



WEB COPY



W.P.No.30883 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.30883 of 2012 and
MP.No.2 of 2012

S.Arunachalam

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary to Government,
Housing and Urban Development Department,
Secretariat, Fort St.George,
Chennai 600 009
- 2.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008
- 3.The Commissioner,
Corporation of Chennai,
Ripon Buildings,
EVR Salai,
Chennai – 600 003

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of Constitution of India praying to issue a writ of certiorari calling for the records of the second respondent in its impugned letter no.B1/615/2012, dated 31.10.2012 and to quash the demand of Rs.37,50,000/- made by the second respondent



W.P.No.30883 of 2012

towards payment of Open Space Reservation Charges.

WEB COPY

For Petitioner : Mr.R.Umasuthan

For Respondents

For R1 : Mr.V.Manoharan,
Additional Government Pleader

For R2 : Mrs.P.Veena Suresh,
Standing Counsel

For R3 : Mr.G.T.Subramaniam

ORDER

This writ petition has been filed challenging the order passed by the second respondent dated 31.10.2012 thereby demanded a sum of Rs.37,50,000/- towards open space reservation charges.

2. The petitioner had purchased property admeasuring 1 ground and 1180 sq.ft. comprised in RS.No.4288/54, Block No.94, Mylapore, Chennai situated at Plot no.44, Door No.85, (old No.44), Kasturi Avenue, MRC Nagar, Chennai. The said property was purchased by the petitioner by way of registered sale deed dated 02.02.1976 registered vide document No.106 of 1976. The layout of the said house site was approved by the Corporation of Madras under reference 189 of



W.P.No.30883 of 2012

WEB COPY

1975. The layout approval was duly extended by the approval No.177 of 1976. As per the layout, house plots were provided with water connection, drainage and sewerage connection. The petitioner obtained planning and building permission from the third respondent for construction of residential house under PPA.No.2667 of 1978 and PP.No.2565 of 1978 dated 04.08.1978. Accordingly, the petitioner constructed house and the house was also subjected for property tax, water, drainage and sewerage connection charges. Thereafter, as the said house had become dilapidated and unworthy for occupation, the petitioner applied through his power of attorney for demolition and reconstruction by fresh planning and building permission. While being so, the second respondent by order dated 31.10.2012 demanded a sum of Rs.37,50,000/- as open space reservation charges along with other charges. The petitioner questioned the demand of open space reservation charges alone on various grounds.

3. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.



W.P.No.30883 of 2012

WEB COPY

4. The very same issue was already dealt with by this Court in WP No.14670 of 2010 dated 25.09.2012, wherein it is held as follows:

“36. But, in respect of layouts whose total extent of land is above 10,000 sq. meters, the Rules have always insisted upon handing over of Open Space Reservation land to the extent of 10% of the total area. In respect of layouts whose total extent is above 10,000 sq. meters, it was made clear by the successive Government Orders that no charges in lieu of 10% of the area can be accepted. This is borne out by--

(1) G.O.Ms.No.743, Housing and Urban Development, dated 10.5.1979,

(2) G.O.Ms.No.940, Housing and Urban Development, dated 8.10.1982,

(3) the Development Control Rules as of September, 2004 (hosted in the official website) and the Table contained therein under Rules 19(a) and 19(b) and

(4) [Regulation 29](#) and Annexure XX under the Development Regulations of the year 2008.

37. The above discussion containing the entire history of development of the legal obligations imposed upon developers of layouts under the [Tamil Nadu Town](#)



W.P.No.30883 of 2012

and Country Planning Act, would show two things, namely, (i) that in respect of layouts where the total extent of land is above 10,000 sq. meters, it is not permissible to collect charges in lieu of 10% of the Open Space Reservation land; and (ii) that in respect of layouts where the total extent of land is between 3,000 sq. meters and 10,000 sq. meters, there was an option either to leave Open Space Reservation land or to pay charges in lieu thereof.

38. In so far as the case on hand is concerned, the first respondent-CMDA has taken a categorical stand that the land belonging to the petitioner is in a layout whose original extent of site was above 10,000 sq. meters. Therefore, the obligation of the original promoter was to carve out Open Space Reservation land to the extent of 10% of the total area. No charges could be or could have been accepted in lieu thereof.

39. The fact that no Deed of Conveyance was executed in respect of OSR land already handed over to the Corporation, cannot really stand in the way, since the law is well settled by the Supreme Court in the decisions which I have referred to in paragraph 13 above. Therefore, I am of the considered view that the demand for OSR charges from the petitioner, on the ground that



W.P.No.30883 of 2012

OSR land was not conveyed, cannot be sustained for 3 reasons namely---

- (i) that 10% of the area had actually been handed over to the local body about 36 years ago;
- (ii) that no charges in lieu of OSR land can be accepted if the parent site of the layout is more than 10,000 sq. meters; and
- (iii) that in any case, the legitimacy of the demand for conveying of the OSR land by a registered deed is doubted by the Supreme Court in Pt. Chet Ram and other cases. Therefore the impugned demand is liable to be set aside and the petitioner is entitled to succeed. Hence, this writ petition is allowed and the impugned order is set aside.”

4.1 Aggrieved by the above order, the second respondent also preferred appeal in WA.No.542 of 2013 and the same was also dismissed by this Court by order dated 09.02.2024. The relevant portion of the said order is extracted hereunder:

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



W.P.No.30883 of 2012

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



WEB COPY



W.P.No.30883 of 2012

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.



WEB COPY



W.P.No.30883 of 2012

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



W.P.No.30883 of 2012

WEB COPY

order of the learned Judge which is impugned herein is to be sustained.

5. In view of the above, the impugned order passed by the second respondent dated 31.10.2012 is quashed insofar as demand of open space reservation charges alone to the tune of Rs.37,50,000/- and this writ petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

16.08.2024

Neutral citation: Yes/No

Index: Yes/No

Speaking/Non-speaking order
lok



WEB COPY



W.P.No.30883 of 2012

To

1. Secretary to Government,
The State of Tamil Nadu,
Housing and Urban Development Department,
Secretariat, Fort St. George,
Chennai 600 009
2. The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008
3. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
EVR Salai,
Chennai – 600 003



WEB COPY



W.P.No.30883 of 2012

G.K.ILANTHIRAIYAN, J.

lok

W.P.No.30883 of 2012



WEB COPY



W.P.No.30883 of 2012

16.08.2024