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W.A.Nos.2780 and 2781 of 2021
and W.P.No.18825 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.A.Nos.2780 and 2781 of 2021
and W.P.No.18825 of 2021

W.A.No.2780 of 2021:

- 1.The Commissioner,
Corporation of Coimbatore,
Coimbatore-641 001.
- 2.The Sub Collector/
The Assistant Commissioner,
East Zone, Corporation of Coimbatore,
Coimbatore-641 005.

.. Appellants

Vs

- 1.M/s.Sneha Ashiana Pvt. Ltd.,
rep. by it Authorized Signatory Renil Francis,
3/166, V.K.Nagar NGO Colony,
Thudiyalur,
Coimbatore-641 023.



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2.M/s.Sudarshana Developers & Others,
rep. by one of its Partners B.Somasundaram,
Door No.509, P3, Red Rose Plaza,
D.B.Road, R.S.Puram, Coimbatore.

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

.. Respondents

W.A.No.2781 of 2021:

The Commissioner,
Corporation of Coimbatore,
Coimbatore-641 001.

.. Appellant

Vs

B.Somasundram,
Proprietor,
Somu's Properties,
Door No.509, 3, Red Rose Plaza,
D.B.Road, R.S.Puram,
Coimbatore.

.. Respondent

W.P.No.18825 of 2021:

1.M/s.Sneha Ashiana Pvt. Ltd.,
rep. by its Authorised Signatory
N.Somasundaram.

2.M/s.Sudarshana Developers,
rep. by one of its Partners B.Somasundram.
No.509, P3, Red Rose Plaza,
Coimbatore.

.. Petitioners

Vs



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- 1.The Chief Secretary,
Government of Tamil Nadu,
Chennai-600 009.
- 2.The Home Secretary,
Government of Tamil Nadu,
Chennai.
- 3.The Director,
Vigilance and Anti Corruption,
No.293, MKN Road,
Alandur, Chennai-600 016.
- 4.The Commissioner of Corporation
of Coimbatore,
Coimbatore-641 001.

.. Respondents

Prayer : Appeals filed under Clause 15 of Letters Patent against the common order dated 19.2.2021 passed in W.P.Nos.15077 of 2020 and 28007 of 2019.

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus to direct the respondents to consider petitioner's representation dated 21.06.2021 and to direct the fourth respondent to refund the amounts viz., 3,60,12,000/- (Rupees Three Crores Sixty Lakhs and Twelve Thousand only) collected illegally from the petitioners.

W.A.Nos.2780 and 2781 of 2021:

For the Appellants

: Mr.S.Silambanan
Addl. Advocate General
assisted by
Mr.K.Magesh



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For the Respondents : Mr.V.Karthick
Senior Counsel
for Mr.M.Aravind Subramaniam
for respondent Nos.1 and 2
: Mr.P.Muthukumar
State Government Pleader
for respondent No.3

W.P.No.18825 of 2021:

For the Petitioners : Mr.V.Karthick
Senior Counsel
for Mr.M.Aravind Subramaniam

For the Respondents : Mr.P.Muthukumar
State Government Pleader
for respondent Nos.1 and 2
: Mr.R.Muniyapparaj
Addl. Public Prosecutor
for respondent No.3
: Mr.S.Silambanan
Addl. Advocate General
assisted by
Mr.K.Magesh
for respondent No.4

COMMON JUDGMENT
(Delivered the Hon'ble Chief Justice)

The writ petition being W.P.No.18825 of 2021 has been filed to seek a direction on the respondents to consider the representation



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dated 21.06.2021 and to direct the fourth respondent to refund the amount of Rs.3,60,12,000/- collected illegally from the petitioners and to take necessary action. Two writ appeals have been preferred by the Coimbatore Corporation, where a demand made by them for a sum of Rs.3,60,12,000/- towards "Future Maintenance Charges" was held to be illegal. Therefore, the writ petition as well as the writ appeals were clubbed to be decided by a common order.

2. The main issue for consideration is as to whether the Coimbatore Corporation is having power to impose Future Maintenance Charges when it is not so provided under the Coimbatore City Municipal Corporation Act. 1981 and the Rules framed thereunder. The issue aforesaid was discussed at length by the learned Single Judge in his order dated 19.2.2021 holding the demand to be illegal and, accordingly, it was quashed. The writ petition was filed to seek refund of the amount paid after the disposal of the writ petitions being W.P.Nos.15077 of 2020 and 28007 of 2019. Despite the judgment in favour of the developer M/s.Sneha Ashiana Private Limited and M/s.Sundarshana Developers, the amount aforesaid was deposited on



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their own. In any case, we are not required to analyse the issue as to whether the Corporation can demand the amount towards Future Maintenance Charges. It has been decided by the learned Single Judge and the appeals have been filed to challenge the order. Therefore, the aforesaid issue would also be considered along with the writ petition filed by the petitioner to seek a direction to refund of the amount.

3. During the course of argument, learned Additional Advocate General appearing for the Corporation fairly admitted that there is no provision for imposing "Future Maintenance Charges", rather, what exists is Development Charges. The prayer is accordingly to treat the amount demanded towards Future Maintenance Charges to be towards 25% of the Development Charges.

4. It is in the background that if a developer laid roads, drainage, constructed culverts and provided street lights, then, he is not required to pay 100% Development Charges and what remains payable is only 25% of the total Development Charges. In the instant case, the



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developer had developed 68 acres of land and, accordingly, 25% of the Development Charges comes to the sum demanded towards Future Maintenance Charges. It was in fact under wrong heading, otherwise, should have been towards Development Charges. Accordingly, the prayer is to modify the order of the learned Single Judge or clarify the aforesaid so that the amount paid by the developer may be taken towards Development Charges.

5. Learned counsel appearing for the developer, however, submitted that as per By-law 10 of the Coimbatore City Municipal Corporation Layout Bylaws, 1983, a developer, who developed roads, culverts, drainage, street lights etc., is not liable to pay the Development Charges. Therefore, nothing is payable by the developer having developed the area on his own. Thus, the prayer is to dismiss the appeals preferred by the Corporation while allowing the writ petition with a direction to refund the amount. It is, however, submitted that if this Court comes to the conclusion that the amount charged towards Future Maintenance Charges can be treated to be Development Charges to the extent of 25%, then at least a direction



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be given to the Corporation to maintain the roads, drainage, culverts and street lights etc. out of the aforesaid amount. To this proposal, no objection has been raised by learned Additional Advocate General appearing for the Corporation. In the background, we have considered the matter.

6. Two writ appeals have been filed against the order of the learned Single Judge holding the demand for Future Maintenance Charges to be illegal, as no provision for it exists. We do not find any illegality in the judgment of the learned Single Judge, because in the absence of any provision either in the Coimbatore City Municipal Corporation Act, 1981 or the Coimbatore City Municipal Corporation Layout Bylaws, 1983, the demand towards Future Maintenance Charges could not have been made.

7. However, the issue that remains is as to whether a developer is under an obligation to pay the Development Charges because learned Additional Advocate General appearing for the Corporation submitted that they would raise demand for Development Charges if



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the order under the appeal is not interfered with and alternatively it is submitted that the amount already paid by the developer may be adjusted towards the Development Charges.

8. We find justification in the submission made by learned Additional Advocate General appearing for the Corporation for the reason that the developer is under an obligation to pay 25% of the Development Charges, if roads, drainage, culverts etc. are constructed on his own in the area. Otherwise, the developer is under an obligation to pay 100% Development Charges. This has been even clarified by the Corporation in its Circular dated 15.10.1993. Paragraph 4 of the said Circular is quoted herein for ready reference:

*"(4). COLLECTION OF DEVELOPMENT CHARGES -
SHORT COLLECTIONS - FULL COST NOT REALISED.*

According to by law 10 read with by laws 12(a) and 12(b), if the applicant is not willing to carry out the works on his own accord, but chooses to remit the amount covered by estimates, he shall remit the cost for works as estimated by the Corporation and he shall remit the amount in full. It is therefore very clear that 100% of the estimated cost worked out at the time of



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approval of layout, should be collected before approving the lay out. No provision for deduction of any amount is contemplated either in the by law or in any other rules. But instead of collecting 100% of the estimated cost, only 75% of the cost is collected and deducting 25% of the estimated costs initially remitted along with the application for which there is no provision in the by law. The 25% of estimated cost initially remitted along with the application is not amount to taken into consideration for any subsequent adjustment and if is a specific collection to meet administrative expenses etc.

According to by law 12(i), if the applicant requests to remit the amount in installments, he can be permitted to remit the amount in installments within a maximum period of one year, first installment being not less than 25% of the total estimated cost (excluding 25% amount already remitted along with the application) and balance in at least 12 equal monthly installments. Though 25% of the estimated cost is collected for the second time, the second collection of 25% actually represents the remittance of the first installments of 100% of the estimated cost to be collected in full and the remaining 75% of the cost should be remitted on



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equal monthly installments not exceeding 12.

In emphasize made in the by law to make the position more color that the lay out in this case (remittance of estimated cost in installments) will be approved on remittance of 50% (25% remittance along with the application and 25% first installment) of estimated cost has been wrongly interpreted to mean that the balance to be collected in installments i.e. 50% only instead of 75%. Though in no case permission has been applied for and granted to remit amount in installments. It is noticed, that amount has been collected as 75% uniform in all cases, instead of collecting full cost given when the applicant came forward to remit the amount in single installment. This is against rules and therefore it is not in order.

The Town Planning Officer is requested to review all approved cases of lay outs immediately and to take urgent action taken to realise the amount covered by short collections and to make hood the less. As report as to the action taken in this regard should he sent to the Commissioner collections are fully settled."

9. In the light of the aforesaid, the developer is under an



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obligation to pay 25% of the Development Charges, which amount is equivalent to the amount so paid by him, though initially it was demanded as Future Maintenance Charges, but treating it to be the Development Charges, the Corporation would not demand further charges towards Development Charges in view of the direction given above.

10. Accordingly, we are not inclined to issue direction for refund of the amount, but direct the Corporation to treat it to be 25% of the Development Charges and, accordingly, they would be under obligation to maintain the roads, drainage, culverts and street lights etc.

11. With the aforesaid, the writ petition and the writ appeals stand disposed of. There will be no order as to costs. Consequently, W.M.P.No.20124 of 2021 and C.M.P.Nos.18260 and 18264 of 2021 are closed.

(M.N.B., CJ.) (N.M., J.)
11.07.2022

Index : Yes/No
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To

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Chennai-600 009.
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THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

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