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W.P.No.26207 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.26207 of 2023

and

WMP.No.25610 of 2023

1.Narendra Sakariya
2.Meena Sakariya

...Petitioners

Vs.

1.The Commissioner
Corporation of Chennai
Rippon Buildings
Chennai 600 003.

2.The Superintendent Engineer
(Electrical & Planning)
Town Planning Department
Greater Chennai Corporation
Ripon Buildings
Chennai 600 003.

...Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the communication of the second respondent bearing TP.D.C.No.D2/2791/2022 dated 16.06.2023 and quash the same and consequently direct the respondents to refund the sum of Rs.22,05,600/- remitted by the petitioners towards building license fee for construction of school building comprising of two blocks of ground floor plus 2 floors in S.No.461/3A, Puzhal Village, Red Hills Ambattur Road, Puzhal.

For Petitioners : Mr.Jayesh B.Dolia
Assisted by
Mr.Kalayanaraman
for M/s.Aiyar and Dolia

For Respondents : Mr.A.S.Raghul Adhithya
for Mrs.P.T.Ramadevi
Standing Counsel

ORDER

The petitioners herein challenged the order passed by the second respondent rejecting the request of the petitioners for refund of the building license fee paid by them.



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2. It is the case of the petitioners that the petitioners applied for sanction of building permit for putting up construction of a school building comprising of two blocks of ground floor plus 2 floors in S.No.461/3A, Puzhal Village, Red Hills Ambattur Road, Puzhal falling within the limits of the respondents Corporation.

3. The petitioners obtained planning permission from the respondents on 07.04.2019 by remittance of building license fee and payment towards Workers Welfare Board. Owing to outbreak of Covid-19 pandemic and resultant financial constraint, the petitioners decided not to go ahead with the project. Therefore, on 14.03.2022 they sent a letter addressed to CMDA to refund the development charges and other charges, which were remitted by the petitioners. The petitioners also surrendered the original planning permission. At the request of the petitioners, CMDA had refunded the development charges and other charges except the infrastructure and amenities charges and shelter fees. Thereafter, the petitioners addressed a letter dated 06.01.2023 to the respondents requesting them to refund the building license fee and the amount remitted towards the Workers Welfare Board. The original building



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permit was also surrendered to the respondents. Now, through the impugned order, the second respondent rejected the request of the petitioners on the ground that the building planning permission granted to the petitioners was lapsed on 01.10.2019 but the petitioners failed to commence the construction within the period of six months and consequently, the request for re-payment of building license fee and other charges, can not be considered.

4. The learned counsel for the petitioners has submitted that when the petitioners decided not to go ahead with construction of building, the respondents are not entitled to retain the license fee paid by the petitioners at the time of seeking planning permission.

5. The learned counsel for the respondents corporation by taking this Court to the counter affidavit filed by the second respondent submitted that under Section 242 of Chennai City Municipal Corporation Act, 1919, if the petitioners failed to commence the construction within six months from the date of permission granted for construction, the permission would be automatically lapsed. Since in the case on hand, the permission granted to the petitioner lapsed as early as 01.10.2019, the request of the petitioners for



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refund of the building license fee cannot be entertained. The impugned order was passed by the respondents on 16.06.2023 by relying on Section 242 of the Chennai City Municipal Corporation Act. Admittedly the Tamil Nadu Urban Local Bodies Act came into force on 13.04.2023 and the Chennai City Municipal Corporation Act got repealed. Therefore, the respondents corporation passed the impugned order by taking into consideration the provision of a repealed enactment, in the absence of similar provision under the present enactment namely Tamil Nadu Urban Local Bodies Act. Hence, impugned order cannot be sustained.

6. A perusal of the demand advice issued by the second respondent in response to the application submitted by the petitioners seeking building permission would suggest that a sum of Rs.22,05,000/- was demanded towards the building license fee and Rs.600/- towards scrutinize fee.

7. As far as scrutinizing fee is concerned, the petitioners are not entitled for refund of the same as their application is already submitted and permission granted. As far as building license fee is concerned, the petitioners



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have decided not to proceed with the construction of the building. Hence, the respondents are not entitled to retain the building license fee, that too by relying on provision that is already repealed. Therefore, the Writ Petition is allowed in part by setting aside the impugned order in so far as refusal to refund the building license fee is concerned. As a necessary consequence, the respondents are directed to refund a sum of Rs.22,05,500/- within a period of six weeks from the date of receipt of copy of this order.

21.09.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
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