

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON :19.11.2018
PRONOUNCED ON:22.11.2018

CORAM:
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.13658 of 2012
and
M.P.No.1 of 2012

LANCOR HOLDINGS LTD,
Arihant VTN Square,
New No.58, Old No.104,
G.N.Chetty Road,
T.Nagar,
Chennai 600 017
rep. By its
Managing Director Mr.R.V.ShekarPetitioner

Vs.

1.State of Tamil Nadu,
Rep by the Secretary to Government,
Housing and Urban Development Department,
Secretariat,
Fort. St. George,
Chennai - 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

...Respondents

Prayer:

The Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamum to call for the records of the second respondent in its impugned Letter No.C3/5359/2011 dated 26.04.2012 and quash the demand of Rs.40,10,000/- for Open Space Reservation Charge and Rs.4,09,00,000/- for Premium FSI Charges which have been computed on the basis of the revised Guideline Value of Rs.3000/- per sq.ft of land in Town Survey No.53, Old Survey No.97/15 at Adambakkam Village, Alandur Taluk, Kancheepuram District, bearing New No.3, Old No.19, 3rd Main Road, Ramnagar, , Nanganallur, Chennai - 600 061 and consequently direct the 2nd respondent to accept from the petitioner the said Open Space Reservation Charge and Premium FSI Charges computed on the basis of the Guideline Value of land in Town Survey No.53, Old Survey No.97/15, at Adambakkam Village, Alandur Taluk, Kancheepuram District, bearing New No.3, Old No.19, 3rd Main Road, Ramnagar,

Nanganallur, Chennai - 600 061 prevalent on the date for the grant of approval by the first respondent for the petitioner's application for planning permit, namely 30.03.2012.

For Petitioner : Mr.P.R.Raman, Senior Counsel,
for Mr.C.Seethapathy

For R1 : Mrs.Sri Jayanthi,
Special Government Pleader

For R2 : Mr.Karthick Raja

O R D E R

The Writ petition has been filed by a Public Limited Company in the nature of Certiorarified Mandamus to call for the records of the second respondent namely the Member Secretary, Chennai Metropolitan Development Authority [CMDA] Chennai in letter No.C3/5359/2011 dated 26.04.2012 and quash the demand of Rs.40,10,000/- for Open Space Reservation Charge [OSR charge] and Rs.4,09,00,000/- for Premium FSI charges [PFSI charges] which had been computed on the basis of the revised guideline value of Rs.3,000/- per sq.ft on land in T.S.No.53, O.S.No.97/15, Adambakkam, Alandur Taluk, Kancheepuram bearing new No.3, Old No.19, 3rd Main Road, Ram Nagar, Nanganalloor, Chennai and consequently, direct the second respondent to accept from petitioner, the OSR charges and PFSI charges computed on the basis of the guideline value prevalent on the date for grant of approval by the first respondent, the Secretary to Government, Housing and Urban Development Department, State of Tamil Nadu, Chennai for the petitioner's application for planning permit namely 30.03.2012.

2. The learned senior counsel for the petitioner submitted that the petitioner undertook the development of an extent of 19 grounds and 2315 sq.ft of land in T.S.No.53, O.S.No.97/15, at Adambakkam Village, Alandur Taluk, Kancheepuram District, bearing New No.3, Old No.19, 3rd Main Road, Ramnagar, Nanganallur, Chennai. The petitioner had submitted an application for planning permission for construction of stilt floor plus six floors plus seventh floor (part) Multi storied residential building with 64 dwelling units. This application was submitted to the second respondent, Chennai Metropolitan Development Authority, [CMDA] on 11.04.2011 together with necessary scrutiny fees as fixed. For obtaining sanction for construction of multi storied building, several approvals and No Objection Certificates have to be obtained. These stipulations are governed by G.O.Ms.No.163, Housing and Urban Development [UD

I] Department dated 09.09.2009. This Government order gives guidelines for collection of PFSI which depends on the road width. The amount of PFSI shall be equivalent to the cost of proportionate land as per the guideline value of the Registration Department. This Government order was in accordance with the Regulation 36 of the Development Regulations for the Second Master Plan for Chennai Metropolitan area, 2026. The Government had approved the guidelines for PFSI. The OSR charges are also calculated in accordance with the valuation of the Registration Department. This has been provided in the Second Master plan for Chennai Metropolitan Area, 2026 issued by the second respondent/ CMDA.

3. The application submitted by the petitioner dated 11.04.2011 was processed by the respondents and finally the petitioner received a letter from the second respondent on 20.01.2012 seeking certain corrections in the plan. These corrections were complied with and letter dated 23.01.2012 was sent by the petitioner. The petitioner also received and submitted No Objection Certificates from various Departments. Thereafter, the second respondent also addressed the Commissioner, Corporation of Chennai seeking clarification whether the land where the project is to be effected, had been reserved for any public purpose. Clarification was also issued.

4. Finally, it has been stated by the petitioner that in the case of multi storeyed building, the plan has to be scrutinized by a Panel consisting of 9 members chaired by the Member Secretary of CMDA. This meeting was held on 25.01.2012. The Panel approved the building plan and recommended the case of the petitioner to the first respondent for further processing. This was by letter dated 29.02.2012. Thereafter, the first respondent, by letter No. [M.S.No.93] dated 30.03.2012, granted approval for the multiple storeyed building plan permission. Certain conditions were imposed including that of a revised planning permission application form to be furnished with structural stability certificate and a No objection Certificate from Indian Air Force. The CMDA was also directed to make regular inspection of the building to avoid deviations. The CMDA was thereafter requested to take necessary further action for issuance of planning permission. This letter had been issued to the second respondent.

5. Thereafter, the second respondent, by letter dated 11.04.2012, had addressed the Sub Registrar, Alandur to furnish the guideline value of the land, since the OSR charges and PFSI charges have to be calculated in accordance with the guideline value. The Sub Registrar, Alandur made an endorsement that the guideline value was Rs.3,000/- per sq.ft. This endorsement was dated 12.04.2012. After this, the second respondent CMDA addressed a letter No.C3/5359/2011 dated 26.04.2012, which is

the impugned order calling upon the petitioner to pay a sum of Rs.40,10,000/- towards OSR charges and Rs.4,09,00,000/- towards PFSI charges apart from other charges.

6. The above letter, with respect to calculation relating to the OSR charges and PFSI charges alone has been challenged by the writ petitioner, since according to the writ petitioner, the approval had been granted by the first respondent on 30.03.2012 and on that date, the guideline value was Rs.2,500/- per sq.ft and thereafter on 01.04.2012, there had been revision in the guideline value and it had increased to Rs.3,000/- per sq.ft. The claim of the petitioner is that they must be called upon to pay the OSR charges and PFSI charges only at the rate of Rs.2,500/- per sq.ft and not at the rate of Rs.3,000/- per sq.ft., as demanded in the impugned letter. They claimed that they are liable to pay the charges at the rate of guideline value which was prevalent on the date of approval by the first respondent and not on the date of information sought for and received by the second respondent.

7. A counter affidavit had been filed by the second respondent, in which they have stated that it was a fact that the petitioner has submitted a planning permission application and that No Objection Certificate had been obtained from various Departments and that the revised plan was examined and found to be in accordance with the Development Control Regulations of the Second Master Plan. It had also been stated that the multi storeyed building Panel had, in their meeting dated 25.01.2012, recommended forwarding the proposal to the Government. It was also stated that the Commissioner, Corporation of Chennai had clarified that the lay out was not in any land reserved for public purpose. It was also stated that the first respondent had issued the letter in MS.No.93 dated 30.03.2012, granting approval for issue of planning permission. However, it was stated that this approval was subject to conditions. It was not a final approval. The conditions stipulated are to be satisfied and the second respondent, has to make an inspection and grant final approval.

8. It was also stated in the counter affidavit that the order of the first respondent dated 30.03.2012 was received by the second respondent only on 02.04.2012. Thereafter, they had sought for information on the guideline value. The Sub Registrar, Alandur had stated that the guideline was Rs.3,000/- per sq.ft. Consequently, the second respondent/ CMDA stated that the petitioner will have to pay OSR charges and PFSI charges only at the rate of Rs.3,000/- per sq.ft. They specifically stated that the request of the petitioner to consider the guideline value as on the date of the issuance of G.O, namely 30.03.2012, is not correct and cannot be accepted.

The second respondent prayed that the writ petition may be dismissed.

9. Heard arguments of Mr.P.R.Raman, learned Senior Counsel appearing for Mr.C.Seethapathy, the learned counsel for the petitioner and Mrs.Sri Jayanthi, learned Special Government Pleader appearing for the first respondent and Mr.Karthik Raja, learned counsel appearing for the second respondent.

10. Mr.P.R.Raman, learned Senior Counsel appearing for the petitioner took the Court through the facts of the case and stated that the application for planning permission had been submitted by the petitioner for construction of stilt floor plus six floors plus seventh floor [part] multi storeyed building with 64 dwelling units to the second respondent on 11.04.2011. It is also pointed out that G.O.Ms.No.163, Housing and Urban Development [UDI] Department, dated 09.09.2009 provided that PFSI charges shall be paid in accordance with the guideline value. This was in accordance with Regulation 36 of the Development Control Regulations for the Second Master Plan for Chennai Metropolitan Area, 2026. Similarly, even for OSR charges, under the same Second Master Plan, the OSR charges are payable in accordance with the guideline value furnished by the Registration Department. The learned Senior Counsel further stated that final approval of the plan was granted on 30.03.2012. However, the second respondent had forwarded the communication requesting the guideline value with the Sub Registrar, Alandur only on 11.04.2012. In the meanwhile, on 01.04.2012, the guideline value had increased from Rs.2,500 per sq.ft to Rs.3,000/- per sq.ft. The learned Senior Counsel stated that the petitioner can make payment towards OSR charges and PFSI charges only at the rate which was prevalent on the date of grant of approval by the first respondent and not on the date when the second respondent sought and obtained the guideline value.

11. This contention of the learned Senior counsel has been very strongly objected to by Mr.Karthik Raja, learned counsel appearing for the second respondent/CMDA. The learned counsel pointed out that the approval granted by the first respondent was only a conditional approval. If the conditions are not satisfied, the second respondent will have every right to reject the permission granted and request the first respondent to re-visit the grant of approval. It was also pointed out by the learned counsel that the letter granting permission of the first respondent dated 30.03.2012, was received by the second respondent only on 02.04.2012. Thereafter, they had sought for information regarding the guideline value by letter dated 11.04.2012 from the Sub Registrar, Alandur. The information was provided on 12.04.2012,

stating that the guideline value was Rs.3,000/- per sq.ft. The learned counsel therefore stated that the petitioner should pay the OSR charges and the PFSI charges only at the rate of Rs.3,000/- per sq.ft and not at the rate of Rs.2,500/- per sq.ft.

12. Mrs.Sri Jayanthi, learned Special Government Pleader appearing for the first respondent also supported the stand taken by Mr.Karthik Raja, the learned counsel for the second respondent.

13. I have carefully considered the arguments advanced.

14. The petitioner is a public limited company registered under the Companies Act, 1956 involved in the business of real estate development. They undertook development of an extent of 19 grounds and 2315 sq.ft of land in T.S.No.53, O.S.No.97/15, Adambakkam, Alandur taluk, Kancheepuram District bearing new door No.3, old No.19, Third Main Road, Ram Nagar, Nanaganalloor, Chennai 600 061. They had submitted an application on 11.04.2011 for building sanction and planning permission for construction of stilt floor plus six floors plus seventh floor [part] multi storeyed residential building, 64 dwelling units to the second respondent. This application was processed at various levels. Finally, on 20.01.2012, the second respondent/CMDA had addressed a letter to the petitioner stating that the planning permission application had been received and that there were certain violations and defects to be rectified. It is the claim of Mr.P.R.Raman, learned Senior counsel appearing for the petitioner that these violations/defects were rectified and complied with and a letter was addressed to the second respondent on 23.01.2012 itself. Thereafter, on 25.01.2012, as contemplated under Rule 28 of the Development Control Rules under the Second Master Plan for Chennai Metropolitan Area 2026, the plan was scrutinized by a Panel consisting of nine members, chaired by the Member Secretary of the second respondent/CMDA. The other members were representatives of various Departments including Electricity Board, Police, Fire and Rescue services, etc., The learned Senior Counsel pointed out that this Panel cleared the project on 25.01.2012. It has also been stated in the counter affidavit filed by the second respondent that the said Panel discussed the subject in detail and recommended forwarding the proposal to the Government, after obtaining confirmation in writing from the regulatory body that the site is not categorised as reserved for public purposes. A letter dated 30.01.2012 was addressed by the second respondent to the Commissioner, Corporation of Chennai seeking clarification in this regard. The clarification was also received. Thereafter, the planning permission application was forwarded to the Government by the letter of the second respondent dated 29.02.2012. On 30.03.2012, the first

respondent passed Government letter in M.S.No.93 Housing and Urban Development [UDI] Department, dated 30.03.2012. In the said letter, they have stated as follows:

"letter (Ms) No.93, dated.30.03.2012

2. The Government, after careful examination, have decided to accord approval to the recommendation of the Multi-Storeyed Building Panel. Accordingly, the Government, approve the recommendation of the Multi-Storeyed Building panel for issue of Planning Permission to M/s.Lancor Holdings Limited (GPA) for the construction of Stilt Floor+ 6 Floors + 7th Floor (part) Residential Building with 64 Dwelling Units at New No.3, Old No.19, 3rd Main Road, Ramnagar, Nanganallur, in Old S.No.97/15 of Adambakkam Village, T.S.No.53, Block No.15, Ward No.E of Alandur Municipality, based on the plan incorporating the conditions imposed by Director of Fire and Rescue Services in his No Objection Certificate issued in K.Dis.No.7831/C1/2011, dated 09.06.2011 subject to the following conditions and on payment of Development Charges and other usual charges.

(i) The applicant should furnish revised Planning Permission Application Form.

(ii) The applicant should furnish the Structural Stability Certificate signed by the Structural Engineer who has now signed in the revised plans before issue of Planning Permission

(iii) The applicant should furnish No Objection Certificate from Indian Air Force before issue of Completion Certificate.

3. I am to request you to obtain an undertaking before issue of Planning Permission from the applicant as usual to the effect that he would fulfill all the Development Regulations provisions, conditions imposed by Director of Fire and Rescue Service and other Departments. The Chennai Metropolitan Development Authority is also requested to make regular inspection of the building to avoid deviation and to ensure that all the conditions of Director of Fire and Rescue Services are carried over in the Multi-Storeyed Building.

4. I am, therefore, to request you to take necessary further action accordingly for issue of Planning Permission."

The said letter also bears an endorsement " By special Messenger". It was addressed to the Member Secretary, CMDA,

Chennai. In the counter affidavit, it has been mentioned that this letter was actually received by the second respondent only on 02.04.2012. Thereafter, the second respondent had addressed the Sub Registrar, Alandur seeking information about the guideline value for the land where the site of the project was situated. This was necessary since under G.O.Ms.No.163 Housing and Urban Development [UDI] Department, dated 09.09.2009, the PFSI charge is payable as per the guideline value of the Registration Department. This was in accordance with Rule 36 of the Development Control Regulations for the Second Master Plan for Chennai Metropolitan Area 2026. The specific provision is as follows:

(iii) The amount to be paid by the applicant towards the premium FSI (hereinafter referred to as Premium FSI Charge) shall be equivalent to the cost of the proportionate land stated above, as per the Guide Line Value of the Registration Department.

Similarly, with reference to OSR charges, under the same Master Plan, Annexure XX provides as follows with reference to reservation and payment to be made.

"ANNEXURE XX

Reservation of land for community recreational purposes in cases of special buildings/Group Developments/multistoreyed building developments

10% of the area excluding roads or in the alternative he shall pay the market value of the equivalent land excluding the first 3000 sq.m. as per the valuation of the Registration Department, only where it is not possible to provide open space due to physical constraints. No such area reserved shall measure less than 100 square metres with a minimum dimension of 10 metres.

15. The issuance of the planing permission/approval of planning permission by the first respondent on 30.03.2012 was received by the second respondent on 02.04.2012. This time gap has been the direct cause for filing the writ petition. On 30.03.2012, the guideline value was Rs.2,500/- per sq.ft. On 02.04.2012, the guideline value had increased to Rs.3000/- per sq.ft. This has necessitated in passing the impugned letter by the second respondent, wherein they have demanded the amount towards OSR charges and PFSI charges at the rate of Rs.3,000/- per sq.ft. The relevant portion of the letter reads as follows:

iv)	Open space & reservation charge	Rs.40,10,000/-
viii)	Premium FSI Charges	Rs.4,09,00,000/-

16. The learned Senior Counsel appearing for the petitioner insisted that the charges are payable only the guideline value prevalent as on the date when the approval had been granted by the first respondent. On the other hand, Mr.Karthik Raja, learned counsel appearing for the second respondent/CMDA insisted that the amount is payable only as on the date when the information has been furnished with reference to the guideline value. In this connection, Mr.Karthik Raja relied on 2007 (11) SCC 140 [Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others] para 36 and 38 reads as follows:

"36.It is now well settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer res integra.

38. The question again came up for consideration in Howrah Municipal Corpn.v.Ganges Rope Co.Ltd.⁶ wherein this Court categorically held:(SCC p.680 para 37)

"37. ... The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to 'ownership or possession of any property' for which the expression 'vest' is generally used. What we can understand from the claim of a 'vested right' set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a 'legitimate' or 'settled expectation' to obtain the sanction. In our considered opinion, such 'settled expectation', if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the

State Government, in exercise of its rule-making power, amended the Building Rules and imposed restrictions on the heights of buildings on G.T.Road and other wards, such 'settled expectation' has been rendered impossible of fulfilment due to change in law. The claim based on the alleged 'vested right' or 'settled expectation' cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such 'vested right' or 'settled expectation' is being sought to be enforced. The 'vested right' or 'settled expectation' is being sought to be enforced. The 'vested right' or 'settled expectation' has been nullified not only by the Corporation but also by the State by amending the Building Rules. Besides this, such a 'settled expectation' or the so-called 'vested right' cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon.

The learned counsel also relied on 1992 (3) SCC(455) para 24 [Usman Gani J.Khatri of Bombay Vs. Cantonment Board and others] reads as follows:

"24. It appears from the record that the Union Ministry of Environment, State of Maharashtra, National Commission on Urbanization and Expert Working Group on Cantonment Areas took notice of this problem in the city of Pune and suggested schemes which took the shape of orders issued by the GOC-in-Chief, Southern Command and amendments in the bye-laws by the Cantonment Board. The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned instalments and getting conversion of their land in freehold tenure. The first scheme of restrictions was brought into force long back on December 24, 1982 and the second on March 26, 1984. The petitioners did not submit any fresh building plans in accordance with the first or the second scheme of restrictions. Many of the petitioners have not paid a single pie towards the conversion charges, some of them have paid only few instalments and the others though have paid the instalments but not according to the schedule. In any case the High Court is right in taking the view that the building plans can only be sanctioned according to the building regulations prevailing at the time of sanctioning of such building

plans. At present the statutory bye-laws published on April 30, 1988 are in force and the fresh building plans to be submitted by the petitioners, if any, shall now be governed by these bye-laws and not by any other bye-laws or schemes which are no longer in force now. If we consider a reverse case where building regulations are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit.

“

17. Placing reliance on the above two judgments, the learned counsel for second respondent/CMDA stated that if a statutory right is provided for and enforcement is in several stages, then until the conditions stipulated are satisfied, no right can be said to have been vested on the person concerned.

18. Learned counsel for the second respondent also relied on 2017 (13) SCC 672 [State of Kerala and others Vs. Palakkad heritage Hotels]. In that case it was held that the processing of the application for grant of licence commences from the date of application but the date on which a formal, final decision is taken by the competent authority, alone would be the relevant date, for determination of rules applicable, and the recommendation made by the subordinate authority, even if significant for taking a formal decision by the competent authority, will be of no avail. This judgment actually emphasizes the fact that the date of final approval alone is the relevant date. In this case, the final approval by the competent authority was on 30.03.2012. The second respondent is the subordinate authority to the first respondent.

19. The learned counsel for the second respondent also relied on 1981 (2) SCC 205 [State of Tamil Nadu Vs. M/s. Hind stone and others]. In this case, it had been held that

“ (5) A statutory rule, while ever subordinate to the parent statute, is otherwise, to be treated as part of the statute and as effective. Rules made under the statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purposes of construction or obligation. So statutory rules made pursuant to the power entrusted by Parliament are law made by Parliament within the meaning of Article 302 of the Constitution.

Rule 8-C thus falls under Article 302 and does not contravene Articles 301 and 303."

In the present case, there is no rule stating the date on which the guideline value should be taken into the account. The planning permission gets its final approval when it is approved by the first respondent. The rest of the processes are procedural in nature. Consequently, all facts the ratio laid down would not be applicable.

20. In 2014 (6) MLJ 385 [Chennai Metropolitan Development Authority, rep. By its Member Secretary, Chennai 600 008. Vs. Prestige Estates Projects Ltd., Through its Vice-President, Bangalore - 560 001 and Another] A Division Bench of this Court was concerned with a case wherein CMDA demanded additional payment owing to revision of guideline value. The facts of the case are that

" the second respondent on receipt of application for planning permission issued a demand dated 27.03.2012 demanding the remittance of development charges and other charges.

The second respondent /appellant herein has issued another demand notice dated 22.08.2012 in the form of revised advice calling upon the petitioner, to remit the balance I&A charges of Rs.4,17,15,000/- and balance Ppremium FSI charges of Rs.90,76,75,000/- and called upon the petitioner to remit the same within 30 days from the date of receipt of the said notice, failing which interest @ 12% p.a will be charged and if no remittance is made within 60 days from the daste of issue of the demand notice, the papers would be returned unapproved."

The writ petitioner came to know that it was revised on account of revision to the guideline value of the land which came into effect from 01.04.2012."

It was held that,

" The only reason assigned by the appellant, that too in the counter affidavit, is that the Government have revised the guideline value upwardly with effect from 01.04.2012 and as per the revised guidelines value, the site of the petitioner is Rs.4,000/- per sq.ft and NOC issued by CMWSSB dated 30.03.2012 was received on

02.04.2012 and in the interregnum, guideline value was revised and the impugned demand came to be made. Admittedly, the said reason is not found in the impugned demand notice and sought to be justified only through the counter affidavit and in the celebrated case of Mohinder Singh Gill and Another Vs. Chief Election Commissioner, New Delhi and Others (1978) 1 SCC 405 : LNIND 1977 SC 332, wherein it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and therefore, on that ground also, the impugned demand is unsustainable."

The Chennai Metropolitan Development Authority had filed SLP.Nos.31274-31275/2014 before the Hon'ble Supreme Court, which is pending.

21. In the present case, the second respondent is an arm of the first respondent. The CMDA has been created to ensure primarily that they act as a median to receive applications and in the case of multistoreyed building, the application will be forwarded to the Government for necessary approval. The Government forms a MSB panel and the said Panel examines the planning permission and then they give the necessary recommendation to either grant approval or deny the approval. In the present case, the MSB panel had recommended grant of approval to the Government. This has been admitted in the counter affidavit. It is only thereafter that the first respondent passes an order and finally grant approval. This approval is based on No Objection Certificates received from various Departments and is based on scrutiny of the approval by the MSB Panel. A finality is reached with respect to the planning permission to be given. Thereafter, the charges that are to be levied under various heads are demanded by the CMDA. That demand is incidental. That demand can be made only after final approval had been granted by the 1st respondent. The basis for such demand is the grant of approval. That demand is procedural in nature and not based on statute. It is provided for in law, but relates back to the final approval. The charges have to be demanded only on the basis of the guideline value as on the date of approval of the plan, in this case, 30.03.2012. In the impugned order also, the various heads wherein charges have to be paid are stated. They are as follows:

i	Development charge for land and building under Sec.59 of the T&CP Act, 1971	Rs.2,11,000/-
ii	Balance Scrutiny Fee	Rs.6,000/-
iii	Regularization charge	Rs.Nil
Iv	Open Space & reservation charge	Rs.40,10,000/-
v	Security Deposit (For Building)	Rs.12,30,000/-
vi	Security deposit for Display Board	Rs.10,000/-
vii	Infrastructure & Amenities Charges	Rs.31,00,000/-
viii	Premium FSI Charges	Rs.4,09,00,000/-

22. These heads wherein charges have to be paid, can be collected or can be levied only when the plan is granted approval. A right had been vested with the petitioner, since the planning permission had been approved finally by the Government only on the date of the approval of the plan by the 1st respondent. Before granting such approval, if there had been statutory amendments, then the petitioner has to be subjected to such amendments. But revision in guideline value is not due to any statutory amendment. It is procedural in nature. The necessary charges demanded do not impinge on the approval of the building plan, but it depends on the area of the building and not on the other factors of NOCs from various other agencies. When, once the first respondent grants permission, thereafter, the further process begins. On the one hand, the petitioner begins to construct the building and before constructing such building, necessary payments have to be made under the various heads as stipulated above. Two of those are relatable to the guideline value. That value has to be fixed only on the date of approval of the building plan. If the Plan had been approved on a particular date and thereafter, if the second respondent delays and then obtains the guideline value which had increased either by an efflux of time or by revision in the guideline value, then the petitioner cannot be mulcted with such charges. The petitioner has to pay the charges as on the date of the approval. The petitioner will be liable to pay additional charges only if the rules so stipulate specifically. In the present case, the increase in the guideline value was subsequent to the date of approval. The impugned letter has not given any reason for the delay in demand after the guideline value had been revised. The reason has been given only in the counter affidavit and that cannot be accepted. If in the approval letter itself, the demand as per increase in the rate of guideline value had been indicated, then that increase will have to be read along with the approval. In the instant case also, the charges for plan scrutiny, for example, had been given at Rs.6,000/-. The security deposit for display had been

given as Rs.10,000/-. These are fixed charges. If these charges are fixed, then any increase should be indicated at the time when approval is granted or it should have been indicated by the second respondent when recommending for grant of approval. In the present case, it is seen that the petitioner company had submitted their planning permission on 11.04.2011. This had taken its own time to be processed and the first respondent finally granted approval on 30.03.2012. The rate as on 30.03.2012 is the rate at which the petitioner has to pay OSR charges and PFSI charges. The learned counsel appearing for the petitioner placed great reference of 2007 (11) SCC 40 [Commissioner of Municipal Corporation, Shimla Vs. Prem Lata Sood and Others] which had been referred above, which, with most respect, I must say that it was a case where the Hon'ble Supreme Court was concerned whether the law had been amended. The Hon'ble Supreme Court held that delay in the processing of an application for sanction cannot be complained of. In this case, the petitioner has not complained for the delay in obtaining approval for the plan. On the other hand, the second respondent had taken steps to determine the guideline value after it had been revised. That the guideline value would be revised on the first of April every year is knowledge known to all. As a matter of fact, in the Government Order, it had been mentioned that the order had been dispatched by a special messenger and that there is no reply to that aspect in the counter affidavit. It had been only stated that the approval order dated 30.03.2012 was received only on 02.04.2012. But, unfortunately on 01.04.2012, the guideline value had been revised. This is to the direct loss and detriment of the petitioner. I hold that the petitioner cannot be charged with the increase in guideline value. The rules also do not provide the date on which the valuations should be arrived at. The date on which the valuations must be arrived at is the date on which the final approval was granted. The second respondent has every right to inspect the building and they have a right to regulate the construction of the building. But the approval is granted only by the first respondent. I therefore hold that the petitioner had made out a case for favorable consideration and consequently the writ petition is allowed and the impugned order dated 26.04.2012 is quashed in so far as the OSR charges and PFSI charges are concerned. The second respondent is directed to raise demand only based on the guideline value prevalent as on 30.03.2012 with respect to the said two charges. No costs. Consequently, connected W.M.P is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mfa

To

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

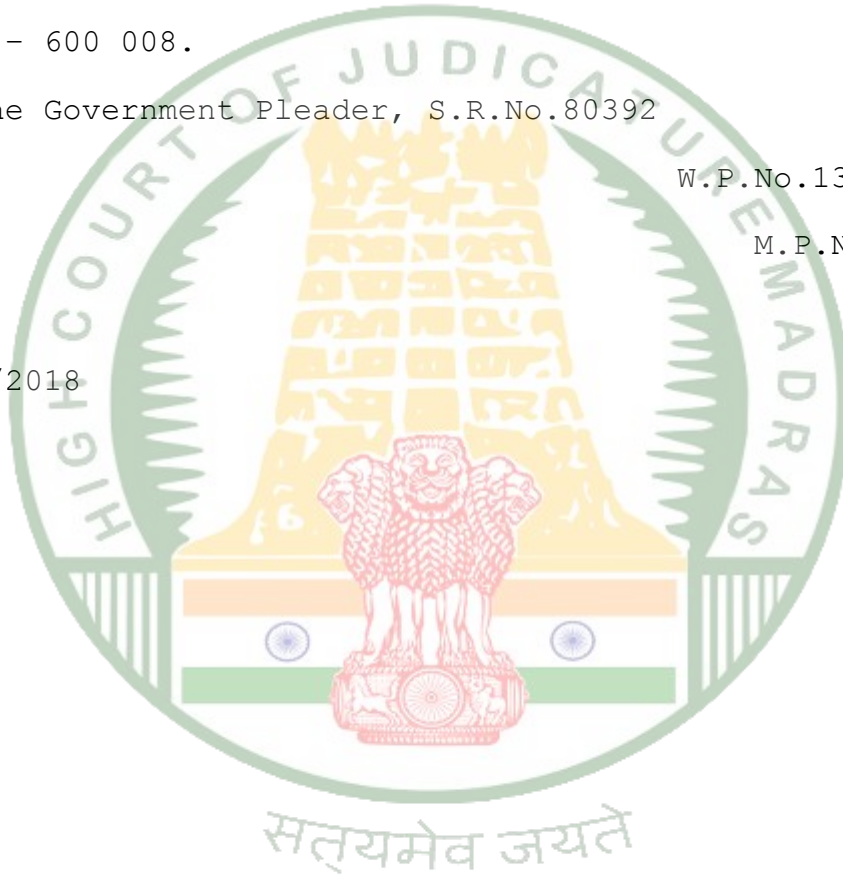
2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.8, Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

+1cc to the Government Pleader, S.R.No.80392

W.P.No.13658 of 2012
and
M.P.No.1 of 2012

RSK(CO)

rrs 13/12/2018



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