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W.A.Nos.2188 and 2230 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2023

CORAM:

THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN THILAKAVADI

W.A.Nos.2188 and 2230 of 2018

and

C.M.P.Nos.16976 and 17733 of 2018

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai – 600 009.

2.The Director,
Town and Country Planning,
No.807, Anna Salai,
Chennai – 02.

...Appellants in both the WAs

Vs.

1.S.Sundar

... 1st respondent in WA.2188/2018

1.M.Sankareswaran

... 1st respondent in WA.2330/2018

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road,
Chennai – 03.

...2nd Respondent in both WAs



W.A.Nos.2188 and 2230 of 2018

Prayer in both the Writ Appeals: Writ Appeals filed under Clause 15 of the Letters Patent Act, to set aside the order dated 27.04.2018 made in W.P.Nos.30043 and 30045 of 2016 and allow these writ appeals.

For Appellants : Mr.S.Silambanan,
Additional Advocate General
Assisted by
Mr.Hasan Fizal,
Additional Government Pleader
and Mr.Babu Barveez,
Government Advocate

For Respondents : Mr.V.Karthic,
Senior Counsel
Assisted by
Mr.S.Haroon AL Rasheed for R1

R2 – No appearance



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J U D G M E N T

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(Judgment was made by **R.SUBRAMANIAN, J.**)

The State is on appeal challenging the order of the writ Court made in W.P.Nos.30043 and 30045 of 2016 quashing the departmental proceeding launched against the petitioners in the said writ petitions for having collected a lesser amount as Infrastructure and Amenities Development charges.

2. The concept of Infrastructure and Amenities Development charges. was first introduced by G.O.Ms.No.191 dated 01.06.2007. The said Government Order prescribed a maximum and minimum amount of Infrastructure and Amenities Development charges per square meter and vested the discretion in the Director of Town and Country Planning and Vice-Chairman of the Chennai Metropolitan Development Authority to fix the charges in between the maximum and minimum amount. Pursuant thereto, The Director of Town and Country Planning passed an order dated 01.06.2007 fixing the Infrastructure and Amenities Development charges for multi-storeyed building at Rs.1000/- per square metre.



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3. Subsequently, another Government Order was passed in G.O.Ms.No.22 dated 26.01.2008, wherein, there were certain modifications regarding the Infrastructure and Amenities Development charges. The said Government Order also provided the maximum and minimum rates and authorised the Director of the Town and Country Planning or the Vice-Chairman of the Chennai Metropolitan Development Authority, as the case may be, to fix the actual charges. Pursuant to G.O.Ms.No.22 dated 26.01.2008, the Director of Town and Country Planning fixed Rs.1000/- per square meter as Infrastructure and Amenities Development charges payable for the multi-storeyed buildings.

4. By a subsequent Government Order viz., G.O.Ms.No.161 dated 09.09.2009, the Government reduced the Infrastructure and Amenities Development charges at Rs.250/- per square meter for multi-storeyed residential buildings.



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5. The respondents herein who were working as Assistant Director of Town and Country Planning and Supervisor in the Directorate of Town and Country Planning raised a demand against the builder who had submitted an application for approval, based on handing over of the Open Space Reservation (OSR) land to them, which was on 31.10.2009, applied the last of the three Government Orders viz., G.O.Ms.No.161 dated 09.09.2009 and collected Rs.250/- per square meter as Infrastructure and Amenities Development charges.

6. Complaining that they should have collected Rs.1000/- and not Rs.250/- and the action of them collecting Rs.250/- per square meter has caused loss to the State Exchequer, the charges were framed and they were dismissed from service. In the mean time we find that some of the builders who had sought for permission had challenged the quantum of Infrastructure and Amenities Development charges leviable and the date on which the same should be levied.



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7. A Single Judge of this Court in W.P.No.6725 of 2011 found that the Infrastructure and Amenities Development charges could be collected on the basis of the date on which the OSR land was surrendered and not on the basis of the original sanction. This finding was affirmed by a Division Bench of this Court and an attempted appeal against the said judgment of the Division Bench in SLP.(Civil)No.26254 of 2015 was dismissed by the Hon'ble Supreme Court on 28.07.2017.

8. Consequent upon the judgment of the Hon'ble Supreme Court, the criminal case that was launched against the private respondents was also quashed by this Court in CrI.O.P.No.25124 of 2017. While quashing the said criminal proceeding, this Court had adverted to the judgment of the Hon'ble Supreme Court and concluded that there was no financial loss to the Government because of collection of Rs.250/- per square meter, made by the private respondents.

9. In view of the above said pronouncement, the writ Court had only followed the judgment of the Hon'ble Supreme Court and held that



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since there was no financial loss and the charges being only on that ground, set aside the punishment. We do not find any ground to interfere with the said order. The writ appeal therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petitions are closed.

10. Since both the private respondents have attained superannuation, the appellants will workout the benefits payable to them and disburse the same within a period of four (4) months from the date of receipt of a copy of the order.

(R.S.M., J.) (K.G.T., J.)
01.03.2023

dsa
Index :No
Internet :Yes
Neutral Citation : No
Speaking order



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