

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.36022 of 2015
and
MP.Nos.1 & 2 of 2015

Sharad Vasanji
New No.9, Old No.4,
Tailors Road, Kilpauk,
Chennai - 600 010.

... Petitioner

Vs

The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Chennai - 600 008.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the respondent pertaining to Letter No.B2/3811/2015 dated 01.09.2015 and quash the same to the extent of the demand of Additional Charges and consequently direct the respondent to issue planning permission to the petitioner pursuant to the petitioner's application dated 10.03.2015.

For Petitioner : Mr.P.Wilson, Senior Counsel
for Mr.Richardson Wilson

For Respondent : Mr.K.Rajashrinivas
Counsel for CMDA

ORDER

Heard Mr.P.Wilson, learned Senior Counsel appearing on behalf of Mr.Richardson Wilson, learned counsel on record for the petitioner and Mr.K.Rajashrinivas, learned counsel appearing for the respondent-CMDA.

2. The petitioner in this Writ Petition seeks for issuance of Writ of Certiorarified Mandamus to quash the proceedings of the respondent-CMDA dated 01.09.2015, insofar as it demands Additional Charges from the petitioner for approving the Planning Permission and consequential direction, directing the respondent to issue Planning Permission pursuant to the petitioner's application.

3. The facts which are necessary for the disposal of the Writ Petition are that the petitioner submitted an application for grant of Planning Permission on 27.11.2012 for putting up construction of Stilt + 4 Floors residential building with 72 dwelling units at Plot No.11, Sapthagiri Nagar Main Road, Sapthagiri Nagar, Sholinganallur Village. The said application was processed by a letter dated 20.06.2013 issued by the CMDA, the petitioner was directed to remit various amounts as detailed in the said letter under 9 heads. In the said letter, one of the condition was that the petitioner should hand over the Plot No.11, comprised in Survey No.651/15 for road purpose free of cost, through a registered gift deed in favour of the respondent. The petitioner had complied with the demand made in the letter dated 20.06.2013 and remitted the amounts on 17.07.2013, as it is evident from the receipts issued by the respondent. With regard to the gift deed, the petitioner has complied with the same and executed the gift deed on 21.03.2014. Thereafter, another communication was sent by the respondent stating that the petitioner has to gift the Link Road portion and a communication was sent to the petitioner on 26.11.2014 by the respondent, requesting the petitioner to comply with the requirements stipulated in the letter dated 14.10.2014. This has been complied with by the petitioner and he has also handed over the Link Road portion to the respondent, which has been taken over by the respondent on 04.06.2015, which is evident from the Land Delivery Receipt filed in the typed-set of papers.

4. It appears that there was a delay in handing over the Link Road portion, on account of the fact that there was an Electricity Transformer in the said area and the petitioner had to approach the Electricity Board for relocating the same. Be that as it may, the condition imposed by the respondent for handing over the Link Road portion has been complied with and the possession has been taken over by the respondent on 04.06.2015. Thereafter, the petitioner has been advised to submit another application on 10.03.2015. On receipt of the

said application, the respondent without reference to the earlier proceedings and applications, treating the same as if it is a new application, passed the impugned order dated 01.09.2015, imposing various conditions apart from demanding additional amounts under the 9 heads. In the tabulated statement in Page No.2 of the impugned order dated 01.09.2015, it has been mentioned that the charges/deposits already made by the petitioner, which has been approved in File No.B2/18737/2012 has been adjusted in the impugned order. The petitioner is aggrieved by the additional amounts demanded.

5. The respondent in their counter affidavit seeks to justify the additional demand by contending that the rates have been revised based on the notification issued by the Government, in exercise of powers conferred under Section 32(A) of the Tamil Nadu Town and Country Planning Act 1971, which is pursuant to the Government Order in G.O.(Ms) No.303 Housing and Urban Development (UD1) Department dated 30.12.2013, in and by which the Government has enhanced the amount of Security Deposit for Institutional Building, Special Building, Group Development and Multi-Storeyed Building. In terms of the said notification, the development regulations of the respondent have been amended. This amendment is sought to be relied upon by the respondent to demand the differential amount of rates under various heads.

6. After hearing the learned counsel for the parties and after perusing the materials placed on record, the only issue to be decided is to whether the petitioner's application dated 10.03.2015 for Planning Permission could be treated as a fresh application.

7. It may be true that the petitioner submitted an application on 10.03.2015. However, such application cannot be treated as a fresh application in the light of the fact that the respondent themselves have reckoned that the earlier application has been approved in File No.B2/18737/2012, as they have given credit to the amounts already remitted by the petitioner. Furthermore, in Paragraph No.4 of the counter affidavit, the respondent have admitted that the file relating to the petitioner's application was returned as unapproved on 18.12.2015. Thus the respondent having admitted that the application of the Planning Permission has not been rejected, but only returned, the question of treating the petitioner's application on re-submission as a fresh application is untenable and erroneous. Furthermore, there is nothing on record to show

that the amendment to the development regulations of the respondent, pursuant to the notification published in the Tamil Nadu Government Gazette dated 02.09.2008, is retrospective. Under such circumstances, the demand for payment of differential amount is unsustainable in law. Accordingly, the Writ Petition is allowed and the impugned order insofar as it demands the differential amount in the tabulated statement contained in Paragraph No.2 of the impugned order towards Scrutiny Fee, Open Space Reservation Charges (OSR Charges), Security Deposit for the proposed building and Premium FSI Charges are quashed. The respondent is directed to proceed further on the petitioner's application based on the amounts already remitted by the petitioner without demanding any differential charges, which has been quashed by this Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Chennai - 600 008.

+1cc to Mr.K.Rajashrinivas, Advocate, S.R.No.1209
+1cc to Mr.Richardson Wilson, Advocate, S.R.No.1094

W.P.No.36022 of 2015

AD(CO)
CA(25/01/2016)

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