IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.Nos. 15077 of 2020 & 28007 of 2019
and
W.M.P.Nos. 27617 of 2019, 18793, 18794, 18795, 20029
& 18792 of 2020

W.P.No. 15077 of 2020

1.M/s. SnehaAshiana Pvt Ltd.,
Rep. By its Authorized Signatory,
Mr.Renil Francis
3/166, V.K.Nagar NGO Colony,
Thudiyalur, Coimbatore – 641023.

2.M/s. Sundarshana Developers & Others,
Rep. By one of its partner,
Mr.B.Somasundaram,
Male, aged about 55 years,
S/o. Balasingam,
Door No. 509, P3, Red Rose Plaza,
D.B.Road, R.S.Puram, Coimbatore. ...Petitioners

Vs.

1.The Commissioner,
Corporation of Coimbatore,
Coimbatore – 641 001.

2.The Sub-Collector / The Assistant Commissioner,
East Zone, Corporation of Coimbatore,
Coimbatore – 5.

3.The Sub-Registrar,
Gandhipuram Sub-Registrar Office,
Kalapatti Road, Saravanampatti,
Coimbatore – 641 035. ...Respondents

Prayer in W.P.No. 15077 of 2020: Writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of certiorarified mandamus, calling for the records pertaining to the Pre-Conditional order of the 2nd respondent directing the petitioner herein to deposit a sum of Rs.3,60,12,000/- (Three Crores Sixty Lakhs Twelve Thousand Rupees) as 'Future Maintenance Charges' for the final approval of the lay out developed by the petitioner in Kalapatti Village, Coimbatore Corporation Limit, East Zone, (morefully described in schedule of property) initiated vide Na.Ka.No.10306/2015/H1/(E) dated 15.07.2019, and the consequential order of the 1st respondent dated 16.06.2020 directing the 3rd respondent not to register any sale agreement and sale deeds pertaiing to the lay out may be quashed as the same is being ultra vires and illegal and consequently direct the 1st and 2nd respondent to grant final approval without insisting for the deposit of the 'Future Maintenance Charges' for the lay out developed in the property (morefully described in the schedule of property).

For Petitioner : Mr.Karthik, Senior Counsel

For Respondent : Mr.R.Sivakumar,Standing Counsel
for R1 & R2
Mr.T.M.Pappiah, Spl.Govt. Pleader
for R3

W.P.No. 28007 of 2019

B.Somasundram ...Petitioners

Vs.

The Commissioner,
Corporation of Coimbatore,
Coimbatore – 641 001. ...Respondent

Prayer in W.P.No. 28007 of 2019: Writ petition filed under Article 226 of the Constitution of India seeking issuance of writ of mandamus, directing the respondent herein to desist from demanding / collecting "Future Maintenance Amount" while according final approval of the layouts.

For Petitioner : Mr.M.R.Thangavel

For Respondent : Mr.R.Sivakumar,Standing Counsel

COMMON ORDER

The petitioners in the above writ petitions are land developers, submitted their applications before the respondent/Corporation for their layout plan approval. Vide the impugned order in the writ petitions, the respondent/Corporation insisted the petitioners to pay 25% of the total estimate as charges towards Future Maintenance amount for lay out and aggrieved over the same, these writ petitions are filed.

2.The case of the petitioner is that they have applied for layout approval from the first respondent/Corporation for the lands promoted by them as housing sites. The Director of Town and Country Planning the concerned authority has given their consent and the local planning authority, Coimbatore City Municipal Corporation also granted technical sanction and issued their consent with certain conditions as on 17.11.2017 directing the petitioners to pay 25% of the estimate cost of the layout to be paid as Future Maintenance for the final approval of the layout.

3.Mr.V.S.Karthi, learned Senior counsel representing Mr.Aravind Subramaniam, learned counsel for the petitioner submits that there is no statutory backing over the demand made and the petitioners have developed all required amenities as directed by the local authority and therefore in the absence of any specific provision enabling the respondent/Corporation for collecting the Future Maintenance, the respondent/Corporation is not justified in demanding the future maintenance from the petitioner, for the Layout. According to the learned Senior counsel, the petitioners have made all the developments in the lay out such as road, drainage, street light etc., as suggested by the Corporation and nothing has been left out on the required amenities.

4.The learned Senior counsel by referring to the relevant provisions of law in the Tamil Nadu Town and Country Planning Act, Coimbatore City Municpality Act, 1981 and the relevant Rules substantiated his case that there is no specific provisions under the aforesaid Act and Rules enabling the respondent/Corporation to demand 25% of the estimated amount as a demand for the purpose of future maintenance. He would further submit that excepting the respondent Corporation, no other Corporation in this State is demanding any amount for Future Maintenance of a layout.

5.Mr.R.Siva Kumar, learned Standing counsel for the Coimbatore Corporation contended that under Section 250 of the Coimbatore City Municipal Corporation Act, the applicant shall remit a sum not exceeding 50% of the estimated cost for the lay out maintenance and shall reserve 10% of the Lay out area for common purposes. As per By-laws, 1983, the amount to be reiterated as per Section 250 of the Corporation Act is quantified as 25% of the estimated cost and therefore as per the above provision, the amenities charges for petitioners lay out is worked out and this estimated cost of 25% of the total cost for the basic amenities is arrived at Rs.3,60,12,500/- and the same is claimed as future maintenance.

6.The learned Standing counsel for the respondent Corporation also relied on ***Sundaram Auto Components Ltd., Vs. State of Tamil Nadu dated 30.06.2011*** reported in ***(2011) CDJ MHC 3619 and D.Manikandan Vs. State of Tamil Nadu in W.A.No.1809 of 2011 dated 27.08.2013*** in support of his contentions.

7.This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

8.The respondent/Corporation/the local authority demanded 25% of the estimated development charges as Future Maintenance from the petitioner/promoters. Development is defined in Sub Section 13 of Section 2 of the Town and Country Planning Act, 1971 as follows;

> ***"Development"*** *means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared*

under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the making of any material change in the use of any building or land:

Provided that for the purposes of this Act, the following operations or uses of land shall not be deemed to involve development of the land, that is to say,-

(a) the carrying out of any temporary works for the maintenance, improvement or other alteration of any building, being works which do not materially affect the external appearance of the building;

(b) the carrying out by a local authority of any temporary works required for the maintenance or improvement of a road, or works carried out on land within the boundaries of the road;

(c) the carrying out by a local authority or statutory undertaker of any temporary works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;

(d) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to

the enjoyment of the dwelling house as such; and

(e) the use of any land for the purpose of agriculture, gardening or forest (including afforestation) and the use for any purpose specified in this clause of this proviso of any building occupied together with the land so used;

9.The levy of development charges is also provided under Section 59 of the Act and the same is extracted hereunder;

59. Levy of development charges:

(1) Subject to the provisions of this Act and the rules made thereunder, every planning authority including a local authority, where such local authority is the planning authority, shall levy charges (hereinafter called the development charges) on the institution of use or change of use of land or building or development of any land or building for which permission is required under this Act in the whole area or any part of the planning area within the maximum rates specified in section 60.

Provided that the rates of development charges may be different for different parts of the planning area and for *different uses: Provided further that the previous sanction of the Government has been obtained for the rates of levy. (2) When a planning authority, including a local authority, where such local authority is the planning authority, shall have determined to levy development charges for the first time or at a new rate, such authority shall, forthwith, publish a notification in the Tamil Nadu Government Gazette specifying the rates of levy of development charges.*

(3) The development charges shall be leviable on any person who undertakes or carries out any such development or institutes or changes any such use.

(4) Notwithstanding anything contained in sub-sections (1) and (2), no development charges shall be levied on development, or institution of use or of change of use of, any land or building vested in or under the control or possession of the Central or any State Government or of any local authority.

10.Section 60 of the Tamil Nadu Town and Country Planning Act classify categories of Land Usage as industrial commercial or residential and agricultural for the purpose of assessing the development charges. Section

62 empower the local authority to collect the development charges.

11.The Assistant Executive Engineer, East Zone, Coimbatore Corporation has issued an abstract for basic amenities such as formation of road etc which is stated in their counter affidavit as follows;

Formation of Road	:	Rs.3,57,00,000/-
Strom water drain construction	:	Rs.4,57,00,000/-
Providing Parking Area fencing	:	Rs. 12,50,000/-
Providing Street Lights	:	Rs. 86,50,000/-
Providing Well Water supply	:	Rs. 32,50,000/-
Providing UGD Arrangements	:	Rs.4,48,00,000/-
Providing Bore Wells	:	Rs. 8,10,000/-
Providing Drinking Water Arrangements	:	Rs. 38,90,000/-
Total	:	Rs.14,40,50,000/-
Estimate cost	**:**	**Rs.3,60,12,500/-**

12.Therefore, according to these respondents, these basic amenities has to be developed only by the promoters and in this case Rs.14,40,50,000/- is fixed as total estimated cost for the land development and 25% of the estimated cost of the land development has been fixed as Rs.3,60,12,500/- and this amount is demanded as future maintenance on the 25% of the estimated basic amenities required for the layout. The learned counsel for the respondent/Corporation relied on the Circular of Coimbatore City Municipal Corporation dated 19.10.1993 which reads as follows;

> *"Along with the application, the appellant shall remit a sum of 25% of the cost of layout improvement as estimated by the corporation based on the alignment, width and length of roads as proposed in the layout plan submitted by the applicant. The estimate of improvements under the bylaws shall be limited to the specifications furnished in APPENDIX II."*

13.Even in this circular referred by the respondent Corporation, there is no reference enabling the respondents/Corporation to collect any amount as future maintenance. A circular cannot prevail over any Act or Rules, when there is a separate Rule available on Levy of Development

Charges namely, the Tamil Nadu Town and Country Planning Act (Levy of Infrastructure and amenity charges) Rules, 2008 the respondent is relying on a Circular for collection of this future amount. Neither in the Town and Country Planning Act nor in the Coimbatore City Municipal Corporation Act, there is no specific provision enabling the respondent/Corporation for collecting future maintenance. The petitioners have also made out a case by referring the similar layout approval orders issued by Salem Corporation and other Corporations and reiterated that there is no enabling provision for collecting any advance tax on layout approvals.

14. Mr.R.Sivakumar, learned Standing Counsel appearing for the respondent / Corporation submits that expenses are required for formation of road, parking area fencing, street lights, underground drainage facilities and supply of drinking waters for the lay outs proposed by the petitioners, and for these basic amenities, the total expense has been arrived by the respondent / Corporation as Rs.1,44,08,000/- and on these total cost, 25% of the cost is demanded as a future maintenance.

15. The learned counsel appearing on behalf of the petitioner has pointed out that all these basic amenities have already been in the lay out and therefore, there is no necessity for any further expenses for these basic amenities and this amount is taken up for the future maintenance, which is not provided and or in the acts or rules.

16. Apart from collecting amount at the time of approval of lay out, the Corporation is also collecting the development charges at the time of approval of planning permissions for any construction of houses in these approved lay out. The Corporation is also collecting property taxes from the residents of the area on this future maintenance, expected to be provided by the Corporation.

17. In view of the above discussions, these writ petitions are allowed and the impugned demand notice claiming future maintenance are quashed as there is no enabling provision to the Corporation for collection of

these future maintenance from promoter of the land. Consequently, connected miscellaneous petitions are closed. No costs.

19.02.2021

kkn/mrm
Internet:Yes/No
Index:Yes/No
Speaking / Non-speaking.

To:

1.The Commissioner,
Corporation of Coimbatore,
Coimbatore – 641 001.

2.The Sub-Collector / The Assistant Commissioner,
East Zone, Corporation of Coimbatore,
Coimbatore – 5.

3.The Sub-Registrar,
Gandhipuram Sub-Registrar Office,
Kalapatti Road, Saravanampatti,
Coimbatore – 641 035.

B.PUGALENDHI, J.

kkn

W.P.Nos. 15077 of 2020 & 28007 of 2019
and
W.M.P.Nos. 27617 of 2019, 18793, 18794, 18795, 20029
& 18792 of 2020

19.02.2021

W.P. Nos.15077 of 2020 & 28007 of 2019
and WMP.Nos.18793, 18794, 20029 of 2020,
27617, 18792 &18795 of 2020

B. PUGALENDHI, J.

Today, the matter is listed under the caption "for being mentioned".

2. It is brought to the notice of this Court that some typographical error have been crept in the order dated 19.02.2021. Accordingly, the following correction shall be incorporated in the order:

3.In the appearance portion the name of the petitioner counsel has been typed as "Mr.Karthi, Senior Counsel" and the same shall be replaced as "**V.Karthick, Senior Counsel for Mr.Aravind Subramaniam.**" and in the first line of paragraph No.3 "Mr.V.S.Karthi, learned Senior Counsel representing Mr.Aravind Subramaniam," shall be replaced as "**Mr.V.Karthick, learned Senior Counsel** representing Mr.Aravind Subramaniam,"

B. PUGALENDHI, J.

dpq

4. Registry is directed to carry out the necessary corrections in the

Order and issue fresh order copy.

05.03.2021

dpq

W.P. Nos.15077 of 2020 & 28007 of 2019
and WMP.Nos.18793, 18794, 20029 of 2020,
27617, 18792 &18795 of 2020

Issue order copy on 08.03.2021