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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.24197 of 2022

1.C.Sethupathy

2.N.Sivasamy

Both are represented by their Power Agent
M/s.Noble Developers and Properties (India) Private Limited,
Rep. by its Managing Director Mr.A.Ramesh Kumar
Door No.9/15, Sri Ram Layout,
Saibaba Colony, Coimbatore – 11

Petitioners

vs.

1.The Member/Secretary,
Coimbatore Local Planning Authority,
Coimbatore,
Coimbatore District.

2.The Commissioner,
Coimbatore Corporation,
Coimbatore,
Coimbatore District.

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

Respondents

(R3 *suo motu* impleaded vide order dated 22.06.2023 in WP.No.24197 of 2022)



Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 2nd respondent to accept and receive the Development Charges for constructing residential apartment complex in the land measuring 1147.71 sq.mts comprised in S.F.No.437/1A2C of Kalapatti Village, Coimbatore North Taluk, Coimbatore District, which is required to be paid by the petitioner to the Coimbatore Corporation by considering the petitioner's letters dated 12.08.2021 and 08.10.2021, within the time stipulated by this Court.

For Petitioners : Dr.C.Ravichandran

For Respondents : Mr.A.M.Ayyathurai
Government Advocate for R1

Mr.K.Magesh
Standing Counsel for R2

Mrs.S.Mythreye Chandru
Special Government Pleader for R3

ORDER

The Secretary to Government, Housing and Urban Development Department, Secretariat, Fort St. George, Chennai – 600 009 is *suo motu* impleaded as the 3rd respondent in this writ petition.

2.Mrs.S.Mythreye Chandru, learned Special Government Pleader takes notice on behalf of the impleaded 3rd respondent.



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3. This writ petition has been filed for a direction to the 2nd respondent to accept and receive the development charges for the construction put up by the petitioners by considering the representations made by the petitioners dated 12.08.2021 and 08.10.2021.

4. Heard Dr.C.Ravichandran, learned counsel appearing on behalf of the petitioners, Mr.A.M.Ayyathurai, learned Government Advocate appearing on behalf of the 1st respondent, Mr.K.Magesh, learned Standing Counsel appearing on behalf of the 2nd respondent and Mrs.S.Mythreye Chandru, learned Special Government Pleader appearing on behalf of the 3rd respondent.

5. The brief facts of the case is that the petitioners obtained planning permission from the 1st respondent through proceedings dated 28.09.2016. The planning permission states that the permission will be in force for a period of three years and the petitioners were also subjected to certain terms and conditions.

6. The grievance of the petitioners is that they submitted the Challan on 04.02.2021 and it was not able to be uploaded in the computer. The petitioners



were also not able to make the payment physically. Hence, the petitioners made a representation through their developers on 12.08.2021, requesting the 2nd respondent to receive the development charges. Since the representations did not evoke any response, the present writ petition has been filed before this Court seeking for appropriate directions.

7.The 2nd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

5.It is further submitted that the power agent of the petitioners obtained planning permission from the first respondent for a period of 3 years to construct of 20 residential flats in the land measuring 1147.81 sq.m. Comprised in S.F.No.437/1A2C of Kalapatti Village, Coimbatore North Taluk, Coimbatore District in 2016. The petitioners did not renew the Planning Permission within the time period granted by the first respondent. Due to non-renewal of the said planning permission, the said building was deemed as unauthorized construction. Hence, the second respondent Corporation issue notice dated 13.09.2021 under Section 296 of the Coimbatore City Municipal Corporation Act, 1981.

6.It is further submitted that the petitioners got



planning permission from the 1st respondent on 28.09.2016 for a period of three years and did not renew it till date. The petitioners did not apply for renewal of the Planning Permission by approaching 1st respondent. Under these circumstances, the 2nd respondent Corporation cannot issue Building permission for the same and is authorized to issue notice for unauthorized building construction.

7.It is further submitted that the petitioners have to approach the first respondent for renewal of license for construction. Without approaching the competent authority, sending representation to the 2nd respondent Corporation does not serve any purpose. The action initiated by the second respondent is in accordance with law. The Stop the Work and Show Cause Notice dated 13.09.2021 was issued under Section 296 of Coimbatore City Municipal Corporation Act, 1981. There is no violation of law as alleged by the petitioners.

8.This Court has carefully considered the submissions made on either side and also the materials available on record.

9.The short ground that has been raised by the learned counsel for the petitioners is that even though the planning permission stipulated validity period as three years, there was subsequent amendment that was brought into



Section 50 of the Tamil Nadu Town and Country Planning Act, 1971 whereby, the period was enlarged to five years. A clarification was also made by the Commissioner of Town and Country Planning through proceedings dated 06.06.2017, whereby, it was made clear that every permission having the validity of three years has been amended as five years and the same will apply for planning permission which will be expiring on or after 30.03.2017. By relying upon the amendment, the learned counsel for the petitioners submitted that the validity period for the planning permission issued by the 1st respondent in favour of the petitioners will come to an end only on 27.09.2021. Hence, it was contended that the respondents must be directed to accept and receive the development charges.

10.Per contra, the learned Standing Counsel appearing on behalf of the respondents submitted that the planning permission was granted by imposing some certain terms and conditions. The learned Standing Counsel by pointing out to Clauses 17 and 18 of the General Conditions and Clauses 1 & 3 of the Special Conditions submitted that the petitioners even without obtaining a building permission, proceeded to put up a huge construction. Immediately on coming to know of the same, the Corporation initiated proceedings by issuing Show Cause Notice under Section 296 of the Coimbatore City Municipal



Corporation Act, 1981. The petitioners have also filed an appeal before the Government and the same is pending. It was therefore contended that the petitioners have violated the terms of the planning permission and hence is not entitled for the relief sought for in this writ petition.

11. In the considered view of this Court, the planning permission itself stipulated certain conditions. Unfortunately, a huge construction has been put up in the property even without obtaining building permission. The same has been taken note of by the Corporation and Stop Work Notice was also issued. The petitioners have approached the Government for regularization and it is stated that the same is pending. Therefore, till the building is regularized, there is no question of directing the respondents to receive the development charges for the planning permission granted. If ultimately, the building is regularized in the appeal pending before the Government, thereafter, it will always be left open to the petitioners to approach the respondents for paying the development charges. This is in view of the amendment through which the validity period was extended from three years to five years.

12. In the light of the above discussion, this Court is not inclined to grant the relief as sought for by the petitioners for the present. The appeal filed by the



petitioners is now pending before the impleaded 3rd respondent. It is left open to the petitioners to prosecute the appeal pending before the 3rd respondent. If ultimately, the 3rd respondent regularizes the construction put up by the petitioners, the petitioners will always be entitled to approach the 1st and 2nd respondents for payment of the development charges as per the planning permission. Except giving this clarity, no further orders can be passed in this writ petition.

13.This writ petition is disposed of accordingly. No Costs.

22.06.2023
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
ssr

To

1.The Member/Secretary,
Coimbatore Local Planning Authority,
Coimbatore,
Coimbatore District.

2.The Commissioner,
Coimbatore Corporation,
Coimbatore,
Coimbatore District.



3. The Secretary to Government,
Housing and Urban Development Department,
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N. ANAND VENKATESH, J.

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W.P No.24197 of 2022

**22.06.2023
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