IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.93 of 2014 and M.P.No.1/2014

Coimbatore City Municipal Corporation
rep. by its Commissioner,
Coimbatore. ... Appellant /3rd Respondent

-vs-

1. V.Ramasamy (Deceased)

2. Government of Tamil Nadu
rep. by its Secretary to Government,
Municipal Administration and Water
Supply, Fort St. George, Chennai.

3. Town & Country Planning Department
rep. by its Special Commissioner,
No.807, Anna Salai, Chennai-600 002.

4. R.M.Visalakshi

5. R.M.Alamu

6. R.M.Chinna Alamu

7. V.Meenakshi ... Respondents

(R4 to R7 are substituted vide order of this Court
dated 20.03.2018 made in CMP.No.4943/2018
in W.A.No.93/2014 by this Court)

Prayer:

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 15.04.2013 made in W.P.No.8279/2006 by a learned Single Judge of this Court.

Writ of Mandamus directing the respondents to refund deposit, a sum of Rs.5 38 941/- which the second respondent is statutorily liable to refund pursuant to completion of the work done by the petitioner as per the planning permission for layout granted effective from 15.05.1997.

For Appellant	:	Mr.Siva Kumar, Standing Counsel for Coimbatore Corporation
For respondents 2 &3	:	Mr.T.Arunkumar, Government Advocate
For respondents 4 to 7	:	Mr.N.L.Rajah, Senior Counsel for Mr.Jayashankar

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been directed against the order made in W.P.No.8279/2006 dated 15.04.2013, thereby granting the prayer for issuance of a Writ of Mandamus, directing the 2nd respondent therein/appellant herein to refund the deposit amount of Rs.5,38,941/- to the writ petitioner.

2. Learned Standing Counsel appearing for the appellant Coimbatore City Municipal Corporation argued that when the Writ Petitioner made an application dated 15.12.1994 for approval of lay out of plots in T.S.Nos.546, 547, 562 and 563 situated in Kumarapalayam Village within the Corporation Limit of Coimbatore, acknowledging the same, the writ petitioner was directed to remit Rs.1,75,921/- towards Approach Road Development Charges within 7 days from the date of receipt of the said letter dated 13.08.1995 in order to give approval for layout. He has also deposited the said amount on 18.09.1995. Again, another letter dated 14.09.1995 was sent on behalf of the Commissioner, Coimbatore Corporation, informing the writ petitioner to remit a further sum of Rs.3,63,020/- in the Corporation Treasury towards layout development charges so as to obtain lay out sanction, that was also complied with by him vide Coimbatore Corporation Treasury Receipt dated 19.09.1995 for Rs.1,90,000/- and 20.09.1995 for Rs.1,73,020/- and as such, the writ petitioner has remitted a total sum of Rs.5,38,941/- (Rs.1,75,921/- on 18.09.1995 + Rs.1,90,000/- on 19.09.1995 + Rs.1,73,020/- on 20.09.1995). After the completion of the work, the same was inspected and then after verification, the writ petitioner was also given the confirmation of approval for the sanction of the layout. Thereafter, he has sent a letter asking the appellant to refund the deposit of Rs.5,38,941/- that was

remitted in the Coimbatore Corporation Treasury on 18.09.1995, 19.09.1995 and 20.09.1995 respectively. Since the said deposit was a non-refundable one, the writ petitioner took out a writ petition before this Court on the premise that the action of the appellant in not refunding the deposit of Rs.5,38,941/- was illegal, arbitrary and unreasonable, he pleaded.

3. Learned Standing Counsel for the appellant further argued that the learned Single Judge, while entertaining the writ petition has overlooked the vital aspect that the amount deposited by the writ petitioner was a non-refundable deposit and the same could be utilised only for the purpose of the future maintenance of the said layout, inasmuch as it is the prime obligation on the part of the promoters to provide basic amenities like laying of roads, street lights, drainages, culverts and also to make appropriate provisions for water supply etc. The said 25% of the development charges does not preclude the writ petitioner from making the above provision of basic amenities. When it is the obligation on the part of the every promoter to provide the basic amenities, once an application for approval of the layout is received, after a preliminary inspection regarding the suitability of the land, the layout improvement cost will be estimated by the Corporation and then the promoter must pay the 25% of the estimated cost. On such payment, that application will be processed further for the purpose of issuing technical sanction. If all the other conditions are fulfilled, the applicant will be informed to develop the layout by providing the basic amenities like road, culverts, street lights, drainages and provisions for water supply etc. and thus, it has become the duty of the promoter to provide the above facilities. On such providing the facilities, the site will be again inspected by the Corporation and if the amenities are provided as per the requirements, then the layout will be sanctioned. It is only thereafter, they can sell the individual sites. Since the said payments were all made as per the provisions of the Act, he cannot ask for refund of the same as the appellant Coimbatore Corporation has got further obligation to maintain the said layout for all the time in future by using the above said deposit.

4. Learned Standing Counsel for the appellant further taking support from Section 250 of the Coimbatore City Municipal Corporation Act, 1981, argued that as per Section 250(2) of the Act, every owner shall remit a sum not exceeding 50% of the estimated cost of layout in the land and that the owner shall also reserve not exceeding 10 per cent of the layout for common purpose in addition to the area provided for laying out streets. If for any reason, any owner contravenes any of the conditions specified therein, he shall be liable for prosecution. Again, if the owners have not complied with the provisions of sub-

sections (1) and (2), the Commissioner may, by notice, require the defaulting owner to lay out and make a street or streets on such land and in such manner and within such time as may be specified in the notice as per Section 250(3) and finally, if the owner fails to lay any road within the specified time shown in the notice, the Commissioner may layout and make the street and the expenses thereof incurred shall be recovered from the defaulting owner as per Section 250(4). Completing the reading of Section 250, learned Standing Counsel for the appellant submitted that when the above said deposit has been received in addition thereto, the writ petitioner has completed the layout and made the streets, then the question needs to be answered by this Court is whether for the purpose of undertaking any repair in future, the deposit made by the writ petitioner can be utilised by the appellant in future, if it is provided, otherwise, the streets laid by the writ petitioner will be left unimproved, as a result, users of the road would be put to prejudice. This aspect has been completely overlooked by the learned Single Judge. Again taking reliance from Section 62 of the Tamil Nadu Town and Country Planning Act, 1971, enabling the appellant herein to collect development charges, the learned Standing Counsel argued justifiing the collection of the development charges.

5. Continuing his arguments, again going back to the Circular dated 15.10.1993 issued by the Commissioner, Coimbatore Corporation, the learned Standing Counsel for the appellant has contended that when a similar occasion arisen for refund of the deposit money by an identical promoter, it was found that there was no provision in the Act or Rules or by-laws made thereunder for adoption of such a procedure, therefore, the refund of the development charges is not entertainable. In view thereof, in the same Circular, the Town Planning Officer was requested to review all such cases of irregular refunds, if any made and to take urgent action to recover the amounts and to regulate the irregular refunds. Therefore, when there was already a Circular dated 15.10.1993 issued by the Commissioner of the Coimbatore City Municipal Corporation, the question of refunding the deposit would not arise. Hence, the impugned order passed by the learned Single Judge, directing the appellant to refund the amount is liable to be interfered with, he pleaded.

6. Since during the pendency of this Writ Appeal, the writ petitioner/1st respondent died, his legal representatives were substituted as respondents 4 to 7 herein as per the order of this Court dated 20.03.2018 made in CMP.No.4943/2018 in W.A.No.93/2014.

7. Learned Senior Counsel appearing for the respondents 4 to 7 submitted that the premise on which the writ appeal has been

filed that the appellant is entitled to retain the deposit made by the writ petitioner is without any authority. Taking us to Section 59(2) of the Town and Country Planning Act, 1971, he has submitted that when a planning authority including a local 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 and Section 59(3) says that based on the notification prescribed, the authority can levy on any person who undertakes or carries out any such development or institutes or changes any such use. But in the present case, the appellant has not till date issued any notification specifying the rates of levy of development charges. However, when the writ petitioner has approached the appellant for sanctioning the lay out approval relating to the layout of plots in T.S.Nos.546, 547, 562 and 563 measuring an extent of 6.8 acres of Kumarapalayam Village within the Corporation Limit of Coimbatore, a layout plan was also prepared making it clear the provisions of drainage facilities and street laying and common area for public purpose as per the guidelines of the Town and Country Planning Act and Coimbatore City Municipality Rules. There has been an usual practice being followed. Generally, an application for approval of layout to be submitted to the Corporation of Coimbatore. Thereafter, the Administrative Engineer of the Corporation of Coimbatore would compute the cost that would include laying of road, street lights, drainages, culverts and also making appropriate provisions for water supply etc. shown in the layout and thereupon, the applicant, namely, the writ petitioner was required to pay 1/4th of the computed amount and on payment of the said amount, the application would be taken up for approval.

8. Learned Senior Counsel for the writ petitioner further submitted that in the present case, since the application was made on 15.12.1994, the writ petitioner was directed to remit Rs.1,75,921/- towards Approach Road Development Charges. Accordingly, the same was remitted on 18.09.1995. Thereafter, another letter dated 14.09.1995 was sent to the writ petitioner informing him to remit a further sum of Rs.3,63,020/- in the Corporation Treasury towards layout development charges in order to get layout sanction which was also complied with by the writ petitioner on 19.09.1995 and 20.09.1995 respectively and thus the writ petitioner has deposited a total sum of Rs.5,38,941/-. In addition to the said deposit, the writ petitioner carried out all the layout works, namely, laying of roads, streets, culverts and bridges etc. Apart from that, the registration of gift deed also has been done. Thereafter, the work undertaken by the writ petitioner was also verified by the appellant. But, till date, there is no any notice or letter asking the writ petitioner to do any more important work. Therefore, when the appellant was

fully satisfied with the work undertaken by the writ petitioner, he is entitled to get the refund of deposit of Rs.5,38,941/-, hence, an application was made. This was not considered for quite a long time. Hence, the Writ Petitioner was advised to come to this Court seeking to issue a Writ of Mandamus directing the appellant to refund the deposit amount of Rs.5,38,941/- and this Court after considering the case of both sides finally found that the writ petitioner is entitled to get back the deposit amount of Rs.5,38,941/-. Without complying with the said order, the present appeal has been filed by the appellant.

9. Again taking support from Section 59(2) of the Tamil Nadu Town and Country Planning Act, 1971, the learned Senior Counsel for the writ petitioner submitted that the said deposit was directed to be made by the appellant only to ensure that if for any reason after the writ petitioner completing the other works, on inspection by the appellant, if any road is not properly laid or any deficiency was found to rectify the same, the deposit amount could be made use of. In the present case, there was no such complaint ever made by the appellant indicating any deficiency in laying out of any of the roads, streets, culverts, bridges etc. Therefore, the appellant has no right whatsoever to retain the deposit amount. Further, though the appellant justifies the retention of the deposit amount of Rs.5,38,941/-, as they have not complied with the mandatory conditions mentioned in Section 59(2) of the Act by issuing proper notification in the Tamil Nadu Government Gazette specifying the rate of levy of development charges and also making a clear mention that the amount deposited is non-refundable, they cannot retain the same.

10. Explaining further, it was also submitted that Sections 59 to 63 of the Tamil Nadu Town and Country Planning Act Act deal with the levy of development charges, rates of development charges and assessment and collection of development charges by the Planning Authorities and the apportionment of certain development charges. When Section 59 empowers the Planning Authority to levy the development charges, nowhere either in the Town and Country Planning Act or in the Coimbatore City Municipal Corporation Act justifying the appellant to retain the deposit money has been shown. Therefore, the appellant has no cause to come to this Court to cancel the order passed by the learned Single Judge. Finally, concluding his arguments, taking support from a copy of the Resolution No.704 passed in the ordinary meeting of the Coimbatore Municipal Corporation held on 21.8.1996 as found in the Minutes Book No.185 of Coimbatore Corporation Council granting permission to refund a similar deposit stated that when the Coimbatore Municipal Corporation even on 21.8.1996 which is subsequent to the circular dated 15.10.1993 refunded the similar amount, it goes without saying

that the Circular dated 15.10.1993 relied on by the appellant retaining the deposit cannot be acceptable as it is not justified in law.

11. Heard the learned Government Advocate appearing for the respondents 2 and 3.

12. The core issue raised in the present appeal is whether the deposit amount of Rs.5,38,941/- made by the writ petitioner towards development charges is liable to be refunded or not as held by the learned Single Judge for which it is necessary to refer to Section 59(2) of the Tamil Nadu Town and Country Planning Act, 1971 which is given as under :

''59(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.

A cursory perusal of Section 59 shows that it deals with levy of development charges and calculation of development charges by the Planning Authority. When Section 59 of the Act empowers the planning authority to levy development charges, Sections 61 to 63 provide the procedure to be followed for assessment of development charges and calculation and recovery of such charges. Section 60 also deals with the rate of development charges to be fixed by the competent authority.

13. In general, before calculating the development charges, a Notification in the Tamil Government Gazette specifying the rate of levy of development charges to be issued. But in the present case, as rightly admitted by the appellant, no notification was issued by the State Government specifying the rate of levy of development charges. Therefore, when the above Section 59(2) clearly states that there shall be a notification published in the Tamil Nadu Government Gazette specifying the rate of levy of the development charges and as admittedly neither before the learned Single Judge, nor before us, when no such notification specifying the rate of levy has been made available or brought to notice, we find it difficult to support the case of the appellant for retention of the development charges. As a matter of fact, the learned Counsel for the appellant repeatedly relied upon Section 250 of the Coimbatore City Municipal Corporation Act which is given as under :

> ''250. Owners obligation to make a street when disposing of lands as building sites:-- (1) If the

owner of the land, utilises, sells, leases or otherwise disposes of such land or any portion or portions of the same as sites for the construction of buildings, he shall, save in such cases as the site or sites may abut on an existing public or private street, layout and make a street or streets giving access to the site or sites and connecting with an existing public or private street.

(2) In regard to the laying out or making of any such street or streets, the provisions of section 251 shall apply, subject to the conditions that owner shall remit a sum not exceeding 50 per cent of the estimated cost of layout improvements in the land and that the owner shall also reserve not exceeding 10 per cent of the layout for the common purposes in addition to the area provided for laying out streets. If any owner contravenes any of the conditions specified above, he shall be liable for prosecution.

(3) If, in any case, the provisions of sub-sections (1) and (2) have not been complied with, the Commissioner may, by notice, require the defaulting owner to layout and make a street or streets, on such land and, in such manner and within such time as may be specified in the notice.

(4) If such street or streets are not laid out and made in the manner and within the time specified in the notice, the Commissioner may layout and make the street or streets, and the expenses incurred shall be recovered from the defaulter owner.

(5) The Commissioner may, in his discretion, issue the notice referred to in sub-section (3) or recover the expenses, referred to in sub-section (4) to or from the owners of any buildings or lands abutting on the street or streets concerned, but any such owner shall be entitled to recover all reasonable expenses incurred by him or all expenses paid by him, as the case may be, from the defaulting owner referred to in sub-section (3).

A regulatory Act must be construed having regard to the purpose it seeks to achieve. The State as a statutory authority cannot ask for something which is not contemplated under the Act. A statute relating to regulation of user of land must not be construed to be a limitation prohibiting transfer of land which does not affect its user. The plan provides that schools, hospitals etc. would be located at particular sites.

When that purpose is satisfied, the Court in the name of interpretation would not make a further attempt to find out who did so. Simply because in the approved plan certain areas are earmarked for certain public purpose, it does not mean that the developer had lost his right over it. A developer could alienate even such area reserved for public purpose, provided, the purchaser of it should use it for the very same purpose for which it was earmarked in the approved plan. Under section 250 of the Coimbatore City Municipal Corporation Act, 1981, even though such alienation of the reserved area would be punishable, nevertheless it does not say that the colonizer would not be the owner of the property and the transferee from such colonizer would not acquire title over it at all. [Bagyam v. Commissioner, Coimbatore City Municipal Corporation, Coimbatore, 2009 (7) MLJ 653]

See Case Law under section 250 of the Madurai City Municipal Corporation Act, 1971.''

A perusal of the above shows that Section 250 of the Coimbatore City Municipal Corporation Act, 1981 deals with owners obligation to make a street while disposing of lands as building sites. Sub-clause (2) also says that laying out or making up any such street is subject to the condition that the owner shall remit a sum not exceeding 50% of the estimated cost of the lay out improvements in the land. The liability has been fixed on the owner to reserve not exceeding 10% of the layout for the common purposes in addition to the area provided for laying out the streets. Sub Section (3) provides that if, in any case, the provisions of sub-sections (1) and (2) have not been complied with, the Commissioner may, by notice, require the defaulting owner to layout and make a street or streets, on such land and, in such manner and within such time as may be specified in the notice. The Commissioner may layout and make the street and thereupon the expenses incurred can be recovered from the defaulting owner. Therefore, there is no provision shown to us justifying the retention of the deposit amount whereas it is claimed by the writ petitioner before the writ court that he has carried out all the instructions, namely, laying of the road, streets, culverts, bridges etc. and thereafter the works done by the writ petitioner were also inspected and certified to be in good condition.

14. Secondly, even if we consider the argument of the learned Counsel for the appellant that by virtue of Section 250 of the Coimbatore City Municipal Corporation Act that they can ask every promoter to make a deposit and then to undertake the laying of road, bridges, culverts etc., the said sub-clause 4 of

Section 250 makes the position very clear that if for any reason streets or bridges or any provisions indicated by the appellant in the notice not carried out, the commissioner can make the layout and make the street and the expenses thereof can be recovered from the defaulting owner. But in the present case, the Counter Affidavit filed before the learned Single Judge also supports the case of the writ petitioner that there was no any default committed while laying of the road provision, bridges etc. A letter dated 13.02.1997 issued by the AEEW has been mentioned by the writ petitioner that the appellant after inspecting and verifying the good condition of the work undertaken by the writ petitioner, the Commissioner, Coimbatore City Corporation has also endorsed the same on 17.02.1997 that also further supports the case of the writ petitioner that there was no any deficiency or complaint while laying the road provision, bridges etc.

15. Thirdly, we are also able to see the resolution dated 21.8.1996 passed in the ordinary meeting of the Coimbatore Municipal Corporation as found in the minutes book No.185 of Coimbatore Municipal Corporation Council Subject No.14. A perusal of the said resolution shows that a sum of Rs.1,29,294/- was deposited by one applicant towards development charge apart from the amount of Rs.40,500/-. The remaining sum of Rs.88,794/- was found to be refunded. Such permission has been granted for refund of the deposit amount that indicates that the Circular dated 15.10.1993 issued by the Commissioner stating that there is no provision in the Act or Rule or by-law made thereunder for refund of the money cannot support the appellant to retain the same for the simple reason that when there was no notification as stipulated under Section 59(2) of the Tamil Nadu Town and Country Planning Act is issued, they ought not to have collected the development charges. In the present case, when the road provision, bridges and culverts etc. have been fully undertaken without leaving any complaint, the refund of the deposit amount of Rs.5,38,491/- as ordered by the learned Single Judge cannot be found fault with.

16. Finally, though it is argued by the learned Counsel for the appellant that the learned Single Judge has not referred to Section 59(2) of the Act mentioned supra, in our considered opinion, as a matter of fact, the appellant will not get any support from that Section because the development charges were calculated without issuing any notice as mentioned in Section 59 (2) of the Act. In view thereof, as there is no any provision shown to us for retention of the deposit money, we are unable to find any infirmity or illegality in the impugned order passed by the learned Single Judge.

17. In the result, the Writ Appeal fails and the same is

accordingly dismissed. The appellant is directed to refund the amount to the respondents 4 to 7 who are the legal heirs of the deceased 1st respondent/writ petitioner, within a period of two weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. Secretary to Government,
   Government of Tamil Nadu,
   Municipal Administration and Water
   Supply, Fort St. George, Chennai.

2. Special Commissioner,
   Town & Country Planning Department
   No.807, Anna Salai, Chennai-600 002.

+1cc to Mr.Siva Kumar, Advocate, S.R.No.37871
+1cc to the Government Pleader, S.R.No.38099

W.A.No.93/2014

RK(CO)
CT 03/01/2022