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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.16965 of 2011

and

M.P. 1 & 2 of 2011

Shri Ragavendra Educational Trust,
Rep. By its Chairman S.B.Yuvaraj,
6/145, Mariamman Koil Street,
Vennandur, Namakkal District.

... Petitioner

Vs

1.State of Tamil Nadu,
Rep. By its Secretary,
Housing and Urban Development Dept.,
Fort St. George, Chennai.

2.The Director,
Town and Country Planning Authority,
807, Anna Salai, Chennai.

3.Assistant Director,
Town and Country Planning Authority,
Salem Zone, No.6, Sannadhi Street,
Subramania Nagar, Sooramangalam,
Salem - 5.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of respondents culminating in the order of the third respondent bearing No.Na.Ka.No.374/2011, Se.Ma., dated 10.05.2011, and quash the same and direct the respondents not to demand any further sums towards infrastructure and amenities charges other than a sum of Rs.11,75,300/- demanded vide Na.Ka.No.11120/2007/BAZ, dated 26.09.2007.

For petitioner : Mr.N.L.Rajah, SC
for Mr.S.Ashok Kumar

For Respondents : Mr.P.Rajalakshmi, AGP



new constructions, additions to existing constructions and change of use of existing buildings, the respondent can apply the new rate of Rs.250/- per sq.mtr. and the said new rate also can be collected only with effect from 12.11.2007 towards Infrastructure and Amenities Charges. Since the said G.O. has come into force only with effect from 12.11.2007, in the present case, neither the said G.O. can be put against the petitioner nor the case of the petitioner can be brought under any one of the situations mentioned in Rule 4 of the said G.O., as the sanction for construction of the building in question was already granted by the second respondent on 26.09.2007 itself. Besides, the respondents have not even made any mention either in the impugned order or in the counter affidavit about the applicability of the said G.O.

5. Referring to Rule 5 of the said G.O., learned Senior counsel submitted that only the Director of Town and Country Planning alone is authorized to fix the rates of such charges in respect of all the areas, other than the Chennai Metropolitan Planning Area. Therefore, placing reliance on the proceedings dated 16.11.2007 of the Executive Officer of the Vennanthur Town Panchayat, learned Additional Government Pleader cannot argue that the petitioner is liable to pay the enhanced compensation at the rate of Rs.250/- per sq.mtr.

6. Concluding his arguments, taking support from Section 49 of the Town and Country Planning Act, 1971, learned Senior counsel submitted that as per Section 49, the second respondent/the Director of Town and Country Planning Authority, Chennai, is the only Competent Authority and therefore, after scrutinizing the application submitted by the petitioner trust, the said Authority had also granted sanction for construction of the building in question on 26.09.2007 itself, which is much before the G.O.Ms.No.22, dated 25.01.2008, came into force i.e., with effect from 12.11.2007, hence, the impugned order passed by the third respondent directing the petitioner trust to pay at the rate of Rs.250/- per sq.mtr. is liable to be set aside.

7. A detailed counter affidavit has been filed by the third respondent. Mrs.P.Rajalakshmi, learned Additional Government Pleader appearing for the respondents, submitted that when the petitioner trust, vide their letter dated 25.01.2008, requested the respondents to allow them to pay a sum of Rs.11,75,300/- towards Infrastructure and Amenities Charges, the respondents, having issued G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, prior to the said letter submitted by the petitioner, have rightly issued the impugned proceedings demanding at the rate of Rs.250/- per sq.mtr. It is



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further submitted that the second respondent, vide proceedings dated 26.09.2007, accorded sanction for construction of the building in question demanding Rs.11,75,300/- towards Infrastructure and Amenities Charges and sent the same directly to the Executive Officer of the Vennandur Town Panchayat marking a copy to the third respondent. But, the petitioner did not remit the said demand raised by the second respondent and on the other hand, the petitioner trust had remitted only a sum of Rs.8,700/- towards centage charges as raised by the second respondent vide proceedings dated 06.09.2007. Moreover, it is contended that when the petitioner trust did not pay the Infrastructure and Amenities Charges till 16.02.2011, the demand made by the second respondent is perfectly in accordance with the stipulations made in G.O.Ms.No.191, Housing and Urban Development (UD4-2), dated 01.06.2007. Subsequently, when G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, came into force, as per rule 1(g) of this G.O., defining what is special building, the impugned order has been rightly issued demanding to pay at the rate of Rs.250/- per sq.mtr. and therefore, the same cannot be questioned by the petitioner trust.

8. Continuing her arguments, the learned Additional Government Pleader pleaded that when the petitioner trust submitted their proposal to construct the building in question to the Executive Officer of Vennandur Town Panchayat, the same was forwarded to the second respondent through the third respondent and thereafter, on receipt of the inspection report from the third respondent, the second respondent raised the demand to the tune of Rs.8,700/- towards Centage Charges. After payment of such demand, the second respondent, vide proceedings dated 26.09.2007, had accorded consent and directly forwarded the same to the Executive Officer of Vennandur Town Panchayat with an intimation to direct the petitioner trust to remit a sum of Rs.11,75,300/- towards Infrastructure and Amenities Charges. However, without making such payment, the petitioner trust had completed the construction of building in question. Therefore, the non-payment of such sum goes without saying that G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, will be certainly made applicable to the case of the petitioner, because, this has come into force with effect from 12.11.2007. Moreover, this Court, vide order dated 21.07.2011, granted an order of interim stay with a condition that the petitioner trust shall pay a sum of Rs.11,75,300/- within a period of three weeks. However, the said direction of this Court till date has not been complied with by the petitioner trust.

9. It is at this stage, learned Senior counsel for the petitioner trust submitted that they have already paid the said



sum on 04.08.2011 itself and to that effect, he has also produced a copy of the remittance challan.

10. Heard the learned counsel appearing on either side and perused the materials available before this Court.

11. It is the case of the respondents that when G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, which came into effect from 12.11.2007, has been placed reliance with regard to payment of Infrastructure and Amenities Charges at the rate of Rs.250/- per sq.mtr., it is for the petitioner trust to establish that either planning permission or building approval has been granted after the said G.O. came into force on 12.11.2007. In this context, it is necessary to extract below Rules 1, 2, 4 and 5 of the said G.O.:-

"1. Short title and commencement.-- (1) These rules may be called the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008.

(2) It shall be deemed to have come into force on the 12th day of November 2007.

2. Definitions.-- (1) In these rules, unless the context otherwise requires,--

(a) "Act" means the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972);

(b) "Officer concerned of the planning authority or the local authority" means any person nominated by the planning authority or the local authority for the purpose of Section 63-B of the Act and rule 7;

(c) "Group Development" means accommodation for residential or commercial or industrial or institutional or combination of such activities, housed in two or more blocks of buildings in a particular site, irrespective of whether these structures are interconnected or not. Any interlink between these structures in terms of connecting corridors shall not be construed as making any two structures into one block. However, if these blocks are connected solidly by at least one-third of the width of any one block in the connecting side, then such blocks shall be construed as a single block;

(d) "infrastructure" means the sum of technical installations and social institutions creating a basis for human activities. Specifically it is the physical equipment needed to provide services such as transport, power, water,



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supply, sewerage, drainage, communications and access;

(d) "local authority" means ---

(i) a Municipal Corporation established under any law for the time being in force; or

(ii) a Municipal Council or a Third Grade Municipality or a Town Panchayat constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920); or

(iii) a Panchyat Union Council or a Village Panchyat constituted under the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994);

(e) "multi-storeyed building" means a building having more than 4 floors including the ground floor or if the ground floor is used for parking under stilts, then, excluding the ground floor, whose height is 15 metres or more;

(f) "special building" means a building having more than two floors, but not exceeding 4 floors or a residential building having more than 4 dwelling units or a building accommodating commercial or industrial or institutional or combination of such activities with a floor area exceeding 300 square metres.

(2) The words and expression used in these rules and not defined, but defined in the Act shall have the meaning, respectively, assigned to them in the Act.

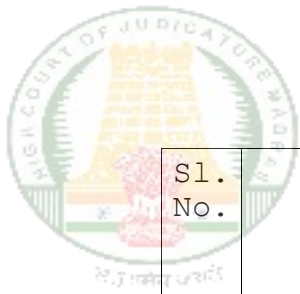
3.....

4. Infrastructure and amenities charges.--

The infrastructure and amenities charges shall be collected for new constructions, additions to existing constructions and change of use of existing buildings at the rates not exceeding the maximum rate and not less than the minimum rates indicated in the Table below, in case of different categories of buildings referred to in the Table:

TABLE

Sl. No.	Type of building rates per square metre	Minimum rates per square metre	Maximum
(1)	(2)	(3)	(4)
		Rs.	Rs.



Sl. No.	Type of building rates per square metre	Minimum rates per square metre	Maximum
1.	Multi-storeyed buildings accommodating residential or commercial or Information technology or industrial or institutional or combination of such activities	500	1000
2.	Commercial building, Information Technology building, Group development and Special building (not covered under Sl.No.1)	200	500
3.	Institutional building (not covered under Sl.No.1)	100	200
4.	Industrial building (not covered under Sl.No.1)	100	200

5. Fixation of rates of charges.--- (1) The Director of Town and Country Planning shall fix the rates of such charges in respect of all the areas, other than the Chennai Metropolitan Planning Area, for each of the above categories of buildings, which shall not be less than the minimum and not more than the maximum as prescribed in rule 4, taking into account the various aspects of developments including infrastructure needs. He may fix different rates for different categories of buildings or for different areas.

(2) In respect of the Chennai Metropolitan Planning Area, the Vice-Chairman, Chennai Metropolitan Development Authority shall fix the rates of such charges for each of the above categories of buildings which shall not be less than the minimum and not more than the maximum as prescribed in rule 4, taking into account the various aspects of developments including infrastructure needs. He may fix different rates for different categories of buildings or for different areas."

A conjoint reading of Rules 4 and 5 vividly depicts that the Director of Town and Country Planning is empowered to collect the charges towards Infrastructure and Amenities for new constructions, additions to existing constructions and change of use of existing buildings at the rates specified in the table column extracted supra. It is further clear that the above said



G.O. came into force only with effect from 12.11.2007. In such circumstances, it is necessary to see on what date the second respondent/competent authority has granted sanction for construction of the building in question.

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12. Admittedly, when the petitioner trust applied before the respondents on 17.04.2007 for construction of the building in question, the second respondent/the Director of Town and Country Planning had granted sanction for construction of the building in question on 26.09.2007 itself making it clear that the petitioner trust shall pay a sum of Rs.11,75,300/- towards Infrastructure and Amenities Charges. That clearly shows that much prior to the G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, coming into force i.e. on 12.11.2007, the second respondent had granted sanction for construction of the building in question. Therefore, the argument advanced by the learned Additional Government Pleader placing reliance on the above said G.O. to substantiate the impugned order cannot be sustained, in as much as the Director of Town and Country Planning has granted the sanction for construction of the building on 26.09.2007 even prior to the G.O. dated 25.01.2008, that came into force from 12.11.2007.

13. It is also not in dispute that the after the issuance of G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, which has come into force with effect from 12.11.2007, the petitioner has not moved any application either for new construction or additions to the existing constructions or change of use of existing buildings, enabling the respondents to invoke Rule 4 of the said G.O. Therefore, the respondents cannot apply the Rule 4 mentioned supra.

14. To sum up, this Court, finding that G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, has come into force only with effect from 12.11.2007 and by that time the second respondent has already accepted the case of the petitioner for construction of the building in question on 26.09.2007 itself, is unable to find any merit in the impugned order. Hence, in such view of the matter, the impugned order passed by the third respondent is set aside.



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15. In fine, for reasons stated above, the writ petition is allowed as prayed for. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

To

1.The Secretary,
Housing and Urban Development Dept.,
Fort St. George, Chennai.

2.The Director,
Town and Country Planning Authority,
807, Anna Salai, Chennai.

3.The Assistant Director,
Town and Country Planning Authority,
Salem Zone, No.6, Sannadhi Street,
Subramania Nagar, Sooramangalam,
Salem - 5.

+1cc to the Government Pleader Sr.21938
+1cc to Mr.S.Ashok kumar, Advocate Sr.81699

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srg 26/12/2019