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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 14.12.2023

Orders delivered on : 27.03.2024

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

and

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.Nos.12405, 12408, 12414, 12416 of 2022
and WMP.Nos.11871, 11875, 11878, 11879, 11880
and W.P.No.16277 of 2023

W.P.No.12405 of 2023 :-

M/s.Marg Properties Limited
having its registered office at
Sri Sai Subhodhaya Apartments
Basement No.57/2B,East Coast Road
Thiruvanniyur, Chennai-600 041
Rep. By its Authorised Signatory

..Petitioner in all the
above WPs

Vs

1. The State of Tamilnadu,
rep. by the Principal Secretary to Government,
Housing and Urban Development [UD5(1)] Department
Fort St.George, Chennai-600 009
- 2.The Director
Town and Country Planning
2nd, 3rd, 4th floor, C&E Market Road
Koyambedu, Chennai-600 107
- 3.The Member Secretary/Regional Deputy Director
Mammalapuram Local Planning Authority/
Directorate of Town and Country Planning, Chenglepet.



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4. The Executive Officer
Thiruporur Panchayat Union
Thiruporu, Chengelpet

..Respondents in all
the above WPs.

PRAYER in WP.12405 of 2022: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records relating to the impugned order in G.O.[3D] No.11 dated 18.01.2021 passed by the 1st respondent rejecting the appeal preferred by the petitioner and directing the petitioner to obtain fresh planning permission from the concerned authority and quash the same.

PRAYER in WP.12408 of 2022: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records relating to the impugned demand notice in Na.Ka.No.122/2010 dated 31.08.2021 and consequent rejection letter in Na.Ka.No.453/2021 dated 29.12.2021 issued by the 4th respondent, demanding vacant land tax on the land in which constructions of building are in progress as per plan permission No.18/2011 (1 to 44) dated 20.04.2011 and quash the same.

PRAYER in WP.12414 of 2022: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the records on the files of the 3rd respondent relating to the impugned communication in Na.Ka.No.299/2014/MMPLA dated 21.12.2015 and quash the same as arbitrary and illegal and further direct the 2nd respondent to consider the petitioner's



application dated 24.09.2014 and resubmitted on 17.04.2015 for extension/renewal of planning permission and grant extension/renewal of planning permission in No.18/2011 (1 to 44) dated 20.04.2011 for further period as provided in law, without demanding any additional charges including development and infrastructure and amenities charges from the petitioner.

PRAYER in WP.12416 of 2022: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari, to call for the records relating to the impugned Letter in 7877/UD4-3/2019-2 dated 06.02.2020 issued by the 1st respondent requesting the petitioner to submit fresh application for planning permission to the concerned authorities and quash the same as illegal.

PRAYER in WP.No.12414 of 2022: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the entire records on the files of the 3rd Respondent relating to the impugned communication Na.Ka.No.299/2014/MMPLA dated 21.12.2015 and quash the same as arbitrary and illegal and further direct the 2nd respondent to consider the petitioners application dated 24.9.2014 and resubmitted on 17.4.2015 for extension /renewal of planning permission and grant extension /renewal of Planning permission in No.18/211 (1 to 44) dated 20.4.2011 for further period as provided in law without demanding and additional charges including development and infrastructure and amenities charges from the petitioner.



PRAYER in WP.No.16277 of 2023: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorari to call for the records relating to the impugned notice Na.Ka.No.122/2010 dated 27.04.2023 issued by the 4th respondent, threatening to seal the project premises and initiate criminal proceedings treating the constructions of building as per plan permission No.18/2011 (1 to 44) dated 20.04.2011 as unauthorized and illegal.

For Petitioner	:Mr.Issac Mohanlal, Senior counsel Assisted by Mr.Godson Swaminathan for Mr.K.Alakendran
For Respondents	:Mr.Stalin Abimanyu Additional Government Pleader for R1 and R2 Mr.S.Balamurugan for R3 Mrs.C.Sangamithrai for R4.

COMMON ORDER

W.P.No.12405 of 2022 was filed praying to quash the impugned order in G.O.[3D] No.11 dated 18.01.2021 passed by the 1st respondent whereby, the appeal preferred by the petitioner was rejected and directed the petitioner to obtain fresh planning permission from the concerned authority.

W.P.No.12408 of 2022 was filed praying to set aside the demand Notice in Na.Ka.No.122/2010 dated 31.08.2021 and consequent rejection letter in Na.Ka.No.453/2021 dated 29.12.2021 issued by the 4th respondent, demanding vacant land tax on the land in which constructions of building are in progress.



W.P.No.12414 of 2022 was filed to set aside the communication of the 3rd respondent in Na.Ka.No.299/2014/MMPLA dated 21.12.2015 and further direct the 2nd respondent to consider the petitioner's application dated 24.09.2014 and re-submitted on 17.04.2015 for extension/renewal of planning permission in No.18/2011 dated 20.04.2011 for further period as provided in law, without demanding any additional charges including development and infrastructure and amenities charges from the petitioner.

W.P.No.12416 of 2022 was filed praying to set aside the order in Letter No.7877/UD4-3 /2019-2 dated 06.02.2020 issued by the 1st respondent requesting the petitioner to submit fresh application for planning permission to the concerned authorities.

W.P.No.16277 of 2023 was filed praying to set aside the impugned notice in Na.Ka.No.122/2010 dated 27.04.2023 issued by the 4th respondent, threatening to seal the project premises and initiate criminal proceedings by treating the communications of buildings as per plan permission No.18/2011 (1 to 44) dated 20.04.2011 as unauthorized and illegal.

2. The nutshell of the facts in the above writ petitions is that the petitioner is a builder and intended to construct a multistoried residential apartment at the vacant land measuring a total area of 28743.15 sq.meters situated at



Kalavakkam Village, Tiruporur Taluk, Chengalpet District and submitted the proposal (Project) to the 2nd respondent through the 3rd and 4th respondent respectively to build 6 blocks encompassing 732 dwelling units with a built-up area of 71,684.84 sq.mtr.

3. The 2nd respondent granted technical clearance for the same vide his order dated 08.03.2011 in Ka.Va.DTCP.No.38/2011. Subsequent to technical clearance granted by the 2nd respondent, 3rd respondent vide letter dated 20.04.2011 issued a planning permission vide building plan permit under Section 49(1)(2) and (3) of Tamil Nadu Town and country Planning Act, 1971 vide planning Permission No.18/2011.

4. The validity of the approval is for 3 years i.e. From 20.04.2011 to 19.04.2014. The petitioner paid Rs.180,00,000/- towards infrastructure and amenities charges and development charges as demanded in the order granting planning permission. Two years later, environment clearance was granted by State Level Environment Impact Assessment committee/Authority on 09.07.2013.

5. Since the approval granted is for 3 years from 20.04.2011 to



19.04.2014 after the expiry of the said period, 4th respondent insisted for renewal of building plan approval vide letter dated 05.05.2014. The petitioner preferred application dated 24.09.2014 for renewal. In the meantime, the 4th respondent Panchayat again issued a notice dated 17.10.2014 insisting the petitioner to obtain extension of time. The petitioner again preferred an application for renewal/extension of time.

6. However, the 4th respondent issued lock and seal notice in Na.Ka.No.45/2015 dated 27.07.2015 under Sections 56 and 57 of the Tamil Nadu Town and Country Planning Act, 1971. The petitioner gave objections to the said Lock and seal notice on 31.07.2015.

7. The petitioner preferred an application dated 11.09.2015 for renewal of building plan approval to the 3rd respondent Local Planning Authority. Thereafter, lock and seal was removed by the 4th respondent, by order dated 29.07.2015.

8. The 3rd respondent Local Planning Authority vide letter dated 21.12.2015 pointed out that extension of time will be decided on payment of additional infrastructure and Amenities charges as per revised rates notified vide



G.O.(Ms).No.86, Housing and Urban Development Department dated 28.03.2012. The petitioner again requested for extension of time vide letter dated 09.03.2020.

9. The petitioner also sent representations dated 21.01.2020 and 09.03.2020 to the Principal Secretary to the Government, Housing and Urban Development Department, stating that resubmission of Planning Permission application will result in raising fresh demand increasing the cost of construction to complete the project. The petitioner requested to place the matter before Appeal Committee with a request to sympathetically consider the matter considering the cost escalation as well as the need to complete the project with further request to inspect the site for granting extension.

10. Thereafter, the Deputy Secretary to Government, by letter dated 09.10.2020, communicated to the petitioner to attend the Appeal Committee Meeting on 12.10.2020. On 31.08.2021, a notice was issued by the 4th respondent stating that the construction carried out is beyond the planning permission validity period and hence, the same is considered as an unauthorized building and therefore, directed to get necessary orders for approval by payment of charges applicable to the building. Thereafter, the petitioner by letter dated



24.12.2021, stated that the project awaiting UDS registration and since the completion is in progress, sought to consider the present stage of construction. Subsequently by letter dated 29.12.2021, the 4th respondent rejected the request of the petitioner for extension of time relying on the rejection of Appeal preferred by the petitioner by G.O.(3D).No.11 dated 18.01.2021.

11. It is relevant to point out herein that in the Appeal Committee Meeting, the petitioner put forth their submission that due to delay in obtaining EIA clearance, the entire project was delayed from the Original scheduled project period. Since the project was registered under Tamil Nadu Real Estate Regulatory Authority on 02.07.2018, the petitioner sought to extend the validity of planning permission for a period of 12 months as a special case. However, the Appeal Committee taking note of the DTCP letter dated 06.02.2020, rejected the appeal and directed the petitioner to obtain fresh planning permission

12. The Government vide order in G.O.(3D).No.11 Housing and Urban Development [UD5(1)] Department dated 08.01.2021 after recording the recommendations of the Appellate Committee, rejected the appeal of the petitioner under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971, and directed the petitioner to obtain fresh planning permission from the



concerned authority.

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13. The third respondent filed counter affidavit stating that it is the duty of the petitioner to obtain necessary clearance from the appropriate authority within the stipulated time and the delay in getting environment clearance, cannot be stated as a reason for extending the validity of the planning permit. It is further stated that the affidavit of the petitioner dated 17.04.2015 would go to show that the entire structure built up is an unauthorized building. After the expiry of time limit of plan approval, the request for extension of time was rejected and directed the petitioner to file a fresh application for approval.

14. The 4th respondent filed counter affidavit stating that the petitioner failed to construct the building within the time as stipulated in the planning permission dated 05.05.2011 and therefore, based on G.O.No.161 Housing and Urban Development Department dated 09.09.2009, 4th respondent issued a lock and seal notice upon the project on 27.07.2015. It is further stated that the 1st respondent passed the order on 06.02.2020 directing the petitioner to submit fresh application for planning permission to the concerned authorities. The petitioner preferred an appeal against the above said order and the same was rejected by the 1st respondent vide G.O.(3D).No.11 dated 18.01.2021.



Thereafter, a demand notice dated 31.08.2021 demanding vacant land tax was issued since the extension of plan permission was rejected by the respective authorities.

15. Heard both sides counsel in detail and perused the records carefully.

16. The impugned order passed in G.O.(3D).No.11 Housing and Urban Development [UD5(1)] Department, dated 18.01.2021 would go to show that the petitioner sought before the Appeal Committee to consider the case and sought for extending the validity for a period of twelve months and if need be to conduct inspection on the site in order to grant necessary extension. However, the Appeal committee, after hearing the petitioner rejected the appeal and gave recommendations that the petitioner has to obtain fresh planning permission. The 1st respondent examined the appeal and taking note of the recommendation of the Appeal Committee, rejected the appeal preferred by the petitioner and directed the petitioner to obtain fresh planning permission from the concerned authority. Further, directed the Director, Town and Country Planning to take necessary action as per existing procedure.

17. The learned Senior counsel appearing for the petitioner among very



many contentions, submitted that the prescribed authority empowered to hear the appeal has to act quasi judicially and decide the matter in accordance with law. The authority has to independently consider whether to accept the representations or to reject them. The discretion has to be exercised within the statutory limits and on application of mind to the facts of the case as also the recommendations of the Appeal Committee. The learned senior counsel further submitted that since the 1st respondent-Quasi judicial authority rejected the appeal based on the recommendations of the Appeal Committee, the appeal requires rehearing and disposal in accordance with law.

18. It is well settled principle that a statutory authority shall act within the limits of the statute and exercise its discretion only within such prescribed limits, and not beyond. There can be no assistance taken in the quasi judicial function. In similar circumstances, a Division Bench of this court in the case of ***1.Alarmel Valli Vs. The Secretary, Urban and Housing Department, Fort St.George, Chennai-600 009 [2016 SCC Online Mad 1754]*** set aside the order of the 1st respondent and remitted the matter back to the 1st respondent for fresh consideration/rehearing and disposal in a dispassionate manner and in accordance with law. The Division Bench held that the 1st respondent has not ascribed reasons much less justifiable or acceptable to satisfy the subjective



conscience of the court, in accepting the Appeal Committee's Recommendations.

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19. Another Division Bench of this Court in ***W.P.Nos.5253, 12208 and 12211 of 2020 [Order dated 28.03.2023 R.P.S.Mahendhiran Vs. 1.The Member Secretary, Chennai Metropolitan Development Authority, Thazhamuthu Natarajan Building, No.1, Gandhi Irwin Road, Egmore, Chennai-600 008]*** while dealing with the reasons given by the Appeal Committee, held that the 1st respondent shall pass independent speaking order without being influenced by the report of the Appeal Committee. In such view, the Division Bench remitted back the matter to the 1st respondent for fresh consideration. The learned Judges directed the 1st respondent to decide the matter independently without being influenced by the report of the Appeal Committee.

20. Keeping in view the above legal principles, it is seen that in the present case, the petitioner's appeal was referred to the Appeal Committee and the petitioner was directed to appear before the Appeal Committee Meeting. The Appeal Committee heard the petitioner and recommended for the rejection of the appeal. The 1st respondent accepted the recommendation of the Appeal Committee and rejected the appeal. The impugned order dated 18.01.2021 would read that the Government have examined the appeal carefully with



relevant records and decided to accept the recommendation of the Appeal Committee at para 4 above; Accordingly, the Government rejected the appeal.

21. In the considered view of this court, rejection of the Appeal preferred by the petitioner by the 1st respondent merely on the basis of the report of the Appeal Committee, cannot be sustained. The 1st respondent has mechanically rejected the appeal without independently assessing the issue. Further, we are of the view that the 1st respondent has not given any reason for rejecting the appeal filed by the petitioner. As the 1st respondent is exercising his quasi judicial powers while considering and passing orders in the appeal and revision filed by the aggrieved party, the 1st respondent must consider all the materials placed before him and by independent appreciation of the materials placed, has to pass speaking order by giving reasons.

22. On a careful consideration of the contentions raised in the above writ petitions, we are of the considered view that the issue on hand requires proper consideration and hearing by the quasi judicial authority. The 1st respondent shall consider the case of the petitioner and decide the issue by exercising quasi judicial powers.



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23. In the result, the writ petitions are allowed. The impugned order of the 1st respondent dated 18.01.2021 in G.O.(3D).No.11 Housing and Urban Development [(UD5(1)) Department, is set aside. The entire matter is remanded back to the 1st respondent for fresh consideration/rehearing. The 1st respondent shall decide the matter, within a period of three months from the date of receipt of a copy of this order, independently in accordance with law after issuing notice to necessary parties. No costs. Consequently, connected miscellaneous petitions are closed.

[J.N.B.,J.]

[N.M.,J.]

27.03.2024

Index :Yes/No

Speaking/Non-speaking order

nvsri

To

1. The Principal Secretary to Government,
Housing and Urban Development [UD5(1)] Department
Fort St.George, Chennai-600 009

2.The Director

Town and Country Planning
2nd, 3rd, 4th floor, C&E Market Road, Koyambedu, Chennai-600 107

J.NISHA BANU, J.



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W.P.12405 / 2022 etc batch

and

N.MALA, J.

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3. The Member Secretary/Regional Deputy Director
Mammalapuram Local Planning Authority/
Directorate of Town and Country Planning, Chenglepet.

4. The Executive Officer
Thiruporur Panchayat Union
Thiruporu, Chengelpet

Order made in
W.P.Nos.12405 etc batch of 2022

27.03.2024