

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved : on 23.03.2018

Order Delivered : on 27.04.2018

Coram:-

The Honourable Mr. Justice T.Raja

Writ Petition Nos.30043 and 30045 of 2016

S.Sundar ... Petitioner in W.P.No.30043/16
M.Sankareswaran Petitioner in W.P.No.30045/16

vs.

- 1.The Secretary to Government,
Housing and Urban Development Dept.,
Fort St. George,
Chennai - 9.
- 2.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 2.
- 3.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai. ... Respondents in both WPs

Prayer in W.P.No.30043/16:- Writ Petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the first respondent in G.O. (2D) No.78, Housing and Urban Development (UD2(1) Department, dated 04.05.2016 and quash the same and direct the respondents to reinstate the petitioner into service with all monetary and service benefits.

Prayer in W.P.No.30045/16:- Writ Petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the first respondent in G.O. (2D) No.77, Housing and Urban Development (UD2(1) Department, dated 04.05.2016 and quash the same and direct the respondents to allow the petitioner to retire from service with all notional benefits.

For Petitioner in

WP No.30043/16 : Mr.R.Venkataraman
for Mr.S.Sairam

For Petitioner in

W.P.No.30045/16 : Mr.AR.L.Sundaresan, SC
for Mr.S.Sairam

For R1 & R2 in both WPs : Mr.S.R.Rajagopal, AAG

Assist. By Mr.V.Jayaprakash Narayanan, Spl.GP

For R3 in WPs : No Appearance

COMMON ORDER

The present writ petitions are directed against the impugned orders passed by the first respondent / the Secretary to Government, Housing and Urban Development Department, Chennai, vide G.O. (2D) No.78, Housing and Urban Development (UD2(1) Department, dated 04.05.2016, and G.O. (2D) No.77, Housing and Urban Development (UD2(1) Department, dated 04.05.2016, respectively, in and by which, the petitioners were removed from the services of the respondent on the ground that they have caused huge financial loss of Rs.10,31,07,750/- in collecting Infrastructure and Basic Amenities charges relating to construction of Multi-Storeyed Building (Club House and Information Centre) at Tiruporur Panchayat Union, while they were working as Supervisor and Assistant Director of Town and Country Planning respectively in the respondent department.

2. Assailing the impugned order, Mr.R.Venkataraman, learned counsel appearing for the petitioner in W.P.No.30043 of 2016, pleaded that while the petitioner was serving as Supervisor / Draughtsman-II, one applicant made a proposal for construction of Multi-storeyed Building (Club House and Information Centre) at Thiruporur Panchayat Union, Navalur Village, Chengalpattu Taluk, the said proposal was technically approved by the Commissioner of Town and Country Planning vide Roc.No.26842/07BA2, dated 10.03.2008, and forwarded the proposal to the Mamallapuram Local Planning Authority (MLPA) and the said MLPA, in its 110th meeting held on 29.05.2008 as subject No.4, dealt with the said aspect and approved the proposal of the said applicant subject to a condition that the OSR (Open Space Reservation) should be handed over to the local body as insisted by the Directorate of Town and Country Planning (DTCP) and thereafter, the Member Secretary, MLPA, served a letter on the applicant on 05.06.2008 to comply with the special condition regarding handing over of the OSR to local body. However, the said condition was not complied with by the applicant. As the said condition was not complied with, the issue of non-compliance of the condition by the applicant was again discussed by the MLPA, in its 111th meeting held on 29.07.2008, whereby it was resolved not to issue any planning permission without the compliance report from the applicant with regard to special condition imposed in the letter dated 05.06.2008 by the MLPA.

3. In the meanwhile, the President of Confederation of Real Estate Developers' Association of India (CREDAI) has represented to the Government stating that since the levy of charges is over and above the development charges, which is collected under various other heads and that in other States the rates are much lower and that in view of higher rates of interest on home loans, the sales have also dipped, they have requested the Government to reduce the Infrastructure and Amenities charges for the various types of building and the said charges may be effective from 08.04.2008 and the same may be permitted to be paid in two installments. The said representation of the CREDAI is pending with the Government from the year 2008. In view of pendency of the said representation with the Government, like many other builders, the present applicant also awaited the result of the Government on the representation made by the CREDAI, without complying with the condition imposed by the MLPA.

4. Considering the above said request of CREDAI, it is stated, the Government had issued G.O.Ms.No.161, Housing and Urban Development Department, dated 09.09.2009, revising the rates of charges and mode of payment in respect of Infrastructure and Amenities charges for different categories in different areas as stated below:-

S.N o	Type of Building	Chennai Metropolitan Development Authority	Commissioner of Town and Country Planning			
		Chennai Metropolitan Area	Chengal pattu Region	Coimbatore Tirupur and Kurichi	Other areas	
		Rs. Rates per Sq. Mtr.				
1.	Multi Storeyed Building Commercial or Information Technology or Industrial or Institutiional or Combination of such activities	500	500	375	250	

S.No	Type of Building	Chennai Metropolitan Development Authority	Commissioner of Town and Country Planning		
2.	Multi Storeyed residential	250	250	250	250
3.	Other than Multi Storeyed building Commercial building, Information Technology building, Group Development and Special Building	250	250	190	125
4.	Institutional building (not covered under S.No.1)	100	100	75	75
5.	Industrial building (not covered under S.No.1)	150	150	112.50	75

After a period of one month from the date of issuance of G.O.Ms.No.161, dated 09.09.2009, the applicants submitted a letter dated 31.10.2009 to the Member Secretary, MLPA, by enclosing a copy of OSR Gift Deed, five sets of proposed drawings. The same was also received by the office of the MLPA on 03.11.2009. It is further submitted that the DTCP issued a circular on 14.01.2011 directing all the officers of the respondent department including the petitioners that the rate of Infrastructure and Amenities Charges would be collected as per the G.Os. and circulars issued and were in force at that time. It is further stated that the controversy with regard to the date of collecting Infrastructure and Amenities Charges has been settled by the Rule of 9 of the G.O.Ms.No.22, dated 25.01.2008 that at the time of final decision, rates of Infrastructure and Amenities Charges applicable as on the date of issue of technical clearance by the Commissionerate of Town and Country Planning (CTCP) shall be levied as Infrastructure and Amenities Charges in areas covered by the Commissioner of Town and Country Planning, however, in respect of Chennai Metropolitan Area, the date of raising demand for Developmental charges be considered as crucial date for levy of Infrastructure and Amenities Charges. As per Rule 9 of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, namely, G.O.Ms.No.22, Housing and Urban Development (UD4-

1), dated 25.01.2008, only at the time of final decision on the application for grant of planning permission, but before the issue of the planning permission, the applicant shall pay to the Planning Authority or the Local Authority, as the case may be, Infrastructure and Amenities Charges, while so, a reminder letter dated 17.02.2009 issued to the applicant to handover the OSR to the Local Authority also clearly shows that no final decision was taken by any authority till such time. In the meanwhile, this Court has granted an order of interim stay on 10.06.2009 passed in W.P.No.2683 of 2009 against the operation of G.O.Ms.No.22, dated 25.01.2008. Subsequently, during the pendency of interim stay, G.O.Ms.No.161, dated 09.09.2009, has been issued fixing Rs.250/- per square meter, superseding G.O.Ms.No.22, dated 25.01.2008, which fixed Rs.1000/- per square meter. In such view of the matter, the question of raising demand at the rate of Rs.250/- per square meter also will arise only when the applicant complies with the condition imposed on him, hence, the charge memo dated 18.03.2011 framing the following two charges against the petitioners is bad in law.

"Charge No.1:-- In file No.275/07/MLPA relating to construction of Multi-Storeyed Building (Clubhouse and Information Centre) at Thiruporur Panchayat Union, Navalur Village Chengalpattu Taluk, Director of Town and Country Planning has approved the proposal vide Proc.Roc.No.26942/07/BA2, dated 10.03.2008. The OSR area handed over by the applicant on 11.11.2008. But the demand has been raised at the rate as per G.O.Ms.No.161, dated 09.09.2009. As per note sheet 118289x250+28782x500 (club house) = Rs.4,39,63,250) vide proceedings Roc.No.275/07 MLPA dated 25.11.2009, it was remitted on 22.12.2009. Planning permission has been issued on 18.01.2010 (MLPA approval No.4/2010).

The demand should have been collected @ the rate of Rs.1000/- per sq.mtr. for the total area of 147071 sq.mtr. as per G.O.Ms.No.22, Housing and Urban Development Department, dated 25.01.2008, which is applicable for MSB building.

Infrastructure & Basic Amenities charges to be collected for:

Residential area	= 118289 sq.m.
Commercial area	= 28782 sq.m.

Total area	= 147071 sq.m. X
Rs.1000	= Rs.14,70,71,000/-
Financial loss	= to be collected -

actually collected.

Rs.14,70,71,000 - Rs.4,39,63,250
= Rs.10,31,07,750/-

Thus Thiru S.Sundar, Supervisor/D.II. Villupuram Regional/formerly Supervisor/D.II, Chengalpattu Region, has caused financial loss of Rs.10,31,07,750/- (Rupees ten crore thirty one lakhs seven thousand seven hundred and fifty only) to Government.

Charge No.2:- That he has failed to do his legitimate duty. His action led to unbecoming of a Government servant and thus violated Rule 20(1) of Tamil Nadu Government Servants Conduct Rules, 1973."

5. At this stage, Mr.AR.L.Sundaresan, learned Senior counsel appearing for the petitioner in W.P.No.30045 of 2016, to whom a similar charge as stated above was issued, submitted that the Infrastructure and Amenities Charges raised by the Member Secretary, MLPA on 23.11.2009 was rightly confirmed by the previous Director of Town and Country Planning on 28.01.2010 and this was again confirmed by the MLPA, in its 120th meeting held on 29.12.2010. Therefore, it is contended, when there was no objection raised by the previous Director and the MLPA also has confirmed the Infrastructure and Amenity demand, the petitioners have rightly demanded the payment on the basis of G.O.Ms.No.161, Housing and Urban Development Department, dated 09.09.2009, and collected Rs.250/- per square meter, hence, the same cannot be found fault with.

6. It is further submitted that when the petitioners have obeyed the Town and Country Planning Act and Rules, G.O.Ms.No.161, Housing and Urban Development Department, dated 09.09.2009, and also Circular dated 16.09.2009 issued by the Commissioner of Town and Country Planning, advising all the officers to follow G.O.Ms.No.161, dated 09.09.2009, fixing Rs.250/- per square meter, the charge memo issued against the petitioners should have been avoided. However, although the petitioners have submitted their respective explanations, the disciplinary authority, without accepting the same, joining hands with the Enquiry Officer, without giving an opportunity to the petitioners to cross-examine any of the departmental witnesses, ought not to have accepted the report of the Enquiry Officer, holding them guilty of all the charges levelled against them. The said approach adopted by the Enquiry Officer and the Disciplinary Authority is wholly opposite to the ratio laid down by the Hon'ble Apex Court in State of Uttaranchal and others Vs. Kharak Singh [(2008) 8 SCC 236], wherein, it is held that in an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an

opportunity to him to cross-examine the witnesses of the employer and only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him. The said procedure has been completely violated, as a result, free and fair enquiry was not held, which has caused grave prejudice to the petitioners in loosing their jobs as well as their livelihood, therefore, it is contended, the impugned orders are liable to be quashed.

7. Continuing his arguments, learned Senior counsel further submitted that in terms of Section 63-B of the Town and Country Planning Act, inserted by way of Act 34 of 2007 with effect from 01.06.2007, every local authority or Planning Authority while granting building permit (or) planning permission, shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area in order to meet the impact of the development and for ensuring sustainable development of urban and rural areas at different rates prescribed for different area by following procedures by providing adequate infrastructure and amenities. Therefore, from this provision, it is clear that the Authorities shall levy infrastructure and amenities on any person while according building permit. This has been further clarified by the Commissioner of Town and Country Planning by the circular dated 16.09.2009. Again, this has been fortified by another Government letter dated 22.06.2012 issued by the Secretary to Government, Housing and Urban Development Department, making it clear that in respect of Chennai Metropolitan Area, the date of raising demand for developmental charges be considered as crucial date for levy of infrastructure and amenity charges. Therefore, in the case on hand, since the case of the petitioners falls under the Chennai Metropolitan Area and the date of raising demand by the petitioner being 23.11.2009 which is after the issuance of G.O.Ms.No.161, dated 09.09.2009, fixing Rs.250/- per square meter, they cannot be blamed as they have rightly fixed the demand for infrastructure and amenity charges. Hence, it is contended, the charges levelled against the petitioners are liable to be quashed in the light of G.O.Ms.No.161, dated 09.09.2009, circular dated 16.09.2009 of the Commissioner of Town and Country Planning, followed by another Government letter dated 22.06.2012 issued by the Secretary to Government and also in view of Section 63-B of the Town and Country Planning Act. Hence, the impugned orders passed by the first respondent removing the petitioners from the services of the respondent department are liable to be quashed.

8. Concluding their arguments, Mr.AR.L.Sundaresan, learned Senior counsel and Mr.R.Venkaraman, learned counsel, for the petitioners jointly submitted that as against the final

report filed before the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu, in Special Case No.3 of 2014 against the petitioners herein who have been arrayed as accused in Crime No.04-AC/2011/CC-II for offences under Sections 120B and 420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, 1988, when the the petitioners herein have filed Criminal Original Petition No.25124 of 2017 seeking to quash the same, this Court, vide its order dated 02.01.2018, quashed the Special C.C.No.3 of 2014 pending on the file of the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu, by observing that there was neither dereliction of duty nor any criminal intention on the part of the petitioners herein for not collecting Rs.1000/- per sq.mt. from the promoters and therefore, this cannot be construed as conspiracy to enable the builder to avail the benefit of anticipation of G.O.Ms.No.161, dated 09.09.2009. By citing so the said judgment, it is further contended that the present charges framed against the petitioners for the very same issue as discussed in the criminal court are liable to be quashed as not maintainable.

9. A detailed separate counter affidavit has been filed by the respondents 1 and 2. Mr.S.R.Rajagopal, learned Additional Advocate General, assisted by Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, for the respondents 1 and 2 submitted that the main issue in regard to the date on which the Infrastructure and Amenity charges become liable for payment remains at the time of final decision on the application for grant of planning permission but before the issue of planning permission. In the present case, admittedly, the technical clearance was granted by the Commissioner of Town and Country Planning with conditions on 10.03.2008, therefore, the date of giving clearance should be the date for collecting the Infrastructure and Amenities Charges. Besides, the Government have also issued orders in G.O.Ms.No.22, Housing and Urban Development Department, dated 25.01.2008, notifying rules towards collection of Infrastructure and Amenities charges and this apart, as per Rule 9 of the Infrastructure and Amenities Charges Rules, 2008, Infrastructure and Amenities Charges should be collected at the time of final decision on the application for grant of planning permission but before the issue of planning permission. Subsequently, the said Rule has been amended prescribing the collection of Infrastructure and Amenities Charges vide G.O.Ms.No.86, Housing and Urban Development (UD4) Department, dated 28.03.2012, however, the crucial date regarding the applicability of rates for collection of Infrastructure and Amenities Charges remains as it is i.e., at the time of final decision on the application for grant of planning permission but before the issue of planning permission.

10. Apart from this, it is submitted, the Director of

Town and Country Planning has also issued circular Nos.9278/2007/BA1, dated 25.08.2007, 11.01.2008 and 13.02.2008 clearly giving a direction to collect the Infrastructure and Amenities charges as per the Government Order in force, therefore, it goes without saying that the writ petitioners should have collected the Infrastructure and Amenities Charges at the rate prevailing on the date of issue of technical clearance by the Director of Town and Country Planning, inasmuch as once the technical clearance is accorded, the process of decision making on plan approval is complete and then subsequently what remains to be done by the concerned officer in the field is only to collect the payment and release the plan, hence, it is contended, there was no ambiguity, as to the date on which the decision regarding plan approval was taken and it is not only the first case, in many cases, the petitioners have collected Infrastructure and Amenities Charges contrary to the prevailing Government Orders and circulars.

11. The learned Additional Advocate General further contended that if the petitioners had any doubt regarding the rate at which Infrastructure and Amenities Charges to be collected, they should have obtained clarification from the Director of Town and Country Planning, rather than suo-moto deciding to adopt the reduced rates on the basis of G.O.Ms.No.161, dated 09.09.2009, ignoring the G.O.Ms.No.22, dated 25.01.2008, besides ignoring the technical clearance letter dated 10.03.2008 issued by the Commissioner of Town and Country Planning clearly mentioning the Government Order as per which Infrastructure and Amenities Charges should have been collected. Continuing his argument, Mr.S.R.Rajagopal, learned Additional Advocate General further contended that the petitioners have miserably failed to follow the rate of Infrastructure and Amenities Charges fixed by the Government in G.O.Ms.No.22, dated 25.01.2008 at the rate of Rs.1000/- per square meter, however, on the other hand, the petitioners, on their own, have followed the subsequent Government Order issued in G.O.Ms.No.161, dated 09.09.2009 prescribing to collect the Infrastructure and Amenities Charges from Rs.1000/- per square meter to Rs.250/- per square meter. Thus, such an arbitrary approach of the petitioners had caused huge financial loss to the Government to the tune of Rs.10,31,07,750/-, hence, they were issued with a charge memo dated 18.03.2011 calling upon them to submit their explanation. Thereafter, on receipt of their explanations, Enquiry Officer was appointed, who also, on completion of the enquiry, submitted his report holding them guilty of both the charges. Subsequently, both the petitioners were furnished with a copy of the enquiry report, for which, they have also submitted their explanation dated 12.04.2012 and thereafter, the Disciplinary Authority, finding their further explanations to the enquiry report were not satisfactory, after

Careful examination of case and also by obtaining the view of the Tamil Nadu Public Service Commission, passed the impugned punishment of removal from service against the petitioners, hence, it is pleaded, the impugned orders do not call for any interference.

12. Again, referring to G.O.Ms.No.22, Housing and Urban Development Department, dated 25.01.2008, the learned Additional Advocate General submitted that as per the said G.O., the first installment of 50% of the Infrastructure and Amenities Charges shall be made at the time of final decision on the application for grant of planning permission but before the issue of planning permission; the second installment of 25% of the Infrastructure and Amenities Charges shall be made within the end of six months period from the date of issue of planning permission; and the third installment of balance 25% of the Infrastructure and Amenities charges shall be made within one year from the date of payment of second installment or before the issue of completion certificate whichever is earlier. By citing the said G.O., it is further contended that on the date of technical clearance i.e. on 10.03.2008 granted by the Commissioner of Town and Country Planning, only G.O.Ms.No.22, dated 25.01.2008 alone was in existence, therefore, the petitioners should have collected the Infrastructure and Amenities Charges at the rate of Rs.1000/- per square meter, however, the petitioners have followed the subsequent G.O.Ms.No.161, dated 09.09.2009, reducing the Infrastructure and Amenities charges from Rs.1000/- per square meter to Rs.250/- per square meter. This has caused a huge financial loss to the tune of Rs.10,31,07,750/- to the Government, hence, the punishment of removal from service passed by the first respondent by taking note of the aforesaid loss caused by the petitioners to the exchequer does not call for any interference.

13. Again, referring to an order dated 02.01.2018 passed in CrI.OP.No.25124 of 2017 by this Court, it is contended that merely because there was a finding therein that no culpability can be attributed to these petitioners for not collecting Rs.1000/- per square meter, the petitioners cannot escape from the departmental proceedings, hence, the said order is inapplicable to the present case.

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

15. It is seen from the materials available on record that the applications dated 04.08.2007 and 19.09.2007 submitted by one Mr.A.Lakshmi Narayanan, seeking permission to construct Mult-Storeyed Building (MSB) was approved by the DTCP in Roc.No.26842/07/BA2, dated 10.03.2008 and thereafter, the same

was forwarded to the MLPA. Subsequently, the MLPA, in its 110th meeting held on 29.05.2008 as subject No.4, approved the said proposal of the applicant subject to a condition that the OSR should be handed over to the local body as insisted by the DTCP, for which, the Member Secretary, MLPA, has also served a letter on the applicant on 05.06.2008 to comply with the said condition. However, the applicant seeking planning permission has not complied with the said condition. This has been discussed by the MLPA, in its 111th meeting held on 29.07.2008, whereby it was resolved not to issue planning permission to the applicant until the applicant complied with the earlier condition imposed by the MLPA on 05.06.2008. Again, the MLPA had sent one more reminder letter to the applicant on 17.02.2009 to comply with the said condition. Thus, it is clear that till 17.02.2009, no final decision was taken for the grant of planning permission to the applicant warranting the petitioners to issue the demand notice for payment of I&A charges.

16. While the matter stood as above, when the CREDAI (Confederation of Real Estate Developers' Association of India) has filed a Writ Petition No.2683 of 2009 challenging the Government Orders passed in G.O.Ms.No.22, Housing and Urban Development Department, dated 25.01.2008, and G.O.Ms.No.84, Housing and Urban Development Department, dated 08.04.2008, prescribing the rate of Infrastructure and Amenities Charges at Rs.1000/- per square meter, while entertaining the said writ petition, this court, vide its order dated 10.06.2009, granted an order of interim stay of operation against the collection of Infrastructure and Amenities charges in terms of the above said G.O.Ms.Nos.22 and 84. In view of the said interim order of stay granted on 10.06.2009, the Government was not able to enforce the Infrastructure and Amenities Charges against anyone.

17. In fact, it is seen that, during the period of interim order of stay was in operation, the President of the CREDAI has also requested the Government to reduce the Infrastructure and Amenity Charges on account of slump in the real estate market and also that they faced severe financial crunch. Thereafter, on taking note of various representations made by the CREDAI, the Government, issued G.O.Ms.No.161, Housing and Urban Development Department, dated 09.09.2009, reducing the Infrastructure and Amenity charges to the tune of Rs.250/- per sq.mt. from Rs.1000/- per sq.mt. In the present case, although the technical clearance was granted on 10.03.2008 by the Commissioner of Town and Country Planning with certain conditions, the MLPA, in its meeting held on 29.05.2008 as subject No.4, approved the said proposal subject to a condition that the OSR should be handed-over to the local body as insisted by the DTCP. Apart from this, another letter dated 05.06.2008 was issued by the Member Secretary, MLPA to the applicant to comply with the said condition to handover OSR to local body and

again, for the failure to comply with the said condition to handover the OSR to the local body, yet another decision was taken by the MLPA, in its 111th meeting held on 29.07.2008, resolving not to issue planning permission until the applicant complied with the conditions imposed by the MLPA. Besides, one more reminder letter dated 17.02.2009 was issued by the MLPA reminding the applicant to comply with the said condition. Therefore, those proceedings clearly show that no final decision was taken till 17.02.2009 for grant of planning permission, since the applicant seeking planning permission had not complied with the special condition to handover the OSR to the local body.

18. In the meanwhile, as I mentioned above, this Court has passed an order of interim stay in W.P.No.2683 of 2009, on 10.06.2009, against the collection of Infrastructure and Amenities Charges in terms of G.O.Ms.No.22, Housing and Urban Development Department, dated 25.01.2008. Hence, no situation has arisen for the petitioners to issue a notice calling upon the applicant to pay the Infrastructure and Amenities Charges at the rate of Rs.1000/- per square meter. Again, it is to be noted that in view of issuance of subsequent G.O.Ms.No.161, dated 09.09.2009, prescribing Infrastructure and Amenities charges at the rate of Rs.250/- per square meter, the G.O.Ms.No.22, dated 25.01.2008, prescribing Infrastructure and Amenities charges at the rate of Rs.1000/- per square meter has been superseded. Thus, it is clear that the petitioners cannot be held responsible for not collecting Rs.1000/- per square meter from the applicant and it is due to the administrative delay, they could not enforce the earlier Government Order passed in G.O.Ms.No.22, dated 25.01.2008, prescribing Infrastructure and Amenities charges at the rate of Rs.1000/- per square meter.

19. It is also to be noted that till the issuance of G.O.Ms.No.161, dated 09.09.2009, neither the applicant has complied with the condition to handover the OSR to Navalur Panchayat, nor a final decision was taken for grant of planning permission as per the Rules 8 and 9 of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 (G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008. In this context, it is pertinent to refer to the Rules 8 and 9 thereof which are stated below:-

"8. Final assessment of Infrastructure and Amenities Charges.-- The planning authority or the local authority, as the case may be, after taking into consideration the objections, if any, filed by such person in respect of Infrastructure and Amenities Charges, payable by such person

shall issue a notice in writing of such assessment in Form C.

9. Payment of Infrastructure and Amenities Charges.-- Such person on receipt of the final assessment order under Rule 8 shall be liable to pay to the Planning Authority or the Local Authority, as the case may be, Infrastructure and Amenities Charges assessed:--

Sl.No.	Number of Installment	Quantum of Infrastructure and Amenities Charges to be collected	Period of payment
(1)	(2)	(3)	(4)
1.	1 st Installment	50 per cent of the charge	At the time of final decision on the application for grant of planning permission but before the issue of the Planning permission
2.	2 nd Installment	25 per cent of the charge	Within the end of 6 months period from the date of issue of Planning Permission
3.	3 rd Installment	25 per cent of the charge	Within one year from the date of payment of second installment or before the issue of completion certificate whichever is earlier

A bare perusal of the above provision clearly depicts that the applicant, on receipt of the final assessment order under Rule 8, shall be liable to pay the Infrastructure and Amenities Charges to the Planning Authority or the Local Authority, as the case may be, and that the period of demand also makes it clear that the first installment at the rate of 50% shall be made at the time of final decision on the application for grant of planning permission but before the issuance of the planning permission. As I mentioned above, in the cases on hand, no such final decision was taken till the issuance of

G.O.Ms.No.161, dated 09.09.2009, therefore, I am of view that no case has been made out by the respondents to proceed departmentally against the petitioners.

20. Besides, given the facts and circumstances of the case, it is relevant to refer to Section 63-B of the Town and Country Planning Act, which is stated below:-

"Section 63-B: Levy of infrastructure and amenities charges:--

(1) Every local authority or the planning authority, as the case may be, while according building permit under the relevant laws or according permission under this act, as the case may be shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area so as to meet the impact of development and for ensuring sustainable development area so as to meet the impact of development and for ensuring sustainable development of urban and rural areas by providing adequate infrastructure and basic amenities at the rates as determined in accordance with such procedure as may be prescribed which shall not be less than minimum and not more than the maximum as may be prescribed, and different rates may be prescribed for different parts of the planning area and for different uses.

(2) The infrastructure and amenities charges shall be leviable on any person who undertakes or carries out any such development or institutes any use or charges any such use.

(3) The collection of the infrastructure and amenities charges shall be made in such manner as may be prescribed."

A mere reading of the above said provision clearly shows that every local authority or Planning Authority, while granting building permit or planning permission, shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area in order to meet the impact of the development and for ensuring sustainable development of urban and rural areas at different rates prescribed for different area by following procedures by providing adequate infrastructure and amenities. Whiles, when the building permit or planning permission has not been granted till the issuance of G.O.Ms.No.161, dated 09.09.2009, the respondents cannot find fault with the petitioners, inasmuch as G.O.Ms.No.22, dated

25.01.2008, has also been superseded after the issuance of G.O.Ms.No.161, dated 09.09.2009.

21. Indeed, in a similar issue, in the case of another applicant, namely, M/s.Arun Excello Infrastructure Private Limited, a criminal complaint was registered against both the petitioners herein by the Inspector of Police, Vigilance and Anti-Corruption, Chennai, alleging that in respect of fixation of infrastructure and amenity charges pertaining to the Multi-storeyed Building proposed to be constructed by M/s.ArulExcello Infrastructure Private Limited in Maraimalai Nagar Municipality, the petitioners herein along with one Mr.P.Suresh, Managing Director of M/s.ArunExcello conspired and did not pursue the demand raised in terms of G.O.Ms.No.191, dated 01.06.2007 fixing the infrastructure and amenity charges at the rate of Rs.1000/- per square meter and on the contrary, they kept the matter pending for a period of 10 months and raised a fresh demand in terms of subsequent G.O.Ms.No.161, dated 09.09.2009, reducing the infrastructure and amenity charges at the rate of Rs.250/- per square meter. In the above said criminal complaint, both the petitioners herein were arrayed as Accused in Crime No.04-AC/2011/CC-II for offences under Section 120B and 420 IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, 1988. Thereafter, the respondent Police therein had filed a final report before the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu in Special CC.No.3 of 2014. Seeking to quash the said final report, the petitioners herein have preferred Criminal Original Petition No.25124 of 2017 before this Court. While considering the issue of whether the petitioners herein, in connivance with M/s.ArunExcello, have fixed a sum Rs.250/- per square meter as against Rs.1000/- per square meter towards Infrastructure and Amenities Charges, this Court, agreeing with these petitioners that no culpability can be attributed to these petitioners for not collecting Rs.1000/- per square meter and that there was neither dereliction of duty nor any criminal intention on their part for not collecting Rs.1000/- per square meter, has quashed the entire charges and also held as under:-

"17. Therefore, it is alleged in the final report that in pursuance of G.O.No.191 dated 01.06.2007 the builders are required to pay charges as per the provisions of the Government Order which were prevalent when the planning permission was issued. The Planning permission was issued for Ms.ArunExcello Infrastructure Private Limited on 18.11.2008. Hence the G.O.M.S.No.191 issued on 01.06.2007 G.O.Ms.No.22 dated 25.01.2008 and G.O.M.S.No.84 dated 08.04.2008 and the rates prescribed in these G.O's alone are applicable and the builders are not

eligible to any benefit of revision of rates on account of the subsequent orders. Knowing fullywell that the G.O issued subsequently i.e., G.O.Ms.No.161 dated 09.09.2009 is not applicable but in order to obtain wrongful gain and in order to help A3 and A4 the accused A1 and A2 with criminal intention to obtain wrongful gain and caused wrongful loss to the Government to the tune of Rs.8.68 Crores had delayed the process and thereby committed offence of Criminal misconduct.

18. While the allegation against the petitioners in the final report is as above, the Hon'ble Supreme Court considering the quash petition of the Co-accused, in Crl.A.Nos.1325 and 1326 of 2017 dated 28.07.2017, has held as under.

i) The First Information Report (FIR) under Sections 420 and 120B of the Indian Penal Code, 1860 (IPC) is registered against the appellants herein for causing wrongful loss to the Government. The allegations in the charge sheet are that the appellants in conspiracy with petitioner nos.1 and 2 in SLP(C)No.26254/2015, anticipating some reductions in Infrastructural and Amenities Charges without paying the amount to the Government; petitioner Nos.1 and 2 in SLP(C)No.26254/2015 being Government Servants abused their official position and helped the appellants to get the benefit of G.O.Ms.161 dated 09.09.2009 as per which the charges were reduced from Rs.1000/- per square meter to Rs.250/- per square meter. The trial Court framed the charges against the appellants. The appellants filed discharge application which was dismissed. Being aggrieved, the appellants filed two Criminal Revisions against the order of the Trial Court, which have been dismissed by the High Court vide impugned Judgment and challenging the order of the High Court these proceedings are filed.

ii) It may be recorded at this stage that the question as to whether the charges were payable by the appellants @ Rs.250/- per square meter or Rs.1000/- per square meter was the subject matter of SLP(C) No.26254 of 2015 which is also listed along

with these appeals. In that case, the demand of the State Government calling upon the appellants to pay the charges @ Rs.1000/- was challenged by the appellants in the High Court and the High Court allowed the writ petition. Intra Court appeal preferred by the State Government was also dismissed. SLP(C) No.26254 of 2015 has been filed against the said Judgment of the High Court. By a separate order, the said petition stands dismissed. The effect thereof is that the appellants were required to pay Rs.250/- per square meter only and having held so, the very basis and foundation of the charge sheet in the present case is demolished and they cannot be prosecuted.

iii) In these circumstances, these appeals are allowed and the appellants are discharged in the FIR No.04/AC/2011/CC-II.

19. While, challenging the demand of Rs.1000/- per sq.mt as Infrastructure and amenities charges by the Housing and Urban Development Department, the Apex Court has held that the 3rd and 4th Accused (Promoters) in this case are liable to pay only Rs.250/- per sq.mt and not Rs.1000/- and disposed the connected SLP(C)No.26254 of 2015. Thus, the very fundamental requirement to prosecute the petitioners is lost. The Apex Court had specifically held that the promoter is liable to pay only Rs.250/- per sq.mt. While so, no culpability can be attributed to these petitioners for not collecting Rs.1000/- sq.mt. More so, when the record show that A1 pursuant to G.O.84 had issued demand notice seeking amenities charges at the rate of Rs.1000/- vide his notice dated 01.12.2008, but due to the order passed by the Commissioner, Town and Country Planning on 26.03.2009 and subsequent to the issuance of G.O.161 dated 09.09.2009, the petitioners were not able to collect Rs.1000/- sq.mt as per G.O.M.S.No.84. (Housing and Urban Development Department)

20. Therefore, it is very clear that there was neither dereliction of duty or any criminal intention on the part of the petitioners herein for not collecting Rs.1000 per sq.mt from the promoters. It is due to the administrative delay, they could not

enforce the earlier notice dated 01.12.2008 issued pursuant to G.O.(MS).No.84. This cannot be construed as conspiracy to enable the builder to avail the benefit in anticipation of G.O.(MS).No.161 dated 09.09.2009. The Hon'ble Supreme Court after taking note of all these facts has quashed the criminal case against the other accused. The said reasoning squarely applies to these petitioners also. Hence, following the dictum of the Supreme Court in Crl.A.Nos.1325, 1326 of 2017 dated 28.07.2017, the petition under consideration is allowed."

In the above said case, in view of introduction of Infrastructure and Amenities Charges, vide G.O.Ms.No.22, dated 25.01.2008, M/s.ArunExcello Infrastructure moved an application to exclude the extent of 1,83,720 square meter and thereafter, ignoring the same, the then Regional Director raised a fresh demand for the entire extent (3,01,650/- square meter) at the rate of Rs.1000/- per square meter. As against that, the said M/s.ArunExcello Infrastructure Private Limited challenging the said proceedings filed a Writ Petition No.6725 of 2011, whereby this Court, vide its order dated 15.04.2013, set aside the said proceedings. Relevant portions thereof are extracted below:-

"9. The indisputable facts which have been set out above would amply establish that though originally the planning permission was given to an extent of 1,83,720 sq.mt., now the petitioner is proposing to put up construction only to an extent of 1,68,644 sq.mt. As stated already, infrastructure and amenities charges came to be imposed for the first time by virtue of G.O.Ms.No.191, Housing and Urban Development Department, dated 01.06.2007. The Government by proceedings dated 26.03.2009 issued instructions to exclude the area sanctioned prior to 31.05.2007, which will only mean that since the petitioner has obtained planning permission on 29.03.2007 to an extent of 1,83,720 sq.mt., it need not pay the infrastructure and amenities charges. It is also made clear, as stated already, that the petitioner has not submitted a revised plan for putting up construction only to an extent of 1,68,644 sq.mt. Therefore, there cannot be any objection on the side of the respondent to permit the petitioner to put up such construction and sanction the revised plan submitted by the petitioner, if it is

otherwise in order. Further, the respondents cannot claim any infrastructure and amenities charges for the reasons set out earlier.

10. Though the present writ petition has been laid challenging the proceedings of the second respondent dated 09.02.2011 and 15.02.2011, demanding a sum of Rs.15,08,25,000/- for the revised plan submitted by the petitioner since the petitioner is trying to put up construction only for an extent of 1,68,644 sq.mt., I am of the considered view that the writ petition could be disposed of in the following manner:-

(i) The impugned proceedings of the second respondent directing the petitioner to pay the infrastructure and amenities charges are liable to be set aside and accordingly, set aside.

(ii) Respondents 2 and 3 are directed to consider the revised plan submitted by the petitioner for putting up the construction to an extent of 1,68,644 sq.mt., and the said exercise has to be carried out within a period of four weeks from the date of receipt of a copy of this order.

(iii) The respondents shall not claim any infrastructure and amenities charges."

Challenging the above said order, when the Town and Country Planning Department preferred Writ Appeal No.1632 of 2014, the Hon'ble Division Bench of this Court, vide its order dated 26.03.2015, dismissed the said writ appeal confirming the order passed by the learned Single Judge on 15.04.2013, and thereafter, when the Special Leave Petition was filed by the Town and Country Planning Department, the same was also dismissed by the Hon'ble Apex Court on 28.07.2017 in SLP.No.26254 of 2015, holding that M/s.ArunExcello Infrastructure Private Limited is liable to pay only Infrastructure and Amenity charges only at the rate of Rs.250/- per square meter, but, not at the rate of Rs.1000/- per square meter. Again, taking note of all these facts, our High Court has also quashed the final report filed by the respondent police therein against petitioners herein / writ petitioners herein on the file of the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu, in Special Case No.3 of 2014.

22. In this context, at the risk of repetition, it is pertinent to note the following crucial facts;

a) the planning permission was granted to

M/s.ArunExcello on 29.03.2007 to the extent of 3,01,650 square meter and thereafter, on 25.02.2009, M/s.ArunExcello moved an application to the Commissioner, DTCP, requesting to revise the Infrastructure and Amenity Charges after excluding the extent of 1,83,720 square meter. Subsequently, on 26.03.2009, the Commissioner of Town and Country Planning, also accorded approval to the said extent. Whiles, an order of interim stay was obtained by the CREDAI before this Court on 10.06.2009 passed in W.P.No.2638 of 2009 against the collection of Rs.1000/- per square meter in terms of G.O.Ms.No.22, dated 25.01.2008. Thereafter, on receipt of various representations from the CREDAI seeking to reduce the Infrastructure and Amenities Charges, the Government, vide G.O.Ms.No.161, dated 09.09.2009, reduced the Infrastructure and Amenities Charges to Rs.250/- per square meter from Rs.1000/- per square meter. Subsequently, the office of the DTCP, vide its circular dated 16.09.2009, directed all the officers to collect the Infrastructure and Amenities Charges on the revised rate. Under these facts and circumstances, the matter went upto the Hon'ble Apex Court, whereby, it was held that M/s.Arun Excello is liable to pay only Rs.250/- per square meter, not Rs.1000/- per square meter towards the Infrastructure and Amenities Charges and ultimately, our High Court, by taking note of all these facts, has held that there was neither dereliction of duty nor any criminal intention on the part of the petitioners therein / writ petitioners herein for not collecting Rs.1000/- per square meter from M/s.ArunExcello (Promoter).

b) In the above said case, although planning permission was granted as early as on 29.03.2007, in view of the administrative delay and grant of interim order of stay by this Court, they were not able to enforce G.O.Ms.No.22, dated 25.01.2008, prescribing Rs.1000/- per square meter and ultimately, on the basis of subsequent G.O.Ms.No.161, dated 09.09.2009, a sum Rs.250/- per square meter only was collected in respect of M/s.ArunExcello.

c) On comparison to the above case, the case of the writ petitioners herein stands clearly on a better footing than that of M/s.ArunExcello, for, there was no any planning permission granted till 2010. Secondly, the MLPA approved the proposal sent by the DTCP for technical clearance only on 29.05.2008, that too, with a condition that the OSR should be handed over to the local body. Subsequent thereto, the applicant also complied with the said condition by submitting a copy of the OSR to the Navalur Panchayat, Chengalput Taluk, Kancheepuram District, on 03.11.2009, as could be seen from a letter dated 31.10.2009 of the applicant, therefore, in such a scenario, the reason stated in the impugned order that although the applicant had handed over the OSR to the authorities on 11.11.2008 the petitioners have failed to follow the then

prevailing Government Orders in force is wholly misconceived and cannot be accepted. Besides, the Commissioner of Town and Country Planning, vide his proceedings dated 16.09.2009, directed all the officers to follow G.O.Ms.No.161, dated 09.09.2009, prescribing to collect the Infrastructure and Amenities Charges only Rs.250/- per square meter. Therefore, by following all these proceedings, on 23.11.2009, the petitioners have raised Infrastructure and Amenities demand, which was admittedly confirmed by the previous Director of Town and Country Planning on 28.01.2010 and that MLPA also, in its 120th meeting held on 29.12.2010, approved the said demand raised by the petitioners. Hence, neither the question of contributing culpability against the petitioners for not collecting Rs.1000/- per square meter nor the question of causing financial loss to the exchequer can arise against the petitioners.

23. Finally, one of the contentions of the learned Senior counsel for the petitioners in W.P.No.30045 of 2016 as well as the learned counsel for the petitioner in W.P.No.30043 of 2016 is that the departmental enquiry was not held in a fair and proper manner, inasmuch as they were not permitted to cross examine the witnesses, with the result, they were not able to put-forth their cases to the enquiry officer. Rebutting such contention, the respondents have not mentioned anything about the manner in which the enquiry was conducted by the Enquiry Officer in their counter affidavit filed before this Court. In this context, it is necessary to refer to the judgment of the Hon'ble Apex Court in Kharak Singh's case (cited supra). Relevant portion thereof is extracted below:

"15) From the above decisions, the following principles would emerge:

i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked

to give any explanation about the evidence led against him.

iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

A mere perusal of the above proposition clearly depicts that in an enquiry, the employer/department should take steps first to lead evidence against the delinquent charged and give an opportunity to cross-examine the witnesses of the employer. Only thereafter, the delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him. On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary / punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any. But, in the case on hand, the respondents have not established before this Court whether fair and proper enquiry was held, nor they have stated a single word in their counter affidavit about the manner in which the enquiry was held by the Enquiry Officer.

24. Further, it is to be noted that while proceeding against the petitioners departmentally, neither the Enquiry Officer nor the Disciplinary Authority has ever considered whether the final planning permission was granted before the issuance of G.O.Ms.No.161, dated 09.09.2009. In fact, the record shows that even today, planning permission has not been granted either under Section 63B or as per Rule 9 of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 (G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008), therefore, the question of raising Infrastructure and Amenities charges on the basis of G.O.Ms.No.22, dated 25.01.2008, which has already been superseded by G.O.Ms.No.161, dated 09.09.2009, does not arise. This has been completely overlooked by the Enquiry Officer as well as the Disciplinary Authority during the disciplinary proceedings. Besides, I am of the considered view that the Enquiry Officer as well as the Disciplinary Authority have completely failed to follow the enquiry proceedings as per the principles laid down by the Hon'ble Apex Court in Kharak Singh's case (cited supra), while proceeding against the petitioners departmentally.

25. Thus, in view of the aforesaid reasons, the impugned orders passed by the first respondent removing the petitioners from the services of the respondent department are liable to be quashed and accordingly, they are quashed.

Consequently, the writ petitions are allowed. The respondents are directed to reinstate the petitioner in W.P.No.30043 of 2016 into the services of the respondent department with all the consequential service and monetary benefits. In respect of the petitioner in W.P.No.30045 of 2016, the respondents are directed to allow him to retire from the services of the respondent department with all consequential notional benefits, as he has already reached the age of superannuation. The said exercise shall be completed by the respondents within a period of four weeks from the date of receipt of a copy of this order. No Costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Secretary to Government,
Housing and Urban Development Dept.,
Fort St. George, Chennai - 9.

2.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai - 2.

3.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai.

+1cc to Government Pleader Sr.No.32844

+2cc to M/s.S.Sai Raman, Advocate SR.No.31734.31735

NRL(CO)

sm:10.5.2018

Common Order in WP Nos.30043 &
30045 of 2016

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