

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2015

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.33914 of 2014

S.Raj Pandyan

.. Petitioner

vs.

1. The Principal Secretary
Government of Tamil Nadu
Housing & Urban Development
Department, Fort St.George
Chennai 600 009.
2. The Commissioner
Corporation of Chennai
Rippon Building
Park Town, Chennai 600 003.
3. CMDA rep.by
The Member Secretary
No.1, Gandhi Irwin Road
Egmore, Chennai 600 008.
4. The Assistant Executive Engineer
Town Planning (Approval) Section
Regional Office (South)
Corporation of Chennai
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the entire records of the fourth respondent herein in WDC No.PPA/WDCN11/03585/2014 dated 01.10.2014 to quash the same and to consequently to direct the fourth respondent to issue planning permit in pursuance of the application in WDCN No.PPA/WDCN11/03585/2014 dated 22.05.2014 for the property situated at No.109, Krishnamachari Nagar Third Street, Maduravoyal, Chennai 600 095.

For Petitioner : Mr.Raja Kalifulla
Senior counsel for
Mr.M.Muniruddin

For Respondents : Mr.S.Gunasekaran
Government Advocate for R1
Mr.T.C.Gopalakrishnan
for RR2 and 4
Mr.A.Kumar for R3

ORDER

Heard Mr.Raja Kalifulla, learned Senior counsel assisted by Mr.M.Muniruddin appearing for the petitioner, Mr.S.Gunasekaran, learned Government Advocate appearing on behalf of the first respondent; Mr.T.C.Gopalakrishnan, learned counsel appearing on behalf of Chennai Corporation and Mr.A.Kumar, learned Standing counsel appearing on behalf of Chennai Metropolitan Development Authority.

2. The petitioner seeks for the issuance of a writ of certiorarified mandamus to quash the order passed by the fourth respondent dated 01.10.2014 and consequently to direct the fourth respondent to issue planning permission in pursuance of the application in WDCN No.PPA/WDCN11/03585/2014 dated 22.05.2014 in respect of the property in question.

3. The impugned proceedings has demanded various charges from the petitioner and the challenge in this writ petition is confined only on the following two demands viz.,

(i) Open Space Reservation charges of Rs.10,85,000/-

and

(ii) Workers Welfare Board Contribution of Rs.77,500/-.

In respect of other amounts, the learned Senior counsel for the petitioner submitted that the petitioner will remit all other amounts demanded in the impugned proceedings.

4. The question to be decided in this writ petition is, when the petitioner had earlier obtained the building plan approval from the Maduravoyal Town Panchayat, who was the competent authority to grant such application at the relevant point of time on 20.06.1986 and the approved building plan was also sanctioned vide proceedings dated 21.06.1986, whether it would be open to the respondents now, to demand the Open Space Reservation Charges.

5. This issue came up for consideration before this Court in the case of Kumaran vs. State of Tamil Nadu and another in W.P.No.5317 of 2009 dated 03.08.2009. The said writ petition was filed by the petitioner therein challenging the order passed by the CMDA demanding Open Space Reservation Charges as a pre-condition to grant planning permission in respect of the proposed development of

Commercial building. The petitioner therein contended that CMDA had no jurisdiction to demand the Open Space Reservation Charges as those charges are inapplicable in case of the development involving an area less than 3000 sq.mt. It was contended by the authorities that the reasons for demanding the said charges is that the property has to be treated as part of an unauthorised sub division. This Court after hearing the submission made on either side held as follows:

"7. I have considered the rival submissions carefully.

8. The following facts are not in dispute and in fact admitted by the second respondent also.

(i) The former Maharaja of Travancore owned a large extent of land in Old Survey No.57/1 and he sold an extent of 25.67 cents to M/s.Salem Murasu (P) Ltd.,

(ii) Thereafter, Salem Murasu (P) Ltd., applied for approval for planning and building permit to the Corporation of Chennai and the Corporation of Chennai granted the permission on 13.03.1987.

(iii) Thereafter, the property along with the building was sold to Mr.S.Balasubramanian, and

(iv) From Mr.S.Balasubramanian, the petitioner purchased the subject property.

10. The main reason adduced by the second respondent for demanding Rs.95,50,000/- towards O.S.R.Charges is that the property is to be treated as a part of an unauthorised sub division. When it was pointed out by the petitioner that the erstwhile owner of the property obtained planning and building permit in the year 1987 itself, the stand taken by the second respondent is that they have not sanctioned the planning and building permit in the year 1987 and it was only the Corporation of Chennai which granted the approval. Therefore, the second respondent maintains that this issue could be raised now and their demand is in order and justified.

11. I am unable to accept the stand of the second respondent in questioning the planning permission and building permit granted by the Corporation of Chennai in the year 1987 itself by totally disassociating itself.

12. As rightly pointed by the learned counsel for the petitioner, the Corporation of Chennai has been delegated with the powers by the second respondent during the relevant point of time. It is an admitted fact that a valid planning permission was granted in the year 1987 to the erstwhile owner of the property. When it is not

established before this Court that the grant of approval in the year 1987 is tainted with illegality, it is not open to the second respondent to assume and presume so many things in the year 2008 to question the grant of valid planning permission granted by the Corporation of Chennai. When the approval was granted in the year 1987, the legal presumption is that the same has been granted in accordance with the rules and regulations and after complying with all the formalities. To rebut that legal presumption, sufficient and cogent evidence should be produced, that too, within a reasonable period. In the present case, not only second respondent is questioning the approval granted by the Corporation of Chennai, the delegated authority, in the year 1987, after 21 years, but failed to establish their stand that all is not well in the grant of the approval in the year 1987. The second respondent cannot disassociate themselves from the granting of the approval by the Corporation in the year 1987 and contend that the Corporation is a necessary party to come before this Court to explain how it granted the approval 21 years back.

13. From the records, I find that the petitioner is the lawful owner of the property and after obtaining the permission to demolish the existing superstructure he pulled down the building which was in existence. Further, he has been repeatedly knocking the doors of CMDA but his request for removing the OSR charges was turned down mainly on the ground that there was no proper subdivision in the year 1986.

14. Therefore, I am of the considered view that the demand of the first respondent, demanding a sum of Rs.95,50,000/- towards OSR charges alone is not sustainable and therefore, the same is set aside."

6. The above mentioned decision is squarely applicable to the case on hand insofar as it demands the Open Space Reservation Charges is concerned as the reason stated for demanding the said charges is treating the property as a part of an unauthorized subdivision. Since the issue is covered by the earlier decision of this Court, the demand made in respect of Open Space Reservation Charges is quashed.

7. Insofar as to the demand made in respect of Tentative Improvement Charges, though initially the learned Senior Counsel submitted that the petitioner is not liable to pay the same, after perusing the Tamil Nadu Town and Country Planning Act, 1971 and Rules and the Development Control Rules for Chennai Metropolitan

Area, 2004 in terms of Rule 13 as per Annexure IX -Special Rules for Multi-Storeyed Buildings, he would admit that the improvement charges are payable. Therefore, the contention of the petitioner that tentative improvement charges are not payable is liable to be rejected. Accordingly, it is rejected.

8. The next ground taken by the learned Senior counsel for the petitioner is with regard to the demand made towards the Contribution to Workers Welfare Board and would submit that the demand is without jurisdiction and the Act does not provide for the same.

9. It is seen that the said amount is demanded at the rate of Rs.129/- per sq.mt. In this regard, a circular has been issued by the Government in W.D.C.No.111/2014 dated 04.03.2014 and the amount is being collected for the purpose of implementation of the welfare scheme under Tamil Nadu Manual Workers [Construction Workers] Welfare Scheme, 1994 while issuing the building permit for construction of Buildings from 17.12.2013. Hence, it is clear that the amount towards Workers Welfare Board is towards such charges to implement the statutory scheme.

10. Learned Senior Counsel for the petitioner submitted that the petitioner is willing to remit the said amount without prejudice to his rights to question the same at a later point of time, if need arises.

11. For all the foregoing reasons, this writ petition is partly allowed and the impugned demand made in respect of Open Space Reservation Charges to the tune of Rs.10,85,000/- [Rupees ten lakhs and eighty five thousand only] is quashed. However, all other amounts, as demanded in the impugned proceedings dated 01.10.2014 are confirmed and the petitioner is directed to remit the same. It is also made clear that the remittance to be made by the petitioner towards Workers Welfare Board shall be without prejudice to his rights to question the same at a later point of time. If the petitioner pays the amount as demanded excepting the Open Space Reservation Charges, the respondents are directed to consider his application for demolition and re-construction within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Principal Secretary
Government of Tamil Nadu
Housing & Urban Development
Department, Fort St.George
Chennai 600 009.
2. The Commissioner
Corporation of Chennai
Rippon Building
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Corporation of Chennai
No.115, Dr.Muthulakshmi Salai
Adyar, Chennai 600 020.

1 cc to Mr.A. Kumar, Advocate, sr. 10432
1 cc to Government Pleader, sr. 9956

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AK (CO)
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