

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION No.3946/2017
and W.M.P.No.4028/2017

M/s.Golden Homes Private Limited,
Rep. by its Authorised Signatory,
Mrs. Rekha,
AC 63, 5th Avenue Anna Nagar,
Chennai 40.

... Petitioner

Vs.

1. The Secretary to Government,
Housing and Urban Development Authority,
Fort St. George,
Chennai-600 009.

2. The Chennai Metropolitan Development Authority,
Rep. by Member Secretary,
No.1 Gandhi Erwin Road,
Egmore Chennai 600 008,

3. The Commissioner,
Poonamalee Municipality,
Office of Poonamalee Municipality,
Chennai 600 056.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the 3rd respondent vide his letter Na.Ka.No.842/2016/F1 dated 20.01.2017 pursuant to the demand in their letter in Na.Ka.No.842/2016/F1/27.12.2016 and to quash the same and further directing the 3rd respondent to issue Renewal Building Permit to the petitioner's development situated at Poonamalle Bypass Road, for the construction of residential and commercial building consisting 10 blocks Viz A1, A2, C-Stilt plus 17 floors, B1, B2, D, E-Stilt plus 16 Floors with 815 dwelling units, Block F- Basement Floor, Stilt Floor, plus 3 floors of commercial building with Gym, Games, Parlour, Banquet hall and Swimming Pool, Block G- Ground Floor Departmental Store, Block H- Ground Floor, Electrical Room at Survey No.5/15c, 84/E, 85, 86/1, 87, 88/1, 88/2, 89/1, 89/2A, and 89/2B, Poonamallee village, Poonamallee Bypass Road, Chennai 600 056, pursuant to the renewed Planning Permit issued by Chennai

Metropolitan Development Authority vide their Permit No.9082 issued vide their proceeding C/PP/MSB-IT/B6 A to X/2016 dated 27.06.2016 without insisting the petitioner to pay the demand as raised in their letter dated 27.12.2016.

For Petitioner :Mr.S.Sundaresan

For Respondents :Mr.S.Diwakar - for R1
Special Government Pleader
Mr.C.Johnson- for R2
Mr.R.Govindasamy - for R3

O R D E R

Heard Mr.S.Sundaresan, learned Counsel appearing for the petitioner, Mr.S.Diwakar, learned Special Government Pleader for the first respondent, Mr.C.Johnson, learned Counsel appearing for the second respondent, and Mr.R.Govindasamy, learned Counsel appearing for the third respondent.

2. The petitioner has come forward to challenge the 3rd respondent's letter in Na.Ka.No.842/2016/F1, dated 20.01.2017 pursuant to the demand letter in Na.Ka.No.842/2016/F1/27.12.2016 and to quash the same and further to direct the 3rd respondent to issue Renewal Building Permit to the petitioner's development situated at Poonamalle Bypass Road, for the construction of residential and commercial building, pursuant to the renewed Planning Permit issued by Chennai Metropolitan Development Authority vide their Permit No.9082 issued by their proceeding No. C/PP/MSB-IT/B6 A to X/2016 dated 27.06.2016 without insisting the petitioner to pay the demand as raised in their letter dated 27.12.2016.

3.The petitioner earlier obtained planning permission for the construction of 10 blocks granted by the second respondent in pursuant to the Government order issued in G.O.Ms. No.13, H&UD (UD-1), dated 12.01.2012. This planning permission was granted by the second respondent in letter dated 22.03.2012, on receipt of the necessary charges payable and on compliance of the conditions imposed by the respondent no.1. Accordingly, the petitioner has paid a total sum of Rs.4,12,70,500/- (Rupees four crores twelve lakhs seventy thousand and five hundred only). The petitioner has also gifted Open Space Reservation as per the Town and Country Planning Act.

4.Thereafter, under the Tamil Nadu District Municipalities Act, 1920, the petitioner sought for building permit from the respondent No.3. In tune with the planning permission granted by the respondent No.2, the respondent No.3 has granted the building permit in and by proceedings dated 21.01.2012. Condition No.3 of the planning permit mandates no construction

to be made after the expiry of the period of three years mentioned therein, until and unless a fresh permission is obtained. A violator will be faced with the consequences of penal actions and the unauthorized construction being removed as per Section 204 of the Tamil Nadu District Municipalities Act. In a case, where a construction of the building is not completed within the specified time, the same would lapse and a fresh application has to be made. However, under Section 50 of the Tamil Nadu Town and Country Planning Act, the applicant who got the permission earlier can seek extension and get it.

5.The petitioner could not complete the project. The petitioner company made an application to respondent Nos.2 and 3, for extension by exercising the power conferred under Section 50 of the Tamil Nadu Town and Country Planning Act. The extension sought for, has been granted for a period of three years. Needless to state that the payment made by the petitioner earlier for several charges has been taken into account while granting extension.

6.However by the impugned order, the third respondent has informed the petitioner that in view of mandate under Section 304 of the Tamil Nadu District Municipalities Act, 1920, there is no question of renewal and hence there has to be a fresh application after the expiry of the time granted earlier and as a consequence thereon, the petitioner will have to make a requisite payment one more time. Accordingly, a sum of Rs.79,70,000/- (Rupees seventy nine lakhs seventy thousand only) has been demanded, though paid on the earlier occasion.

7.The learned counsel appearing for the petitioner would submit that the condition No.3 of the earlier building permission has to be seen contextually from the point of view of a construction without permission. Thus, the subsequent demand sought to be made for considering the second application cannot be sustained in the eye of Law.

8.Learned Counsel for the third respondent would submit that as mandate under Section 204 of the Tamil Nadu District Municipalities Act, 1920, the application being a fresh one, the petitioner has to comply with the condition all over again. The learned counsel also made reliance upon condition no.3 of the permit and incidentally submits that there is an appeal provision available.

9.Condition No.3 of the building permission deals with the alleged construction after the expiry of the time mentioned therein. A perusal of Section 321 (9a) of the Tamil Nadu District Municipalities Act, 1920, would show that there is a provision for renewal of license / permission, subject to the limitation of 30 days being minimum and 90 days being the maximum.

10. Admittedly in the case on hand, the petitioner has applied within the time. Section 204 of the Tamil Nadu District Municipalities Act, 1920, has to be looked at from his own context. It merely states that a fresh application has to be made before the work is continued. Therefore, the object of this provision is to make sure that there is no construction without permission. There is a difference between a fresh application and a new application. To put it differently, an application seeking renewal is nothing but a fresh application and not a new one. Provisions of a statute have to be read in consonance with each other to avoid any unnecessary conflict. Therefore, Section 204 has to be read with 321 (9a) of the Tamil Nadu District Municipalities Act, 1920.

11. The matter can be looked at from the different perspective as well. The permission is sought for the same project. The petitioner has not changed the permission sought for and obtained earlier. Merely because, the project could not be completed, the respondent no.3 cannot seek the payment once again. A mere availability of the alternative remedy per se cannot be a ground. This issue sought for lies in a very narrow campus. It is one dealing with the payment of charges.

12. In such view of the matter, this Court is of the view that the order impugned cannot be sustained in the eye of Law and it is hereby set aside. In so far as the payment of Rs.79,70,000/- (Rupees seventy nine lakh seventy thousand only) is concerned. For all practical purposes, the application made by the petitioner has to be taken as duly complied with payment of requisite fee has done earlier. It is brought to the knowledge of this Court that the petitioner has paid a scrutiny fee for the grant of permission by paying a requisite amount more than Rs.1,00,000/- (Rupees one lakh only). The learned counsel also submits that any miscellaneous fees would also be paid. The statement made by the learned counsel appearing for the third respondent that two other payments such as, Building Construction Welfare Fund and Vacant Site Tax having been paid earlier are given credit to while considering the present application is also recorded. The fourth respondent shall consider the granting of necessary permit within a period of four weeks from the date of receipt of a copy of this order.

13. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

maya/nmm

To

1. The Secretary to Government,
Housing and urban Development Authority,
Fort St George, Chennai 600 009.
2. The Member Secretary,
The Chennai Metropolitan Development Authority,
No.1 Gandhi Erwin Road,
Egmore Chennai 600 008,
3. The Commissioner,
Poonamalee Municipality,
Office of Poonamalee Municipality,
Chennai 600 056.

+1cc to Mr. S. Sundaresan, Advocate Sr. 22916

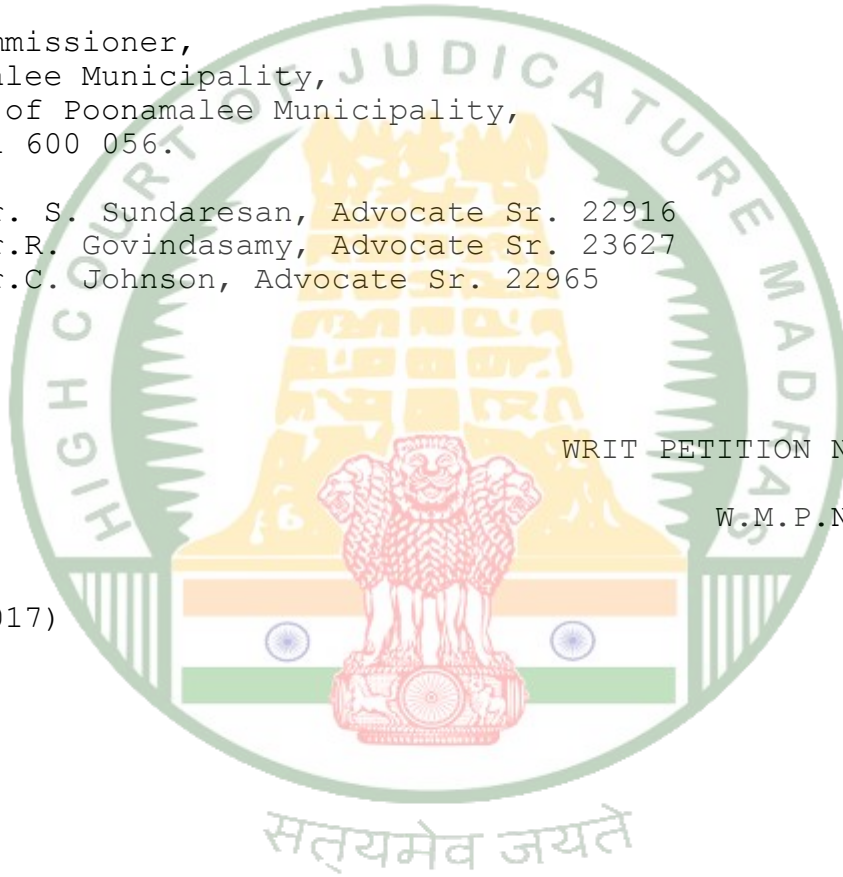
+1cc to Mr.R. Govindasamy, Advocate Sr. 23627

+1cc to Mr.C. Johnson, Advocate Sr. 22965

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VGI (CO)
VR(24/4/2017)

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