

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Petition No.13770 of 2016
and
W.M.P.No.12075 of 2016

Hazel Realty Private Limited
(Formerly VGN Pragnya Realty Pvt.Ltd.,)
Rep by its Senior Manager Projects
G.Jai Kumar
Poonamallee - Avadi High Road
Paruthipattu Village,
Avadi, Chennai 71.

... Petitioner

Vs

1. The Commissioner
Avadi Municipality
Avadi Chennai 54
2. The Secretary
Tamil Nadu Construction Workers Welfare Board
No.8 Valluvarkottam High Road
Nungambakkam Chennai 34
3. The Member Secretary
Chennai Metropolitan Development Authority
No.1 Gandhi Irwin Road
Thalamuthu Natarajan Building
Egmore Chennai 8

... Respondents

Prayer: Petition has been filed under Article 226 of the Constitution of India seeking Writ of Certiorarified Mandamus calling for the records pertaining to the demand notice dt 9.2.2016 bearing Ref. No.Roc. No.10418/15/F1 issued by the 1st respondent and quash the same in respect of the payment demand of Rs. 91 81 800/- (Rupees Ninety One Lakhs Eighty One Thousand and Eight Hundred only) towards the Manual Workers General Welfare Fund and consequently direct the 1st respondent to issue and release the building permission relating to the renewed planning permission granted by the 3rd respondent vide its letter dt 14.10.2015 bearing Ref. No.EC/CC/N-II/6479/2015.

For Petitioner : Mr.Ganesh

For Respondents : Mr.P.Srinivas (R1)
Mr.V.Jayaprakash Narayanan,
Special Government Pleader (R2)
Mr.M.Kathikeyan (R3)

O R D E R

The petitioner has come before this Court challenging the demand notice dated 9.2.2016 issued by the 1st respondent in respect of the payment demand of Rs 91,81,800/- (Rupees Ninety One Lakhs Eighty One Thousand and Eight Hundred only) towards the Manual Workers General Welfare Fund and consequently direct the 1st respondent to issue and release the building permission relating to the renewed planning permission granted by the 3rd respondent vide its letter dated 14.10.2015.

2.1 The petitioner Company applied for planning permission and necessary sanction for putting up residential building on the property comprised in Survey Nos.629/1B1-6.50 cents, 629/3-3 cents, 629/1B2.13.50 cents, 629/4A - 15.25 cents, 629/4B -17.75 cents, 629/5A-15 Cents, 629/5B1 -18.25 cents, 629/5B2 - 77.75 cents, 629/6B1 - 24 Cents, 629/6B2 - 1.76 acres, 629/6B3 & 631/1B - 2 Acres totally measuring an extent of 5.67 acres on 15.04.2011 in MSB/2011/405. After such submission of application, the petitioner Company has duly processed the same in accordance with the applicable development control rules and regulations. The 3rd respondent has granted planning permission for construction of Block A, B and C with stilt plus fourteen floors, Block D (Club House) with GF plus 2 floors with combined basement and Block E with stilt plus 13 floors (LIG) residential buildings with 781 dwelling units at T.S.No.8/1, 9/2, 3,5,6,7,8,10, Block No.83 Ward 1 of Avadi Municipality, Old S.Nos.629/1B1, 1B2, 3,4, 5A, 5B1, 5B2, 6B1, 6B2, 6B3 and 631/1B of Paruthipattu Village on 16.05.2012. The petitioner Company paid a sum of Rs.2,25,000/- towards development charges, Rs.48,000/- towards layout and scrutiny fee, Rs.18,87,000/- towards security deposit on 16.04.2012, Rs.16,20,000/- towards Development Charges, Rs.84,00,000/- towards security deposit of Building, Rs.8,18,000/- towards security deposit of STP, Rs.3,01,50,000/- towards infrastructure and amenities charges and Rs.4,84,35,000/- towards premium FSI charges on 30.03.2012, in connection with the planning permission.

2.2 According to the petitioner, the earlier planning permission was granted by the 3rd respondent on 16.05.2012 and

Avadi Municipal Approval on 08.08.2012 in respect of the construction. The planning permission got expired on 15.05.2015 and therefore, the petitioner Company applied for renewal of planning permission on 22.04.2015 as the building construction was not completed before the said period. At the time of expiry of planning permission, the petitioner had already completed 75% of the work and the balance work to be completed is only 25%. The 3rd respondent has considered the renewal application for planning permission and approved the renewal on 14.10.2015. The said renewal approval of planning permission was renewed from 15.05.2015 to 14.05.2018 and the petitioner Company was also directed to approach the 1st respondent in respect of the building permission.

2.3 While that being so, the 1st respondent issued a demand notice dated 09.02.2016, demanding a sum of Rs.91,81,800/- towards Manual workers general welfare fund in respect of granting the renewed building permission. Through a reply dated 25.07.2012, the petitioner Company has stated that a sum of Rs.28,99,200/- was already paid for getting original building permission. Without taking into consideration the earlier payment and based on the new rule, the 1st respondent has demanded a sum of Rs.91,81,800/-. Challenging the same, the petitioner has come forward with this writ petition.

3.1 The 2nd respondent has filed a counter affidavit by stating that through G.O.Ms.No.95, Labour and Employment Department dated 02.07.1997, the Government have fixed 0.3% of total estimated cost of the building construction or maintenance of dams, bridges, roads or in any building operations, under a scheme framed under Section 3 of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 and by G.O.Ms.No.295, Labour and Employment (I2) Department, dated 17.12.2013, the Government have refixed 1% of the total estimated cost of the building or construction work proposed to be constructed as contribution to the fund. Therefore, as per the new G.O. Only, 1% of the total estimated cost of the building is being demanded towards contribution to the aforesaid fund.

4. Heard the learned counsel on either side and perused the materials available on record.

5. According to the 2nd respondent, originally, as per the old G.O., a sum of Rs.28,99,200/- was demanded, being 0.3% of the total estimated cost. When the original approval was granted, the petitioner was supposed to pay only 0.3% of the total estimated cost of the building, whereas when renewal has been obtained, as per new G.O.Ms.No.295 dated 17.12.2013, as per

which, the petitioner has to pay 1%, which is to the tune of Rs.1,20,80,000/-. At this juncture, it is pertinent to point out that the petitioner had paid a sum of Rs.28,99,200/- on 25.07.2012, being 0.3% of the total estimated cost. Therefore, after deducting the said sum of Rs.28,99,200/- from Rs.1,20,80,000/- (Rs.1,20,80,000/- minus Rs.28,99,200/-), the balance amount would be Rs.91,81,800/-. However, the said calculation cannot reflect the correct position.

6. The petitioner Company has already paid a sum of Rs.28,99,200/- for the entire project. 75% of the work had already been completed and 25% of the work alone is left out. If at all, as per the new G.O., the petitioner has to pay any amount, it should be only for 25% of the left out work and not for the entire project. Therefore, the amount to be paid by the petitioner for 25% of the left out work is Rs.30,20,000/- (Rs.1,20,80,000 $\times$ $\frac{1}{4}$). Even, that amount of Rs.30,20,000/- cannot be demanded by the respondent in entirety, as the petitioner has to pay only for the left out 25% work and not for the entire work. Therefore, in the amount of Rs.28,99,200/-, which the petitioner had already paid for the entire work, $\frac{1}{4}$ th has to be calculated and the same has to be deducted. The amount for the 25% of the left out work as per the old G.O. comes to Rs.7,24,800/- (Rs.28,99,200 $\times$ $\frac{1}{4}$). The said amount of Rs.7,24,800/- is to be deducted from Rs.30,20,000/-, which comes to Rs.22,95,200/- (Rs.30,20,000 minus Rs.7,24,800). Therefore, the amount due and payable by the petitioner for renewal is only Rs.22,95,200/-.

7. In view of the above, this writ petition is disposed of by directing the petitioner to pay a sum of Rs.22,95,200/- (Rupees twenty two lakhs ninety five thousand two hundred only) within a period of three weeks from the date of receipt of a copy of this order and on such payment, the renewal has to be given to the petitioner, within one week thereafter. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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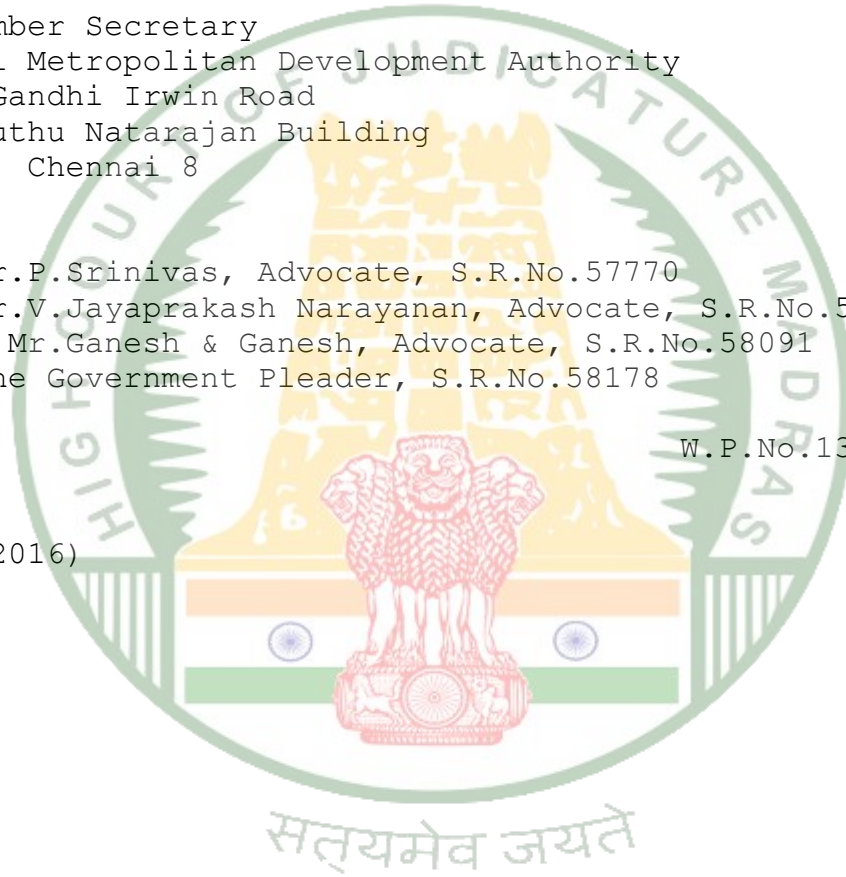
To

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+1cc to Mr.P.Srinivas, Advocate, S.R.No.57770
+1cc to Mr.V.Jayaprakash Narayanan, Advocate, S.R.No.58129
+2cc's to Mr.Ganesh & Ganesh, Advocate, S.R.No.58091
+1cc to the Government Pleader, S.R.No.58178

W.P.No.13770 of 2016

EV(CO)
CA(26/10/2016)



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