



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.20805 of 2012
and
M.P.No.1 of 2012

Orders reserved on 09.03.2020	Orders pronounced on 17.03.2020
----------------------------------	------------------------------------

M/s.Rite Choice Foundations
and Engineering Pvt. Ltd.,
Rep., by its Managing Director,
Mr.C.K.Sridhar,
No.10/2, First Main Road,
Kasturiba Nagar, Adyar,
Chennai-600 020.

.. Petitioner

-vs-

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

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

.. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in its impugned letter No.B2/4919/2011, dated 16.07.2012 and to quash the demand of Rs.6,74,00,000/- for Premium FSI charges which has been computed based on the revised guideline value at Rs.14,000/- per sq.ft. in the land comprised in Old S.Nos.1 Part and 9/1 part, T.S.Nos.38 & 39, Block No.34 of Kottur Village, Kottur Division, Mylapore-Triplicane Taluk, Chennai District, within the sub-Registration District of Adayar and in the Registration District of Chennai South and situated at Plot Nos.25 & 26, Old Door Nos.5 & 4, New Door Nos.11 & 29, 2nd Crescent Park Road, Crescent Avenue Road, Gandhi Nagar, Adayar, Chennai-600 020 and to



WEB COPY

consequently direct the second respondent to accept from the petitioner the Premium FSI charges computed on the basis of the guideline value of the said land, prevailing prior to 31.03.2012.

For Petitioner : Mr.A.L.Somayaji,
Senior Counsel
assisted by
Mr.R.Umasuthan

For Respondents: R1 - Ms.A.Madhumathi,
Special Government Pleader

: R2 - Mr.P.S.Ganesh
Standing Counsel

ORDER

The petitioner, a private limited company engaged in the business of real estate and development, undertook a project in Chennai situated in New Door Nos.11 and 29, 2nd Crescent Park Road, Crescent Avenue Road, Gandhi Nagar, Adayar, Chennai-600 020.

2.The petitioner submitted an application to the 2nd respondent, Chennai Metropolitan Development Authority (CMDA) on 27.10.2010, for grant of planning permission for the proposed construction of Basement Floor (part) + Stilt Floor + 4 Floors residential building with twenty dwelling units. The application was examined by the CMDA and certain defects/violations were noticed, which were intimated to the petitioner, by letter dated 08.02.2011. The planning permission was, accordingly, returned to the petitioner unapproved, giving them liberty to re-submit the application along with revised plan rectifying the violations/defects and furnishing particulars required. The application was re-submitted along with the revised plan on 31.03.2011. On 05.01.2012, the petitioner addressed the CMDA enclosing copy of the survey report submitted by the Institute of Remote Sensing, Anna University, Chennai, with demarcation of High Tide Line and 100 meters line of Adayar river for the proposed construction. The CMDA, after taking on record the re-submitted planning permission application, by letter dated 18.01.2012, addressed the Tamil Nadu State Coastal Zone Management Authority & Director of Environment requesting for clarification whether, the site proposed to be developed by the petitioner falls within 100 metres High Tide Line, Adyar river. The report of the Institute of Remote Sensing, Anna University was enclosed along with the communication. Thereafter, the petitioner has submitted representations on 26.03.2012 and 30.04.2012.



3.The first respondent, the Government, by letter dated 07.05.2012 addressed to the CMDA with copy marked to the petitioner, forwarded the representations submitted by the petitioner to the CMDA to examine the appeal and send report to the Government along with connected original records. In the mean time, the CMDA sent a reply to a communication sent by the Inspector General of Registration dated 02.08.1989, by addressing the same to the Sub Registrar, Adyar, by letter dated 06.07.2012, requesting to furnish the guideline value of the land in question for assessing the Premium FSI charges relating to the proposed development to be done by the petitioner. The Sub Registrar, Adyar, on 06.07.2012, informed the CMDA that the guideline value for Kottur Village, Gandhi Nagar 2nd Crescent Park Road & Gandhi Nagar Crescent Park Avenue is Rs.14,000/- per sq.ft. from 01.04.2012. The Sub Registrar, Adyar, vide letter dated 09.07.2012, informed one Mr.R.J.V.Kaiwar that the guideline value for Kottur Village, Gandhi Nagar Crescent Park Avenue & Gandhi Nagar 2nd Crescent Park Avenue Road is Rs.5,000/- per sq.ft. from 01.08.2007 to 31.03.2012. Upon receiving such information, the CMDA by letter dated 16.07.2012, informed the petitioner that the planning permission received by them is under scrutiny and to process the application, the petitioner was requested to remit various sums in seven separate Demand Drafts. The quantum, which is now subject matter of this writ petition is the amount directed to be paid as Premium FSI charges of Rs.6,74,00,000/-.

4.The petitioner has impugned a communication dated 16.07.2012 of the CMDA, insofar as it demands Premium FSI charges at Rs.6,74,00,000/-. The contention raised by the petitioner is that the Premium FIS charges should be calculated based upon the guideline value, which was prevailing on the date of submission of the application for planning permission, which was submitted by the petitioner on 27.10.2010. The petitioner's case largely rested upon a decision of the learned Single Bench of this Court in the case of Prestige Estates Projects Limited vs. State of Tamil Nadu and another in W.P.Nos.25677 and 25678 of 2012, dated 13.12.2012. In the said decision, it was held that for the purpose of calculating the Premium FSI charges, the rates prevailing on the date of application should be reckoned. This writ petition was entertained and an interim order was granted. Subsequently, the said decision was affirmed by a Division Bench in CMDA vs. Prestige Estates Projects Ltd. and others, 2014-4-L.W.83. However, the said contention cannot be countenanced by the petitioner at this juncture, in the light of the decision of the Hon'ble Supreme Court in CMDA and another vs. Prestige Estates Project Ltd., (2019) 15 SCC 212. The Court held that submission of application for permission and steps taken by the applicant to comply with the conditions and deposit the charges does not confer a vested right in the applicant for



grant of planning permission. The operative portion of the judgment reads as follows:-

"33. On 27 March 2012, while issuing a demand notice to the respondent, it was made clear by the appellant that the planning permission was still to be issued. The submission of the application for permission and the steps taken by the respondent to comply with the conditions and the deposit of the charges did not confer a vested right in the respondent for the grant of planning permission. The grant of planning permission would only ensue upon the appellant scrutinizing the application and determining that the permissions which were sought were in accordance with the development regulations and all other planning requirements holding the field. Before the planning permission was issued, the revised charges for Premium FSI came to be enforced. Once the revised charges came into force with effect from 1 April 2012, the respondent, as the applicant for planning permission, was bound to pay the revised charges. As on 1 April 2012, the respondent had no planning permission in its favour. The submission of the respondent that planning permission was issued in May 2012 evidently will not advance the case of the respondent. The grant of any permission post the revision of the Premium FSI charges would necessarily be subject to the revised charges. Hence, in raising the demand on the basis of the revised charges on 22 August 2012, the appellant was acting in accordance with law."

5. Thus, it was held that the developer is liable to pay the revised charges, which are applicable when the planning permission was granted. Therefore, the petitioner cannot fall back on the date of application, that is, 27.10.2010 and contend that the Premium FSI charges should be computed based on the guideline value prevailing on the said date. Therefore, the prayer sought for in the writ petition to that extent is liable to be rejected.

6. Having held so, the next question would be as to what would be the appropriate date, which has to be applied for the purpose of determining the guideline value consequently, the quantum of Premium FSI charges. Had the application not been processed and permission had not been granted, there can be no difficulty in arriving at the date, as the date on which orders are passed will be the relevant date for the purpose of



ascertaining the guideline value. However, in the instant case, there has been a development, which has taken place during the pendency of this writ petition. When the writ petition was entertained, an interim order was granted directing the petitioner to deposit a sum of Rs.5,05,50,000/- and furnish bank guarantee for the differential amount of Rs.1,68,50,000/-, by order dated 02.08.2012. The petitioner filed appeal before the Division Bench in W.A.No.1783/2012. The appeal was disposed of by judgment dated 17.08.2012. The operative portion of the judgment reads as follows:-

"5.After hearing the learned Senior Counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing for the first respondent and the learned counsel appearing for the CMDA, we are of the view that the interim order granted by the learned Single Judge could be modified, by directing the appellant to pay a sum of Rs.4,00,00,000/- (Rupees Four Crores only) by way of demand draft and the remaining amount shall be secured by way of bank guarantee issued in favour of CMDA, within a period of six weeks from the date of receipt of a copy of this judgment. On the appellant complying with the above conditions, within the time stipulated by this Court, the CMDA may process the application submitted by the appellant for planning permission in accordance with law. It is needless to say that such payment of bank guarantee furnished shall be without prejudice to the rights of parties and subject to the final decision in the writ petition."

7.The condition imposed by the Division Bench in the aforementioned decision was accepted by the CMDA, consequent upon which, planning permission was granted on 31.12.2012.

8.The learned Senior Counsel for the petitioner submitted that guideline value from 01.04.2012 for Gandhi Nagar 2nd Crescent Park Road is Rs.14,000/- per sq.ft., for Crescent Avenue Road, it is Rs.8,000/- per sq.ft. The guideline value from 09.06.2017 for Gandhi Nagar 2nd Crescent Park Road is Rs.9,380/- per sq.ft., for Crescent Avenue Road, it is Rs.5,360/- per sq.ft. Therefore, it is submitted that the Court may fix an appropriate date, which is to be taken as the relevant date for determining the guideline value.

9.The argument of Mr.P.S.Ganesh, learned Standing Counsel for the CMDA is that revised plan was submitted by the petitioner and for all purposes, on the current date when the



writ petition is disposed of should be taken into consideration.

10. Heard the learned counsels for the parties and carefully perused the materials placed on record.

WEB COPY

11. After having elaborately heard the learned counsels for the parties, though it may be true that planning permission was granted for the proposed construction on 31.12.2012, pursuant to the judgment passed by the Division Bench in W.A.No.1783 of 2012, the fact remains that planning permission has been granted. The CMDA has not challenged the judgment in W.A.No.1783 of 2012, but accepted the same, permitted the petitioner to comply with the condition, process the application and granted planning permission. Therefore, this Court has no hesitation to hold that the relevant date for reckoning the guideline value will be 31.12.2012, the date on which planning permission was granted.

12. In the result, the prayer sought for by the petitioner for calculating the Premium FSI charges based on the guideline value prevailing on 31.03.2011 is rejected and the second respondent/CMDA is directed to compute the Premium FSI charges by adopting the guideline value, which was prevailing for the area by reckoning the date 31.12.2012, the date on which planning permit was issued. Accordingly, a demand be raised on the petitioner within a period of three weeks' from the date of receipt of a copy of this order giving the petitioner thirty days time to pay the same.

13. With the above observations and directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

abr

To

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



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

WEB COPY

+1cc to Mr.P.S.Ganesh, Advocate, S.R.No. 21105
+1cc to Mr.R.Umasudan, Advocate, S.R.No. 23643
+1cc to the Government Pleader, S.R.No. 24095

Writ Petition No.20805 of 2012

AD(CO)
GN(01/07/2020)