

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1330 of 2012**

- Rajesh Kumar Devnani, S/o Late Hariram Devnani, aged about 38 years, R/o Amapara Ward, Kanker, District North Bastar Kanker (C.G.)

---- Petitioner**Versus**

1. State of Chhattisgarh, Through the Secretary, Department of Urban Administration, D.K.S. Bhawan, Raipur (C.G.)
2. Deputy Director, Nagar Tatha Gram Nivesh, Regional Office Dhamtari, District Dhamtari, Chhattisgarh
3. Chief Municipal Officer, Nagar Palika Parishad, Kanker, District Kanker (C.G.)
4. Nagar Palika Parishad, Kanker Through - The Chief Municipal Officer, Nagar Palika Parishad Kanker, District North Bastar Kanker (C.G.)

---- Respondents

For Petitioner	:	Shri Raj Kumar Pali, Advocate with Shri Amit Kumar Sahu, Advocate
For Respondents/State	:	Ms. Richa Shukla, Dy. GA
For Respondents No.3 & 4	:	Shri Sourabh Sharma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****21/08/2019**

1. Heard.
2. The short question in this case is that the petitioner, who has applied for a building permission and submitted a map to the respondents No.3 & 4, which was sanctioned. It is contended that during such sanction the development fees has been charged to Rs.1,64,750/- vide Annexure P-4 apart from other other charges. It is contended that as per the Chhattisgarh Bhumi Vikas Rules,

1984 (for short 'the Rules, 1984') sub-rule (3) of Rule 21, the scale of fee is defined for different purpose, wherein the development charges have been prescribed and for development of an area up to 1 hectare as Rs.500/- is prescribed. It is stated that the petitioner has sought the development below the area of 1 hectare, which would be evident from the document filed with the rejoinder. The completion certificate of the building would show that the constructed area is 62370 sq. feet, therefore, the petitioner has wrongly been charged Rs.1,64,750/- instead of Rs.500/-. It is further contended that the notice was issued to the respondents, however, the amount has not been refunded, therefore, the petitioner cannot be charged exorbitant fees in name of development plan against the Rules, 1984, which prescribed scale of fees.

3. Per contra, learned counsel for the respondent would submit that the construction though was in respect of 62370 sq. feet, but the map which was submitted along with Annexure P-3, the construction was sought for different floors i.e. Lower Ground Floor, Ground Floor, First Floor and Second Floor. He would further submit that the petitioner has constructed four floors area including the lower ground floor and has over and above the sanction plan has constructed against building plan. Therefore, a notice was issued on 12.05.2011 vide Annexure R-3 and further notice was also served on 23.06.2011 to construct the building according to plan despite that the construction has been made. He would further submit that the development charges have been made applicable according to Rule 21, column (c) of Rule, 1984 which prescribes different rates to be charged for different type & use of construction and as such petition is liable to be dismissed.
4. I have heard learned counsel for the parties and perused the documents.
5. Perusal of the documents filed along with the petition shows that by Annexure

P-3, the permission was granted to the petitioner for construction and along with Annexure P-3, a map is also attached which is in respect of the location plan. The map would show that permission was sought for the different dimensions of area i.e. lower ground floor, basement, upper ground floor, first floor and second floor and total built up area is shown as 62370 sq. feet.

6. The Rules, 1984 is framed in exercise of the powers conferred by Section 85 read with sub-section (3) of Section 24 and Section 31 of the Chhattisgarh Nagar Tatha Gram Nivesh Adhiniyam, 1973. Rule 21 of the Rules, 1984 prescribes different scale of fee. Sub-rule (3) of Rule 21 prescribes the fees for the different type of building and the permission. sub-rule (a) of sub-rule (3) of Rule 21 shows that a scale of fee for development of area of 1 hectare would be Rs.500. The sub-rule (c) for permission of high rise buildings the different fees is prescribed, which would be relevant for the issue in hand the same reads as under:-

Rule 21 (c) for permission for high-rise buildings.

Item No.	Type of construction	Fees Chargeable in rupees.
1.	A building intended to be exclusively for residence.	Rs.10.00 per Sq. Mtr. Floor area space.
2.	A building intended to be used as shops, store house, factory or for carrying on trade or business or any other commercial or industrial purpose	Fees as prescribed in Item No.1 with additional charges of 100% of amount of fees.
3.	A building intended to be used as administrative block in a factory.	Fees as prescribed in Item No.1.
4.	A building intended to be used for shop-cum-residence purposes.	Fees Specified in Item No.1 together with additional charges of 50% of such amount of fees.

5. A building intended to be used for any special, charitable, cultural, educational purposes including hospital, school, club, Dharamshala and similar types of buildings and for any other purpose not specifically provided for. 50% of fees specified for Item No.1.]

7. The map in this case would show that apart from the lower ground floor and basement up till second floor, the construction permission was accorded. Therefore, how much fees is to be charged is to be calculated would be matter of evidence which can be arrived at only after the measurement of building is physically made. These facts are disputed question of fact which cannot be decided in this petition. It is also not in dispute that the building is used for carrying on business. Under the circumstances, the respondent is directed to take a measurement of entire building and thereafter shall calculate the leviable development charges and after calculation of the same, if it is found that higher charges are being recovered from the petitioner, then it shall return the same along with interest payable at the Bank rate. The contention of respondent that construction of building is not done according to the sanctioned plan. These issue are not subject of adjudication in this writ petition which is filed by the petitioner. The respondent shall be at liberty to measure the building, whether it has been constructed strictly in accordance with the building plan or not and thereafter the respondents shall also have the liberty to proceed in accordance with law.

8. With the aforesaid observation, the writ petition stands disposed of.

Sd/-

Goutam Bhaduri
Judge