IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/12/2022

C O R A M

THE HONOURABLE Mr.JUSTICE **N. SATHISH KUMAR**

Writ Petition No.25764 of 2022

G.T.Housing Private Limited
rep. By its Managing Director
Mr.K.Bharat Doshi
No.249 Sydenhams Road
Periamet
Chennai 600 003. ... Petitioner

Vs

1. Chennai Metropolitan Development Authority
   rep. By its Member Secretary
   1 Gandhi Irwin Road, Egmore
   Chennai 600 008.

2. The Government of Tamil Nadu
   rep. By its Secretary to Government
   Housing and Urban Development Department
   Fort St. George
   Chennai 600 009. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first respondent to refund the excess amount of Rs.16,25,250/- collected from the petitioner towards infrastructure and Amenities Charges for the project of the petitioner at Pillaiyar Koil Street, Padikuppam Village, comprised in S.Nos.247/2a,1A2, 2A1B, 2A5, 2A6 and 2A7 of Padi Village, Ambattur Taluk, Tiruvallore District, considering the representation of the petitioner dated 8/3/2010.

For Petitioner	...	Mr.P.Elayarajkumar for M/s.Ramalingam Associates
For respondents	...	Mr.V.Nanmaran Additional Government Pleader for R.1 Mr.R.Arunkumar for R.2.

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ORDER

This writ petition has been filed to direct the first respondent to refund the excess amount of Rs.16,25,250/- collected from the petitioner towards infrastructure and Amenities Charges for the project of the petitioner at Pillaiyar Koil Street, Padikuppam Village, comprised in S.Nos.247/2a,1A2, 2A1B, 2A5, 2A6 and 2A7 of Padi Village, Ambattur Taluk, Tiruvallore District, considering the representation of the petitioner dated 8/3/2010.

2. The petitioner has obtained necessary planning permission and construction permit strictly in terms of planning permit granted and certificate obtained from the first respondent for construction of dwelling houses and the revised plan is also approved on 5/10/2007 and the construction was in half way. Second respondent formulated Town and Country Planning Rules, 2008, empowering the second respondent to fix minimum and maximum rates for various categories as infrastructure and amenity charges payable by the property promoters to the Government. Accordingly, second respondent had issued G.O.Ms.No.84 Housing and Urban Development (UD4-1) Department, dated 8/4/2008 by which for the first time in State of Tamil Nadu, infrastructure and amenity charges were fixed specifying the minimum and maximum rates. In respect of the category of development undertaken by the petitioner, the maximum fee was fixed at Rs.500/- per sq.meter. Though the planning permit and building permit was obtained much earlier in 2005 itself and construction activities also commenced, the first respondent, by virtue of the said G.O., insisted that the additional dwelling units proposed in the revised plan will be levied with infrastructure and amenity charges.

3. As against the said G.O., writ petitions have been filed and various representations were made to the Government seeking to reconsider to reduce the levies. Taking into consideration, second respondent had issued G.O.Ms.No.161 Housing and Urban Development (UD41) Department, dated 9/9/2009 in partial modification to the earlier G.O., and fixed the maximum levy of infrastructure and amenity charges at Rs.250/- per sq.meter in respect of Chennai Metropolitan Area, relating to the Group Development and Special Buildings.

4. First respondent by Letter No.EN3/2409/2008, dated 4/2/2010, called upon the petitioner to remit a sum of Rs.5,000/- and Rs.1,15,000/- towards the development charges and infrastructure and amenity charges for the additional area constructed enabling them to issue the required statutory completion certificate. By Letter No.B3/1110/2010, dated 4/2/2010, first respondent had made separate levy, referring to the G.O., dated 8/4/2008 called upon the petitioner to pay the infrastructure and amenity charges at the rate of Rs.500/- per sq.meter, thereby, directing the petitioner to pay Rs.32,25,000/- for the development made by the petitioner.

5. After perusal of the Rules and Government Order issued, petitioner came to know that by virtue of G.O.Ms.No.161, Urban and Housing Development Department, dated 9/9/2009, the revised rate towards infrastructure and amenity charges is fixed at Rs.250/- per sq.meter, instead of Rs.500/- per sq.meter for the Group Development. The said G.O., makes it clear that the earlier minimum and maximum rates specified in the Rules is done away with.

6. Hence the petitioner had made a representation dated 8/3/2010, to the first respondent to refund an amount of Rs.16,12,250/-. Since the same has not been considered so far, petitioner has come forward with the instant writ petition praying for the relief as stated therein.

7. In the counter filed by the first respondent, it is stated that vide, G.O.Ms.No.84, Housing and Urban Development (UD4-1) Dept, dated 8/4/2008 has fixed the infrastructure and amenities charges, at the rate of Rs.500/- sq.m. Based on the above G.O., amount was collected from the petitioner.

8. Subsequently, Government of Tamil Nadu have revised infrastructure and amenities charges at the rate of Rs.250/- sq.m, vide, G.O.Ms.No.161 Housing and Urban Development (UD4-1) Department, dated 9/9/2009. As the approval was accorded during the validity of earlier G.O.Ms.No.84, Housing and Urban Development (UD4-) Department, dated 8/4/2008, request for collection and refund of infrastructure and Amenities charges at the rate of Rs.250/- per sq.m., does not applicable to the petitioner. Hence the writ petition is liable to be dismissed.

9. Heard Mr.P.Elayarajkumar, learned counsel for the petitioner, Mr.V.Nanmaran, learned Additional Government Pleader for the first respondent and Mr.R.Arunkumar, learned counsel for the second respondent.

10. The learned counsel appearing for the petitioner submitted that originally, G.O.Ms.No.84 Housing and Urban Development {UD 4 (1)} Department, dated 8/4/2008, development charges have been fixed at Rs.500/- per sq.feet. Thereafter, based on the representation made by various stake holders, G.O.Ms.No.161 Housing and Urban Development {UD 4 (1)} Department, dated 9/9/2009, has been issued, wherein, the

amount has been reduced from Rs.500/- to Rs.250/- and the earlier G.O., has been modified. Whereas, the amount has been calculated based on the earlier G.O., even in the year 2010. When the earlier G.O., was done away with the specific G.O., the respondents have collected the excess amount. Hence, they are liable to refund the amount.

11. The learned counsel appearing for the first respondent submitted that the amount has been calculated as per the original G.O. Subsequent G.O., will apply only prospectively. Therefore, the petitioner cannot claim refund of amount.

12. Perused the entire materials available on record.

13. It is relevant to note that G.O.Ms.No.84 dated 8/4/2008, for the first time in State of Tamil Nadu, the infrastructure and amenity charges were fixed specifying the minimum and maximum rates. In respect of the category of development undertaken by the petitioner, maximum fee was fixed at Rs.500/- per sq.meter. Whereas G.O.Ms.No.161 Housing and Urban Development (UD 4 (1) Department, dated 9/9/209, in partial modification to the earlier G.O., fixed the maximum levy of infrastructure

and amenity charges at Rs.250/- per sq.meter, in respect of Chennai Metropolitan Area, relating to the Group Development and Special Buildings.

14. It is relevant to extract G.O.Ms.No.161, Housing and Urban Development (UD 4 (1) Department, dated 9/9/2009.

> "In the G.O., first read above, the Government have directed that the infrastructure and basic amenities charges shall be collected for different categories of building on the rates indicated therein.
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> 2. In the G.O., fourth read above, the Government have directed that the maximum and minimum rates of infrastructure and amenities charges shall continue to be the same as prescribed under Rule 4 of the Tamil nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, as indicated therein. As per orders issued therein, the charges shall be collected in 3 instalments as prescribed under Rule 9 of the above Rules, viz., 50%, 25% and 25% as first, second and third instalments respectively. The Government also directed that

in respect of the Chennai Metropolitan Area and Chengalpattu Region, the maximum rates of the charges shall be fixed and collected in respect of Coimbatore and Tiruppur Local Planning areas and Kurichi New Town Development area 75% of the maximum rates of charges and in respect of the other areas 50% of the maximum rates of charges shall be fixed and collected.

3. In his representation fifth read above, the President of Confederation of Real Estate Developers' Associations of India has represented that the levy of charges is over and above the development charges that is collected under various other heads and that in other States, the rates are much lower. Pointing out that the real estate market is very much depressed and the sales have dipped as a result of high rates of interest on home loans, he has requested that the Infrastructure and Amenities charges for the various types of buildings may be reduced; that the charges may be made effective from 8/4/2008, the date of issue of G.O. In the reference fourth read above and that infrastructure and amenity charges may be paid in two instalments.

4. The Government have examined the request in para 3 above in the light of the reports

sent by the Commissioner of Town and Country Planning and the Additional Chief Secretary and Vice-Chairperson, Chennai Metropolitan Development Authority in their letters 6th and 7th read above. The Government took note of the slump in the construction industry, the need to provide relief to construction industry while at the same time recognising the need for generating funds and the need to give impetus to the residential construction which will ultimately benefit the general public. The Government after careful consideration direct as follows:-

(i). The minimum and maximum rates specified in Rule 4 of Tamil Nadu, Town and Country Planning (Levy of infrastructure and Amenities Charges) Rules, 2008 shall be done away with.

(ii). The infrastructure and amenities charges for different categories in different areas shall be as given in the table below:-

S. No.	TYPE OF BUILDING	CHENNAI METROPOLITAN AUTHORITY	Commissioner of Town and Country Planning		
		Chennai Metropolitan Area	Chengalpattu Region	Coimbatore, Tirupur and Kurichi	Other areas
1.	Multi Storeyed Building Commercial or Information Technology or Industrial or Institutional or combination of such activities	500	500	375	250
2.	Multi Storeyed residential	250	250	250	250
3.	Other than Multi storeyed Buildig Commercial building, Information Technology building, Group Development and Special Building	250	250	190	125
4.	Institutional building (not covered under S.No.1)	100	100	75	50
5.	Industrial building (not covered under S.No.1)	150	150	112.50	75

iii. The infrastructure amenities charges shall be paid in one lumpsum before issue of planning permission.

iv. The above rates of infrastructure and Amenities charges shall take place with immediate effect.

v. The revised rates of infrastructure and amenities charges shall be revised at a later date whenever necessity arises.

5. Orders already issued in the G.O., 4th read above shall stand modified to the extent indicated in para 4 above. The Member-Secretary, Chennai Metropolitan Development Authority and the Commissioner of Town and Country Planning are directed to pursue action accordingly.

6. The Commissioner of Town and Country Planning is directed to send necessary proposal on amendment to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 to Government accordingly.

15. A perusal of the above G.O., makes it clear that the rate fixed in earlier G.O.Ms.No.84 is done away with on the date of the second G.O and the rate has been modified in paragraph 4. When the entire rate fixed in the earlier G.O., is done away with and the new rate has been fixed, subsequently, the first respondent once again claiming the amount based on the earlier G.O., in the year 2013, is not according to law. When the impugned notice demanding Rs.31,10,000/- was issued, G.O.Ms.No.84, dated 8/4/2008, is not in force. When the rates have been fixed and later

modified, taking note of the consideration of the difficulty faced by the promoters, the above rate ought to have been collected whereas, the respondents have relied upon the G.O., of the year 2010, which has already been done away with.

16. In the result, this writ petition is allowed and the respondents are directed to refund the excess amount of Rs.16,25,250/- (Rupees Sixteen lakhs twenty five thousand two hundred and fifty only) collected from the petitioner towards infrastructure and Amenities Charges for the project of the petitioner at Pillaiyar Koil Street, Padikuppam Village, comprised in S.Nos.247/2a,1A2, 2A1B, 2A5, 2A6 and 2A7 of Padi Village, Ambattur Taluk, Tiruvallore District, within a period of two months, from the date of receipt of a copy of this order. No costs.

15/12/2022

Index : Yes / No
Internet: Yes
Speaking/non speaking order

mvs.

N. SATHISH KUMAR, J
mvs.

To

1. The Member Secretary
   Chennai Metropolitan Development Authority
   1 Gandhi Irwin Road, Egmore
   Chennai 600 008.

2. The Government of Tamil Nadu
   rep. By its Secretary to Government
   Housing and Urban Development Department
   Fort St. George
   Chennai 600 009.

W.P.No.25764 of 2010

15/12/2022