



WA No.663 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

CORAM

THE HON'BLE MR.SANJAY V.GANGAPURWALA , CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

WA No.663 of 2022
and CMP Nos.4569, 7863 and 7867 of 2022

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

.. Appellant

-VS-

1. Akshaya Signature Homes Private Limited,
Rep. by its Authorized Signatory, Mr.J.Ravi
2. State of Tamil Nadu,
Rep. by its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009.
3. The Director of Town and Country Planning,
807, Anna Salai, Chennai 600 002.

.. Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent against the order dated 29.09.2021 passed in W.P.No.43571 of 2016 on the file of this Court.



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For the Appellant : Mr.P.Kumaresan
Additional Government Pleader
for Mrs.P.Veena Suresh

For the Respondents : Mr.Satish Parasaran
Senior Counsel
for Mr.Rahul Balaji for R-1

: Mr.P.Muthukumar
State Government Pleader
assisted by Mrs.R.Anitha,
Special Government Pleader,
for RR 2 and 3.

* * * * *

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

We have heard Mr.P.Kumaresan, learned Additional Advocate General for the appellant, Mr.Satish Parasaran, learned senior counsel, for the first respondent and Mr.P.Muthukumar, learned State Government Pleader for respondent Nos.2 and 3.

2. The first respondent/writ petitioner has sought for the planning permission. The same was granted for 24 dwelling units in a



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built-up area of 9326.21 sq.m. The writ petitioner also paid Premium FSI charges amounting to a sum of Rs.12,27,25,000/- (Rupees twelve crores twenty seven lakhs twenty five thousand only). Subsequently, revision was sought for by the petitioner from the existing planning permission pertaining to 49 dwelling units in a built-up area of 9314.59 sq.m. It is observed that there is no dispute with regard to these figures.

3. The present appellant was charging additional premium FSI charges on the ground that the rates have been revised. The learned Single Judge allowed the writ petition filed by the petitioner and held that the demand of additional premium FSI charges of Rs.5,72,20,000/- is erroneous and directed refund of the said amount.

4. The learned Additional Advocate General appearing for the appellant submits that, though the rates were revised, the learned Single Judge erroneously held that the petitioner is not liable to pay the premium FSI charges as applicable on the date of the revised planning permission. The learned Additional Advocate General relied upon the judgment of the Apex Court in a case of **Chennai**



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Metropolitan Development Authority vs. Prestige Estates Project Limited, reported in **(2019) 15 SCC 212**.

5. Mr.Satish Parasaran, learned senior counsel for the first respondent/writ petitioner, submits that now this issue could not be a debatable issue in view of G.O. (Ms.) No.189, dated 26.10.2022, issued by the Housing and Urban Development (UD1) Department.

6. It is not disputed that the petitioner was accorded the planning permission in the year 2014 for a built-up area of 9326.21 sq.m. The petitioner paid the premium FSI charges amounting to a sum of Rs.12,27,25,000/-. Subsequently, on 14.05.2015, the petitioner sought revised permission, however, for a reduced area of 9314.59 sq.m. It is the case of the present appellant that the premium FSI charges were revised and as such, the difference has to be paid by the petitioner.

7. Paragraph 3 of the G.O. dated 26.10.2022 reads thus:

“3. The Government after careful examination accept the proposal of Member Secretary, Chennai Metropolitan Development Authority and



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hereby amend the conditions issued in para 2 of the Government Order first read above for adjusting the Premium FSI charges already paid under the original Planning Permission in the application of revised plans as follows:-

- i. The floor area for which premium FSI charges has already been collected shall be deducted for calculation of Premium FSI charges in the revised proposal.*
- ii. All other charges such as Development Charges, Infrastructure and Amenities Charges, MIDC Charges and Shelter Charges, etc., as applicable shall be collected for the additional area over and above the floor area already approved.*
- iii. The premium FSI charges paid earlier shall not be refunded except the dropping of proposal.*
- iv. The Developer/Applicant shall ensure that the structure already constructed is safe and sound to withstand the additional load due to the additional floor area proposed. Necessary certification in this regard shall be obtained from the Developer, Architect and Structural Engineer."*

8. The said G.O. specifically says that the floor area for which premium FSI charges had already been calculated shall be deducted for calculation of premium FSI charges in the revised proposal. As per the G.O., the relevant factor is the floor area and not the rate of premium FSI charges. The G.O. would be binding upon the present



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appellant.

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In light of that, the writ appeal is dismissed. There will be no order as to costs. Consequently, miscellaneous petitions are also dismissed. The appellant shall comply the order of the learned Single Judge within six weeks.

(S.V.G., CJ.)

(D.B.C., J.)

17.10.2023

Index : Yes/No
Neutral Citation : Yes/No
sra

To

1. The Secretary to Government of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009.
2. The Director of Town and Country Planning,
807, Anna Salai, Chennai 600 002.



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