IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29744 of 2013

Thiagarajar Mills Private Limited,
Singanallur,
Coimbatore – 641 005,
Rep. by its General Manager
P.K.Venugopal ... Petitioner

Vs.

1.The Member Secretary (in-charge),
Coimbatore Local Planning Authority,
Coimbatore – 641 012.

2.The Secretary to Government,
Housing & Urban Development Department,
Government of Tamil Nadu,
Chennai – 600 009. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, quash the order Na.Ka.No.333/2006 dated 07.10.2010, demanding interest of Rs.2,99,300/- and direct the 1st respondent to refund the sum of Rs.14,38,500/- excess I & A charges collected, to the petitioner.

For Petitioner : M/s.Vijayakumar
for Mr.T.R.Rajaraman

For Respondents : M/s.M.Elumalai,
Government Advocate for R1
M/s.A.Madhumathi
Special Government Pleader for R2

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ORDER

This Writ Petition has been filed by Thiagarajar Mills Private Limited, represented by its General Manager, registered under the Companies Act, challenging the demand issued by the first respondent dated 07.10.2010, demanding a sum of Rs. 2,99,300/- being the interest for the belated payment of Infrastructure and Amenities charges (I & A Charges).

2. The petitioner submitted an application for grant of planning permission for putting up Multistoreyed Commercial Building. The application was processed by the first respondent. While granting approval, issued a demand dated 08.04.2008, demanding a sum of Rs. 24,93,400/- as I & A charges. In terms of demand dated 08.04.2008, the Petitioner was required to pay a sum of Rs.3,83,600/- as the first instalment and the balance amount of Rs.24,93,400/- before grant of the completion certificate and the petitioner was also required to execute an Indemnity Bond on Rs. 20/- non-judicial paper giving an affidavit of undertaking. The Petitioner remitted the total amount of Rs.28,77,000/-. The first respondent by the impugned demand has directed the petitioner to pay interest @ 6% on the belated remittance of I & A charges. Thus, the correctness of this is questioned in this Writ Petition.

3. Heard M/s.Vijay Kumar, learned counsel appearing for petitioner and M/s.M.Elumalai, learned Government Advocate appearing for the first respondent and Mrs. A. Madhumathi, learned Special Government Pleader appearing for the second respondent.

4. There are two limbs in the prayer sought for by the petitioner in the present Writ Petition. Firstly to quash the demand for payment of interest @ 6% and the second is to refund a sum of Rs.14,38,500/-, which according to the Petitioner is the amount paid in excess than what is required to be paid by them.

5. This Court will first consider as to whether the demand for interest is justified or not. The arguments of the learned counsel for the Petitioner rests upon the demand dated 08.04.2008, issued by the first respondent, which informs the petitioner that the I & A charges is Rs.28,77,000/-. The first instalment / initial payment payable is Rs.3,83,600/-, and the balance amount of Rs.24,93,400/- payable upon completion of the building, prior to the issuance of the completion certificate. Therefore, it is submitted that no time limit was prescribed for

payment of the final amount and the first respondent is not justified in demanding interest for belated payment. The power to levy I & A charges was conferred on the Planning Authority / first respondent, pursuant to exercise of powers by the Government under Section 122 (2) (bb) of the Tamil Nadu Town and Country Planning Act, 1971 and the Rules called as Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008. The said rule was published in the Tamil Nadu Government Gazette on 26.01.2008.

6. Rule 4 deals with the Infrastructure and Amenities charges which varies according to the type of the building, for better appreciation the same is quoted here under:-

> 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 rates indicated in the Table below, in case of different categories of buildings referred to in the Table:-

Sl. No.	Type of building	Minimum rates per square meter	Maximum rates per square meter
(1)	(2)	(3)	(4)
		Rs.	Rs.
1.	Multistoreyed buildings accommodating residential or commercial or information technology or industrial or institutional or combination of such activities	500	1,000
2.	Commercial building, Information Technology building, Group development and Special building (not covered under Sl.No.1)	250	500
3.	Institutional building (not covered under Sl.No.1)	100	200
4.	Industrial building (not covered under Sl.No.1)	150	300

7. Rule 9 of the said Rule deals with the payment of Infracture and Amenities Charges which read as follows:-

> Infrastructure and Amenities Charges:- Such person on receipt of the final assessment order under Rule 8

to pay to the Planning Authority or the Local Authority, as the case may be Infrastructure and Amenities passed:-

Number of Instalment	Quantum of Infrastructure and Amenities Charges to be collected	Period of Payment
Ist Instalment	50 per cent of the charge	At the time of final decision on the application of planning permission but before the issue of the Planning Permission.
2nd Instalment	25 per cent of the charge	Within the end of 6 months period from the date of issue of Planning Permission.
3rd Instalment	25 per cent of the charge	Within one year from the date of payment of second instalment or before the issue of completion certificate earlier.

8. In terms of the above Rules, the first instalment being 50% of the charges is to be remitted at the time of final decision of the application for grant of planning permission, but before issuance of planning permission. The second instalment of 25% is to be paid within the end of six months period from the date of end of issue of planning permission and the third instalment of 25% is to be paid within a period of one year from the date of payment of second instalment or before issuance of Completion Certificate, whichever is earlier.

9. The Rules provide for an appellate remedy for a person who is aggrieved by a final assessment being made in terms of

Rule 8 of the said Rules. However, so far as the Petitioner is concerned, they have not challenged the final assessment but their challenge is only with regard to the levy of interest and rate of Infrastructure and Amenities charges. The Government issued G.O.Ms.No. 34, Housing and Urban Department, dated 08.02.2008, wherein the Government took note of the representation from builders and developers requesting for reduction of rate of I & A charges. The Government accepted the request of the builders and developers and accordingly, directed the applicant seeking planning permission to make an initial payment @ Rs.100/- per square meter and directed the applicants to execute Indemnity Bond towards payment of balance of charges before issuance of completion certificate. In terms of the said Government Order, demand was issued to the Petitioner. However, the Government in G.O.Ms.No. 84, dated 08.04.2008, cancelled the said Government Order and the first respondent by invoking the power under Rule 8, have demanded for payment of 6% interest.

10. In terms of the stipulation made in G.O.Ms.No. 34, the petitioner had executed an indemnity / affidavit of undertaking and made an initial payment at the rate of Rs.100/- per square meter. However, the Petitioner undertook that in the event of non-payment of balance of I & A Charges, within the period prescribed by the Government, the planning permission issued shall stands cancelled and the local planning authority reserves the right to recover the same under the provisions of law. Thus, it is seen that neither under the Rules nor under the Government Order there is a provision to levy interest. However, if the petitioner fails to adhere to the time schedule, the respondents would be entitled to cancel the planning, but there is no power to levy interest.

11. Admittedly, the Petitioner did not comply with the payment schedule as contemplated under the Rule 9 of the Rules (supra). However, I & A charges was collected @ Rs. 750/- per square meter and demand was issued. Therefore, the power to levy interest should be traceable to the rules, which do not provide for levy of interest.

12. In the instant case, the demand of interest at 6% is a penal levy and to demand the said amount, the first respondent should have power to do so. That apart, it cannot be disputed that at the relevant time several Writ Petitions were filed, interim orders were also granted and subject to filing affidavit of undertaking, planning permission applications were passed. Thus, in the absence of any power to levy interest, under the Rules, more particularly, Rule 8 relied on by the first respondent in the counter affidavit, the demand of interest to

the tune of Rs. 2,99,290/- is unsustainable. Therefore, to that extent the Petitioner is entitled to succeed.

13. The second limb of the prayer is to refund a sum of Rs.14,38,500/-. This prayer has been made by referring to G.O.Ms.No.161 dated 09.09.2009, where the rates of I & A charges was brought down by the Government. Reading of the Government order shows that the Government granted such concession taking note of the slump in the construction industry, which was relevant to the year 2009. The Government order, more particularly, Paragraph No.4 (iv) read with Paragraph No.5 clearly shows the order is prospective and such concession cannot be extended to the case of the petitioner as their planning permission was granted in G.O.Ms.No. 84 dated 08.04.2008 was in vogue. Hence, the petitioner cannot seek for applying the reduced rates as reduced by the Government in G.O.Ms.No. 161, dated 09.09.2009 nor the further reduced rates as per G.O.Ms.No. 86, dated 28.03.2012 and the rates which were prevailing on the date, when the application was considered for passing orders would be relevant. Therefore, the second limb of the prayer sought for by the petitioner cannot be sustained.

14. In the result, the Writ Petition is partly-allowed and demand for payment of interest of Rs.2,99,300/- is set aside and quashed and the second limb of the prayer sought for by the petitioner to apply G.O.Ms.No.161, dated 09.09.2009 and refund of sum of Rs. 14,38,500/- is rejected. No costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//
Sub Assistant Registrar

Pns

To

1.The Member Secretary (in-charge),
Coimbatore Local Planning Authority,
Coimbatore - 641 012.

2.The Secretary to Government,
Housing & Urban Development Department,
Government of Tamil Nadu,
Chennai - 600 009.

+1cc to the Government Pleader SR.24097

W.P.No.29744 of 2013

SVI(CO)
CB(01/07/2020)