IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **20.11.2023**
Pronounced on : **09.02.2024**

CORAM:

THE HON'BLE MR. JUSTICE **R.SURESH KUMAR**
AND
THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

W.A.No.542 of 2013
and C.M.P.No.20567 of 2021

The Member Secretary
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 8. ... Appellant

Vs.

1. M.Krishnaswamy

2. The Commissioner
Corporation of Chennai,
Chennai - 600 003.

3. Raja Sir M.A.Muthiah Chettiar
Charitable Educational Trust,
Rep. by its Trustee
Raja Sir M.A.Muthiah Chettiar,
Chettinad House,
Raja Annamalaipuram,
Chennai - 600 028. ... Respondents

(R3 impleaded as party respondent vide order of Court, dated 18.07.2014 made in M.P.No.1 of 2014 in W.A.No.542 of 2013)

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order passed in W.P.No.14670 of 2010, dated 25.09.2012.

For Appellant : Mr.P.Kumaresan, AAG
assisted by Mrs.Veena Suresh
Standing Counsel

For Respondents : Mr.G.Masilamani, Senior Counsel
and Mr.S.Vijaya Kumar, Senior Counsel
for Mr.G.Bharadwaj for R1

Mr.R.Raman Laal, AAG
assisted by Mrs.P.T.Rama Devi
and Mr.A.S.Ragul Adhithya for R2

Mr.M.Praveen Kumar
for Mr.T.Balaji for R3

J U D G M E N T

R.SURESH KUMAR, J.

This Intra Court Appeal has been directed against the order passed by the Writ Court in W.P.No.14670 of 2010 by order, dated 25.09.2012.

2. The brief facts which are required to be noticed for the disposal of this writ appeal are as follows :

(i) that the first respondent along with his wife and son purchased a landed property bearing Plot No.41, 42, 53 and 54 comprised in R.S.No.4288/71, Satyadev Avenue, MRC Nagar, Raja Annamalaipuram, Chennai-28 under a sale deed, dated 11.07.2005 registered as a document No.1894/2005. On 26.12.2008, the first respondent, his wife and son jointly applied for planning permission to the appellant, i.e., CMDA to put up a multi storied building in the said land.

(ii) By communication, dated 21.01.2010, the appellant informed the first respondent that, the application submitted by them was under consideration and he had to pay certain charges like developmental charges, security deposit, regularisation charges, OSR charges, infrastructure and amenities charges, IDC for metro water, balance of security fee.

(iii) The first respondent had complied with all the demand in the said letter, dated 21.01.2010, except the OSR charges demanded by the appellant CMDA to the extent of Rs.58,50,000/-.

(iv) In this context, it was the case of the first respondent that, the OSR charges could be levied only if an extent of land equivalent to 10% of the total area of the lay out was not reserved for open space and conveyed to the local body.

(v) In this context, it is the further case of the first respondent who stood as the writ petitioner before the writ court that, the 10% of the total area measuring about 6 grounds and 170 sq.ft. already been handed over by the original owner, who was the predecessor in title, to the local body, namely the Corporation of Chennai.

(vi) Though the land had been handed over and it has been taken over by the Corporation of Chennai way back in the year 1976, i.e., on 11.02.1976, actual gift deed though had been drafted, it could not be executed and registered.

(vii) This was the main contention of the appellant CMDA. Therefore they demanded the said amount as OSR charges in lieu of the OSR land of 10% land.

(viii) When this issue was pending with the appellant CMDA, the first respondent filed writ petition seeking for a mandamus in W.P.No.7899 of 2010, where an order was passed by the writ court on 21.04.2010, directed the CMDA to consider the request of the first respondent. In pursuance of the same or in compliance of the said order of this Court, the appellant issued an order or communication, dated 25.06.2010 claiming that the OSR charges cannot be waived.

(ix) Challenging the said order, dated 25.06.2010 passed by the appellant CMDA, the first respondent had filed the said writ petition challenging the said proceedings, where the stand taken by the appellant CMDA was that, as per the Development Control Rules, the land equivalent to 10% of the total area of any development has to be earmarked as OSR land and if that land is not earmarked and handed over by way of executing the gift deed to local body, in lieu of the same, the applicant / promoter has to pay the market value of the said OSR land to the planning authority, namely the CMDA. Therefore on that footing, it was claimed by the CMDA that, they demanded the said amount which the first respondent wanted to waive. Therefore it was not accepted and therefore the order impugned in the writ petition was passed.

(x) With regard to the said stand taken by the appellant CMDA, the first respondent who was the writ petitioner, had brought to the notice of the learned Judge that, insofar as the handing over of the 10% of the total area of the lay out as open space Reserve is concerned, 6 ground and 170 sq.ft.

had already been given to the Chennai Corporation and they have also taken possession on 11.02.1976, since then, it has been maintained by the Chennai Corporation as their land or OSR land and therefore the question of giving further land as OSR land does not arise. Therefore the question of making any demand of OSR charges in lieu of the OSR land also does not arise.

(xi) Having considered the rival contentions raised by the parties before the writ court, the learned Judge by his exhaustive order, had allowed the said writ petition, by order, dated 25.09.2012. As against which, this writ appeal has been directed.

3. Heard Mr.P.Kumaresan, learned Additional Advocate General assisted by Mrs.Veena Suresh, learned Standing counsel appearing for the appellant CMDA.

4. The learned Additional Advocate General would contend that, insofar as the lay out in question is concerned, initially a large extent have been plotted out by the original owner consisting of 34 plots, that was

approved by the planning authority sometime in 1974. At that time, the plot No.35 though has been mentioned, subsequently, a revised plan was submitted to the Chennai Corporation, where plot Nos.36 to 65 have been sub-divided and a revised plan was submitted to the Chennai Corporation to approve the entire plot area consisting of plots from 1 to 65, that was refused or rejected by the Chennai Corporation.

5. Thereafter, no approval had been given to the lay out, at least for the plots starting from 36 to 65 and insofar as the land in question belongs to the first respondent is concerned, plot Nos.41, 42, 53 and 54 are put together and made as a square shape land, which was the land wherein the proposed Multi Storied Building, in short MSB was to be constructed. Therefore to get approval for 4 such plots, the said application since had been filed, that was considered and all charges including OSR charges had been sought for, which was not paid by the first respondent writ petitioner, instead they wanted waiver of the said OSR charges, which could not be given by the appellant CMDA. Therefore it was rejected through the order, dated 25.06.2010.

6. Therefore the learned Additional Advocate General would further contend that, insofar as the 4 plots meant for construction of MSB is concerned, those plots were unapproved plots or plots forming part of the unapproved lay out. Therefore in order to regularise those plots, the OSR land condition should be fulfilled, otherwise, at least the OSR charges in lieu of the OSR land shall be paid. Therefore such a charges cannot be sought for waiver and hence, the first respondent /writ petitioner along with his family members who made the joint application for such approval are not entitled to seek for such waiver of the OSR charges. Therefore there was every justification on the part of the appellant CMDA to pass orders to reject such request through the order, dated 25.06.2010 which is impugned before the writ court.

7. The learned Additional Advocate General would also contend that, though it was the stand taken by the Chennai Corporation, that 6 grounds and 170 sq.ft. had been handed over to the Corporation who had taken possession of the same on 11.02.1976 and the land, i.e., OSR land had been maintained by the Chennai Corporation all along, the fact remains that,

there has been no document to establish that, 6 grounds and 170 sq.ft. as OSR land had been executed and handed over or gifted to the Chennai Corporation.

8. As per the Development Control Rules, as far as the OSR lands are concerned, it should be clearly gifted by way of gift deed and duly executed and registered the same in favour of local body. Unless and until such a transfer is effected under the Transfer of Property Act and Registration Act, it cannot be stated that, the OSR land has been handed over to the local body, i.e., Chennai Corporation. Therefore the learned Additional Advocate General would contend that, the stand taken by the Chennai Corporation would no way help the first respondent and the first respondent also cannot take shelter under the stand of the Chennai Corporation as if the predecessor in title, i.e., the original promoter had handed over the OSR land to the extent of 6 grounds and 170 sq.ft. to the Chennai Corporation. Therefore on that ground, the demand made by the appellant CMDA for OSR charges is fully justifiable and the plea that has been taken by the first respondent / writ petitioner is completely untenable. Therefore that waiver plea made by

the first respondent / writ petitioner having been considered was rejected through the order of the appellant CMDA, dated 25.06.2010. Therefore that order is to be sustained, however, erroneously the learned Judge has taken a different view in considering the aforestated aspects or the issue has not been considered in proper perspective by the learned Judge and therefore, the said writ petition since has been allowed through the impugned order, it requires reconsideration and interference of this Court against the impugned order passed by the writ court, he contended.

9. On the other hand, Mr.G.Masilamani, learned Senior counsel appearing for the first respondent / writ petitioner would contend that, insofar as the four plots which were submitted for the purpose of regularisation and approval for construction of MSB is concerned, if it is the stand of the appellant CMDA, that the said plots or land are part of the unapproved lay out, that means, that piece of the land or four plots are only unapproved land. Therefore independently that lands have to be considered for the purpose of approval and regularisation. Therefore the said plot area alone shall be taken into account for the purpose of levying the OSR

charges and in this context, if it is less than 2500 sq.mt. earlier and subsequently less than 3000 sq.mt as per the Development Control Rules, exemption shall be given for the lands from OSR charges. Therefore the very demand of OSR charges itself made by the appellant CMDA is unlawful, he contended.

10. The learned Senior counsel would further submit that, that apart the entire lay out is concerned, it is the stand of the Chennai Corporation that, the entire lay out including plots up to 65 had been approved.

11. Assuming that, part of the lay out has not been approved, that is from plot No.35 or 36 till 65 is concerned including the land belongs to the first respondent and his wife and son, insofar as their said lands are concerned, if it is part of the unapproved layout, for the entire unapproved lay out since has been taken into consideration by the CMDA, for which the OSR land has been calculated, 6 grounds 170 sq.ft. already being the OSR land was handed over by the original owner, that is, the predecessor in title of the first respondent, to the Chennai Corporation.

12. This position since has been confirmed, the learned Senior counsel would contend that, from 1976 the said OSR land of 6 grounds and 170 sq.ft. being maintained by the Chennai Corporation, for all practical purposes. The OSR land since has been earmarked and handed over to the local body, the question of demanding any OSR charges in lieu of OSR land does not arise and therefore, for that reason also, the demand made by the CMDA cannot be countenanced, he contended.

13. On the other hand, Mr.R.Raman Laal, learned Additional Advocate General appearing for the second respondent, Chennai Corporation, on instructions would submit that, originally plot up to 35 had been approved by the Chennai Corporation. Up to plot No.34, it was only a small extent of each plot roughly 1 ground and odd each. As far as plot No.35 is concerned, it is totally 80 grounds, which has been shown as single plot. Subsequently, those 80 grounds in plot No.35 had been further plotted out from Plot No.36 to 65, out of which, these four plots, i.e., Plot Nos. 41, 42, 53 and 54 had been purchased by the first respondent, his wife and his son.

14. The learned Additional Advocate General appearing for the Chennai Corporation would further submit that, each and every plot, i.e., not only from Plot Nos.1 to 34 but also from Plot Nos. 36 to 65 whoever purchased the plot from the original owners made applications to the Chennai Corporation as well as CMDA. Since majority of them applied to the Chennai Corporation as their built up area is only Ground + 2 floors, therefore the plan approving authority is the Chennai Corporation, to whom applications were made and all those applications having been processed, approval was given.

15. At least in some cases, like the present first respondent, when such application had been made, the CMDA also had given approval regularising the said plots for multi storied building, i.e., more than Ground + 2 floors. All these approvals had been given both by the Chennai Corporation and CMDA only on the basis of the receipt of OSR land to the extent of 6 grounds and 170 sq.ft. which had been handed over to the Chennai Corporation on 11.02.1976, since then these 6 grounds and odd as OSR land being maintained only by the Chennai Corporation.

16. In support of his contention, the learned Additional Advocate General appearing for the Chennai Corporation has produced some of the plan approval given by the Corporation of Chennai in other plots. For instance Plot Nos.36 and 59 etc. were given such approval. Also the learned Additional Advocate General appearing for the Chennai Corporation has filed certain photographs to establish that the 6 grounds and 170 sq.ft of the OSR land being maintained for public utility like toilet, playing area etc.,

17. We have considered these rival submissions made by the respective learned counsel appearing for the parties and have perused the materials placed before this Court.

18. Though extensive arguments were made by the learned Counsel appearing for the parties, the issue which is to be resolved in this case is in very narrow compass.

19. In fact, the issue raised by the writ petitioner / first respondent and the counter arguments made by the CMDA who is the appellant herein

before the writ court was considered extensively by the writ court and a detailed order has been passed, where, the Development Control Rules, right from 1979 till date issued from time to time by the rule making authority having been taken note of, the learned Judge has given answers to those queries raised before him with regard to the demand that has been made by the appellant CMDA seeking the OSR charges.

20. It is to be noted that, G.O.Ms.No.743, Housing and Urban Development Department, dated 10.05.1979 was issued as Development Control Rules for unauthorised layout / sub-divisions, levy on Open Space Reservation charges. This in fact has been considered by the learned Judge in the impugned order at para 20.

21. In the said G.O.Ms.No.743, it has been mentioned that, according to Rule 19(a)(iv) of the Development Control Rules of the Madras Metropolitan Development Authority, a layout / sub-division will be approved by the Madras Metropolitan Development Authority only if Open Space Reservation is made for communal and recreational purposes, where

a table has been given. The said table has been extracted at para 18 of the impugned order, therefore we do not propose to extract once again the same.

22. If we look at the table, if the extent of layout is up to 2500 sq.mt. the OSR land required is Nil. That means up to 2500 sq.mt, no OSR land need to be reserved or handed over to the local body. If it is beyond 2500 sq.mt and upto 10000 sq.mt, 10% of the area excluding the roads shall be reserved or the promoter shall pay 1 1/2 times the market value of the equivalent land as per the valuer of the Registration Department. The table further states that, if it is above 10,000 sq.mt, 10% of the area excluding road shall be reserved and this space shall be maintained as communal and recreational open space.

23. The said prescription has been modified with effect from 05.08.1975. Subsequently also amendment has been made in the Development Control Rules at various point of time. According to the said rules, the said open space reserve area required for the layouts of various extent has been mentioned in a table. This has also been extracted by the learned Judge in the impugned order in para 22 and 23.

24. The 2500 sq.mt. ceiling fixed under 1979 G.O. has been enhanced to 3000 sq.mt. That means for the land upto 3000 sq.mt, no need to have a reservation of open space. Only beyond 3000 sq.mt, up to 10000 sq.mt, such a reservation or charges in lieu of reservation are provided and above 10000 sq.mt, 10% of the area must be reserved as OSR. This position continues even till date.

25. Therefore two issues have to be noticed here. First one is that up to 2500 sq.mt. if lands are placed for regularisation and approval, no OSR land needs to be reserved, therefore the question of demanding any OSR charge does not arise. The position has been further improved in the subsequent amendment of the Development Control Rules, where the OSR land limit has been increased up to 3000 sq.mt. Insofar as the present land which is in question consisting of plot Nos.41, 42, 53 and 54 is concerned, the total extent of these four plots is 17000 sq.ft, which is equivalent to 1579 sq.mt. Therefore it is well under 2500 sq.mt ceiling.

26. When that being so, for the lands which are placed for approval and regularisation to the planning authority, namely the CMDA of less than 2500 sq.mt., the reservation of OSR is Nil, therefore no OSR need to be reserved or handed over to the local body.

27. Despite these factual position, on what basis, the CMDA had demanded the OSR charges from the first respondent is not known.

28. In this context, it is further to be noted that, the stand of the CMDA as projected by the learned Additional Advocate General appearing for the CMDA is that, the subject land may be 1579 sq.mt, however, the entire layout area consisting of the unapproved plots starting from plot Nos.36 to 65 had been considered as single layout for the purpose of calculating the OSR land or demanding the OSR fees in lieu of the OSR land. This kind of approach of the CMDA cannot be approved by this Court, for the reason that, it is the definite stand of the CMDA that plot Nos.36 to 65 including plot Nos.41, 42, 53 and 54 are unapproved plots. If they are unapproved plots, each and every plot are an independent unit, i.e., it is a bare and vacant land and unapproved and that would be placed by way of application for regularisation and approval for construction of building.

29. If that being so, four plots consisting of 1579 sq.mt, unapproved land had been shown as the land to develop to construct a multi storied building, that is the reason why, they approached the CMDA. If that being so, these four plots area consisting of 1579 sq.mt alone shall be taken as a unit for the purpose of calculating the OSR.

30. This must be the approach of the CMDA in considering the application submitted by the first respondent. The reason being that, according to rule 19(a)(iv) of the Development Control Rules of the Madras Metropolitan Development Authority, a layout / sub-division will be approved by the Madras Metropolitan Development Authority only if Open Space Reservation is made. That means either a layout or a sub-division can be approved by the CMDA provided if the layout or the sub-division area requires reservation of OSR.

31. Only in this context, the table given in the said rule should be taken into account, where up to 2500 sq.mt, no OSR need to be reserved. The four plots consisting of 1579 sq.mt only and these four plots since are

unapproved, they should be treated only as a sub-division and the sub-division, when it is placed for regularisation and approval to the CMDA, they must treat it as a separate sub-division and the extent of these sub-division alone shall be taken into account and if the total extent of this sub-division comes only less than 2500 sq.mt originally and subsequently, 3000 sq.mt as per the amended rule, the CMDA ought not to have demanded any reservation of OSR or demanded any OSR fees in lieu of OSR land.

32. This simple factor has been completely ignored by the CMDA right from the beginning and despite the same having been discussed exhaustively by the learned single Judge who passed the order which is impugned herein, still not satisfying with the same, the CMDA has chosen to file this Intra Court Appeal absolutely without any acceptable ground.

33. Apart from these reasons, independently, assuming that the OSR lands have to be earmarked or reserved and handed over to the local body is concerned, factually it was found that 6 grounds and 170 sq.ft of land had already been earmarked or reserved as OSR land by the original promoter

and it was handed over to the Chennai Corporation as early as on 11.02.1976. This position has been confirmed by the Chennai Corporation through the learned Additional Advocate General appearing for Chennai Corporation who made it very clear that, the Chennai Corporation has received the OSR land to the extent of 6 grounds and 170 sq.ft and has been utilising the same as OSR land till date.

34. That apart, the learned Additional Advocate General appearing for the Chennai Corporation has brought to the notice of this Court that, several such plot owners in the very same layout had already approached the Chennai Corporation to get regularisation and approval which has been given. One such order in respect of plot No.36 and 59 in the very same layout of one K.Subbiah having been considered, such an approval was given by the Chennai Corporation and the necessary proceedings issued in this regard has been produced by the learned Additional Advocate General before this Court, where on perusal we found that the Open Space Reservation charges has been shown as Nil.

35. It is also brought to our notice shockingly that, despite this litigation, the appellant CMDA had already given approval to the multi storied building to be constructed by the first respondent and after getting such an approval, such multi storied building in fact already been constructed according to the learned Senior counsel appearing for the first respondent. On what basis, such approval had been given is not known and has not been stated anywhere as to which reason they made a demand of OSR charges and for which reason such approval has been given.

36. After having gone through all these records and hearing the learned counsel appearing for the parties concerned, we find that the CMDA has been under total misconception insofar as the application of the relevant Development Control Rules regarding the demand of the OSR charge is concerned.

37. The reason being that, first of all there has been a complete exemption of OSR land for the property with an extent of less than 2500 sq.mt. The present property is definitely less than 2500 sq.mt., therefore

total exemption is available and hence the demand of OSR charge does not arise.

38. Assuming that for argument sake, if it is the stand of the CMDA that the CMDA has taken the entire layout area as one unit and therefore such a demand has been made as it has not been exempted, because of the larger extent which goes beyond 10000 sq.mt is concerned, it is again an absurdity on the part of the CMDA to make such a demand. The reason being that, if it is more than 10000 sq.mt, considering all the unapproved plots starting from plot Nos.36 to 65 as per the Development Control Rules, only open space reserve land is required, i.e., 10% of the land which has already been given and taken over by the local body.

39. Therefore there is no possibility of making any OSR charges in lieu of the OSR land for the layout consisting of more than 10000 sq.mt. When that being so, if the entire lay out of unapproved plots from 36 to 65 are taken into account, certainly it is more than 10000 sq.mt as the total extent of this unapproved layout is 80 grounds and odd. If the entire 80

grounds and odd are taken into account, it is more than 10000 sq.mt, for which no OSR charges can be levied or demanded in lieu of OSR land because only the OSR land alone to be handed over and not the OSR charges. Therefore on that ground also, the move on the part of the CMDA does not make any sense or logic.

40. Therefore looking from any angle, the demand made by the CMDA from the first respondent to make the OSR charges to the extent of Rs.58,50,000/- is unauthorised, unlawful and unjustifiable.

41. Therefore the first respondent had made a request for waiver of such charges and that was also misconstrued by the CMDA as if that, the first respondent seeking some concession which could not be given. Therefore on that ground, stating the reason that the 6 grounds and 170 sq.ft of OSR land claimed to have been handed over to the Chennai Corporation has not been executed by way of Registration of a gift deed and that was the only reason cited in the order impugned before the writ court passed by the CMDA.

42. The said reason cited in the said order passed by the CMDA, dated 25.06.2010 is absolutely unjustifiable, because, first of all the 6 grounds and 170 sq.mt of land had been handed over to the Chennai Corporation on 11.02.1976 and it has been stated before this Court by the learned Additional Advocate General appearing for the Chennai Corporation that the land had already been handed over and taken over by the Chennai Corporation and has been maintaining it as a OSR land.

43. The OSR charge demand made by the CMDA is not tenable as already been found out by this Court for various reasons which we have discussed herein above. Therefore the reasons cited by the CMDA in the said order, dated 25.06.2010, which was impugned before the writ court is absolutely unjustifiable and unlawful. Hence the learned Judge has considered all these aspects in proper perspective and by his extensive order, has ultimately come to a conclusion that the said order passed by the CMDA, dated 25.06.2010 has to be set aside. Accordingly he has set aside the same.

44. The said order passed by the learned Judge which is impugned herein speaks for itself, therefore, for all these reasons we have discussed herein above, the said order of the learned Judge which is impugned herein is to be sustained.

45. Resultantly, the instant appeal does not have any grounds to stand and therefore it naturally has to fail, hence, it is failed.

46. Therefore, the Writ Appeal is deserved to be dismissed, accordingly, it is dismissed. However, there is no order as to costs. Consequently connected miscellaneous petition is closed.

(R.S.K., J.) (G.A.M., J.)
09.02.2024

Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

tsvn

To

The Commissioner
Corporation of Chennai,
Chennai - 600 003.

R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.

tsvn

Judgment in
W.A.No.542 of 2013

09.02.2024