IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.229 of 2014
and M.P. Nos.1 & 2 of 2014

Mathura Flats Owners Association,
rep. by its Secretary and
President Incharge R.Somasunder ... Appellant

vs

1.The Secretary,
Department of Housing and urban Development,
Government of Tamil Nadu,
Chennai 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008. ... Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters Patent Act against the order dated 17.12.2013 passed in W.P. No.17912 of 2013.

For Appellant : Ms.M.Arulmangai

For Respondents : Mr.K.V.Sajeev Kumar,
Special Government Pleader for R1

Mrs.P.Veenasuresh,
Standing Counsel

CMDA for R2

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This writ appeal has been filed challenging the correctness of the order dated 17.12.2013 passed in W.P. No.17912 of 2013.

2.Learned counsel appearing for the appellant submitted that the members of the appellant association had purchased individual flats, promoted by the Tamil Nadu Housing Board at Ambattur Industrial Estate, Anna Nagar, Chennai and the allottees, who are 30 in number, resolved to put up a new building after demolishing the existing superstructure. Since the apartment complex is located adjacent to 120' road, the members of the association wanted to avail premium FSI. In this regard, the association submitted an application dated 20.01.2012 to the Chennai Metropolitan Development Authority (hereinafter referred to as 'C.M.D.A.') and the receipt of the application was acknowledged by them on 23.01.2012. Since the application was not processed on account of the failure to obtain 'no objection' from the Tamil Nadu Housing Board, the appellant filed writ petition in W.P. No.4404 of 2012 before this Court seeking a direction to the C.M.D.A. to process the application without insisting upon 'no objection' from the Tamil Nadu Housing Board. As there was no follow up action taken by the C.M.D.A., the appellant made series of representations requesting them to expedite the process. On account of the failure of CMDA, the appellant filed a Contempt Petition to process the application. Thereafter, the application was returned on 10.01.2013 citing certain reasons and the appellant re-presented the application and by that time, the guideline rate was increased from Rs.950/- to Rs.5,500/- per sq.ft. with effect from 01.04.2012. Thereafter, CMDA processed the application and called upon the appellant to pay premium FSI charges, calculated @ Rs.5,500/- per sq.ft. notwithstanding the submission of application before the revision of guideline rate. Therefore, the appellant challenges the demand made by CMDA for payment of premium FSI charges as indicated in the proceedings dated 15.04.2013 by filing the above writ petition before this Court.

3.Learned counsel appearing for the appellant further submitted that the Member Secretary, Chennai Metropolitan Development Authority filed a counter affidavit in the writ petition stating that the application submitted by the appellant was returned un-approved, taking into consideration their submission that the developer is in the process of submitting a revised plan. Thereafter, the appellant re-presented the plan after a considerable period and the planning authority returned the plan on 10.01.2013 and only on account of the insufficient documents produced by the appellant, the application was returned on multiple occasions and that they justified the collection of premium FSI charges prevailing as on the date on which permission was issued.

4.Learned counsel for the appellant further submitted that the learned Single Judge, without properly considering the claims and the counter claims made by both the parties, on the basis of the reported judgment cited therein in the case of D.Rajan Dev vs. the Government of Tamil Nadu represented by its Secretary in W.P. No.18238 of 2013, has wrongly held that since a valid application was made only after the revision of the guideline rate from Rs.950/- to Rs.5,500/- per sq.ft., the CMDA was perfectly justified in directing the appellant to pay the revised premium FSI charges calculated at the rate prevailing on the date of issuance of permit. Challenging the said findings and conclusions reached by the learned Single Judge, this appeal has been filed.

5.Learned counsel for the appellant submitted that when the members of the appellant association have purchased 30 flats from the Tamil Nadu Housing Board, an application dated 20.01.2012 was submitted by them to put up a new building after demolishing the existing superstructure. When the appellant is liable to pay only the premium FSI charges prevailing as on the said date, merely because of the pendency of the application before the CMDA, the appellant is not liable to pay the premium FSI charges as indicated in the Proceedings issued by the CMDA, fixing or determining the payment of premium FSI charges from Rs.950/- to Rs.5,500/- per sq.ft. with effect from 01.04.2012. When the appellant's application dated 20.01.2012 was complete and in order, the said date alone would be the crucial date. Therefore, the appellant be directed to pay the premium FSI charges at the rate of Rs.950/-, which was the guideline value prevailed on the date of submission of the application and therefore, the excess value of Rs.5,500/- per sq.ft. cannot be made applicable.

6.In reply, learned counsel for the CMDA, drawing our notice to the counter affidavit, submitted that when the application dated 20.01.2012 filed by the appellant was taken up for consideration, a preliminary scrutiny was completed on 19.03.2012. Thereafter, the CMDA, finding that there were number of violations/defects in the application filed by the appellant for planning permission, decided to return the said application on 22.03.2012. Before the said letter was dispatched, the appellant in his letter dated 27.03.2012 informed the CMDA that they are aware that their file was returned due to non compliance of some particulars and requested them not to return their file stating that they would furnish all the relevant particulars.

7.Learned counsel for the CMDA further submitted that since the application of the appellant was made only during the end of January 2012 and the application filed for planning permission is scrutinised for a large number of parameters of Development Regulations including the suitability of the site to take the additional floor area proposed in the application, the premium floor space index application filed by the appellant would consume more time of scrutiny than the normal applications, where no premium floor space index has been proposed.

8.In this regard, it is relevant to refer to the letters dated 30.03.2012 and 24.04.2012 addressed by the appellant requesting the CMDA to return planning permission application and submission of documents as under:

> *'As per Court order on writ petition No.4404 of 2012 and the acknowledgment no APU NO.BN/2012/00084/ 23.02.2012 we have submitted all the relevant documents for your perusal. WE request yo to consider our case*

sympathetically.

We have learned that the High Court has given direction to take action within a stipulated period. Further we learn that our file is going to be returned due to non compliance of some particulars which is relevant to our case.

However we assure you that we will not insist on the court order and assure you that we will furnish all the relevant particulars immediately.

Hence we request you to not to return the file for the above reasons, we request you to consider our case favourably and to issue the planning permission. Kindly do the needful.'

'We have applied for planning permission vide APU No.BN/2012/00084 in pursuance to the application the following documents are herewith enclosed for your perusal.

General Power of Attorney

Approved demolition plan

Page 15 of document 4884/2006

Registry seal of document 4001/1995

Rectified document of 3318/200

Rectified document of 513/2000

Revised drawings of stilt area

Kindly do the needful.'

9.A perusal of the above letters show that the application submitted by the appellant was not in order as required by the CMDA and the documents submitted by them were also not sufficient upto the requirement of the CMDA and therefore, the same was returned on 10.01.2013 stating that there were violations/defects. In the meanwhile, the premium FSI rate was enhanced from Rs.950/- to Rs.5,500/- per sq.ft.

10.In this regard, it is also relevant to refer to the judgment of the Hon'ble Apex Court in the case of D.Rajan Dev vs. the Government of Tamil Nadu, represented by its Secretary, Housing and Urban Development Department (W.P. No.18238 of 2013) as under:

> *(a) The Supreme Court in **Usman Gani J. Khatri of Bombay v. Cantonment Board 1992(3) SCC 455** held that the builder would not acquire any legal right by submitting the building plan. The Supreme Court observed:*
>
> *"The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned instalments and getting conversion of their land in freehold tenure"*
>
> *(b) The Supreme Court in **Usman Gani** in order to explain the unsustainability of the claim made by the builders solely on account of submission of plan indicated a reverse case.*
>
> *"If we consider a reverse case where building regulations*

are amended more favourably to the builders before sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit.

(c) The Supreme Court in ***State of W.B. v. Terra Firma Investment & Trading (P) Ltd., (1995) 1 SCC 125,*** *reiterated the legal position in the following words:*

"14. ....By mere submission of a plan for construction of a building which has not been passed by the competent authority, no right accrues. The learned Judges of the High Court should have examined this aspect of the matter as to what right the respondent had acquired by submission of the plan for construction of the high-rise building before its application was rejected by a statutory provision."

(d) The question as to whether a vested right would accrue to a builder on account of submission of application for approval of building plan and as to whether new building regulations framed by the Government which came into force subsequently would apply to such application came up for consideration again before the Supreme Court in ***Howrah Municipal Corpn. v. Ganges Rope Co. Ltd., (2004) 1 SCC 663.*** *The Supreme Court found that the Act does not contain a provision for deemed sanction. Before the Supreme Court the builder contended that sanction has to be granted on the basis of the Building Rules prevailing on the date of submission of application for sanction. The Supreme Court reiterated the legal position enunciated in* ***Usman Gani*** *that builders do not acquire any legal right*

until the plan is sanctioned. The Supreme Court found that the High Court directed disposal of the application for planning permission before a particular period and it was only after the expiry of the said period, revised Regulations came into force. Even then the Supreme Court negatived the contention taken by the builder. The Supreme Court held:

> *'36.The above stated legal position is not disputed on behalf of the respondent Company. What is being contended is that the order of the High Court fixing a period for the Corporation to decide its pending application for sanction creates a vested right in favour of the applicant Company to seek sanction for its additional proposed construction on the basis of the Building Rules, as they stood prior to the amendment introduced to the Building Rules and the consequent resolution of the Corporation restricting the 'thereunder, restrictions imposed on heights of buildings on specified wards, roads and localities would apply to all pending applications for sanction. The question is whether any exception can be made to the case of the applicant seeking sanction who had approached the Court and obtained consideration of its applications for sanction within a specified period. We have extracted above the various orders passed by the High Court in writ petitions successively filed by the Company in an effort to obtain early sanction for its additional construction of three floors on the buildings in its multi-storeyed complex already*

completed up to the fourth floor. In none of the orders of the High Court, there is a mandate issued to the Corporation to grant a sanction. What was directed by the High Court in the first order was merely a "liberty" or option to the Company to seek sanction for additional three floors. In the subsequent order, an "expectation" was expressed for decision of the pending applications within a period of four weeks. There was, thus, in favour of the Company an order of the High Court directing the Corporation to decide its pending applications for sanction within the allotted period but non-compliance therewith by the Corporation cannot result in creation of any vested right in favour of the Company to obtain sanction on the basis of the Building Rules as they stood on the date of making application for sanction and regardless of the amendment introduced to the Building Rules. Neither the provisions of the Act nor general law creates any vested right, as claimed by the applicant Company for grant of sanction or for consideration of its application for grant of sanction on the then existing Building Rules as were applicable on the date of application. Conceding or accepting such a so-called vested right of seeking sanction on the basis of the unamended Building Rules, as in force on the date of application for sanction, would militate against the very scheme of the Act contained in Chapter XII and the Building Rules which intend to regulate the building activities *in a local area for general public interest and convenience. It may be that the Corporation did not adhere to the time-limit fixed by the Court for deciding the pending applications of the Company but we have no manner of doubt that the Building Rules with prohibition or restrictions on construction activities as applicable on the date of grant or refusal of sanction would govern the subject-matter and not the Building Rules as they existed on the date of application for sanction. No discrimination can be made between a party which had approached the Court for consideration of its application for sanction and obtained orders for decision of its application within a specified time and other applicants whose applications are pending without any intervention or order of the Court.*

37.The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived.'"

11.A perusal of the above judgment clearly shows that the builder would not acquire any right by submitting application for building plan and the right would accrue only after the approval of plan and therefore, the builder is liable to pay the development charges on the basis of the prevailing rate on the date of approval.

Since the present case is also applicable to the judgment referred supra, the learned Single Judge, taking support from the above judgment, has held that a valid application was made only after the revision of guideline rate from Rs.950/- to Rs.5,500/- per sq.ft. and therefore, the CMDA was perfectly justified in directing the appellant to pay the revised premium FSI charges calculated at the rate prevailing on the date of issuance of permit, which in our considered opinion cannot be found fault with.

12.Since it is very clear that a valid application was made only on 24.04.2012 and that the guideline rate was revised from Rs.950/- to Rs.5,500/- with effect from 01.04.2012, the stand taken by the appellant that they are liable to pay premium FSI charges calculated at the rate prevailing as on 20.01.2012 is not correct. Therefore, this writ appeal is liable to be dismissed, hence, the same is dismissed. Consequently, connected M.Ps. stand closed. No costs.

[T.R.,J.] [K.B.,J.]
27.07.2022

vga

To

1.The Secretary,

Department of Housing and urban Development,
Government of Tamil Nadu,
Chennai 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

T.RAJA,J.
AND
K.KUMARESH BABU,J.

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