

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13286 of 2019

Shantha Trust

Rep. by its Managing Trustee

Mr.S.Senthil Kumar

...Petitioner

Vs.

1.The Commissioner and Secretary
Town & Country Planning
Government of Tamil Nadu
Fort St. George, Chennai 600 009

2.The Director
Town & Country Planning
807, Anna Salai, Chennai 600 002

3.The Assistant Director
Town & Country Planning
Villupuram Region, Villupuram

4.The Commissioner
Villupuram Municipality
Pandit Jawaharlal Nehru Road
Villupuram 605 602

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for records dated 08.11.2016 on the file of the 2nd respondent in ref.No.Na.Ka.No.964/2016/Vi.Ma. Dated 04.11.2016, quash the same and direct the 2nd respondent to reconsider and recalculate the infrastructure and amenities charge as per G.O.MS.No.133 dated 28.10.2015, relating to a building plan sanctioned in ref.No.Ma.Va/Vi.Oo.Thi.Ku.No.01/2015 in favour of the petitioner to build G+6 multi storeyed buildings consisting of 14139.05 sq. ft. of constructed area in Survey No.355/1 and 355/2, situated at Vazhuthareddy Village, Villupuram Taluk and Villupuram District and refund 50% of the amount that being Rs.51,02,500/-.

For Petitioner : Mr.S.A.Rajan
For Respondents : M/S.K.Bhuvaneswari
Additional Govt. Pleader

O R D E R

By consent the Writ Petition itself has taken up for final disposal.

2.The petitioner has filed a writ petition to issue a writ of Certiorarified Mandamus, to call for records dated 08.11.2016 on the file of the 2nd respondent in ref.No.Na.Ka.No.964/2016/Vi.Ma. Dated 04.11.2016, quash the same and direct the 2nd respondent to reconsider and recalculate the infrastructure and amenities charge as per G.O.MS.No.133 dated 28.10.2015, relating to a building plan sanctioned in ref.No.Ma.Va/Vi.Oo.Thi.Ku.No.01/2015 in favour of the petitioner to build G+6 multi storeyed buildings consisting of 14139.05 sq. ft. of constructed area in Survey No.355/1 and 355/2, situated at Vazhuthareddy Village, Villupuram Taluk and Villupuram District and refund 50% of the amount that being Rs.51,02,500/-.

3.The learned counsel appearing for the petitioner would submit that the petitioner is the Managing Trustee of the petitioner Trust. The petitioner had applied for approval of building plan sanction to build G+6 multi storeyed buildings consisting of 14139.05 sq. ft. of constructed area in Survey No.355/1 and 355/2 situated at Vazhuthareddy Village, Villupuram Taluk and Villupuram District to build an educational institution known as E.S.Arts and Science College for 14139.05 Sq.Mts. The petitioner also sent a letter dated 24.09.2014 with attached DTCP check list and that he has obtained General Land use Certificate to put up multistoreyed buildings in that locality from the third respondent on 10.10.2014. The second respondent had approved the building permission as per Rule 4(a) of Tamil Nadu Multi storied and Public Buildings Rules 1973 on 14.01.2015 with certain condition and instructed the 3rd respondent to collect necessary charges and issue the multi storied building plan permission.

4.The learned counsel for the petitioner would further submit that the authorities after calculating the ground floor and other multi storied buildings, directed the petitioner to pay Rs.1,06,05,000/- towards infrastructure and amenities charges at the rate of 750.05 per meters for

an extent of 14139.05 sq. Mts. on 22.05.2015. As per the instructions of the authorities, the petitioner paid the entire infrastructure and amenities charges to the 3rd respondent and constructed Ground floor plus two floors. Though, the petitioner was granted permission by the Executive Member, Local Planning Authority Villupuram by its letter Ref.No.Na.Ka.No.1053/2014/V.L.P.A on 11.09.2015, however, the petitioner had to construct the remaining area to the extent of 8,401.48 Sq. Mts. Subsequently, the State Government passed G.O.MS.No.133 dated 28.10.2015 and the earlier charges levied for the developments in the Villupuram and Cuddalore Districts were reduced by dividing the areas. The Government had reduced the infrastructures and amenities charges at the rate of 50% to the other areas in Tamil Nadu. The petitioner's place also comes under other areas of the Villupuram.

5.The learned counsel for the petitioner would submit that though the petitioner was granted permission to construct 14139.05 st. ft., however, the petitioner constructed only Ground floor plus two floors and remaining area to the extent of 8,401.48 Sq.Mts., was not constructed. Accordingly, the petitioner made a representation to the 2nd respondent to get the benefit of G.O.MS.No.133 dated 28.10.2015., to reduce the infrastructures and amenities charges at the rate of 50% to the other areas in Tamil Nadu. However, the authority without considering the above said G.O.Ms.No.133 arbitrarily, rejected the representation of the petitioner, which is unsustainable one and accordingly, prays for appropriate relief.

6.The learned Additional Government Pleader appearing for the respondents on instructions would submit that the planning permission was granted to the petitioner on 11.09.2015. However, the G.O.MS.No.133 was passed only on 28.10.2015 and as per the said G.O.MS.No.133 it is applied only prospectively and not retrospectively. Since the petitioner paid the entire amount of Rs.1,06,05,000/- towards infrastructure and amenities charges at the rate of 750.05 per sq. meters for an extent of 14.139.05 Sq.Mt., on 22.05.2015 itself and not constructed the entire 14.139.05 Sq.Mt., there is no provision for refund of 50% as per G.O.Ms.No.133 and hence the G.O.Ms.No.133 dated 28.10.2015 is not applicable to the petitioner.

7.Considering the above fact that the petitioner is the Managing Trustee of the Educational Institution and the petitioner got approval for a building plan sanction to build G+6 multi storeyed building consisting of 14139.05 to

promote the people with education to open E.S.Arts and Science College in Valudureddi Village and made application under Rule 4(a) to put up multistoried building for educational purpose on 04.09.2014 and sought permission for construction of the above said building and also filed a check list along with the application for the same. Thereafter, on 14.01.2015, the proceedings was issued by the Director of Town and Country Planning, Chennai-2 that after construction, the Villupuram Region and resolution of the Villupuram Municipality were examined carefully and it has been decided to accept the above recommendations for declaring the area in the S.F.Nos. specified above having an extent of 21286 sqm. for construction of multistoried Educational buildings in accordance with rule 4(a) of Tamil Nadu Multistoried and Public Building rules 1973 and there was a declaration that the land comprising Survey Numbers 355/1, 2, Vazhuthreddy Village, Villupuram Local Planning Authoriy Municipality, Villupuram Taluk District having an extent of 21286.46 sqm. is declared as Multistoried Building area for constitution of Educational buildings as per Tamil Nadu Multistoried and Public Buildings Rule, 1973. After the declaration, the Regional Assistant Director, Villupuram Region, directed the petitioner to remit a sum of Rs.32,100/- towards centage charges to the account of 0217-Urban Development-03, IDSMT 800, Other receipts-AA, Director of Town Planning-I and also directed the petitioner to send the original receipt to the Regional Assistant director, Villupuram Region. The authority also sent a demand draft form to deposit the entire amount towards infrastructure and amenities charges at the rate of 750.05 per meters for an extent of 14139.05 sq. Mts. after calculating the ground floor and other multi storied buildings to Rs.1,06,05,000/-. Accordingly, the petitioner paid the entire amount towards infrastructure and amenities charges. Thereafter, the the Commissioner of Town and Country Planning granted permission to run a college. The G.O.Ms.No.133 dated 28.10.2015 came to be passed thereafter only fixing of infrastructure and amenities charges to Villupuram and Cuddalore Districts in the category of "Other areas in Tamil Nadu, and the Chengalpet Region was bifurcated into two regions with one having head quarters at Cehngalpet comprising Kancheepuram and Tiruvallur Districts and another having head quarters at Villupuram comprising Villupuram and Cuddalore Districts. The orders were issued to reduce the infrastructure and amenities charges by 50% over the prevailing rates in Town and country planning areas and Chennai Metropolitan Development Authority Area. Thereafter, the petitioner made a representation dated 12.09.2016 to the 2nd respondent to reconsider and recalculate the infrastructure and amenities

charges as per G.O.MS.No.133 dated 28.10.2015 and refund the amount already paid under the new modification.

8.The crucial issue involved in the present writ petition is whether G.O.133 dated 28.10.2015 is applied prospectively or can be availed by the petitioner retrospectively. In law, it is well recognized the role of interpretation that in the absence of express words or appropriate language from which retrospectively in which retrospectively may be inferred Notification takes effect from the date it is issued and not from any prior date and the principles also well settled in respect of revenue order only prospectively not retrospectively. In the present case, even on bare perusal of the Government Order makes it clear particularly in paragraph 6, the Government after careful consideration of the proposal of the Director of Town and Country Planning reduced the rate of infrastructure and amenities charges to be levied for the development in the Villupuram and Cuddalore Districts falling in Villupuram region applicable to the category of other areas from the date of issue of the order i.e., 28.10.2015. The above Government Order is unambiguous, giving interpretation does not arise. In the present case, the petitioner already obtained permission by paying Rs.1,06,05,000/- and no express provision available in the said Government Order for refund of the amount or giving concession to the petitioner.

9.Hence, this court does not find any illegality or infirmity in the order passed by the 2nd respondent in ref. No.Na.Ka.No.964/2016Vi. Ma dated 04.11.2016. Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner and Secretary
Town & Country Planning
Government of Tamil Nadu
Fort St. George, Chennai 600 009

2.The Director
Town & Country Planning
807, Anna Salai, Chennai 600 002

3.The Assistant Director
Town & Country Planning
Villupuram Region, Villupuram

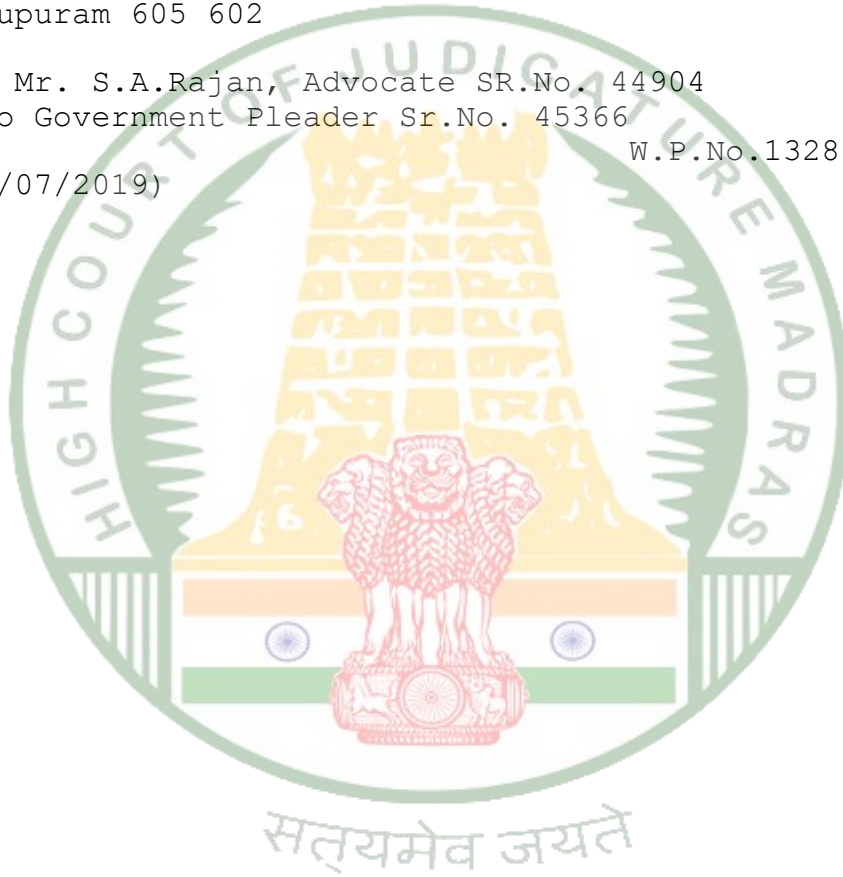
4.The Commissioner
Villupuram Municipality
Pandit Jawaharlal Nehru Road
Villupuram 605 602

+1cc to Mr. S.A.Rajan, Advocate SR.No. 44904

+1 cc to Government Pleader Sr.No. 45366

W.P.No.13286 of 2019

A.SK(10/07/2019)



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