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Writ Petition No.31836 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2023

PRONOUNCED ON : 13.04.2023

Coram:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Writ Petition No.31836 of 2022

M/s.Sikora Salvador International Ltd.,
Rep. By its authorized signatory,
Mr.S.Ramakrishnan,
Office at
No.259/1, Bypass Road,
Poonamallee, Chennai – 600 056. Petitioner

Vs.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai – 8.

2. The Commissioner,
Poonamallee Municipality,
Poonamallee,
Chennai – 600 056.

3. Tamil Nadu Construction Welfare Board,
No.8, Valluvar Kottam High Road,
Nungambakkam, Chennai – 600 034. Respondents

[R3 impleaded vide order dated 12.01.2023 made in WMP No.485/2022 in WP.No.31836 of 2022 by NSKJ]



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Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 2nd respondent to refund the amount remitted towards the building approval and other infrastructural charges to a sum of Rs.19,50,000/- by considering the petitioner representation dated 15.07.2022.

For Petitioner: : Mrs.Reshmi Christy
For Respondents : Mr.C.Manoharan (for R1)
Standing Counsel
Mr.P.Srinivas (for R2)
Standing Counsel
No appearance (for R3)

ORDER

The petitioner has filed this writ petition, seeking the relief of mandamus, for refund of infrastructure deposit to an extent of Rs.19,50,000/- made by his power agent, for the promotion of the site, which was subsequently dropped, by considering his representation dated 15.07.2022.

2. The brief facts leading to the filing of writ petition, are as under:

(i) The petitioner is the absolute owner and is in possession of the land to an extent of 72 cents as per the documents and 69 cents as per the patta comprised in S.No.259/1A1 of Poonamallee Village, Tiruvallur District. The petitioner decided to develop the land by constructing a multi-storey building and entered into a Joint Development Agreement (JDA) dated 06.10.2010 with one developer named M/s.Golden Prosperous Property Developers Pvt. Ltd. As



per the agreement, the builder agreed to develop a mixed Residential Multi-storey building with commercial space in the above said land.

(ii) On 06.10.2010, the petitioner gave a Power of Attorney in favour of J.Ruben George, the Managing Director of the M/s.Golden Prosperous Property Developers Pvt. Ltd. Thereafter, the said Power of Attorney was revoked and a new Power of Attorney was executed in favour of the company name by a deed dated 13.06.2011.

(iii) As per the Joint Development Agreement (JDA), the construction of building should have been completed within a period of 24 months from the date of receipt of the sanctioned plan and the said sanctioned plan should have been obtained within 12 months from the date of the submission of the subdivided patta.

(iv) The builder did not commence the work even in the year 2014. Though it was reminded to him several times, the builder did not fulfill any of the obligations of the JDA. Hence, the petitioner revoked the Power of Attorney dated 13.06.2011 by registered document dated 12.10.2015 and immediately issued the termination letter.



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(v) As per the arbitration clause in the JDA, the matter was referred to arbitration proceedings, since the builder had committed breach of contract. The Arbitration proceedings concluded and the arbitrator has passed an award on 30.09.2018. As per the award, the revocation of the JDA agreement, dated 06.10.2010 entered with the builder, was held valid and the revocation of the Power Of Attorney dated 13.06.2010 by the deed of revocation dated 12.10.2015 was also held valid and further an amount of Rs.5,00,00,000/- was also awarded towards damages in petitioner's favour and the petitioner was also entitled to a total sum of Rs.2 Crores which includes expenses incurred for getting approval from the statutory authorities, that is made to respondents 1 and 2, since the same was set off from Rs.5 Crores payable by the builder. Therefore, the petitioner is entitled for the payments made to the statutory authorities for the approvals together with Rs.3 Crores along with the interest at the rate of 7.5% on the said sum of Rs. 3 Crores from the date of award till the date of payment.

(vi) Against the Arbitration award dated 30.09.2018, the builder approached this Court under Section 34 of the Arbitration and Conciliation Act, 1996 and the same was dismissed by this Court on 12.02.2020.



(vii) As the petitioner has decided not to construct the building at the petition suit premises, he informed the respondents that he have no plans to construct the building at the petition mentioned site and hence requested them to refund the amount which was deposited towards the building plan license, labour welfare deposits and other refundable deposits etc., paid for the development of the property. The same was also intimated to the 2nd respondent by letter dated 08.10.2010. The 2nd respondent inspite of receiving the letter dated 08.10.2018 has not refunded the amount and subsequently, the petitioner also sent a reminder letter to the 2nd respondent dated 15.07.2022 requesting the 2nd respondent to refund Rs.19,50,800/- which was remitted for the approval and acknowledged by the respondent. Hence, he had filed the present writ petition for refund of amount deposited towards infrastructure.

3. Learned standing counsel for the 1st respondent could contend that the amount is not a refundable amount and three years period is over.

4. Learned Standing counsel for the 2nd respondent Municipality, Mr.P.Srinivas, could contend that the building permit was granted for the petitioner house site for the period 23.06.2016 to 22.06.2019 and as such the

<https://www.mhco.org.in> representation could not be considered.



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5. Per contra, the learned counsel for the petitioner drew my attention to the proceedings of the Commissioner of the Poonamallee Municipality dated 23.06.2016 and could contend that Road Permission charges Rs.11,08,800/-; Road Development Charges Rs.30,000/-; Rain Water Harvesting Deposit Rs.10,000/-; Construction Labours Welfare Fund Rs.7,92,300/-; Vacant Site charges Rs.1,79,569/- and Flag Day Charges Rs.10,000/-, were paid.

6. The learned counsel for the 2nd respondent-Municipality could contend that Item Nos.5 and 6 are not refundable in nature.

7. The main contention of the counsel for the writ petitioner is that in view of the dispute between the landowner and promoter who had not developed the building, the charges paid to the Municipality has to be returned, since the representation is made within the stipulated time and there was a Arbitration Proceedings by the Former Judge of this Court in Arbitration Case No.1 of 2017.

Heard both. Perused records.



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8. Pursuant to the orders passed by this Court in OP No.527 of 2016 dated 16.09.2016, the Arbitrator was appointed and there was an arbitration award and the substance of the Arbitration Award that are necessary for the determination of this point, is as follows:

“48. As far as the ninth issue is concerned, the respondent is entitled to a sum of Rs.2,00,00,000/- (Rupees Two Crore) which is the set off against the sum of Rs.5,00,00,000/- awarded in favour of claimant.

51. Accordingly the award is passed as under:

- (i) Declaring that the claimant's termination of the Joint Development Agreement dated 06.10.2010 entered into between the parties by letter dated 03.05.2016 and the revocation of the Power of Attorney dated 13.06.2011 by the Deed of Revocation dated 12.10.2015 executed by the claimant are valid.
- (ii) The forfeiture of the security deposit of Rs.1,46,20,000/- is valid.
- (iii) The claimant is entitled to receive the original title deeds and other records relating to the subject matter to the property which were deposited with the escrow agents under the terms of the JDA.
- (iv)...
- (v) ...
- (vi)...
- (vii) As far as the claim for Rs.48,15,00,000/- is concerned the claimant is entitled to a sum of Rs.5,00,00,000/- (Rupees Five Crore) towards damages.
- (viii) The respondent is entitled to a total sum of Rs.2,00,00,000/- (Rupees Two Crore only) as claimed towards the money spent for pile foundation and the expenses incurred for getting approval from the statutory authority and it is set off against the amount of Rs.5 Crores awarded in favour of the claimant.”



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9. Hence, the petitioner has made the representation on 15.07.2022 to the 2nd respondent Poonamallee Municipality, for refund of the amount deposited pursuant to the order passed by the Arbitrator. It is also to be stated that the OP filed against the award in OP No.93 of 2020 was dismissed on 12.02.2020 by this Court.

10. After going through the conditions and the rival contentions raised by the petitioner that in respect of 6 categories, the amount paid towards Item No.5 and 6 viz., Vacant Site charges (Rs.1,79,569/-) and Flag Day Charges (Rs.10,000/-) are not refundable. With regard to Item No.4, viz., Welfare fund for the Construction Labourers (Rs.7,92,000/-), the 3rd respondent Tamil Nadu Construction Welfare Board was also impleaded, but they have not appeared before this Court and hence, I find that the 2nd respondent shall consider the representation made by the petitioner, since the petitioner has already dropped the plan for construction and there resulted Arbitration proceedings.

11. Accordingly, taking note of the fact that certain amounts are refundable and certain amounts are not refundable, and in view of the mixed question of fact, I am inclined to direct the 2nd respondent/ Poonamallee



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Municipality to consider the permissible heads of refund and to pass suitable orders on the representation made by the petitioner herein within a period of 10 weeks from the date of receipt of a copy of this order. It is hereby made clear that after said order passed by the 2nd respondent Poonamallee Municipality, it is open to the petitioner to challenge the same, if he be so advised.

12. With these directions, the Writ Petition stands partly allowed, to the extent indicated as above. No Costs.

13.04.2023

Index : Yes/No
Speaking order / Non-speaking order
Neutral Citation: Yes/No.
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RMT.TEEKAA RAMAN,J

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To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai – 8.

2. The Commissioner,
Poonamallee Municipality,
Poonamallee,
Chennai – 600 056.

3. Tamil Nadu Construction Welfare Board,
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Pre-delivery order in
Writ Petition No.31836 of 2022

13.04.2023