

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM :

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.30150 of 2014
and
M.P.Nos.1 & 2 of 2014

1. M/s.A.R.Property Developers Private Limited
Rep by its Director N.Abdul Majeed
Having its registered office at
No.F-72, Anna Nagar West
Chennai - 600 040.
 2. M/s.A I Enterprises Private Limited
Rep by its Director H.E.Abdul Azeez
Having its registered office at
F-41A, Anna Nagar East
Chennai - 600 102.
-Petitioners

Vs.

1. The Secretary
Housing and Urban Development (UD-1) Department
Government of Tamil Nadu
Fort St. George
Chennai - 600 009.
 2. The Member Secretary
Chennai Metropolitan Development Authority
Thalamuthu Natarajan Building
No.1, Gandhi Irwin Road
Egmore, Chennai - 600 008.
 3. Vice Chairman
Committee of Senior Officers of CMDA
Housing & Urban Development (UD-I) Dept
Fort St. George, Chennai - 600 009.
- ...Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the entire records of the 2nd respondent in Lr.No.C3(N)4522/2013 dated 30.04.2014 which culminated in its proceedings in Letter No.C3(N) 4522/2013 dated 05.11.2014 and quash the same as arbitrary and illegal and further direct the 2nd respondent to

grant approval for the petitioner's application for revised planning permission in MSB/2013/000253 dated 08.03.2013, by collecting premium FSI charges for 1002 Sq. Mts. of additional premium FSI area alone involved in the application for revised planning permission from the petitioners.

[prayer amended as per order dated 13/02/2015 by TSSJ in M.P.No.1/2015 in W.P.No.30150/2014]

For Petitioners : Mr.R.Muthukumarasamy
Senior Counsel
for Mr.V.P.Sengottuvel

For First Respondent : Mr.T.M.Pappiah,
Special Govt. Pleader

For Second Respondent : Mr.K.Rajasrinivas

O R D E R

The petitioner company is a property development company. It filed an application for planning permission to Chennai Metropolitan Development Authority [CMDA] on 25.08.2010 for the proposed construction of Block "A"-Hotel building with double basement floor+ ground floor+14 floors and Block "B" -with basement floor + Stilt cum ground floor and 12 floors in the property comprised in Survey No.58/1B, 58/2A2 and 58/2A1B of Madhuravoyal Village, Ambattur Taluk. The proposed build up area was 26,556.75 Sq. Mts. inclusive of 6,713.60 Sq. Mts. of premium FSI area.

2.The first respondent/State Government granted its approval on 14.11.2011 to the recommendations of Multi-Storied Building Panel [MSB] for issuing planning permission to the petitioners for the aforesaid project. Thereafter, on 05.12.2011, the 2nd respondent/CMDA directed the petitioners to remit development charges and other charges including premium FSI charges for premium FSI area of 6,717.61 Sq. Mts. and accordingly, on 07.12.2011 the petitioners remitted development charges and other charges including premium FSI charges of Rs.4,34,00,000/-.

3.On payment of development charges and other charges including premium FSI charges by the petitioners, CMDA granted approval for petitioner's application for planning permission on 04.01.2012.

4.Pursuant to the planning permit granted by the CMDA on 04.01.2012, the Corporation of Chennai consequently granted

planning permit on 16.04.2012. The petitioners commenced Pile Foundation Work on 21.08.2012 and on completion of the said work the petitioners obtained Pile Load Testing report on 22.02.2013.

5.The petitioners submitted an application for Revised Planning Permission on 08.03.2013, as the petitioner felt that the Hotel Project which was proposed, may not be viable in that area and decided to revise the earlier proposal from Hotel and Residential Building into an office cum residential building.

6.The earlier planning permit was revised and the revised plan was for construction of Basement floor+Stilt floor part+Ground floor part+12 floors+13th floor part for a total built up area of 27,628.69 sq mts. The revised plan was for planning permit involving an additional premium FSI area of 1002 Sq. Mts. i.e. 7,719.61 sq mts of premium FSI area as against the already approved premium FSI area of 6,717.60 Sq. Mts.

7.For getting planning permission of the revised proposal the petitioners obtained

(a) Concurrence from Chennai Metropolitan Water Supply and Sewerage Board [CMWSSB] for treatment plan;

(b) No Objection Certificate from CMWSSB for the proposed swimming pool;

(c) No Objection Certificate dated 16.05.2013 from Tamil Nadu Fire and Rescue Service department for the proposed Multi storied building;

(d) No Objection Certificate dated 28.05.2013 issued by the Police department for the proposed conversion of earlier approved Hotel and Residential building into office cum residential building.

8.Multi Storied Building panel [MSB] of the second respondent recommended to the Government for approval of the petitioners revised proposal. The first respondent /State, based on recommendation of the Multi Storied Building panel granted its approval on 26.08.2013 for issuance of revised planning permit to the petitioners. On 27.12.2013 CMDA directed the petitioners to remit balance development charges, balance security charges and other charges for approval of revised proposal which was submitted by the petitioners. On 31.12.2013 the petitioner remitted the said charges and produced receipts to the CMDA.

9.CMDA issued revised remittance advice on 30.04.2014 directing the petitioners to pay a sum of Rs.13,94,06,500/- to the balance premium FSI charges by including the premium FSI area of 6,717.61 Sq. Mts. for which required premium FSI charges had already been paid on 07.12.2011.

10. Aggrieved over the revised remittance advice dated 30.04.2014 the petitioners on 21.05.2014 made a representation stating that

(a) the petitioners already paid an applicable premium FSI charges for premium FSI area of 6,717.61 sq mts of built up area on 07.12.2011 i.e. before issuance of the planning permit dated 04.01.2012;

(b) the petitioners are liable to pay premium FSI charges only for the additional premium FSI area which is equivalent to the value of 400.8 Sq Mts of land;

(c) The CMDA has no jurisdiction to direct the petitioners to pay premium FSI charges on the present market value for the entire premium FSI area including the area for which the petitioners already paid premium FSI charges.

11. The said representation was followed by other representations dated 02.09.2014, 10.09.2014 and 03.11.2014. However, by order dated 05.11.2014, CMDA refused to reconsider the remittance advice dated 30.07.2014 by which the CMDA directed the petitioners to pay the balance premium FSI charges of 13,94,06,500/- on the ground that

(a) the petitioners had not commenced the construction as originally approved on 04.01.2012;

(b) The revised plan is a different one involving change of usage and plan in designing and therefore revised plan needs to be treated as a new proposal.

The said order dated 05.11.2014 of the CMDA is being challenged before this Court by the petitioners.

12. Mr. R. Muthukumarasamy, learned Senior Counsel appearing for the petitioners would submit that the impugned order is not sustainable as the petitioners had already paid applicable premium FSI charges for the premium FSI area of 6,717.61 Sq. Mts. of built up area on 07.12.2011 i.e., before issuance of Planning Permit on 04.01.2012 as contemplated under Regulation 36 of Development Regulation for Chennai Metropolitan area and therefore got absolute right over the FSI area of 6,717.61 Sq. Mts. Therefore, he would submit that right got accrued to the petitioners and the same cannot be taken away very lightly.

13. In this regard, he referred to DR. No.36 and relied upon the judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Asian Food Industries reported in (2006) 13 Supreme Court Cases 542, wherein it has been held, by reason of

a policy or the amendment thereof, a vested or accrued right cannot be taken away and it would have only a prospective effect.

14.It is contended by the petitioners that the additional premium FSI area in the revised planning permit is only 1002 Sq. Mts. of built up area and the petitioners are ready to pay premium FSI charges only for the additional premium FSI area which is equivalent to the value of 400.8 Sq. Mts. of land.

15.After the petitioners paid premium FSI charges for 6.717.61 Sq. Mts. of built up area as per Development Regulation No.36 and the guidelines thereof, no jurisdiction is available to CMDA to direct the petitioners to pay premium FSI charges on the present market value for the entire premium FSI area including the area for which the petitioners paid premium FSI charges.

16.Another contention of the petitioners is that DR No.4(4) Development Regulation for Chennai Metropolitan Area enables the petitioners to file revised planning permission application. Annexure to Form "B" application for planning permission for development of land and building and DR No.4(1)(c) also provides for alteration, extension, additional or change of use and therefore, the petitioners application should be treated as a revised planning permission application and it cannot be treated as a new proposal.

17.It is further submitted that CMDA cannot take a different view than the one which has been taken by Multi Storied Building Panel and approved by the Government.

18.The reasoning given in the impugned order that the petitioners have not commenced the construction as originally approved on 04.01.2012 is not correct as the petitioners have commenced construction by completing Pile Foundation Work at the cost of Rs.3.73 Crores which has been admitted by the CMDA in para 15 of its counter.

19.Making the above submissions, the learned Senior Counsel seeks quashing of the impugned order and to grant approval for the petitioners' application for revised planning permission.

20.On the other hand, Mr.P.Thamizhmani, learned counsel appearing on behalf of the second respondent would submit that the petitioners having obtained the planning permission on 04.01.2012 for constructing Block 'A' -Hotel and Block 'B'-Residential to the extent of 26,556.76 Sq. Mts., at Nerkundram Village, Thiruvallur District, another application was submitted on 08.03.2013 seeking planning permission for

construction of Multi Storied Residential Building to the extent of 27,628.69 Sq. Mts. along with premium FSI area for 1002 Sq. Mts. over and above the already availed premium FSI area. Both the applications are totally different in nature and usage and the second application was filed with an undertaking to pay the necessary fees and charges including the premium FSI charges levied by the CMDA from time to time. No planning permission has been granted and the application is pending. Therefore, Rs.13,94,10,000/- is being demanded from the petitioners towards premium FSI charges through letter dated 30.04.2014 deducting the amount already paid.

21. There is no provision for revised application under Town and Country Planning Act 1971 read with Section 4 of Development Regulation of CMDA. The conversion and usage claimed by the petitioners are for their own benefits and therefore, the demanded premium FSI charges has to be paid by the petitioners as per the rule.

22. The second application was filed on 08.03.2013 by the petitioners and the guideline value of the land was fixed by the Registration Department, vide letter No.1605/2013 dated 23.12.2013 as Rs.5500 per sq. Ft. and therefore, the demand is valid. If the petitioners are not willing to pay the balance premium FSI charges, they are at liberty to renew the already approved planning permission for a further period of 3 years and commence and complete the building as per the already approved plan after obtaining fresh building permission from the Corporation of Chennai.

23. The petitioners entirely dropped the earlier approved proposal for the construction of one hotel block and one residential building and submitted a new proposal afresh for single block residential building thereby changing the total profile and usage in the new proposal apart from inclusion of additional level area [Survey No.70.1F1].

24. The learned counsel for CMDA relied upon the learned Single Judge's judgment dated 17.12.2013 in Mathura Flats Owners Association Vs. the Secretary, Department of Housing and Urban Development, Government of Tamil Nadu, Chennai - 600 009 and another in W.P.No.17912 of 2013 to contend that the CMDA is justified in directing the parties to pay the revised premium FSI charges calculated at the rate prevailing on the date of issuance of permit and by submission of an application for building plan, no right would accrue to pay before the approval of the plan. To put it in other words, the party is liable to pay the Development charges on the basis of the prevailing rate on the date of approval. Therefore, he would submit that since the second application is a new one, the FSI charges have to be

paid on the basis of the prevailing guidelines value on the date of approval. Hence, he seeks to dismiss the writ petition.

25. Heard the parties and perused the records.

26. There is no dispute with regard to the submission of an application by the petitioner on 25.08.2010 to CMDA for the proposed construction of Block 'A' - Hotel building with double basement floor+ ground floor plus 14 floors and Block 'B' - Basement floor stilt -ground floor +12 floors at Survey Nos.58/1B, 58/2A2 and 58/2A1B of Madhuravoil Village along with required certificates.

27. The 1st respondent/Government granted its approval to the recommendations of the MSB panel for issuance of planning permission for the said project on 14.11.2011. As per the direction of the CMDA dated 05.12.2011, the petitioners remitted development charges and other charges including the premium FSI charges for premium FSI area of 6.717.61 Sq. Mts. on 07.12.2011 to the tune of Rs.4,34,00,000/-. Consequently, CMDA approved the petitioners' application on 04.01.2012. The Corporation of Chennai gave building permit on 16.02.2012 to the petitioner. Thereafter only the dispute arose.

28. The petitioners would contend that they commenced Pile Foundation Work on 21.08.2012, whereas, the 2nd respondent would contend that the said piling work is for already approved plan. However, the Pile Load Testing report dated 23.02.2013 given by Associated Pile Foundation would reveal that the Piling was already completed. The petitioners on 08.03.2012 filed an application for revised planning permission by revising the earlier planning permit granted on 04.01.2012, which was also approved by the Government on 26.08.2013 as per the recommendations of the MSB panel for revised planning permission to the petitioners. On 27.12.2013 CMDA directed the petitioners to remit the balance development charges and balance security charges and other charges. The petitioners paid the development charges and the balance charges and produced receipts for the additional development charges and other charges to the CMDA. However, CMDA issued revised advice by directing the petitioners to pay a sum of Rs.13,94,06,500/- towards balance premium FSI charges by including the premium FSI area of 6.717.61 Sq. Mts.

29. Initially, by order dated 27.12.2013, revised proposal was received and to process the said application, a sum of Rs.26,28,000/- was demanded and it was stated the revised proposal is under consideration. Thereafter, the impugned order has been passed directing the petitioners to pay a sum of Rs.13,94,06,500/- as balance premium FSI charges, so as to process the planning permission and directed the petitioners to

surrender earlier approval plan that was issued on 04.01.2012. As rightly pointed out by the petitioners, the petitioners already got approval for premium FSI of 6,717.61 Sq. Mts. [Equivalent land area of 2687.04 Sq.Mts.] and paid a sum of Rs.4,34,00,000/- on 07.12.2011 and only additional premium FSI area of 1002 Sq. Mts. [Equivalent land area of 400.8 Sq. Mts.] has to be charged additionally and for charging additional FSI area of 1002 Sq. Mts alone, the present guideline value to be taken into consideration. However, the respondent CMDA took guideline value as on the date of the revised plan even for the already approved FSI area and directed the petitioners to pay a sum (calculated) of Rs.18,28,06,303.68 and deducting Rs.4,34,00,000/- directed the petitioners to pay a sum of Rs.13,94,06,500/- as balance premium FSI charges.

30.The application submitted by the petitioners is not a fresh application as it is only an application to revise the earlier approved plan by the CMDA. The guideline value which was applicable on the date of the original application was already taken and the approved plan was already granted on 04.01.2012. By revising and deleting the hotel project, additional premium FSI area of 1002 Sq.Mts. only [Equivalent land area of 400.8 Sq.Mts.] alone is added. If any additional premium FSI has been added by virtue of revision, only for the present additional area in view of revision, as on the date of the revised application, the guideline value as on the date of the revised application has to be calculated. In that event, the petitioners have to pay a sum of Rs.2,37,28,161, in the following manner:-

Additional premium FSI area 1002 Sq.Mts.Equivalent land area

For the above premium FSI area 400.8 Sq. Mts.

Guideline value as indicated by the Registration department
Rs.5500 per Sq. Ft.

Amount payable for the additional premium FSI area 400.8 Sq.Mts.
= Rs.2,37,28,161/-

31.The amount demanded by the respondent CMDA based on the impugned order is based on the present guideline value for the premium area already approved. What is required to be paid by the petitioners is the premium charges towards additional premium FSI area only. In this regard the judgment of the Hon'ble Supreme Court in the case of Union of India & Ors. vs. Asian Food Industries reported in (2006) 13 Supreme Court Cases 542, can be relied upon.

32.In that case, it has been held that by a policy decision, the vested or accrued right cannot be taken away. If at all it

could have only prospective effect and not retrospective effect. In this case, the petitioners had already paid the premium FSI charges based on the guideline value as on the date of the original application and therefore, the right got accrued to the petitioner in respect of the approved and premium FSI area. Therefore, the respondent CMDA has to calculate premium FSI charges only with regard to additional premium FSI area, which is equivalent to the value of 400.8 Sq. Mts. of land. To put it in other words, the additional premium FSI area involved is 1002 Sq. Mts. of built up area. Hence, there is no question of adopting the guideline value as on the date of the application for revision for the entire premium FSI area. It would amount to taking away the right accrued to the petitioners by grant of approval for the original premium FSI area. As per the original plan, pile work foundation has already been completed and therefore the original application has been acted upon. In view of that, the reasonings given by the respondent CMDA that the construction as per the earlier approval plan was not commenced is not correct. In this regard, the pile load testing report dated 22.02.2013 has been filed by the petitioners.

33. Though, the respondent CMDA has stated in the impugned order that the subsequent application for revision is a different one and it involves change in usage, namely, from Hotel to residential and combined two (2) blocks into one, thus, involving change of usage and plan in designing of the proposed development, the application for revision of approved plan cannot be considered as a different one. It is only an additional construction altering the original plan. It cannot be said alterations, additions etc., are not permissible and there is no prohibition in this regard in any of the rules, orders etc., In view of the same, Planning Permission Approval (PPA) cannot be treated as a new proposal. When the application for planning permission is not a new one, the question of calculating the premium FSI charges for entire area including already approved area based on the prevailing market rate as on the date of the application for revision is unjustified. The respondent CMDA cannot adopt the guideline value as on the date of the application for revision and it could be done only for the additional FSI area that would result because of the revision.

34. The petitioners by paying the premium FSI charges for 6,717.61 Sq.Mts. have acquired absolute right over the property to an extent of 2687.044 Sq.Mts excepting the additional premium FSI area to an extent of 1002 Sq.Mts. Therefore, for the said area only, the new guideline has to be taken and additional premium has to be determined. The petitioners only sought to revise the approval in respect of the original Block "A" by modifying its residential in line with Block "B" which is as per

original plan and the revised plan continues to be residential. MSB panel already recommended the revised proposal to the Government and the Government also approved the same and it will go to show that the application for revised planning permit could be treated as revised proposal only and not as a new proposal. If it is so, neither the MSB panel would have recommended nor the Government would have approved the application for revised planning permit.

35.The 2nd respondent themselves had stated that the pile work was done as per the original plan in paragraph 15 of the counter affidavit. In view of the same the reasonings of the respondent CMDA that the petitioners had not commenced the construction as per the original approved plan has to be rejected in view of their admission made in paragraph no.15 of the counter affidavit.

36.From the above it is very clear that,

- (1)The petitioners had already commenced the construction as originally approved as evident from the pile load testing report dated 22.02.2013.
- (2)The plan submitted by the petitioners cannot be a different one and it is only an application for revision of earlier approved plan.
- (3)The petitioners had already paid premium FSI charges in one lump sum for 6,717.61 Sq. Mts of premium FSI area, which is equivalent to the value of the land area of 2687.004 Sq. Mts. as per the guideline value as on the date of original application.

37.For the aforesaid reasonings, the impugned order has to be set aside and the claim made in the impugned order is not sustainable. If at all the 2nd respondent can demand charges for additional premium FSI area to an extent of 1002 Sq. Mts., which is equivalent to land area of 400.8 Sq. Mts. For the said area, the 2nd respondent is at liberty to apply the new guideline value and demand additional premium FSI charges, as the petitioners had already paid premium charges for the original extent of 6,717.61 Sq. Mts of built up area [equivalent to 2687.5 Sq.Mts. land area].

38.In view of quashing of the impugned proceedings, the following directions are given:

- (1)The petitioner shall pay additional premium FSI charges for 1002 Sq. Mts., which is equivalent to land area of 400.8 Sq. Mts, as per the revised guideline value.
- (2)On payment of such additional premium by the petitioner, the respondent shall issue revised approved plan within four weeks thereof.

39.In fine, the writ petition is allowed as stated above. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

may

To

1. The Secretary
Housing and Urban Development (UD-1) Department
Government of Tamil Nadu
Fort St. George, Chennai - 600 009.
2. The Member Secretary
Chennai Metropolitan Development Authority
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Housing & Urban Development (UD-I) Dept,
Fort St. George, Chennai - 600 009.

+2ccs to Mr.V.P.Sengottuvel, Advocate, S.R.No.92284

W.P.No.30150 of 2014

CS/11/01/18

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