IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.01.2020

DELIVERED ON : 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.16917 of 2015
and M.P.No.1 of 2015

T.D.Sadasivam ... Petitioner

vs.

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

2. The Member Secretary,
   Chennai Metropolitan Development Authority,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai - 600 008.

3. The Sub-Registrar,
   Office of the Sub-Registrar,
   Selaiyur, Chennai - 600 073. ...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India for writ of certiorarified mandamus calling for the records relating to the Letter No.5576/UD1/2015-2 dated 18.05.2015 issued by the 1st respondent and quash the same and consequently direct the 1st respondent to instruct the 2nd respondent to forthwith determine the guideline value as on the date of G.O.Ms.No.142, Housing and Urban Development (UD.1) Department dated 26.09.2014 for the 3533 sq.ft of land in S.No.132/1B in Kalamegham Street (Extn), Rajammal Nagar, Selaiyur Village, East Tambaram through the 3rd respondent and collect the same from the petitioner in terms of G.O.Ms.No.382, Housing and Urban Development (UDI.1) Department, dated 05.05.1994 read with G.O.Ms.No.142, Housing and Urban Development (UD.1) Department dated 26.09.2014.

For Petitioner : Mrs.Nalini Chidambaram Sr.Counsel for M/s.C.Uma

For Respondents : Mr.P.P.Purushothama for R1 & R3 Government Advocate

: Mr.P.S.Ganesh for R2

ORDER

An interesting issue involving the interpretation of a G.O. which states that the petitioner will have to pay the price for the purchase of a piece of land at the prevailing guideline value is the subject matter of consideration in this writ petition. The point for consideration is whether the "prevailing guideline value" has to be interpreted as the guideline value applicable on the date of the G.O. or should be applicable on the date of actual payment.

2.It is an admitted fact that Tambaram Municipality by mistake laid road on the petitioner's absolute property at Rajammal Nagar, Selaiyur Village. Thereafter, after negotiations, the first respondent agreed for exchange of lands to compensate the petitioner by G.O.Ms.No.382, Housing and Urban Development (UDI.1) Department dated 05.05.1994. As per the aforesaid G.O., the Government directed the petitioner to gift the entire land in S.No.132/1B in Rajammal Nagar, Selaiyur Village in which the Municipality had formed the road measuring 2 grounds 622 sq.ft. to Tambaram Municipality. In exchange, the Government agreed to give the petitioner the children play space of 5 grounds 2356 sq.ft. in Dr.Duraisamy Nagar by de-reservation as resolved by Tambaram Municipality. By the same G.O., the Government directed the petitioner that the excess extent of 3 grounds and 1734 sq.ft. viz (5 grounds 2356 sq.ft. less 2 grounds and 622 sq.ft = 3 grounds and 1734 sq.ft.) to be handed over to the petitioner on payment of guideline value in 1985 and interest on the value capitalized upto the date of settlement at an annual capitalization of 10%.

3.Since the petitioner had already sold the land contiguous to the road portion at Rajammal Nagar, he was not in a position to gift the entire land measuring 2 grounds 622 sq.ft. in S.No.132/1B at Rajammal Nagar in compliance with the first condition of G.O.Ms.No.382 dated 05.05.1994 referred to supra. Hence the petitioner requested for modification of G.O. to enable him to pay the market value for the balance portion of land at Rajammal Nagar which he has already sold to a third party in lieu of the gifting of the said land to the Municipality. The Government agreed to the request of the petitioner and issued a fresh G.O. viz. G.O.Ms.No.142 dated

26.09.2014 by the Housing and Urban Development (UDI.1) Department, amending G.O.Ms.No.382 dated 05.05.1994, by directing the petitioner to pay the prevailing guideline value for the balance extent of 3533 sq.ft. in Rajammal Nagar (viz. 2 grounds 622 sq.ft (5422 sq.ft) minus 1189 sq.ft + 700 sq.ft = 3533 sq.ft), since the petitioner has already gifted 1189 sq.ft at Rajammal Nagar vide Gift Deed No.9330/20.6.91 and 700 sq.ft. in Duraisamy Nagar vide Gift Deed No.5329/8.2.2000 to Tambaram Municipality.

4.The case of the petitioner as seen from the affidavit filed in support of the writ petition is that despite several representations, the respondents did not furnish the guideline value for the land measuring 3533 sq.ft. at Rajammal Nagar and hence he is liable to pay for the purchase of 3533 sq.ft at Rajammal Nagar only based on the guideline value that was prevailing on the date of G.O.Ms.No.142 which is 26.09.2014. However, as seen from the counter affidavit filed by the respondents, it is their case that the petitioner has to pay the guideline value for 3533 sq.ft. at Rajammal Nagar based on the guideline value applicable on the date of actual payment.

5.The third respondent in its counter affidavit has declared that the guideline value of Kalamegham Street extension, Rajammal Nagar, Selaiyur Village, East Tambaram for the following periods as follows:

(a) 01.04.2012 to 14.10.2014 - Rs.1,000/- per sq.ft.

(b) 15.10.2014 to 08.06.2017 - Rs.4,000/- per sq.ft.

(c) 09.06.2017 till date - Rs.2680/- per sq.ft.

According to the second respondent, as seen from its counter affidavit, the petitioner will have to pay for the extent of 3533 sq.ft. in S.No.132/1B at Kalamegham Street extension, Rajammal Nagar, Selaiyur Village, East Tambaram on the guideline value applicable on the date of actual payment.

6.According to the second respondent, when their counter affidavit was filed, the guideline value was Rs.4,000/- per sq.ft and hence the petitioner will have to pay at the said guideline value. However, it is the contention of the petitioner that he is liable to pay only on the guideline value applicable on the date of G.O.Ms.No.142 which is dated 26.09.2014 and hence he is liable to pay only at Rs.1,000/- per sq.ft.

7.The petitioner has challenged Letter No.5576/UD1/2015-2 dated 18.05.2015 issued by the first respondent calling upon him to pay for the land measuring 3533 sq.ft. at Rajammal Nagar at the guideline value applicable on the date of making the actual payment which according to petitioner is not correct as he is liable to pay only on the guideline value applicable on the date of the Government Order G.O.Ms.No.142 dated 26.09.2014 which was Rs.1,000/- per sq.ft.

8.Heard Mrs.Nalini Chidambaram, learned Senior Counsel for the petitioner, Mr.P.P.Purushothama, learned Government Advocate for the first and third respondents and Mr.P.S.Ganesh, learned standing counsel for the second respondent.

9.The learned Senior Counsel for the petitioner drew the attention of this Court to G.O.Ms.No.382 dated 05.05.1994, G.O.Ms.No.142 dated 26.09.2014 and to the letters dated 15.10.2014, 07.01.2015, 16.02.2015 and 17.03.2015 sent by the petitioner. According to her, G.O.Ms.No.142 dated 26.09.2014 makes it clear that the petitioner will have to pay for the extent of 3533 sq.ft. at Rajammal Nagar only on the guideline value applicable on the date of the G.O. which specifically states that the payment will have to be made "on the prevailing guideline value". Further, she contended that since there was no response to the several reminder letters sent by the petitioner to the second respondent requesting them to furnish the guideline value to enable the petitioner to make the payment, it can be inferred that the petitioner was always ready and willing to comply with G.O.Ms.No.142 dated 26.09.2014 by paying the sale price on the guideline value applicable as on 26.09.2014 which is the date of G.O.

10.According to the learned Senior Counsel, only due to the respondents delay in intimating the guideline value applicable on 26.09.2014, the petitioner did not make the payment. According to her, for the fault of the second respondent, the petitioner cannot be penalized by calling upon him to pay the sale consideration at the guideline value applicable on the date of actual payment.

11.Per contra, the learned standing counsel for the second respondent, who is the main contesting party drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of Chennai Metropolitan Development Authority and Ors. vs. Prestige Estates Project Ltd., reported in MANU/SC/0988/2019 and submitted that in a case involving planning permission for premium FSI, the Hon'ble Supreme Court held that the planning authority has a statutory obligation to levy and collect the charges as applicable when the planning permission was actually granted. According to him, applying the same principle to the case on hand, the petitioner is liable to pay only at the guideline value applicable on the date of actual payment as demanded by the first respondent under the impugned demand.

Discussion:

12.The relevant portion of G.O.Ms.No.142 dated 26.09.2014, issued by the Housing and Urban Development (UDI.1) Department, Government of Tamil Nadu reads as follows:

> "The Government after careful examination directed the petitioner to pay the prevailing guideline value for the balance extent of 3533 sq.ft. in Rajammal Nagar (viz, 2 grounds 622 sq.ft (5422 sq.ft) minus 1189 sq.ft + 700 sq.ft = 3533 sq.ft), since he has already gifted 1189 sq.ft in Rajammal Nagar vide Gift Deed No.9330/20.6.91 and 700 sq.ft. in Duraisammy Nagar vide Gift Deed No.5329/8.2.2000 to Tambaram Municipality."

As seen from the aforesaid G.O., the petitioner has been directed to pay the sale consideration as per the "prevailing guideline value" for the purchase of 3533 sq.ft. in Rajammal Nagar. The G.O. was issued on 26.09.2014. The term "prevailing guideline value" mentioned in the aforesaid G.O. is the subject matter of interpretation in this writ petition. According to the petitioner, the prevailing guideline value means the guideline value applicable as on 26.09.2014 which is the date of the G.O. But according to the respondents, the prevailing guideline value means the guideline value applicable on the date of the actual payment.

13.G.O.Ms.No.142 dated 26.09.2014 also does not define the word "Prevailing". Applying the golden rule of interpretation, the ordinary meaning of the term "Prevailing" will have to be applied. The ordinary meaning of the term "Prevailing" is "existing at a particular time; current." Under the earlier G.O.Ms.No.382 dated 05.05.1994, the petitioner was directed to pay the land cost at 1985 guideline value but whereas in G.O.Ms.No.142 dated 26.09.2014, the petitioner was directed to pay at the prevailing guideline value. The intention of the Government as seen from G.O.Ms.No.142 dated 26.09.2014 is to collect from the petitioner, the sale consideration for 3533 sq.ft. in Rajammal Nagar on the guideline value applicable as on the date of G.O. and not the guideline value applicable in the year 1985 when by mistake the Government laid a road in the petitioner's absolute property at Rajammal Nagar. In plain and unambiguous language, the Government has made it clear in G.O.Ms.No.142 dated 26.09.2014 that the petitioner shall pay the sale consideration for the balance extent of 3533 sq.ft. in Rajammal Nagar on the guideline value applicable as on the date of G.O. i.e., on 26.09.2014.

14.As seen from G.O.Ms.No.142 dated 26.09.2014, the object of the Government is to get better revenue than what was through G.O.Ms.No.382 dated 05.05.1994. When the words of the statue or the Government order are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning. The word "Prevailing" is an ordinary word in English language which means "existing at a particular time; current." As there is no ambiguity if the ordinary meaning of the word "Prevailing" is applied, the petitioner is liable to pay only at the guideline value applicable as on the date of G.O.Ms.No.142 which is 26.09.2014. The intention of the Government in G.O.Ms.No.142 is to get better revenue than under G.O.Ms.No.382 dated 05.05.1994. If the ordinary meaning of the word "Prevailing" is applied, the Government has achieved its objective.

15.The guideline value fluctuates from time to time, sometimes it increases and sometimes it decreases. Even for the subject property, as seen from the counter affidavit of the third respondent for the period from 01.04.2012 to 14.10.2014 it was Rs.1,000/- per sq.ft., from 15.10.2014 to 08.06.2017 it was Rs.4,000/- per sq.ft. and from 09.06.2017 till date it is Rs.2680/- per sq.ft. If the intention of the Government was to collect the payment in accordance with the guideline value applicable on the date of actual payment, it will lead to absurdity as the petitioner can choose the time for making the payment depending upon the advantage he gains due to the fluctuations in the guideline value prevailing from time to time. This would never have been intention of the Government while issuing G.O.Ms.No.142 dated 26.09.2014.

16.The judgment relied upon by the learned standing counsel for the second respondent in the case of Chennai Metropolitan Development Authority and Ors. vs. Prestige Estates Project Ltd., reported in MANU/SC/0988/2019 referred to supra is not applicable to the facts of the instant case. Since that case involves planning permission for premium FSI for a building complex. The Hon'ble Supreme Court held in that judgment, the payment will have to be made for the planning permit only on the date of sanctioning of the planning permit. The case on hand, does not involve any planning permit and further G.O.Ms.No.142 dated 26.09.2014 which is the subject matter of interpretation in this writ petition in clear and unambiguous terms has directed the petitioner to make the payment only in accordance with the guideline value applicable as on the date of G.O.Ms.No.142 dated 26.09.2014. Therefore, the aforesaid decision relied upon by the learned standing counsel for the second respondent is not applicable to the case on hand.

17.Therefore, this Court is of the considered view that the intention of the Government as per G.O.Ms.No.142 dated

26.09.2014 is to collect the payment from the petitioner only in accordance with the guideline value prevailing as on the date of G.O. which is 26.09.2014. Admittedly, on 26.09.2014, the guideline value for the property was Rs.1,000/- per sq.ft. and hence, the petitioner is liable to pay for the extent of 3533 sq.ft. only at the rate of Rs.1,000/- per sq.ft. and not on the guideline value applicable on the date of actual payment.

18.Further, in the case on hand, the petitioner was always ready and willing to comply with the requirements under G.O.Ms.No.142 dated 26.09.2014. Immediately after G.O.Ms.No.142 dated 26.09.2014, the petitioner sent a letter to the second respondent dated 15.10.2014 undertaking to make the payment as per the prevailing guideline value and also called upon the second respondent to issue a demand notice to enable the petitioner to make the payment. The second respondent by its letter dated 22.12.2014 to the third respondent had also requested the third respondent to furnish the guideline value for the property. A reminder letter was also sent by the petitioner on 07.01.2015 to the second respondent calling upon them to obtain the guideline value from the third respondent at the earliest to enable the petitioner to make the payment in accordance with G.O.Ms.No.142. Once again on 12.01.2015, the second respondent has requested the third respondent to furnish the guideline value for the subject property. One more reminder was sent by the petitioner on 16.02.2015 to the second respondent to obtain the guideline value from the third respondent to enable the petitioner to make the payment as required under G.O.Ms.No.142. Even in the reply dated 11.03.2015 sent by the second respondent, they have not furnished the guideline value for the subject property to the petitioner. In the same reply for the first time, the second respondent has indirectly intimated the petitioner that he has to pay the guideline value prevailing as on the date of the said letter and not on the guideline value applicable on the date of G.O.Ms.No.142 which is dated 26.09.2014. Immediately, the petitioner also replied to the second respondent stating that he is liable to make the payment only in accordance with the guideline value prevailing on the date of G.O.Ms.No.142 i.e., on 26.09.2014. If "prevailing guideline value" is found in G.O.Ms.No.142 dated 26.09.2014 is interpreted to mean the guideline value applicable as on the date of actual payment, it will lead to absurdity and arbitrariness.

19.For the foregoing reasons, this Court is of the considered view that the impugned demand dated 18.05.2015, issued by the first respondent calling upon the petitioner to pay as per the guideline value applicable on the date of actual payment is illegal and not in accordance with G.O.Ms.No.142 dated 26.09.2014.

20.In the result, the impugned demand dated 18.05.2015, issued by the first respondent is hereby quashed and the first respondent is directed to send a fresh notice of demand to the petitioner within a period of four weeks from the date of receipt of a copy of this order fixing the sale consideration for 3533 sq.ft. of land in Kalamegham Street (Extn.), Rajammal Nagar, Selaiyur Village, East Tambaram on the guideline value of Rs.1,000/- per sq.ft. calling upon the petitioner to pay the said sum within a period of four weeks from the date of the notice of demand and on payment of the said sum by the petitioner within the stipulated period, the respondents and the petitioner shall mutually execute the necessary documents and register the same if required under law to fortify their title over their respective properties allotted as per G.O.Ms.No.142 dated 26.09.2014 and accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Member Secretary,
   Chennai Metropolitan Development Authority,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai - 600 008.

3. The Sub-Registrar,
   Office of the Sub-Registrar,
   Selaiyur, Chennai - 600 073.

+1cc to Mr.P.S.Ganesh, Advocate, S.R.No.2872
+1cc to M/s.C.Uma, Advocate, S.R.No.2145
+1cc to the Government Pleader, S.R.No.3157

W.P.No.16917 of 2015

GMR(CO)
CS/11/02/2020