demand for remitting a total sum of Rs.30,16,50,000/-, being the charges at the rate of Rs.1,000/- per sq.mtr., was raised by a communication dated 01.12.2008. 50% of the said amount was made payable immediately as first instalment.

7. According to the petitioner, a representation was made by it as well as by other builders for excluding the charges in respect of the area, for which approval was granted prior to the introduction of the charges, i.e., 1.6.2007. It appears that the said representation was accepted by a communication dated 22.01.2010 of the first appellant, demanding a sum of Rs.3,10,88,750/- on the basis of Rs.250/- per sq.mtr., for the increased extent of 1,11,505 sq.mtrs. and at the rate of Rs.500/- per sq.mt. for the club house building area of 6,275 sq.mtrs. The said amount was accordingly deposited. Thereafter, a new demand was raised vide communication dated 9.2.2011 as under :

"1.Previous approval vide DTCP proceeding
53522/2007/BA2 dated 26.3.2007 - FSI Area 183720 sq.mt.

2.MSB Building approval vide DTCP proceeding
19432/08/CP dated 18.11.2008 - FSI Area - 3,01,650
sq.mt.

3.To exclude the previous approval area vide DTCP
proceeding 3869/09/BA2 dated 26.3.2009.

Hence balance area for I & A calculation
 $(301650 \text{ sq.mt} - 183720 \text{ sq.mt}) = 117930 \text{ sq.mt}$

As per G.O.Ms.No.22, Housing Urban Development
Department dated 25.1.2008, the basic infrastructure and
amenities charges payable for the proposed total
building area 117930 sq.mt is Rs.1000 per sq.mt.

Hence, it is requested the total amount of basic
infrastructure and amenities charges Rs.11,79,30,000/-

less amount already paid to this office Rs.3,10,88,750/- balance Rs.8,68,41,250/- to be remitted at the Government account and the deposit challan to be submitted to this office immediately."

8. The said demand was made on the premise that the rate applicable was Rs.1,000/- per sq.mtr. on the additional increased area of 1,17,930 sq.mtrs. It was originally calculated on the basis of Rs.250/- per sq.mtr. Earlier approval granted for the area of 1,83,720 sq.mtr. was excluded as per the decision taken on 26.03.2009. Being aggrieved, the petitioner preferred the instant writ petition questioning the legality and propriety of the subsequent communication dated 9.2.2011 levying the charges at the rate of Rs.1,000/- per sq.mtr. and the letter dated 15.2.2011, reiterating the same demand.

9. During the pendency of the writ petition, the petitioner, vide application dated 23.08.2011, requested for approval of the revised proposal for an area of 1,68,644 sq.mtrs. The learned Single Judge, after having examined the facts in detail and also, considering the contentions of the parties, held as under :

"9. The indisputable facts which have been set out above would amply establish that though originally the planning permission was given to an extent of 1,83,720 sq.mt., now the petitioner is proposing to put up construction only to an extent of 1,68,644 sq.mt. As stated already, infrastructure and amenities charges came to be imposed for the first time by virtue of G.O.Ms.No.191 Housing and Urban Development Department dated 1.6.2007. The Government by proceedings dated 26.3.2009, issued instructions to exclude the area sanctioned prior to 31.5.2007, which will only mean that since the petitioner has obtained planning permission on 29.3.2007 to an extent of 1,83,720 sq.mt., it need not pay the infrastructure and amenities charges. It is also made clear, as stated already, that the petitioner has now submitted a revised plan for putting up construction only to an extent of 1,68,644 sq.mt. Therefore, there cannot be any objection on the side of the respondents to permit the petitioner to put up such construction and sanction the revised plan submitted by the petitioner, if it is otherwise in order. Further, the respondents cannot claim any infrastructure and amenities charges for the reasons set out earlier.

10. Though the present writ petition has been laid challenging the proceedings of the second respondent dated 9.2.2011 and 15.2.2011, demanding a sum of Rs.8,68,41,250/- for the revised plan submitted by the petitioner, since the petitioner is trying to put up construction only for an extent of 1,68,644 sq.mt., I am of the considered view that the writ petition could be disposed of in the following manner:-

(i) The impugned proceedings of the second respondent directing the petitioner to pay the infrastructure and amenities charges are liable to be set aside and accordingly, set aside.

(ii) Respondents 2 and 3 are directed to consider the revised plan submitted by the petitioner for putting up the construction to an extent of 1,68,644 sq.mt., and the said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order.

(iii) The respondents shall not claim any infrastructure and amenities charges."

10. Feeling aggrieved, the State has come up with the instant writ appeal on the ground that the deduction from payment of charges on 1,83,720 sq.mtrs. area, for which approval was granted in March 2007, was not proper as the project was abandoned by the petitioner and the petitioner has made a fresh application. Thus, the petitioner was liable to pay the charges on the total amount. It was further contended that after introduction of the charges, the petitioner is not entitled to any deduction in respect of any area, for which planning permission was granted earlier. The petitioner is under an obligation to pay the charges as per G.O.Ms.No.84, Housing and Urban Development Department dated 8.4.2008 and not under the subsequent G.O.Ms.No.161, Housing and Urban Development Department dated 9.9.2009. The petitioner is liable to pay a sum of Rs.30,16,50,000/- towards the charges as calculated and demanded by the authorities.

11. During the pendency of the writ petition, the Director of Town and Country Planning, the second appellant, has filed additional counter affidavit in October, 2011 stating that the petitioner had requested for approval for special buildings consisting of stilt plus

4 floors residential buildings to an extent of 33.92 acres. Thereafter, the petitioner has withdrawn the MSB area declaration proposal dated 8.1.2007. The petitioner did not start the construction on the basis of the approval granted by the Director on 26.3.2007 and conveyed by the Regional Deputy Director on 28.3.2007. Thus, the said planning permission be treated as cancelled.

12. In reply, the petitioner filed an additional counter affidavit, objecting to raising additional ground and for the purpose of bona fides of the letter dated 26.3.2009, it was stated as under :

"For the purpose of deciding to exclude the floor area for which previous approval had been given prior to 31.5.2007, a discussion was held on 24.3.2009 at 3.30 p.m. in which, the CMDA Chief Planner Mr. Palanivel and Urban Chief Planner Mr. Kubendran had participated. As a result of this discussion, it was decided to exclude the floor area for which planning permission was issued prior to 31.05.2007. This decision was based on a note which was signed by the Commissioner, Town and Country Planning, Additional Director, Joint Director and Deputy Director and one more person who cannot be identified by this respondent at present. The note was signed by all these 5 members on 25.03.2009. A certified copy which was obtained from the Chief Judicial Magistrate's Court, Chengalpattu is annexed herewith as Annexure B. This note bears File No.3869/09/BA2 which is the same proceeding number reflected in the letter dated 26.03.2009 (alleged bogus letter). Thereafter, the draft letter was put up for approval and was also approved by the Commissioner Town and Country Planning and on the next day 26.03.2009, a letter was issued with signature of Thiru. Ramanathan on behalf of the Commissioner of Town and Country Planning. Incidentally, Thiru. Ramanathan is the same person who has signed the counter affidavit in the writ petition along with Thiru. A. Karthik, IAS, Director, Town and Country Planning. x x x x x x x x x "

13. We have heard Mr. AL. Somayaji, learned Advocate General assisted by Mr. P.S. Sivashanmugasundaram, Special Government Pleader appearing for the appellants/State and Mr. P.S. Raman, learned Senior Counsel, representing Dr. P. Vasudevan, learned Advocate for the first respondent. We have also perused the pleadings and documents appended thereto.

14. The petitioner, by representation dated 02.12.2008 addressed to the first appellant, made a request to deduct the Floor Space Index area (for short "the FSI area") of 1,83,720 sq. mtrs. from the

total FSI area of 3,01,660 sq.mtrs. for which the petitioner was directed vide communication dated 08.12.2008 to pay the charges on the ground that the petitioner had already been granted approval for the building with the FSI area of 1,83,720 sq. mtrs. before 1.6.2007. A similar representation was made to the Commissioner, Director of Town and Country Planning on 15.12.2008. One more letter was sent by the petitioner subsequently which was received on 24.02.2009 in the office of the Commissioner of Town and Country Planning. The office of the Commissioner of Town and Country Planning, vide communication dated 26.03.2009, informed the petitioner that the floor areas for which final approval was issued by Local Body prior to 31.05.2007 (inclusive) for calculation of the charges, has been excluded. On the basis of the said decision, a demand dated 22.01.2010 was raised as under, at the rate of Rs.250/- per sq. mtr. and at the rate of Rs.500/- per sq. mtr. for Club House building area:

Infrastructure and Amenities Charges

Building

Total area of the building 111505.0 sq.mt. X Rs.250	Rs.2,79,51,250
Club House building area 6275 sq. mt. X Rs.500	Rs.31,37,500
	Rs.3,10,88,750/-

(Rupees three crores ten lakhs eighty eight thousand seven hundred fifty only)

15. It appears that the aforesaid sum has been deposited. Thereafter, a revised demand was raised in Na.Ka.No.2552/2007/CR3 dated 09.02.2011 for the same area, i.e., 1,17,930 sq.mtrs. after excluding the area of 1,83,720 sq. mtrs., wherefor, approval was granted earlier at the rate of Rs.1,000/- per sq. mtr. and the same reads thus:

"Details of revised basic infrastructure and amenities charges:

1 Previous approval vide DTCP proceeding 53522/2007/BA2 dated 26.03.2007-FSI Area 183720 sq.mt.

2 MSB Building approval vide DTCP proceeding 19432/08/CP dated 18.11.2008-FSI Area - 3,01,650 sq.mt.

3 To exclude the previous approval area vide DTCP proceeding 3869/09/BA2 dated 26.3.2009

Hence balance area for I & A calculation
(301650 sq. mt. - 183720 sq.mt) = 117930 sq.mt.

As per G.O. Ms.No.22, Housing Urban Development Department dated 25.01.2008, the basic infrastructure and amenities charges payable for the proposed total building area 117930 sq. mt. is Rs.1,000 per sq.mt.

Hence, it is requested the total amount of basic infrastructure and amenities charges Rs.11,79,30,000/- less amount already paid to this office Rs.3,10,88,750/- balance Rs.8,68,41,250/- to be remitted at the Government account and the deposit challan to be submitted to this office immediately."

The same demand was reiterated vide proceedings in Na.Ka.No.2552/07/CR3 dated 15.02.2011. The petitioner, being aggrieved, filed the instant writ petition, questioning the demand of the charges at the rate of Rs.1,000/- per sq.mtr.

16. The question as to whether the petitioner was liable to pay the charges for the entire area i.e., 3,01,650 sq. mtrs. or for 1,17,930 sq.mtrs., after exclusion of the earlier area, was not in issue in the writ petition. The prayer in the writ petition was only to quash the letter in Na.Ka.No.2552/2007/CR3 dated 09.02.2011 and letter Na.Ka.No.2552/2007/CR3 dated 15.02.2011, which sought to enhance charges from Rs.250/- per sq.mtr to Rs.1000/- per sq.mtr.

17. The appellants have projected a new case before us by way of additional grounds raised at the appellate stage to the effect that the petitioner was liable to pay charges for the entire area, not after excluding the area, for which approval was granted before 1.6.2007.

18. The learned Advocate General sought to discard the memo dated 26.3.2009, which prescribes for exclusion of the area for which planning approval was granted before 1.6.2007 without charges. This plea was neither an issue in the writ petition nor pleaded or raised by either party. For the first time, by way of additional ground in the affidavit dated 15.12.2014, the appellants have questioned the validity of the said document on the ground that the same is not available on file and as such, it is not a genuine one. Though the

validity of the said document was not an issue before the learned Single Judge, however, we proceed to examine the same. After issuance of the said memo addressed to the Member Secretary, Mamallapuram Local Planning Authority, Chengalpattu Region and to the Additional Director (I/C), Joint Directors, Assistant Directors and Planning Assistant & Supervisor (Building Division), a copy was marked to the petitioner. On the heels of it, a demand letter No.2525/2007/CR7 dated 22.01.2010 was issued after excluding the previous approval area for the total area of the building 111505 at the rate of Rs.250/- per sq.mtr. and for the Club house building area of 6275 sq.mtrs. at the rate of Rs.500/- per sq.mtr. In the subsequent letter, the rate of charges were enhanced to Rs.1000/- per sq.mtr. There is a clear reference of the memo dated 26.3.2009 for exclusion of the previous approval area and also in the subsequent letter Na.Ka.No.2552/07/CR3 dated 15.2.2011 also, there is a clear exclusion of the previous approval area for the purpose of calculation of charges.

19. Apart from this, the petitioner has produced a copy of the minutes, wherein a clear decision was taken to exclude the floor area, for which planning permission was issued prior to 31.5.2007 for the purpose of calculation of the charges, a copy of the same was obtained through the Court of Chief Judicial Magistrate, Chengalpattu. The minutes was signed by five officers. On the basis of the said decision, subsequently a demand was raised at every stage.

20. The authenticity of the document dated 26.03.2009 further stands established as the petitioner, in its affidavit dated 11.3.2011 filed in support of its writ petition, has clearly stated in paragraph no.8 as under:

"8. I respectfully state and submit that a representation was made on behalf of the petitioner dated 24.02.2009 to the fourth respondent. Accordingly, the fourth respondent sent a letter dated 26th March 2009 to the other respondents to exclude the floor area for which final approval has been issued by local body prior to 31st May 2007 (inclusive) for calculation of infrastructure and amenities charges."

The aforestated averment of the petitioner has not been refuted by the appellants at any stage, except when it was raised by way of an additional ground, as aforestated, in the pending appeal. It was averred as under in the counter affidavit:

"x x x x x x x x x For the additional construction

area on 1,17,930 sq.mtr. over the existing approval, the petitioner are required to remit Rs.11,79,30,000/- as infrastructure and basic amenities charges. x x x x x x x x x
"

21. Thus, we are unable to countenance the contention of the appellants that the said memo dated 26.03.2009 is not available on file and as such, is not a genuine one. As a sequel, we hold that the petitioner is entitled to exemption from payment of the charges for the area, which was approved without charges prior to 1.6.2007.

22. The issue as to whether the petitioner is liable to pay the FSI charges at the rate of Rs.250/- per sq.m. under G.O. Ms.No.161, Housing and Urban Development Department dated 09.09.2009 or at the rate of Rs.1,000/- per sq.m. as per the Rules, 2008 on the area, after excluding the area for which approval was granted prior to 01.06.2007, has become academic. The learned Single Judge has rightly not adverted to the said issue, in view of the petitioner's subsequent representation dated 23.08.2011, submitting revised proposal for approval for the area of 1,68,644 sq.mtrs., which is lower than the exempted area of 1,83,720 sq.mtrs. Thus, we leave the question open to be decided in an appropriate case.

23. Pending the writ petition, the petitioner has submitted a revised proposal for approval for lesser area than the exempted area of 1,83,720 sq.mtrs., vide letter dated 23.08.2011, which reads as under:

We are submitting our revised proposal for MSB Residential Building along with Multi Level Car Park.

We wish to bring to your kind attention that vide letter Roc No.3869/2009/BA2 dated 26.03.2009 issued by the Commissioner of Town and Country Planning, we are exempt from paying infrastructure and amenities charges for an area of 1,83,720 m² as we have already obtained planning permission for the said area prior to 31.05.2007.

Since the area now requested in the revised proposal for approval is 1,68,644m², which is lower than the exempted area of 1,83,720 m², we request you to kindly consider our application and accord planning permission on an early date and oblige.

We would like to bring to your kind attention that the project is being executed by us by availing construction

finance from financial institutions and we are incurring heavy interest charges. Also a number of financial institutions have advanced loan through various customer who have booked their apartments in the project to us. Hence any delay in the approval process may have serious financial impact which we request you to consider.

x x x x x x x x

24. The learned Single Judge has taken into consideration, the aforestated letter and bearing in mind, the fact that the revised proposal has been made only to an extent of 1,68,644 sq. mtrs., which is lesser than 1,83,720 sq. mtrs. for which planning approval was already granted on 26.03.2007, has rightly come to the conclusion that the petitioner is not liable to pay the charges. The decision of the learned Single Judge, directing the appellants 1 and 2 to consider the revised plan submitted by the petitioner for construction to an extent of 1,68,644 sq.mtrs., within a period of four weeks from the date of receipt of a copy of the order, is unexceptionable, warranting no interference.

25. In view of the foregoing, the writ appeal stands dismissed. Costs made easy. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vvk/cad

To

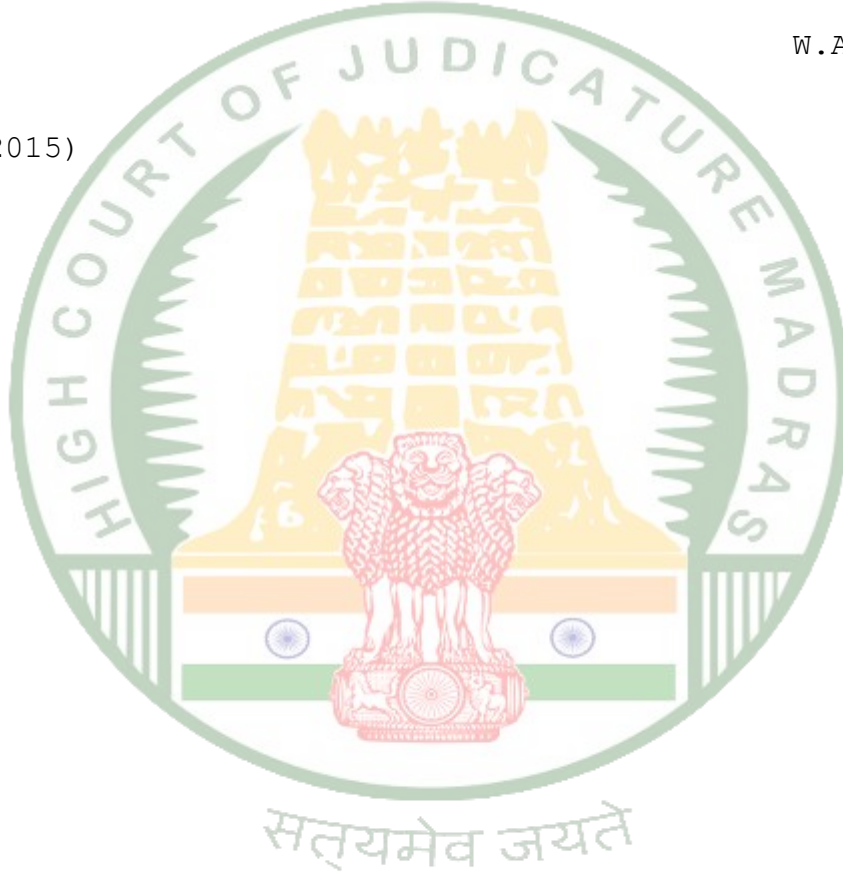
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2. The Director of Town and Country Planning,
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Chennai-600 002.

3. The Secretary to Government,
The Government of Tamil Nadu,
Housing, Rural and Urban Development Dept.,
Chennai-600 009.
4. The Commissioner,
Maraimalai Nagar Municipality,
Maraimalai Nagar,
Chengalpet Taluk.

+lcc to Mr.P.Vasudevan, Advocate, S.R.No.16959

W.A.No.1632 of 2014

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