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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.18328 of 2021

M/s.Arun Excello Homes Private Limited,
Represented by its Managing Director,
Shri P.Suresh,
Bhattad Towers, No.18, West Cott Road,
Royapettah, Chennai - 600 014.

...Petitioner

Vs

1.The Secretary,
Housing & Urban Development Department,
Fort St. George, Chennai - 600 009.

2.The Director,
Town and Country Planning
CMDA Office Complex,
E & C, Market Road,
Koyambedu, Chennai 600 092.

3.The Deputy Director,
Office of the District Town Planning,
No.331/95, Kotrampalayam Street,
Kancheepuram - 631 501.

4.Block Development Officer,
Sriperumbudur Panchayat,
Sriperumbudur,
Kancheepuram - 602 105.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 4th respondent vide proceeding in Na.Ka.No.0901/2021/ B4 dated 19.04.2021 and to quash the proceedings to the extent of the demand made by the 4th respondent and consequently direct the respondents to refund the amount of 48,98,350/- with interest at the rate of 12% p.a. which was paid by the petitioner.

For Petitioner : Mr.AR.L.Sundaresan, Sr. Counsel
for Mrs.R.Kamala Rani



For Respondents : Mr.Arun Natarajan
Government Advocate

ORDER

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The prayer sought for herein is for a writ of certiorarified mandamus to call for the records of the 4th respondent vide proceeding in Na.Ka.No.0901/2021/B4 dated 19.04.2021 and to quash the proceedings to the extent of the demand made by the 4th respondent and consequently direct the respondents to refund the amount of 48,98,350/- with interest at the rate of 12% p.a. which was paid by the petitioner.

2. The petitioner is a Private Limited Company promoting lands and buildings. This company is having lands at various survey numbers in Mathur Village/Panchayat at Sriperumbudur Taluk, Kancheepuram District.

3. On 05.01.2010, the petitioner had submitted an application to the 4th respondent, who was formerly President of Mathur Panchayat, for declaration as multistoried residential building area consisting of various survey numbers in Mathur Village. The 4th respondent i.e., Village Panchayat had passed a resolution on 09.02.2010 in this regard, which was subsequently forwarded with recommendation to the 3rd respondent on 15.02.2010.

4. The petitioner also had submitted an application on 20.09.2012 to the 3rd respondent for such a declaration as multistoried residential building area for land parcel situated at Mathur Village in various survey numbers.

5. Pursuant to the said application made by the petitioner, the 2nd and 3rd respondents sought for certain clarification, which was clarified by the petitioner. Subsequently, the 2nd respondent vide proceedings dated 27.05.2015 had declared the said site i.e., the land consisting of various survey numbers belongs to the petitioner, as Multistoried Residential Area in accordance with Rule 4(a) of the Tamil Nadu Multistoried and Public Building Rules, 1973 (in short '1973 Rules').

6. The 2nd respondent also marked a copy of the declaration to the Government Central Press for gazetting of the said declaration. Accordingly, in Government Gazette No.24 Part VI dated 17.06.2015, the declaration has been notified.

7. Prior to the said declaration made in the year 2015, the land in question belongs to the petitioner was agricultural land. Therefore, having converted the same into Multistoried Residential Area such a declaration was made on 17.06.2015.



8. Thereafter, the petitioner had submitted a proposal on 13.06.2019 for layout development to the 4th respondent for a portion of the land, which had already been declared so, in various survey numbers of the said Village. This was forwarded by the 4th respondent to the 3rd respondent on 13.06.2019 for according a technical clearance.

9. As per the provisions of the Tamil Nadu Town and Country Planning Act, 1971 (in short 'the Act'), the petitioner since had to give the lands as gift, which were earmarked for public or common purposes, such a request was made on 29.09.2020, pursuant to which, the land earmarked for public or common purposes in the proposed layout had been registered and a document has been executed in this regard in favour of the Local Authority on 25.02.2021. Thereafter, the 2nd respondent issued orders on 17.03.2021 communicating the same to the 3rd respondent and the 3rd respondent had directed the petitioner on 23.03.2021 to pay necessary statutory levies viz., Centage charges, Scrutiny Fees, Armed Forces Flag Day Fund and Display Board Deposit Fees. In all these heads, the amount payable by the petitioner had been paid and this has been intimated to the 3rd respondent by the petitioner vide his letter dated 25.03.2021.

10. Subsequently, the 3rd respondent granted the technical clearance for the layout proposal vide his proceedings dated 31.03.2021 with a condition that, the final approval shall be accorded by the Local Authority to the petitioner only on receipt of land conversion fee at the rate of 3% on the guideline value as per G.O.Ms.No.79 dated 04.05.2017.

11. Following the same, the 4th respondent vide his communication dated 19.04.2021 has demanded a sum of Rs.48,98,350/- as conversion charges of the land, which was converted from agriculture land into Multistoried Building Area land. Felt aggrieved over the said orders passed by the authorities concerned, especially, the order of the 4th respondent dated 19.04.2021, the petitioner has moved the present writ petition with the aforesaid prayer.

12. Heard Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner who has pointed out that, insofar as the conversion of the land in question from the agriculture land into Multistoried Building Area for construction of buildings was made as per the 1973 Rules and this has been made as early as on 17.06.2015 itself and this has also been notified in the Gazette.

13. Thereafter, after four years i.e., long after the conversion having been taken place, application has been made in



the year 2019 by the petitioner for seeking technical clearance from the 3rd respondent and consequential permission from the 4th respondent for layout approval. As such, the 3rd respondent, while making the technical clearance, has put a condition that the final approval shall be given by the Local Body i.e., the 4th respondent only after collecting 3% of the guideline value of the land in question as conversion charge, from the petitioner.

14. Following the same, the impugned order has been passed by the 4th respondent dated 19.04.2021, where, he having calculated the guideline value of the land in question converted, demanded a sum of Rs.48,98,350/-, being 3% of the guideline value, which, according to the learned Senior Counsel, is unjust and unlawful demand.

15. The learned Senior Counsel in this regard would point out that, the said demand of 3% of guideline value as conversion charge can be made possible by invoking the provisions, especially Rule 9 of the Rules i.e., the Rules called "Tamil Nadu Change of Land Use (From Agriculture to Non-agriculture Purposes in Non-planning Areas) Rules, 2017 (in short '2017 Rules').

16. Rule 9 of the 2017 Rules reads thus:

"Land use conversion charge.- The local authority, on receipt of the prior concurrence of the Director for the development shall collect land use conversion charge at the rate of 3% of the market value fixed under section 47-AA of the Indian Stamp Act, 1899 (Central Act 2 of 1899) and deposit the amount in Government head of account and grant permission for carrying out the development."

17. Under the Rule 9, if the local authority, on receipt of the prior concurrence of the Director for the development, shall collect land use conversion charge at the rate of 3% of the market value fixed under Section 47-AA of the Indian Stamp Act.

18. Here in the case in hand, on 17.06.2015 itself the conversion made under 1973 Rule, as referred to above, has been made, and it has been notified also. Once the land in question is converted into a Multistoried Building Area and such conversion was made two years prior to the 2017 Rules came into effect, the provisions of 2017 Rules cannot be made applicable to the conversion already been made prior to the said Rule.

19. If at all the respondents want to claim any conversion charges for application made for such conversion after 2017 Rules came into effect i.e. from 04.05.2017, they can collect



such 3% conversion charges as contemplated under Rule 9 of 2017 Rules and therefore, in the present case, since the petitioner's land has already been converted in 2015 itself i.e., well prior to the 2017 Rules came into effect or even was issued. Hence, such a demand now made by the 4th respondent, of course, pursuant to the direction issued in this regard by the 3rd respondent is unlawful, hence the learned Senior Counsel would seek indulgence of this Court against the impugned order.

20. Per contra, Mr.NRR.Arun Natarajan, learned Government Advocate appearing for the respondents 1 to 3 has made submission by relying upon the following averment made in the counter affidavit filed by the 3rd respondent.

"11. It is humbly submitted that the petitioner, M/s.Arun Excello Homes Private Limited in his Writ Petition stated that they have land in S.F.Nos.18/2; 20/1, 2, 3, 4, 5A, 5B; 22/1, 2; 23/1, 2; 24pt; 25/1, 2; 26/1, 2; 27/1pt, 2, 3, 4, 5; 28/1, 2, 3A, 3B, 4, 5A, 5B, 6, 7; 29/1, 2A1, 2A2, 2B, 30/6pt, 7pt; 35/3pt, 36/1pt, 2; 37/1A, 1Bpt, 2pt; 38/1pt, 2pt, 39/1pt; 40/1pt, 2pt, 41/2, 3A, 3B; 82/1A; 83/1pt, 2, 3pt, 4, 5; 84pt; 85; 86; 87; 88/2pt, 89/1Apt, 1Bpt, 2pt; 90/6pt; 92/1 pt; 97/7pt, 8pt at Mathur Village of Sriperumpudur Taluk of Kancheepuram District. The total extent of the site is around 106383.50 Square Meters. The petitioner submitted an application seeking approval for the construction of multistoried residential building in the land in 2015.

This land in question is not included in any development plan approved by Government and lies in the non-planned area, the development of multistoried building could be permitted only in the area declared as "Multistoried Building area" as envisaged under Rule 4 of "The Multistoried and Public Building Rules, 1973. Hence, the proposal of the petitioner was perused in the Directorate of Town and Country Planning, Chennai and necessary orders declaring the land of the petitioner as multistoried building area vide Roc.No.16959/14/Spl.Cell, dated 25.05.2015. After getting the orders of declaring the land as multistoried building area, the petitioner had obtained five approvals at different spells of duration for construction of buildings and layouts in the same site. The petitioner had submitted the layout application in the year 2020 and technical clearance issued by Director of Town and Country Planning, vide Proceedings R.o.c.No.7938/2020/TCP5, dated 17.03.2021 following G.O.Ms.No.18, Municipal Administration and Water Supply (MA 1), dated 04.02.2019, Tamil Nadu Combined Development and Building Rules 2019 for Layout.



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12. It is further submitted that the site of the applicant was only declared fit for the construction of Multistoried Building, no fees for conversion of land use from the petitioner was charged while approving building plan during the year 2015."

21. The learned Government Advocate would further submit that, even though the 2017 Rules came into effect only from 04.05.2017, insofar as the land belongs to the petitioner, wherein he now sought for technical clearance as well as the permission to have the layout is concerned, at the time of conversion of the said land from agriculture into non-agriculture i.e. Multistoried Building Area in the year 2015, no such conversion fees has been paid by the petitioner.

22. Moreover, in the said land, the petitioner made application for seeking such a permission from respondents 3 and 4 only in the year 2019 i.e., on 13.06.2019. Therefore, on the date of making such application, since the 2017 Rules has come into effect, certainly, the provisions of 2017 Rules would apply to the application of the petitioner, which was admittedly made only on 13.06.2019. Therefore, there can be no impediment for the respondents 3 and 4 to claim or collect 3% conversion charges as contemplated under Rule 9 of 2017 Rules. Hence, the learned Government Advocate argues that the impugned communication is sustainable as it goes in accordance with Rule 9 of 2017 Rules, therefore, it does not warrant any interference from this Court.

23. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

24. As has been rightly pointed out by the learned Senior Counsel appearing for the petitioner, insofar as the land in question belongs to the petitioner, which is part of the land of larger extent in various survey numbers at Mathur Village, was a subject matter in the year 2015 before the concerned authority for conversion from agriculture land into non-agriculture use.

25. Having considered the said request made by the petitioner, the entire land at various survey numbers in the said Village was considered and such a conversion was granted by the proceedings of the Director of Town and Country Planning i.e., the second respondent dated 27.05.2015. Accordingly, a declaration has been made in this regard which has also been notified in the Tamil Nadu Government Gazette dated 17.06.2015.

26. For easy reference, the relevant portion of the Government Gazette is extracted hereunder:



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"No.VI(1)/156/2015.

The land comprising Survey Numbers: 18/2, 20/1, 2, 3, 4, 5A, 5B; 22/1, 2; 23/1, 2; 24pt; 25/1, 2; 26/1, 2; 27/1pt, 2, 3, 4, 5; 28/1, 2, 3A, 3B, 4, 5A, 5B, 6, 7; 29/1, 2A1, 2A2, 2B; 30/6pt, 7pt; 35/3pt; 36/1pt, 2; 37/1A, 1Bpt, 2pt; 38/1pt, 2pt; 39/1pt; 40/1pt, 2pt, 41/2, 3A, 3B, 82/1A; 83/1pt, 2, 3pt, 4, 5; 84pt; 85; 86; 87; 88/2pt, 89/1Apt, 1Bpt, 2pt, 90/6pt; 92/1 pt; 97/7pt, 8pt of Mathur Village/Panchayat, Sriperumbudur Taluk, Kancheepuram District, Chengalpattu Region having an extent of 106383.50 Sq.m is declared as Multistoried Building area for construction of Residential Buildings as per Tamil Nadu Multistoried and Public Building Rules, 1973 and instructions, thereof. In addition to that, it is also requested to ensure the compliance of the following conditions at the time of clearing the building plans."

27. Therefore, a larger extent of land in various survey numbers at Mathur Village, Sriperumpudur Taluk, Kancheepuram District belongs to the petitioner was converted as early as on 17.06.2015 into a Multistoried Building Area under 1973 Rules.

28. Once the land has been converted under 1973 Rules from agriculture use to non-agriculture use, here it is for Multistoried Building Area, the question of further conversion does not arise.

29. Therefore, insofar as 2017 Rules is concerned, which, admittedly came into effect only on 04.05.2017, Rule 9 of the Rule 2017 Rules can be made applicable only prospectively to those cases where application is made subsequent to the 2017 Rules, for conversion. Here in the case in hand, conversion has already been made in the year 2015 wherein only in order to develop a portion of the converted land, the petitioner has given application or proposal to the respondents on 13.06.2019. Therefore, the date of application i.e., 13.06.2019 given by the petitioner for the purpose of seeking technical clearance as well as approval for proposed layout cannot be the date for the purpose of Rule 9 of the 2017 Rules, because 2017 Rules is meant for conversion of the land and not for giving any layout approval by the Local Authority or Town Planning Authority.

30. Hence, the stand taken now by the respondents, as has been reflected in their counter affidavit which has been quoted herein above that, if an application is made after 2017 Rules for the purpose of seeking technical clearance or approval of proposed layout or construction etc. it can be treated as an application for the purpose of conversion, of course, it would date back prior to 2017 Rules since the conversion charge has



not been paid, therefore, the present applicant can also be levied or collected the conversion charge of 3%, is absolutely unsustainable and against the 2017 Rules as well as 1973 Rules also.

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31. If this logic now projected by the respondents is accepted, then there will be no end, as by using Rule 9 of 2017 Rules, what are all the conversions having been made prior to 2017 Rules can be revisited and in all these conversions, the 3% conversion charge can be levied or collected by the Local Authority from the applicant for making application for layout plan or building plan etc. That kind of extreme proposition as projected by the learned Government Advocate cannot be accepted by this Court for the aforesaid reasons and discussions.

32. In the result, this Court feels that the impugned demand made through the order passed by the 4th respondent cannot be sustained, accordingly, it is liable to be interfered with.

33. In fine, the impugned order is quashed and the Writ Petition is allowed. However, there shall be no order as to costs.

34. It is brought to the notice of this Court by the learned Senior Counsel appearing for the petitioner that, before filing the writ petition, the petitioner, in order to get the clearance for getting the plan approval for proposed layout, has paid the demand made through the impugned order under protest. Therefore, consequent upon the aforesaid where the impugned order has been quashed and the writ petition has been allowed, as a sequel, the petitioner shall be entitled to get back the said amount already paid and in this regard, a direction is issued to the respondents to pay back the said amount collected from the petitioner as conversion charge at the rate of 3% of guideline value, within a period of four weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary,
Housing & Urban Development Department,
Fort St. George, Chennai - 600 009.



2.The Director,
Town and Country Planning
CMDA Office Complex,
E & C, Market Road,
Koyambedu, Chennai 600 092.

3.The Deputy Director,
Office of the District Town Planning,
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4.Block Development Officer,
Sriperumbudur Panchayat,
Sriperumbudur, Kancheepuram - 602 105.

+1cc to M/s.R.Kamala Rani, Advocate, S.R.No.57430

+1cc to the Government Pleader, S.R.No.57860

W.P.No.18328 of 2021

SSV(CO)
RVM(23/11/2021)