



W.P.No.28150 of 2014

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
05~01~2023	10~01~2023

CORAM:
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

W.P.No.28150 of 2014

M/s.Prashanthi Fertility Research Centre Pvt Ltd.

Represented by its Director,

Dr. G.Gopalaswamy

287/87-A, Velachery Main Road,

Velachery, Chennai-600 042.

...Petitioner

vs.

1. The Inspector General of Registration,
No.100, Santhome High Road,
Pattinampakkam, Chennai-600 028.

2. The Sub Registrar,
Office of the Sub Register,
Velacherry, Chennai 600042.

3. The Member Secretary,
Chennai Metropolitan Development Authority,
1, Gandhi Irwin Road,
Egmore, Chennai-600 028.

...Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ, order or direction to call for the records of the proceedings dated 18.09.2013 Na.Ka.39030/L1/2013



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on the file of the 1st Respondent, and to quash the same as illegal and without jurisdiction, and to consequently direct the third responders refund the money collected in excess of the guideline value together with interest at 12 per cent per annum.

For Petitioner : Mr. V. Lakshminarayanan

For Respondents : Mrs. R. Anitha
Spl.Government Pleader [for R1 & R2]

Mrs.K. Mageswari [for R-3]

ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to set aside the proceedings dated 18.09.2013 Na.Ka.No.39030/L1/2013 on the file of the 1st respondent as illegal and without jurisdiction, and to consequently direct the third responders refund the money collected in excess of the guideline value together with interest at 12 per cent per annum.

2.a. It is the case of the Writ Petitioner that he has built up hospital at TS 31, Block No.69 of the Velachery Village. As existing one plus three floor structure was inadequate, the petitioner requested planning permission from the third respondent on 02.05.2012 to construct hospital building with double basement level plus ground and three floors along with a request to construct a



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fourth floor over and above the existing three floors. In its meeting held on 26.11.2012 the CMDA Planning Committee observed that the construction of the hospital would support the population surroundings and accordingly permitted the hospital building under special sanction.

2.b. The third respondent by letter dated 01.02.2013 to the second respondent requested to furnish the guideline value of the land for the purpose of assessing the quantum of amount to be levied for Open Space Reservation and the Premium FSI charges for the land. Vide its letter dated 06.02.2013, the second respondent informed the third respondent vide two different letters stating in the first letter, that the guideline value of the land was Rs. 8,000/- per sq.ft. as on 06.02.2013. However, in another letter on the same date, the second respondent informed the third respondent that the guideline value of the land was Rs.8,000/- per sq.ft. upto 11.01.2013 and it was Rs.12,000/- per Sq.ft. from 12.01.2013. In response to these letters, the third respondent adopted the guideline value of Rs.12,000/- per sq.ft. and demanded a remittance of Rs.12,62,00,000/- for Premium FSI charges and Rs.2,25,00,000/- as Open Space Reservation Charges. When it was pointed out to the third respondent that the second respondent had



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provided two different values for the same land through two different letters with the same date, the third respondent made it clear that if the demanded amount not paid which would result in cancellation of permission which will cause enormous loss to the Hospital. Left with no other option the petitioner was constrained to pay the demanded amount on 21.03.2013. The petitioner had once again addressed a representation on 09.07.2013 pointing out that the second respondent had furnished conflicting values vide two different letters on the same day. The third Respondent appears to have written to the first Respondent and requested them to clarify the issue. The third Respondent drew the attention of first Respondent to the fact that in one of the letters the guideline value is specified as Rs.12,000/- from 12.01.2013 and in another letter with the same date, it is specified Rs.8,000/- from 01.04.2012 till date. Vide the impugned letter dated 18.09.2013, the first Respondent has once again changed its stance. The respondent now states that the guideline value was Rs.8,000/- till 29.01.2013. However, on and from the said date it had been revised to Rs.12,000/- The second respondent, has shifted his stand in each of his different letters addressed to the third respondent.



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2.C. The Writ Petitioner has presented its application for planning permission on 02.05.2012 on that date the guide line value was Rs.8,000/- . This value was adopted from 01-04-2012 and no further transaction or sale was registered for that road as stated by the second respondent till 06-02-2013. The web site of the registration department shows on 05.03.2013 the guideline value was Rs.8,000/- per.sq.ft. The planning permission process of tendering payment of premium FSI was delayed on account of the third respondent. It is not known as to how the petitioner could be mulcted with liability on account of the delay occasioned by these respondents. However, on RTI reply the petitioner came to know that the third respondent has purported to effect a revision in the guideline value. No objective criteria on the basis of which an upward revision is effected. In substance, the value of the land is pushed up at the whims and fancies of the second respondent without any objective basis. The levy of FSI charges based on the so called enhanced guideline value is illegal and no mandatory procedures to enhance the guideline value, given the fact that even the second respondent is unable to take a consistent stand as to when and how such a revision had been effected. Hence the writ petition is filed challenging the impugned letter dated 18.09.2013 and consequently direct the respondent to refund the money collected



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in excess of the guideline value together with interest at 12% per annum.

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3. The 2nd Respondent filed a counter stating that the 3rd respondent has requested the 2nd respondent to furnish the guideline value of Velachery Main Road, for charges relating to the development proposal at Velachery Main Road. The letter of the 2nd respondent was received on 06.02.2013. The 3rd respondent has not requested to furnish the Guideline Value on any given date. As the 3rd respondent has not mentioned any given date on which the Guideline value is required, the 2nd respondent has sent a reply to the 3rd respondent that Guideline value for the period from 1.4.2012 to 11.1.2013 is Rs.8,000/- per Sq.ft., and from 12.1.2013 onwards, the value of Velachery Main Road is Rs.12,000/- per Sq ft. The 2nd respondent has firstly furnished the Guideline value for Velachery Main Road as Rs.8,000/- per Sq.ft., to the 2nd respondent. Immediately on coming to know of the revision of the Guideline value with effect from 29.01.2013, the 2nd respondent has sent a revised report on the very same day. The 2nd Respondent also replied to the 3rd Respondent that the guideline value has been revised from 01.04.2012 in the meeting held on 29.01.2013.



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4.a. The 3rd Respondent has filed a counter that the Planning Permission was granted on 25.04.2013. Originally, Planning Permission application submitted by the petitioner was examined and the amount to be paid by the petitioner towards the premium Floor Space Index charges as per the guideline value of the Registration Department has been called for from the Sub Register, Chennai-42 in his letter dated 01.02.2013. The S.R.O.in their letter dated 06.02.2013 furnished the guide line value as Rs.8,000/- per sq.ft.for the period from 01.04.2012 to 11.01.2013 and Rs.12,000/- per sq.ft.after 12.01.2013. Accordingly, the Premium Floor Space Index Charges has been worked out based on the guideline value obtained from the SRO and the Premium Floor Space Index Charges of Rs.12,62,00,000/- @ Rs.12,000/- per sq.ft. has been demanded in their office development charges demand letter dated 28.02.2013. The Petitioner has paid that amount vide receipt dated 21.03.2013. The Planning Permission Application was numbered as P.P.No.B/Spl-Blg/124 A to 1/2013 dated 25.04.2013, Permit No.7901/2013 forwarded to Local Body for issue of Building Licence.

4.b. It is the further contention that the petitioner at the time of filing their



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Planning Permission furnished their willingness to avail the Premium Floor Space Index and gave an undertaking to remit the premium Floor space Index charges at the above said rates before getting the planning permission. The CMDA has worked out the premium Floor Space Index charges as per the Guideline Value obtained from the SRO, Velachery vide letter dated 06.02.2013 informing that Guideline Value is Rs.8,000/- per.sq.ft. for the period from 01.04.2012 to 11.01.2013 and Rs.12,000/- after 12.01.2013 CMDA requested SRO vide letter dt. 01.02.2013 that is after 12.01.2013 when the Guideline Value is Rs 12,000/- per Sq.ft. The amount collected towards the premium Floor Space Index has been remitted into Government account. The amount shall be utilized for infrastructure development of the area as decided by the Government. Therefore, opposed the petition.

5. Though the writ petition is challenged the impugned letter of the 1st Respondent revising the guideline value, the main focus of the argument of the learned counsel for the Petitioner before this Court is only for the refund of the alleged excess Premium FSI charges remitted by them. It is the contention of the learned counsel for the Petitioner that the application for Planning Permission was



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submitted on 02.05.2012 and lay out and security fees was also paid on the same

date. The application was received by the CMDA on 03.05.2012. Thereafter, on

15.10.2012 the committee recommended to approve the proposal and again on

30.11.2012 the committee recommended to permit the hospital building under

special sanction. Therefore, it is his contention that when the committee has

permitted hospital building under special sanction, the revised plan has been

submitted on 03.01.2013.

6. Whereas, the Respondent has issued letter demanding FSI charges on the basis of the revised guideline value said to have taken place on 29.01.2013.

According to the learned counsel for the Petitioner, on the date of the committee recommended for building permission the guideline value was only Rs.8,000/- per

sq.ft. Even the revision of guideline value on 29.01.2013 assumed to be true,

since the committee has already recommended the Planning Permission as early as

on 15.10.2012 and 13.11.2012 the Respondent ought not to have demanded

revised guideline value of Rs.12,000/-per sq.ft. Therefore, it is his contention that

the moment when the committee is approved by its recommendation to building

plan the petitioner gets vested right and he is liable to pay only the FSI charges at



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the prevailing rate of guideline value as on the date for approval. Therefore, the main contention of the learned counsel for the Petitioner is that the approval was completed on 13.11.2012 and the proposal for all the floors also accepted by the respondent. Therefore, the respondent collecting the guideline value as per the revised rate is not according to law, since the petitioner has already got the approval by way of committee meeting. Therefore, petitioner is certainly entitled to refund of the excess amount paid to the third respondent towards FSI charges.

7. Though the revision of the guideline value itself is challenged in the writ petition, the learned counsel appearing for the petitioner has focused his argument mainly for refund of the alleged excess payment made by the petitioner as FSI charges. The main contention focused on his submission is that the petitioner's right is crystallised the moment when the committee has approved the planning permission on 15.10.2012 and 30.11.2012. Therefore, the respondent ought to have collected the rate prevailing at the relevant point of time. i.e., Rs.8,000/- per sq.ft. Hence, it is the contention of the learned counsel for the Petitioner that the Petitioner is entitled for refund of excess amount paid to the third respondent.



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8. In support of his submissions he relied upon the following judgments:

1. *Union of India and another vs. Mahajan Industries Ltd., and Another [(2005) 10 SCC 203].*
2. *Vijay Enterprises vs. Union of India [2006 SCC Online Del 788]*

9. Whereas the learned counsel appearing for the Respondent submitted that mere recommendation by the committee for planning permission will not create any vested right. According to him, the guideline value was revised on 29.01.2013. When the application for planning permission was pending for scrutiny with the third respondent, the committee has recommended for building permission under the special sanction by the authorities. Thereafter, revised plan has been submitted and the FSI charges claimed based on the revised guideline. Hence, it is his contention that mere pendency of the application will not create any vested right to the petitioner. What is crucial is the date of planning permission. Only after permission approved by the Government or authorities concerned, the petitioner's right accrues. According to them revised guideline value came into effect on 29.01.2013. The planning permission has been granted on 25.04.2013. Therefore, revised guideline value has been claimed and same has



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been paid without any protest. When the petitioner himself remitted amount, now

he cannot contend that the respondent has received the excess payment.

Therefore, it is his submission that the guideline value prevailing at the time of submission of application or any committee recommendation is not a criteria for the authorities to receive the original rates as per the rules.

10. In support of his submission he has also relied upon the judgments of the Apex Court:

1. Chennai Metropolitan Development Authority vs. Prestige Estates Project Limited [(2019) 15 SCC 212]

2. Chennai Metropolitan Development Authority vs. D.Rajan Dev and others [(2020) 2 SCC 483]

11. Though the main challenge is the revision of the guideline value and impugned letter of the 1st Respondent, no arguments whatsoever advanced as to the revising the guideline value. The main focus of argument of the learned counsel for the Petitioner is that his right accrued when the committee has recommended and permitted the petitioner to build hospital. Therefore, his



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contention is that the guideline value prevailing at the relevant point of time when the committee permitted the petitioner to build hospital alone ought to have been received by the Respondent. Therefore, the only focus of argument for refund of the alleged excess amount paid by the Petitioner.

12. It is relevant to note that the application has been filed by the Petitioner for planning permission to construct hospital building with double basement level plus ground and three floors along with fourth floor over and above the existing three floors. The application has been received by the CMDA on 03.05.2012. In order to find out whether the planning permission is granted in the year 2012 itself prior to the revision of the guideline value on 29.01.2013 this Court has summoned all the original file from the Corporation. On perusal of the original files, same make it clear that the agenda has been placed before the committee as the petitioner has sought for certain relaxation of the set back violations due to existing landing projections. The committee by its meeting consisting of the members and the officers of CMDA and the special invitees passed a resolution on 15.10.2012 as follows:



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“The committee discussed the subject in detail and recommended to relax the set back violation due to the staircase landing projections which is only for a smaller stretch. The committee decided not to permit habitable space in basement floor and recommended to approve the proposal subject to satisfying the other requirement of D.R., including special sanction guidelines to be approved by the authority.”

13. Thereafter, on 15.11.2012, the Petitioner has submitted Revised Plans, Report on Atomic Energy Regulatory Board (AERB) and copy of DFRS recommendation by Deputy Director and requested the CMDA for processing the Petitioner's application and issuing Planning Permission at the earliest. Once again, the matter has been placed before the Committee. The Committee Meeting was held on 26.11.2012 and resolved as follows:

“The Committee discussed the subject in detail and noted that the mixed characteristics of surrounding developments in the vicinity and observed that hospital will not be a mismatched activity and will only support the population surroundings. The Committee recommended to



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permit the hospital building under Special sanction.

Regarding the permissibility of the hospital usage in the Basement, the Committee decided to obtain the remarks from the Bureau of Indian Standards (NBC) for allowing Oncology Department in the Basement floor.”

Thereafter, the Member Secretary addressed letter dated 27.12.2012 to the Registrar of Companies to ascertain and confirm the legal rights of Dr. Geetha Haripriya over the land belongs to M/s. Accurate Foundation (P) Ltd., and sought certain queries.

14. From the above records, it appears that even after the committee recommended permission the application was under process, not culminated to the final planning permit. Much emphasis has been made by the learned counsel, for the signature of the authorities in the proposed plan submitted for various floors. The Plan available in the records for each floor indicates that it was submitted in the year 2012 and the officer acknowledged the same. Therefore, mere



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submission of the proposed plan, attested by the officer to receive the plan, it cannot be presumed that the planning permission was completely over and the authorities granted permission and complied all other formalities. The Committee, in fact, in the first meeting dated 15.10.2012 recommended to approve proposal subject to satisfying the other requirement of D.R., including special sanction guidelines to be approved by the Authority. The above recommendation itself is subject to the fulfillment of the special sanction guidelines to be approved by the Authority. Similarly, Committee Minutes dated 30.11.2012 is only a recommendatory nature, recommending to permit hospital building under special sanction. This Court is of the view that mere such a recommendation made by the Committee in the meeting referred above, it does not give absolute right to contend that those minute itself is a final planning permission.

15. It is relevant to note that on 28.02.2013 a demand of Rs.12,62,00,000/- made by the Respondent as per the prevailing guideline value. The above amount was paid by the Petitioner. Thereafter, the Planning Permission was finally granted on 25.04.2013 for the period from 25.04.2013 to 24.04.2014. The Planning Permission available in the file makes it clear that the permission was granted for



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one year. Therefore, this Court is of the view that mere recommendation of the

Committee, it cannot be said that the recommendation itself amounts to approval.

Such recommendation will not give any vested right to the Petitioner to contend that he is not liable to pay the revised guideline value prior to the final approval of the planning permission. It is not disputed that the guideline value as on the date of planning permission is Rs.12,000/- per sq.ft. Planning Permission was approved only 25.4.2013 and as per Regulation 36 Premium FSI charges collected.

16. In the judgment *Union of India and another vs. Mahajan Industries Ltd.,and Another [(2005) 10 SCC 203]*, the Apex Court has held that crucial date for calculating the conversion charges has to be the date of receipt of application for conversion of land use. Similarly, the Division Bench of Delhi High Court in *Vijay Enterprises vs. Union of India [2006 SCC Online Del 788]* has also held that the conversion charges had to be calculated with reference to the rate applicable on the date that the application for conversion was made. It is relevant to note that the above judgments are not applicable to the facts of the present case. The above judgments relate to the conversion charges.



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WEB COPY 17. The judgment of the Honourable Apex Court in *Chennai Metropolitan Development Authority vs. Prestige Estates Project Limited [(2019) 15 SCC 212]* wherein the 3rd Respondent of the case on hand was the Appellant and the issue is relating to the payment of FSI charges. The Honourable Apex court in the above judgment has held that the levy of Premium FSI charges under Regulation 36 is incident to the planning authority allowing Premium FSI over and above the FSI which is normally allowable. In other words, it is upon and subject to the grant of Premium FSI that the authority can demand Premium FSI charges. If no Premium FSI is sanctioned, obviously there would be no occasion to demand a charge for Premium FSI. Similarly, if planning permission were to be refused, the deposit which is made by the developer would be refunded.

18. In paragraph 33 of the above judgment, the Honourable Supreme Court further held as follows:

“33. On 27 March 2012, while issuing a demand notice to the respondent, it was made clear by the appellant that the planning permission was still to be issued. The submission of the application for permission



and the steps taken by the respondent to comply with the conditions and the deposit of the charges did not confer a vested right in the respondent for the grant of planning permission. The grant of planning permission would only ensue upon the appellant scrutinizing the application and determining that the permissions which were sought were in accordance with the development regulations and all other planning requirements holding the field. Before the planning permission was issued, the revised charges for Premium FSI came to be enforced. Once the revised charges came into force with effect from 1 April 2012, the respondent, as the applicant for planning permission, was bound to pay the revised charges. As on 1 April 2012, the respondent had no planning permission in its favour. The submission of the respondent that planning permission was issued in May 2012 evidently will not advance the case of the respondent. The grant of any permission post the revision of the Premium FSI charges would necessarily be subject to the revised charges. Hence, in raising the demand on the basis of the revised charges on 22 August 2012, the appellant was acting in accordance with law.”

19. From the above, it is very clear that the submission of the application for



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permission and the steps taken by the writ petitioner to comply with the conditions and deposited the demanded charges did not confer a vested right in the petitioner.

20. Similarly, in ***Chennai Metropolitan Development Authority vs. D.Rajan Dev and others [(2020) 2 SCC 483]*** also the Honourable Apex Court has held that mere pendency of the application for planning permission does not create a vested right. Right accrues only after approval is granted by the Government/authorities concerned. This is because the planning permission is accorded on the basis of scrutiny of application form and documents concerned. There is always possibility of an application not meeting the requisite criteria for carrying out the proposed development and being rejected. Until and unless an application complete in all aspects is approved, it remains a mere application no right can be claimed on the basis of such an application. A proposal cannot be equated with an approval, otherwise the later will lose all significance. The obvious logical conclusion is that the right to an applicant accrues when the permission has been granted. Further, as a corollary, it can be said that the rates prevailing at the time of granting of permission are the rates which an applicant has to pay. The respondent applicant cannot claim benefit of the earlier guideline



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value existing prior to the date when approval was granted by the Government and finally the Honourable Apex Court has held that the applicant does not acquire any right under law till his application considered and sanctioned. Regulation 36 clearly provides that the premium FSI shall be allowed in specific areas only with the approval of the Government. Unless and until the Government grants approval, no right accrued to the first respondent.

21. In such a view of the matter, this Court is of the view that as the revised guidelines came into effect on 29.1.2013 and the Planning Permission was granted on 25.04.2013, the Respondents have rightly demanded the rate prevailing at the time of approval, which was also paid by the Petitioner. In such a view of the matter now, the petitioner cannot seek refund.

22. In view of the above, the Writ Petition is dismissed. No costs.

10.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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