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W.P.No.28413 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P.No.28413 of 2023

and

WMP.No.27960 of 2023

Anjli Infra Developers LLP
Rep.by its Authorised Signatory
No.6, Ground Floor
Mr.Philip Zachariah
Rayala Towers
Phase II, Anna Salai
Chennaij 600 002.

...Petitioner

Vs.

- 1.The Commissioner
Corporation of Chennai
Ripon 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 bearing TP.D.C.No.D2/0828/2022 dated 08.09.2023 on the files of the second respondent and quash the same and consequently direct the respondents to refund the sum of Rs.41,68,600/- remitted by the petitioner towards the building license fee for the construction of Multi Storeyed Commercial Group Development consisting of 2 blocks with combined basement floor situated in Old Door No.51, New Door No.22, Rajiv Gandhi Salai (OMR), Chennai 600 119 in S.Nos.480/3B1A of Sholinganallur Village falling within the limit of Greater Chennai Corporation.

For Petitioner : Mr.Jayesh B.Dolia
Senior Counsel
Mr.Kalayanaraman
for M/s.Aiyar and Dolia

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

ORDER

This Writ Petition is filed challenging the order passed by the second respondent refusing to repay the building license fee paid by petitioner



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on the ground that the permit granted to the petitioner expired as early as on 07.06.2019.

2. It is the case of the petitioner that the petitioner applied to the respondent corporation for construction of Multi Storeyed Commercial Group Development consisting of 2 blocks with combined basement floor situated in Old Door No.51, New Door No.22, Rajiv Gandhi Salai (OMR), Chennai 600 119 and also obtained planning permission. The permission for construction was granted by the second respondent on 18.12.2018 after payment of building license fee and also payment towards Workers Welfare Board. Owing to outbreak of Covid-19 pandemic and resultant financial constraint, the petitioner decided not to go ahead with the project. Therefore, the petitioner requested the CMDA to repay the charges, which were remitted by the petitioner. The petitioner also surrendered the original planning permission. At the request of the petitioner, CMDA had refunded the development charges and other charges except the infrastructure and amenities charges and shelter fees. Thereafter, the petitioner addressed a letter to the first respondent on 21.04.2022 requesting him to refund the building license fee and the amount remitted towards the Workers Welfare Board. The original building permit was



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also surrendered to the first respondent. Now, through the impugned order, the second respondent rejected the request of the petitioner on the ground that the building planning permission granted to the petitioner expired long back and therefore, the building license fee cannot be refunded.

3. The learned counsel for the petitioner has submitted that when the petitioner decided not to go ahead with construction of building, the first respondent is not entitled to retain the building license fee paid by the petitioner at the time of seeking planning permission. The learned counsel for the petitioner relied on the order passed by this Court in W.P.No.26207 of 2023 dated 21.09.2023 in this regard.

4. The learned counsel for the respondent corporation by relying on Section 142 of Chennai Corporation Act submitted that if the petitioner failed to commence construction within six months from the date of permission granted for construction, the permission would be automatically lapsed. In the case on hand, the permission granted to the petitioner lapsed as early as 17.06.2019. Hence, request of petitioner for refund of building license fee cannot be entertained.



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5. The impugned order was passed by the respondents on 08.09.2023. The Section 242 of the Chennai City Municipal Corporation Act, pressed into service by respondent's counsel was not in operation on that day. 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 respondent corporation is not entitled to rely on 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 respondent corporation at the time of collection of necessary fee from the petitioner would suggest that the respondent corporation collected a sum of Rs.41,68,000/- towards building license fee and Rs.600/- towards scrutiny fee. After scrutinizing the application submitted by the petitioner, the building permit was granted to the petitioner. However, the petitioner has decided not to proceed with the construction of the building. In such circumstances, the respondent corporation is not justified in retaining the building license fee.



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However, they are entitled to retain the scrutiny fee as the application of the petitioner was already scrutinized. Since the construction of building is dropped, the respondent is not entitled to retain the building license fee, that too by relying on repealed enactment. The order passed by this Court in W.P.No.26207 of 2023 is directly applicable to the facts of the present case and hence this Court decides to follow the same.

7. Accordingly, the impugned order passed by the second respondent is liable to be set aside. In view of the same, the Writ Petition is allowed by setting aside the impugned order and the second respondent is directed to refund the building license fee for a sum of Rs.41,68,000/- within a period of six weeks from the date of receipt of copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

27.09.2023

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