IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. No.43571 of 2016
and
W.M.P. No.37399 of 2016

Akshaya Signature Homes Private Limited
Rep. by its Authorized Signatory, Mr.J.Ravi
G Square, 4th Floor,
46, Rajiv Gandhi Salai (Old Mahabalipuram Road)
Kandanchavadi
Chennai - 600 096 ...Petitioner

Vs.

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

2. The Chennai Metropolitan Development Authority,
   Rep. by its Member Secretary,
   Thalamuthu Natarajan Maaligai,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai - 600 008.

3. The Director of Town & Country Planning,
   807, Anna Salai,
   Chennai - 600 002. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent, comprising of the letter dated 17.06.2016 issued by the 1st respondent to the 2nd respondent, and the consequential demand letter dated 30.06.2016 issued by the 2nd respondent to the petitioner raising a demand of Rs.5,72,20,000/- (Rupees Five Crores Seventy Two Lakhs and Twenty Thousand only) towards premium FSI charges, and to quash the same as illegal, unconstitutional & arbitrary, and to consequently direct the 2nd respondent to refund the sum of Rs.5,72,20,000/- paid to it by the petitioner in lieu of additional premium FSI charges along with interest thereon at the commercial rate of interest from the date of deposit till the date of refund.

For Petitioner : Mr.Sathish Parasaran
Senior Counsel for
Mr.R.Parthasarathy

For Respondents : Mr.A.Selvendiran
Government Advocate for R1 & R3

Mrs.P.Veena Suresh
Standing Counsel for R2

O R D E R

This writ petition has been filed challenging the impugned letter issued by the 1st respondent dated 17.06.2016 and consequential demand letter dated 30.06.2016 issued by the 2nd respondent to the petitioner by raising a demand of a sum of Rs.5,72,20,000/- payable towards premium FSI charges and for a consequential direction to the 2nd respondent to refund the amount that was paid by the petitioner towards premium FSI charges.

2.Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondents.

3.The case of the petitioner is that they wanted to develop a property and initially they decided to put up a construction with 24 dwelling units and other amenities. This structure was proposed to be developed in a built up area of 9326.21 sq.m. The petitioner made an application on 17.04.2013 before the 2nd respondent seeking for planning permission and other approvals.

4.The planning permission was granted by the 2nd respondent on 23.10.2014. The 2nd respondent while granting the approval, also granted the petitioner the entitlement for a premium FSI for 9326.21 sq.m. The petitioner made a payment of Rs.12,27,25,000/- towards the premium FSI charges and the same was also acknowledged by the 2nd respondent through receipt dated 12.06.2014.

5.The petitioner by taking into consideration the market conditions, wanted to make the property more affordable and hence decided to file a revision of the existing planning permission. Thereby, the petitioner decided to build a residential building with 49 dwelling units in a reduced built up area of 9314.59 sq.m. The petitioner applied for the revised planning permit before the 2nd respondent. The 2nd respondent issued a letter dated 27.01.2016 for getting the fresh guideline value for assessing the premium FSI charges. The petitioner made a representation on 01.02.2016 to the 2nd respondent stating that there was no requirement to obtain any fresh guideline value since the premium FSI that was already granted earlier has vested with the petitioner and no additional FSI has been sought for by the petitioner in the revised plan.

6.The representation given by the petitioner was not considered by the 2nd respondent and the 2nd respondent proceeded to issue the demand letter dated 30.06.2016 demanding additional premium FSI charges of a sum of Rs.5,72,20,000/- The petitioner had no other alternative except to make the payment since the development must go on. Therefore, the petitioner made the payment without prejudice to their rights on 08.07.2016.

7.On receipt of the payment from the petitioner, the planning permit was issued to the petitioner on 29.07.2016 and the building permission was also granted by the Corporation of Chennai on 19.10.2016. Aggrieved by the demand made by the respondents towards the additional premium FSI charges of a sum of Rs.5,72,20,000/-, the present writ petition has been filed before this Court.

8.A careful reading of the letter addressed by CMDA to the 1st respondent through letter dated 15.03.2016 shows that there is a specific reference made with regard to a similar claim that was raised for another project that was developed by M/s.A.R. Property Developers and the same being made a subject matter of challenge in W.P.No.30150 of 2014. It is further mentioned in the letter that the matter has been heard by this Court and it has been reserved for orders. It is therefore clear that the respondents were aware that a similar demand that was made for the payment of the additional premium FSI charges was already put to question before this Court.

9.In view of the above, it becomes necessary for this Court to consider as to what happened to this case which was referred to by CMDA. At this juncture, the learned Senior Counsel appearing on behalf of the petitioner submitted that final orders were passed in the said writ petition and to substantiate the same, the learned Senior Counsel cited the judgment in the case of M/s.A.R. Property Developers Private Limited, Rep. by its Director N.Abdul Majeed, Anna Nagar West, Chennai - 600 040 and other vs. The Secretary, Housing and Urban Development (UD-1) Department, Government of Tamil Nadu, Chennai - 600 009 and others reported in 2017 SCC Online MAD 29959. The relevant portions in the said judgment are extracted hereunder:

> 27. There is no dispute with regard to the submission of an application by the petitioner on

25.08.2010 to CMDA for the proposed construction of Block 'A' -Hotel building with double basement floor+ ground floor plus 14 floors and Block 'B' - Basement floor stilt-ground floor +12 floors at Survey Nos. 58/1B, 58/2A2 and 58/2A1B of Madhuravoil Village along with required certificates.

28. The 1st respondent/Government granted its approval to the recommendations of the MSB panel for issuance of planning permission for the said project on 14.11.2011. As per the direction of the CMDA dated 05.12.2011, the petitioners remitted development charges and other charges including the premium FSI charges for premium FSI area of 6.717.61 Sq. Mts. on 07.12.2011 to the tune of Rs. 4,34,00,000/ -. Consequently, CMDA approved the petitioners' application on 04.01.2012. The Corporation of Chennai gave building permit on 16.02.2012 to the petitioner. Thereafter only the dispute arose.

29. The petitioners would contend that they commenced Pile Foundation Work on 21.08.2012, whereas, the 2 respondent would contend that the said piling work is for already approved plan. However, the Pile Load Testing report dated 23.02.2013 given by Associated Pile Foundation would reveal that the Piling was already completed. The petitioners on 08.03.2012 filed an application for revised planning permission by revising the earlier planning permit granted on 04.01.2012, which was also approved by the Government on 26.08.2013 as per the recommendations of the MSB panel for revised planning permission to the petitioners. On 27.12.2013 CMDA directed the petitioners to remit the balance development charges and balance security charges and other charges. The petitioners paid the development charges and the balance charges and produced receipts for the additional development charges and other charges to the CMDA. However, CMDA issued revised advice by directing the petitioners to pay a sum of Rs. 13,94,06,500/- towards balance premium FSI charges by including the premium FSI area of 6.717.61 Sq. Mts.

30. Initially, by order dated 27.12.2013, revised proposal was received and to process the said application, a sum of Rs. 26,28,000/- was demanded and it was stated the revised proposal is under consideration. Thereafter, the impugned order has been passed directing the petitioners to pay a sum of Rs. 13,94,06,500/- as balance premium FSI charges, so as

to process the planning permission and directed the petitioners to surrender earlier approval plan that was issued on 04.01.2012. As rightly pointed out by the petitioners, the petitioners already got approval for premium FSI of 6,717.61 Sq. Mts. [Equivalent land area of 2687.04 Sq. Mts.] and paid a sum of Rs. 4,34,00,000/- on 07.12.2011 and only additional premium FSI area of 1002 Sq. Mts. [Equivalent land area of 400.8 Sq. Mts.] has to be charged additionally and for charging additional FSI area of 1002 Sq. Mts alone, the present guideline value to be taken into consideration. However, the respondent CMDA took guideline value as on the date of the revised plan even for the already approved FSI area and directed the petitioners to pay a sum (calculated) of Rs. 18,28,06,303.68 and deducting Rs. 4,34,00,000/- directed the petitioners to pay a sum of Rs. 13,94,06,500/- as balance premium FSI charges.

31. The application submitted by the petitioners is not a fresh application as it is only an application to revise the earlier approved plan by the CMDA. The guideline value which was applicable on the date of the original application was already taken and the approved plan was already granted on 04.01.2012. By revising and deleting the hotel project, additional premium FSI area of 1002 Sq. Mts. only [Equivalent land area of 400.8 Sq. Mts.] alone is added. If any additional premium FSI has been added by virtue of revision, only for the present additional area in view of revision, as on the date of the revised application, the guideline value as on the date of the revised application has to be calculated. In that event, the petitioners have to pay a sum of Rs. 2,37,28,161, in the following manner:—

> Additional premium FSI area 1002 Sq. Mts. Equivalent land area For the above premium FSI area 400.8 Sq. Mts. Guideline value as indicated by the Registration department
>
> Rs. 5500 per Sq. Ft.
>
> Amount payable for the additional premium FSI area 400.8 Sq. Mts.
>
> = Rs. 2,37,28,161/-

32. The amount demanded by the respondent CMDA based on the impugned order is based on the present guideline value for the premium area already approved. What is required to be paid by the petitioners is the

premium charges towards additional premium FSI area only. In this regard the judgment of the Hon'ble Supreme Court in the case of Union of India v. Asian Food Industries reported in (2006) 13 SCC 542, can be relied upon.

33. In that case, it has been held that by a policy decision, the vested or accrued right cannot be taken away. If at all it could have only prospective effect and not retrospective effect. In this case, the petitioners had already paid the premium FSI charges based on the guideline value as on the date of the original application and therefore, the right got accrued to the petitioner in respect of the approved and premium FSI area. Therefore, the respondent CMDA has to calculate premium FSI charges only with regard to additional premium FSI area, which is equivalent to the value of 400.8 Sq. Mts. of land. To put it in other words, the additional premium FSI area involved is 1002 Sq. Mts. of built up area. Hence, there is no question of adopting the guideline value as on the date of the application for revision for the entire premium FSI area. It would amount to taking away the right accrued to the petitioners by grant of approval for the original premium FSI area. As per the original plan, pile work foundation has already been completed and therefore the original application has been acted upon. In view of that, the reasonings given by the respondent CMDA that the construction as per the earlier approval plan was not commenced is not correct. In this regard, the pile load testing report dated 22.02.2013 has been filed by the petitioners.

34. Though, the respondent CMDA has stated in the impugned order that the subsequent application for revision is a different one and it involves change in usage, namely, from Hotel to residential and combined two (2) blocks into one, thus, involving change of usage and plan in designing of the proposed development, the application for revision of approved plan cannot be considered as a different one. It is only an additional construction altering the original plan. It cannot be said alterations, additions etc., are not permissible and there is no prohibition in this regard in any of the rules, orders etc., In view of the same, Planning Permission Approval (PPA) cannot be treated as a new proposal. When the application for planning permission is not a new one, the question of calculating the premium FSI charges for entire area including already approved area based on the

prevailing market rate as on the date of the application for revision is unjustified. The respondent CMDA cannot adopt the guideline value as on the date of the application for revision and it could be done only for the additional FSI area that would result because of the revision.

35. The petitioners by paying the premium FSI charges for 6,717.61 Sq. Mts. have acquired absolute right over the property to an extent of 2687.044 Sq. Mts excepting the additional premium FSI area to an extent of 1002 Sq. Mts. Therefore, for the said area only, the new guideline has to be taken and additional premium has to be determined. The petitioners only sought to revise the approval in respect of the original Block "A" by modifying its residential in line with Block "B" which is as per original plan and the revised plan continues to be residential. MSB panel already recommended the revised proposal to the Government and the Government also approved the same and it will go to show that the application for revised planning permit could be treated as revised proposal only and not as a new proposal. If it is so, neither the MSB panel would have recommended nor the Government would have approved the application for revised planning permit.

10.It is clear from the above judgment that in no uncertain terms this Court has held that the premium FSI charges that was already paid and the same being granted, will stand vested with the petitioner and additional premium FSI cannot be demanded unless any additional area is sought to be utilised for the purpose of the development of the property and the additional premium FSI will have to be confined only to the additional area.

11.In the present case, the petitioner was originally planning to construct 24 dwelling units in a built up area of 9326.21 sq.m. The petitioner also paid premium FSI charges amounting to a sum of Rs.12,27,25,000/-. Subsequently, the revision that was sought for by the petitioner from the existing planning permission pertained to putting up 49 dwelling units and the same was to be constructed in a built up area of 9314.59 sq.m. There is no dispute with regard to these figures since it is clearly seen from the communication made by the 2nd respondent. Therefore, in the present case, there is no question of demanding for an additional premium FSI since the petitioner is not putting up any construction in any additional area and the fact remains that the total area has actually come down from 9326.21 sq.m. to 9314.59 sq.m. In view of the same, whatever premium FSI charges were already paid and was granted to the petitioner and which right stood vested with the petitioner, should have been utilized while granting the revised planning permission. There was absolutely no authority for the respondents to have demanded for the additional premium FSI charges of a sum of Rs.5,72,20,000/- The judgment that was cited by the learned counsel for the petitioner will squarely apply to the facts of the present case.

12.The petitioner had paid the additional premium FSI charges without prejudice to their rights to question the same, since the petitioner had to proceed further with the construction. Based on the same, the planning permit and the building permission have been granted.

13.In view of the finding given by this Court that the respondents do not have the authority or jurisdiction to demand for the additional premium FSI charges, the payment made by the petitioner has to be necessarily refunded to the petitioner.

14.In fine, the impugned letter dated 17.06.2010 issued by the 1st respondent and the consequential demand letter dated 30.06.2016 issued by the 2nd respondent to the petitioner by raising a demand of Rs.5,72,20,000/- towards additional premium FSI charges, is hereby quashed. There shall be a direction to the 2nd respondent to refund the sum of Rs.5,72,20,000/- to the petitioner, within a period of eight weeks from the date of receipt of copy of this order.

15.In the result, this writ petition is allowed with the above direction. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

ssr

To

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

2. The Chennai Metropolitan Development Authority,
   Rep. by its Member Secretary,
   Thalamuthu Natarajan Maaligai,
   No.1, Gandhi Irwin Road,
   Egmore, Chennai - 600 008.

3. The Director of Town & Country Planning,
   807, Anna Salai,
   Chennai - 600 002.

+1cc to the Government Pleader, S.R.No.50897/21

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.50772/21

+1cc to MS.P.Veena Suresh, Advocate, S.R.No.51921/21

W.P. No.43571 of 2016
and
W.M.P. No.37399 of 2016

RLD(CO)
RGA(26/10/2021)