IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.10071 of 2020
and
WMP No.12239 of 2020

S.Mohan
Managing Director,
M/s. Wisdom Housing and Properties (P) Ltd.,
No.1, 5th Cross Street,
Chrompet,
Chennai 600 044. .. Petitioner

.Vs.

1. The Director,
   Town and Country Planning,
   No.807, Anna Salai,
   Chennai 600 002.

2. The Deputy Director,
   Town and Country Planning,
   Chengulpet Zone,
   Chengulpet.

3. The Commissioner,
   Maraimalai Nagar Municipality,
   Maraimalai Nagar,
   Chengulpet District.

4 .The Inspector General of Registration,
   Chennai.

5. The Assistant Director of Local Fund and Audit,
   Local Fund and Audit Department,
   Kancheepuram 631502. ... Respondents

[R 4 and R 5 suo motu impleaded vide order dt.16.09.2020 made in WMP.No.12239/2020 in W.P.No.10071/2020 by NAVJ]

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorari, calling for records relating to the Order bearing Na.Ka.No.1167/2015/A1 dt.07.05.2020 on the file of the 3rd Respondent and to quash the same.

For Petitioner : Mr.V.Karthik,
Senior Counsel
for Mr.G.Prabhakar

For Respondents: Mr.S.N.Parthasarathi
Government Advocate
for R 1 & R 2

Mr.L.P.Maurya
Standing Counsel
for R 3
Mr.T.M.Pappiah
Special Government Pleader
for R 4

Mr.E.Balamurugan
Special Government Pleader
for R 5

ORDER

This Writ Petition has been filed challenging the Order passed by the 3rd respondent through proceedings dated 07.05.2020, cancelling the layout approval granted to the petitioner through approval dt.15.10.2018.

2.The case of the petitioner is that they are involved in the business of Real Estate and Land Development. The petitioner Company and four others purchased nearly 9.52 acres of lands in Survey Nos.198/2, 198/3, 198/4A and 198/4B1 at Sengundram Village, Kancheepuram District, through various Sale Deeds from the year 2007 to 2012. The petitioner applied for layout approval in the year 2015 before the 1st Respondent. The 1st Respondent through proceedings dt.03.07.2018, granted preliminary approval with certain conditions and ultimately the 3rd Respondent Municipality was directed to grant final layout approval on fulfillment of all the conditions and on payment of the necessary charges.

3.The further case of the petitioner is that, as per the preliminary approval granted by the 1st Respondent, the petitioner will have to deposit Land Conversion Charges at the rate of 3% of the market value of the property in line with G.O.Ms.No.79, dt.04.05.2017. According to the petitioner, the

3rd Respondent assessed and collected 3% of the market value of the property at the rate of Rs.1,18,700/-. The petitioner claims that this amount was paid in the treasury on 16.10.2018. Apart from this payment, the petitioner was also directed to pay a total sum of Rs.29,36,783/- under various heads as development charges. The petitioner also made those payments to the 3rd Respondent.

4.The petitioner thereafter claims to have executed a Gift Deed and the 3rd Respondent through proceedings dt.15.10.2018, granted the final layout approval.

5.The 3rd Respondent issued a Show Cause Notice dt.19.03.2020, directing the petitioner to pay a sum of Rs.50,05,748/- towards the Land Conversion Charges and submit the receipt for the same within a period of 30 days. This notice was issued by the 3rd Respondent based on the objections raised by the Local Fund and Audit Department. The petitioner on receipt of the notice gave a detailed representation on 24.03.2020 and explained as to why the amount demanded by the 3rd Respondent is not payable by the petitioner. The 3rd Respondent did not accept the explanation given by the petitioner and hence the Impugned Order came to be passed on 07.05.2020, by the 3rd Respondent. Aggrieved by the same, the present Writ Petition has been filed before this Court.

6.When the matter came up for hearing on 16.09.2020, the following order was passed by this Court:

> The Inspector General of Registration, Chennai is suo-motu impeaded as the 4th respondent in this writ petition. The Assistant Director of Local Fund and Audit, Local Fund and Audit Department, is suo-motu impleaded as the 5th respondent in this writ petition.
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> 2.The impugned order passed by the 3rd respondent on 07.05.2020 is based upon an audit objection made by the 5th respondent. The 5th respondent is said to have relied upon the valuation fixed by the 4th respondent. The crux of the issue that requires determination in the present writ petition is as to whether the valuation was fixed in accordance with Section 47 AA of the Indian Stamp Act, 1899. If such valuation was fixed, whether the 5th respondent has relied upon this valuation for the purpose of raising an audit objection. The answers to theses two questions will ultimately decide the issue involved in the present writ petition.
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> 3.Mr.T.M.Pappiah, learned Special Government

Pleader, takes notice for the 4th respondent and seeks time to take instructions.

4.Mr.E.Balamurugan, learned Special Government Pleader takes notice for the impleaded 5th respondent, to take instructions.

5.The learned counsel appearing on behalf of the respondents 4 and 5 are directed specifically to take instructions as to whether the value was fixed in accordance with Section 47 AA of Indian Stamp Act, 1899 and whether the Audit objection was made by relying upon the value fixed under Section 47 AA of the Act.

6.The learned counsel for the petitioner is directed to serve the papers immediately to Mr.E.Balamurugan and Mr.T,M.Pappiah, learned Special Government Pleaders appearing on behalf of respondents 4 and 5.

7.Post this case under the caption for orders on 30.09.2020.

7.Pursuant to the above directions issued by this Court, the 3rd Respondent has filed a counter affidavit and the relevant portions are extracted hereunder:

"8. I respectfully submit that the averment of the petitioner in para 6(iii) of the affidavit that the petitioner has paid Rs.1,18,700/- as directed by the 3rd Respondent is totally false and even the Receipt filed by the petitioner in the Typed set of papers does not disclose that the same has been paid to the office of the 3rd Respondent. I respectfully submit that it is a matter of record that the 3rd Respondent has only received Rs.29,36,783/- (Twenty nine lakhs thirty six thousand Seven hundred and eighty three only) under different heads from the petitioner as indicated in the Acknowledgment of the 3rd respondent dated 11.10.2018.

9.I respectfully submit that the averments in para 10(i) of the affidavit that the 3rd respondent authorities have calculated 3% conversion charges as per market value guidelines on sale deeds and directed the petitioner to deposit the amount in the Treasury is totally false and the petitioner is put to strict proof of the same. I respectfully submit that the office of the 3rd respondent has not issued any receipt for collection of Land conversion charges.

10.I respectfully submit that with regard to the averments made by the petitioner in para 10(ii), (iii), (iv) it is submitted that the Director of Local Fund and Audit has calculated the land conversion charges based on the market value as per rule 9 of Tamilnadu change of land use (from agriculture to non-agriculture purposes in non-planning areas) rules 2017. I respectfully submit that Director of Local fund and Audit in his audit objection for the year 2018-2019 has clearly mentioned that the market value to be Rs.402/- per square feet and has calculated the Land conversion charges as 3% of the market value which worked out to Rs.50,05,768/-. I respectfully submit that I am filing the extract of the Audit objection report for better appreciation of the calculation.

8.The learned Special Government Pleader appearing on behalf of the impleaded 4th respondent and the learned Special Government Pleader appearing on behalf of the 5th respondent received written instructions and made their submissions based on those instructions.

9.Mr.V.Karthik, learned Senior Counsel appearing on behalf of the petitioner submitted that the 3rd Respondent has passed the Impugned Order cancelling the layout approval without affording sufficient opportunity to the petitioner. The learned Senior Counsel submitted that the 3rd Respondent has issued the Impugned Order only based on the audit objection raised by the 5th Respondent even without serving a copy of the audit objection received from the 5th Respondent. The learned Senior Counsel further submitted that as per Clause 9 of G.O.Ms.No.79, dt.04.05.2017, the Conversion Charges must be calculated at the rate of 3% of the market value fixed under Section 47-AA of the India Stamp Act and it is not known as to whether the 5th Respondent has calculated the Conversion Charges as per this Clause and the Impugned Order is totally silent about the same. The learned Senior Counsel further submitted that the 3rd Respondent has now demanded for Conversion Charges even for those lands which were given to the 3rd Respondent through Gift Deed dt.27.09.2019. According to the learned Senior Counsel, this itself clearly shows that there is total non application of mind on the part of the 3rd Respondent. The learned Senior Counsel therefore submitted that the Impugned Order passed by the 3rd Respondent is liable to be interfered by this Court and the 3rd Respondent must be directed to issue fresh Show Cause Notice along with all the relevant documents to the petitioner and the other purchasers and based on the explanation given for the notice, the 3rd Respondent can be directed to pass appropriate orders strictly in accordance with law.

10.Mr.T.M.Pappiah, learned Special Government Pleader appearing on behalf of the impleaded 4th Respondent submitted that the market value was fixed in accordance with Section 47-AA of the Indian Stamp Act and the same has been approved by the Valuation Sub Committee and it has been implemented with effect from 01.04.2012. The learned Special Government Pleader submitted that the value was fixed at Rs.402/- per square feet and it was hosted in the Registration website.

11.Mr.E.Balamurugan, learned Special Government Pleader appearing on behalf of the 5th Respondent circulated the written instructions received by him from the Assistant Director of Local Fund and Audit Department. A careful reading of the instructions shows that the 5th Respondent was not even in possession of the so called Report submitted by the Valuation Sub Committee under Section 47-AA of the Indian Stampt Act and the 5th Respondent has directly relied upon the rates mentioned in the Registration website and come to a conclusion that the Conversion Charges must be fixed at the rate of Rs.402/- per square feet and the market value has been assessed and consequently the demand has been made from the petitioner.

12.This Court has carefully considered the submissions made on either side and the materials available on record.

13.In the considered view of this Court, the basis on which the 5th Respondent raised the audit objection with the 3rd Respondent Municipality, lacks clarity. G.O.Ms.No.79, dt. 04.05.2017, specifically provides that the Land Conversion Charges must be collected at the rate of 3% of the market value fixed under Section 47-AA of the Indian Stamp Act, 1899. This would mean that there should be a Constitution of a Valuation Committee by the State Government under the Chairmanship of Inspector General of Registration and such Committee should follow the procedure as may be prescribed and determine the market value by submitting a Report. This Report will be the basis for fixing the Conversion Charges. The specific case of the 5th Respondent is that this Report was not even available with the 5th Respondent and the 5th Respondent has merely gone by the rate specified in the Registration website.

14.In the present case, the petitioner is seeking for the Conversion of agricultural lands into residential plots. It is not known whether the value fixed at the rate of Rs.402/- per square feet pertains to conversion of an agricultural land into a residential plot. There is no clarity on this issue also.

15.The admitted case is that the petitioner has executed a Gift Deed in favour of the 3rd Respondent on 27.09.2017, for the purpose of surrendering the common area and it is not known as to whether the 5th Respondent has excluded this portion of the property at the time of ascertaining the Conversion Charges payable by the petitioner.

16.The 3rd Respondent immediately on receipt of the audit objection raised by the 5th Respondent, should have either explained the 5th Respondent as to how the Conversion Charges was ascertained at the time of granting final approval and sought for a clarity from the 5th Respondent or if the 3rd Respondent decided to straightaway implement the objections received from the 5th Respondent, should have atleast served the copy of the audit objection to the petitioner and sought for an explanation and thereafter passed final orders. The 3rd Respondent did not choose to follow either of these procedures and has proceeded to straightaway demand the Conversion Charges from the petitioner and thereafter cancelled the final approval granted on 15.10.2018. This procedure followed by the 3rd Respondent is in complete violation of the principles of natural justice and it requires the interference of this Court. This Court does not want to render any findings on the merits of the case since this Court has decided to remand the matter back to the file of the 3rd Respondent and hence all the issues are kept open.

17.In view of the above discussion, the Impugned Order passed by the 3rd Respondent through proceedings dt.07.05.2020, is hereby quashed. The matter is remanded back to the file of the 3rd Respondent. The 3rd Respondent is directed to issue a fresh notice to the petitioner and also to other purchasers of the property who have purchased before the approval was cancelled, giving the entire details along with all the relevant documents and the petitioner and other purchasers on receipt of the same shall give their explanation within a period of four weeks from the date of receipt of the notice from the 3rd Respondent. The 3rd Respondent on receipt of the explanation shall thereafter pass final orders strictly in accordance with law. This process shall be completed by the 3rd Respondent within a period of twelve weeks from the date of receipt of copy of this order. Till this issue is finally resolved, the petitioner is directed not to create any third party rights in the property.

18.This Writ Petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed..

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KP

To

1.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai 600 002.

2.The Deputy Director,
Town and Country Planning,
Chengulpet Zone,
Chengulpet.

3.The Commissioner,
Maraimalai Nagar Municipality,
Maraimalai Nagar,
Chengulpet District.

4.The Inspector General of Registration,
Chennai.

5.The Assistant Director of Local Fund and Audit,
Local Fund and Audit Department,
Kancheepuram 631502.

+1cc to The Government Pleader, Sr.No. 37787 & 37967

W.P.No10071 of 2020

SSD(CO)
RMP(03/02/2021)