
(2014) 08 MAD CK 0235

In the Madras High Court

Case No : Writ Appeal Nos. 147 and 148 of 2013 and M.P. Nos. 1 and 2 of 2013

Chennai Metropolitan Development Authority

APPELLANT

Vs

Prestige Estates Projects Ltd.

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2014) 4 LW 83 : (2014) 6 MLJ 385

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram Sathyanarayanan, J

Bench : Division Bench

Judgement

1. The second respondent in W.P. Nos. 25677 and 25678/2012 are the appellants herein. The first respondent filed W.P. No. 25677/2012, praying for issuance of a Writ of Certiorarified Mandamus to quash the impugned demand notice dated 22.08.2012, wherein the appellant has to pay the revised Development Control and other charges, with a further direction to the appellant/second respondent to issue planning permission to the first respondent/writ petitioner, pursuant to his application dated 22.03.2011 and based on the letter dated 05.01.2012 issued by the first respondent in the writ petition and original demand notice dated 27.03.2012 received from the appellant/second respondent in the writ petition.

2. The first respondent herein filed W.P. No. 25678/2012, praying for issuance of a Writ of Declaration, declaring G.O.(Ms.) No. 86, Housing and Urban Development (UD 4(1)) Department dated 28.03.2012, issued by the second respondent herein/first respondent in the writ petition, increasing 50% of the present prevailing rates in infrastructure and amenity charges, is not applicable to them in respect of Infrastructure and Amenities (I & A) charges calculated and demanded in accordance with G.O.(Ms.) No. 161 dated 09.09.2009, passed by the very same respondent.

3. Both the writ petitions, after contest, came to be allowed by a common order dated 13.12.2012 and aggrieved by the same, the second respondent in both the

writ petitions had filed these writ appeals.

4. Facts leading to the filing of the writ petitions have been narrated in detail and in extenso in the impugned common order passed in the above said writ petitions and in order to avoid repetition, only the relevant facts necessary for disposal of these writ appeals are stated hereunder. For the sake of convenience, the array of parties as adopted in the writ petitions is adopted in these writ appeals also:

4.1. The first respondent/writ petitioner, in the affidavit filed in support of this writ petition averred that it is engaged in the business of real estate development across India and in the course of its business, entered into a Joint Development Agreement dated 15.07.2010 with the owner of the land namely M/s. Extra IT Parks Private Limited, on an area sharing basis, with respect to lands situated at Mount Poonamallee High Road, Ayyappanthangal Village, Chennai. The owner of the land, in pursuant to the above said agreement, has executed a registered General Power of Attorney dated 15.07.2010, whereby the writ petitioner was empowered to develop the property by constructing residential apartment buildings after obtaining required planning permission and No Objection Certificate (NOC) from various authorities to develop the property and thereby the writ petitioner became the developer of the property and also an agent of the landowner and the agency is coupled with interest.

4.2. The writ petitioner submitted an application dated 22.03.2011 for grant of planning permission to the second respondent/appellant herein for construction of 33 Blocks Lower Basement + Upper Basement + 1st to 19 Floors + Club House (2610 Dwelling Units) Residential Building for M/s. Prestige Estates Projects Ltd. at S. Nos. 1/1, 1/2, 2, 3/1, 3/2, 3/3, 5/1, 8/2A35, 42/1, 42/2, 42/3A, 42/3B, 42/4, 42/5, 43/1, 43/2, 44/1A, 44/1B, 44/2, 44/3, 45/1A, 45/1B, 45/2, 45/3, 45/4A, 45/4B, 46/1, 46/2, 46/3, 47/1E, 48/A, 48/1B, 48/2, 48/3, 51/1B1, 51/1B3, 51/1C1, 51/1D, 51/1E, 52/1, 52/2, 53, 54/1B of Ayyapanthangal Village, Sriperumpudur Taluk, Kanchipuram District. In the interregnum, the writ petitioner sought NOC from various authorities, namely Airports Authority of India, Fire and Rescue Services Department, Police Department etc., and the authorities had also given NOCs on various dates to the proposed development of the property subject to certain conditions stipulated therein.

4.3. The second respondent herein/first respondent in the writ petition has accepted the recommendation of the Multi-storied Building Panel and accorded its approval for construction of multi-storied buildings on the property by Letter (Ms) No. 09 dated 05.01.2012 and addressed the same to the second respondent in the writ petition/appellant herein stating among other things that the petitioner has gifted a portion of its land for road widening and Open Space Reservation (OSR) and additionally, the writ petitioner was also required to obtain NOC from Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) for using its land in S. Nos. 51/1B2 and 1C2 for access to the property and the petitioner had also obtained NOC dated 30.03.2012 from

CMWSSB and also by executing two gift deeds dated 27.04.2012 in favour of the appellant/second respondent in the writ petition, gifted portion of its land for road widening and OSR purposes and the appellant/second respondent in the writ petition also took the possession of the gifted portion of the property given by the petitioner on 24.05.2012.

4.4. The second respondent, on receipt of application for planning permission, issued a demand notice dated 27.03.2012 demanding the remittance of development charges and other charges and the same is extracted below:

(i) Development charge for land and building under Sec. 59 of the T & CP Act, 1971

Rs. 63,10,000/- (Rupees sixty three lakh and ten thousand only)

(ii) Balance Scrutiny Fee

Rs. 50,000/- (Rupees fifty thousand only)

(iii) Regularisation charge for unauthorised sub division & amalgamation

Rs. 25,10,000/- (Rupees twenty five lakh and ten thousand only)

(iv) Security Deposit (For Building)

Rs. 4,64,15,000/- (Rupees four crore sixty four lakh and fifteen thousand only)

(v) Security Deposit for Display Board

Rs. 10,000/- (Rupees ten thousand only)

(vi) Security Deposit for STP

Rs. 27,15,000/- (Rupees twenty seven lakh and fifteen thousand only)

(vii) Infrastructure & Amenities Charges

Rs. 8,34,40,000/- (Rupees eight crore thirty four lakh and forty thousand only)

(viii) Premium FSI charge for 7890.55 sq.m.

Rs. 44,75,88,000/- (Rupees forty four crore and seventy five lakh and eighty eight thousand only)

4.5. According to the petitioner, the Premium FSI charges were demanded by the appellant herein/second respondent in the writ petition under Clause 36 of the Development Control Regulations and computed on the basis of the guidelines issued in G.O.Ms. No. 163 dated 09.09.2009 issued by the first respondent in the writ petition and the rate of I & A charges are computed on the basis of G.O.Ms. No. 161 dated 09.09.2009 issued by the same respondent and both the Government Orders provide that the charges stipulated therein shall be paid in one lump sum and if the amount is not paid within 30 days from the date of original demand notice, interest @ 12% p.a. would be imposed on the demanded

amount and if the demand is not made within 60 days from the date of issue of the original demand notice, the papers would be returned to the petitioner unapproved.

4.6. The writ petitioner, having paid the demand raised by the second respondent dated 27.03.2012, requested the second respondent/appellant herein to issue planning permission and the petitioner having fulfilled all the requisite conditions, was optimistic about the obtaining of the planning permission. The writ petitioner would further state that to the shock and surprise, the second respondent/appellant herein has issued another demand notice dated 22.08.2012 in the form of revised advice calling upon the petitioner to remit the balance I & A charges of Rs. 4,17,15,000/- and balance Premium FSI charges of Rs. 90,76,75,00/- and called upon the petitioner to remit the same within 30 days from the date of receipt of the said notice, failing which interest @ 12% p.a. will be charged and if no remittance is made within 60 days from the date of issue of the demand notice, the papers would be returned unapproved. It is further indicated in the said notice that acceptance by the Authority of the pre-payment of the Development charge and other charges etc., shall not entitle the person to the Planning Permission, but only refund of the Development Charge and other charges (excluding Scrutiny Fee) in faces of refusal of the permission for non-compliance of the conditions stated above or any of the provisions of Development Regulations, which has to be complied before getting the Planning permission, provided the constructions if not commenced and claim for refund is made by the applicant.

4.7. It is the case of the petitioner that no reason has been provided in the said notice dated 22.08.2012 as to the I & A charges and Premium FSI charges and on enquiry, the writ petitioner came to know that it was revised on account of revision to the guideline value of the land which came into effect from 01.04.2012 and also in terms of G.O.(Ms.) No. 86 dated 28.03.2012. The petitioner would contend that the impugned demand notice dated 22.08.2012 is impermissible and illegal and the writ petitioner had demanded various charges which were raised in the earlier order dated 27.03.2012 and payments were also effected promptly and admittedly, those payments were made well before any increase in guideline value, which came into effect on 01.04.2012 and assessment was also done on 27.03.2012, which is prior to the amended G.O. (Ms.) No. 86 dated 28.03.2012 and took a specific stand that increase in guideline value cannot have retrospective effect and therefore, prays for quashment of the impugned demand notice dated 22.08.2012 and G.O.(Ms.) No. 86 dated 28.03.2012.

4.8. The appellant/second respondent-Chennai Metropolitan Development Authority (CMDA) has filed common counter affidavit stating among other things that NOC obtained by the writ petitioner from CMWSSB on 11.01.2008 was placed before the 197th MSB Panel meeting held on 18.11.2011 and the Committee has decided to modify the earlier conditions of forwarding proposal to

the Government only after the applicant furnishing NOC from CMWSSB and instead stipulated the condition that the applicant should submit NOC from CMWSSB before the issue of DC advice and therefore, the final DC advice is issuable only after receipt of NOC from CMWSSB. MSB panel made a representation based on which the first respondent in the writ petition/second respondent herein has accorded approval in Letter (Ms.) No. 9, H & UD (UD-1) Department dated 05.01.2012 according approval for construction put up by the petitioner subject to following conditions:

"(i) CMDA should ensure that the applicant gifts the road widening portion marked in the plan to the CMDA along with Open Space Reservation (OSR) before issue of Planning Permission.

(ii) The applicant shall furnish NOC from CMWSSB for using their lands in S. No. 51/1B2 and 51/1C2 for access before issue of Development Charges (DC) advice.

(iii) Subject to other usual conditions."

Insofar as getting NOC from CMWSSB, the writ petitioner, vide letter dated 02.03.2012, requested the appellant herein to issue DC advice stating that CMWSSB in letter dated 06.02.2012 has accepted to issue NOC on complying with certain conditions and it was also accepted, vide letter of the writ petitioner dated 18.02.2012.

4.9. The appellant herein/second respondent in the writ petition took a stand that as per the letter dated 05.01.2012 of the Government, DC advice is issued to the applicant/writ petitioner only after the applicant furnishes an updated NOC from CMWSSB, however, the writ petitioner made an interim request to the appellant herein that they have been pursuing the issuance of updated NOC from CMWSSB and therefore, requested CMDA to issue DC advice as an interim action in order to enable them to assess the fund requirement on their part towards payment of the applicable charges and fees in order to make arrangement for mobilization of the fund. Based on the request of the writ petitioner, the demand for DC and other charges was raised in the letter dated 27.03.2012 and the writ petitioner has remitted all the charges on 29.03.2012. Thereafter, the second respondent in G.O.Ms. No. 86 dated 28.03.2012 has increased the I & A charges by 50% with effect from that date and therefore, the T & A charge for residential and commercial MSB development are Rs. 375/- per sq.mtr and Rs. 750/- per sq.mtr respectively.

4.10. It is further stated in the counter that the Government had revised the guideline values upwardly with effect from 01.04.2012 and the revised guideline value for the site of the petitioner is Rs. 4,000/- per sq.ft. In the meanwhile, CMWSSB, vide letter dated 30.03.2012, has issued revised NOC to use their land as access to the rear side of the property, subject to certain conditions and the said letter of NOC from CMWSSB was received by the appellant on 02.04.2012. The appellant in the counter filed in the writ petition took a stand that CMWSSB has issued NOC on 30.03.2012, which was received by the office of the appellant

on 02.04.2012 and in the meanwhile, I & A Charges and guideline value were revised on 28.03.2012 and 01.04.2012 respectively and as the writ petitioner furnished required NOC from CMWSSB only on 02.04.2012, the proposed development levy and collection of the applicable charges and fess as per the rates and procedure that were prevailing on 02.04.2012 and accordingly the revised impugned demand was raised calling upon the petitioner to pay the balance amount of I & A charges and Premium FSI charges.

4.11. The second respondent in these writ appeals/first respondent in the writ petitions has filed the counter supporting the case of the appellant herein.

4.12. The learned Judge, upon consideration of the materials placed on record and the rival submissions, observed that the application of the petitioner is dated 22.03.2011 and the original demand notice dated 27.03.2012 is the date of demand of I & A and other charges, which were paid by the writ petitioner on 29.03.2012 itself and therefore, it is preposterous for the second respondent to apply the new law to the case of the petitioner. The learned Judge further held that G.O.Ms. No. 86 dated 28.03.2012 would have prospective effect only from 28.03.2012 and not to the proceedings issued prior to that, which implemented ex post facto, will be retrospective and cannot be sustained and the vested right and benefit accrued to the petitioner as on the date of application and the then prevailing market and guideline values alone would be the basis for the claim and any subsequent change would not affect the claim of the petitioner. The learned Judge also found that though the writ petitioner originally furnished NOC obtained from CMWSSB to the second respondent/appellant on 11.01.2008, the appellant insisted for fresh NOC from the very same authority and it is not known as to why the appellant/second respondent in the writ petition sought for fresh NOC and therefore, such an act is tainted with arbitrariness and malafide intention and thereby attracting Article 14 of the Constitution of India. The learned Judge ultimately held that the governing law on the date of application, scrutiny, demand for payment of amount and conclusion of the sanction process is material and, therefore, the original demand notice, which was issued pursuant to all the said factors, is relevant to the claim of the petitioner, but not as per the impugned demand, which is in accordance with the changed government orders and the decision taken thereon and hence, law as on the date of completion of the process would be a factor to be reckoned with, but not thereafter. The learned Judge further found that in the present case vested right is accrued on the petitioner, as stated above, and such a right cannot be taken away by enforcing the law against the petitioner and therefore, quashed the impugned proceedings by allowing the writ petitions and aggrieved by the same, the present writ appeals are filed.

5. Mr. A.L. Somayaji, learned Advocate General appearing for the appellant has invited the attention of this Court to the various documents filed in the typed set of papers and would contend that admittedly at the time of filing the writ petition, planning permission was not issued to the writ petitioner and therefore,

whatever conditions required, are to be complied with by the writ petitioner and admittedly, the NOC issued by CMWSSB dated 30.03.2012 was communicated to the appellant herein only on 02.04.2012 and in the meanwhile, the second respondent in these appeals, issued G.O.Ms. No. 86 dated 28.03.2012, effecting the upward revision of I & A charges by 50% with effect from the date of issue of the order and the Government has also revised the guidelines value at Rs. 4,000/- Sq.ft. and the guideline value is the basis for estimating Premium FSI charges payable and therefore, the appellant has issued the revised demand on 22.08.2012 and therefore, it is perfectly valid in law. It is the further submission of the learned Advocate General that earlier DC advice dated 27.03.2012 was issued only on the basis of the request made by the writ petitioner, vide their letter dated 02.03.2012 and it was purely an interim action so as to enable them to assess the fund requirement on their part towards payment of the applicable charges and fees in order to make arrangement for mobilization of the fund and on account of the above factors only, the revised demand notice was issued on 22.08.2012 and it is in accordance with law.

6. It is also submitted by the learned Advocate General that the accrued rights of the writ petitioner/first respondent will come into force only after the release of final plan by CMDA and admittedly, at the time of issuing the impugned demand notice, the plan was not released to the petitioner and therefore, the writ petitioner is liable to comply with the conditions prevailing at that time and it is further contended that in pursuant to the interim order dated 22.01.2013 in M.P. No. 1 of 2013 in these writ appeals, wherein the first respondent/writ petitioner was directed to deposit a sum of Rs. 10 crores with the appellant in addition to a sum of Rs. 40 crores already deposited within a period of two weeks from that date and on receipt of the same, the appellant herein was directed to issue planning permission and the same is subject to the result of the writ appeals and as the petitioner has complied with the said order, the approved plan was released to the petitioner on 08.02.2013 and the local body Panchayat Union, Padappai was also advised suitably and the appellant also addressed a letter dated 13.12.2013 advising the Commissioner, Kundrathur Panchayat Union suitably and made it very clear that the approval is not final and the writ petitioner has to approach the local body for obtaining building permit.

7. The learned Advocate General has also drawn the attention of this Court to the order dated 22.10.2013 made in W.P. No. 18238 of 2013 and would contend that the writ petitioner therein made a challenge to the sanction order after completing the construction with regard to payment of Premium FSI charges and held that when it is made out that the guideline rate was increased during the pendency of application for building permit, necessarily the rate applicable as on the date on which the building plan was sanctioned alone should be paid and in the case on hand, even before the release of planning permission, the impugned revised demand was made and therefore, the first respondent/writ petitioner is liable to pay the same. It is further contended by the learned Advocate General that the first respondent/writ petitioner is not having any accrued right till

planning permission is issued and the crucial date for levying I & A charges is the date of grant of planning permission and admittedly such a planning permission was not granted when the impugned demand was made and the planning permission was issued pursuant to the interim orders passed in the writ petition and therefore, prays for interference.

8. The sum and substance of the submission of the learned Advocate General is that unless and until the planning permission is given/issued, the writ petitioner is liable to comply with the conditions stipulated by the appellant and therefore, the impugned demand raised is perfectly in order and prays for setting aside the impugned common order passed in the writ petitions. The learned Advocate General, in support of his submissions, placed reliance upon the following decisions:

- (i) State of Tamil Nadu Vs. Hind Stone and Others, ;
 - (ii) Usman Gani J. Khatri of Bombay and Others Vs. Cantonment Board and others, ;
 - (iii) Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others, ;
 - (iv) N.D.M.C. and Others Vs. Tanvi Trading and Credit Pvt. Ltd. and Others, ;
- and
- (v) State of Kerala and Another Vs. B. Six Holiday Resorts (P) Ltd. and etc., .

9. Per contra, Mr. Sriram Panchu, learned Senior Counsel appearing for the first respondent/writ petitioner would vehemently contend that admittedly, CMWSSB has issued NOC dated 06.02.2012 to the writ petitioner for award of right of way for using CMWSSB land in S. Nos. 51/B2 & 51/1C2, Ayyappathangal Village and admittedly, CMWSSB has issued earlier NOC to the owner of the property, namely M/s. Extra IT Park Limited and after the petitioner entering into development agreement, once again NOC was cancelled from CMWSSB and accordingly, it was sought once again by the writ petitioner on 23.06.2011 and after process, CMWSSB has issued NOC on 30.03.2012, marking a copy to the appellant herein and according to them, it was received on 02.04.2012 and for the belated receipt, the first respondent/writ petitioner cannot be put to blame. It is the further submission of the learned Senior Counsel appearing for the first respondent that though it is the claim of the appellant that the demand for remittance of DC and other charges were raised on 27.03.2012, in accordance with the request made by the first respondent/writ petitioner vide letter dated 02.03.2012, in the reference made in the said letter, the letter dated 02.03.2012 written by the writ petitioner is not at all mentioned and the writ petitioner, without any lapse of time, has made payment of Rs. 8,34,40,000/- towards I & A charges on 29.03.2012 as well as Premium FSI charges of Rs. 44,75,88,000/- on the same day and the appellant herein had also issued receipts bearing Nos. 005480 and 005481 dated 29.03.2012 respectively and simply because the appellant has received NOC from CMWSSB belatedly on 02.04.2012, it is not

open to them to revise the I & A charges and Premium FSI charges and it amounts to retrospective revision in demand and hence, it is unsustainable in law.

10. The learned Senior Counsel appearing for the first respondent/writ petitioner has also drawn the attention of this Court to the office Order No. 7/2012 dated 16.04.2012 issued by the appellant herein and would contend that as per the contents of the said Office Order, the revised rates of I & A charges are leviable following the guideline value with effect from the issuance of G.O.Ms. No. 86 dated 28.03.2012 and the said charges are applicable where advice was sent on or after 28.03.2012 and where the advice was sent prior to 28.03.2012, the pre-revised rates were only applicable and would contend that admittedly the remittances of DC and other charges including I & A charges and Premium FSI charges were raised on 27.03.2012 by the appellant and therefore, as per the Office Order, the said charges were also remitted on 27.03.2012 in terms of the above said Office Order of the appellant herein and therefore, they are not liable to pay I & A charges and FSI charges. It is also contended by the learned Senior Counsel appearing for the first respondent/writ petitioner that for the demand notice dated 27.03.2012, payment was effected on 29.03.2012 and therefore, it is not open to make the impugned demand calling upon the first respondent/writ petitioner to pay revised I & A charges and FSI charges and prayed for dismissal of the same. The learned Senior Counsel, in support of his submissions, placed reliance upon the following decisions:

(i) Hukam Chand etc. Vs. Union of India (UOI) and Others,

(ii) Purbanchal Cables and Conductors Pvt. Ltd. Vs. Assam State Electricity Board and Another,

11. This Court paid its best attention to the rival submissions and also perused the materials available on record.

12. It is relevant to note certain dates and events:

22.03.2011-Acknowledgment of planning submission submitted by the writ petitioner by CMD A/appellant.

06.02.2012-Letter from CMWSSB to the writ petitioner for issuance of NOC for right of way on account of project proposal changed from Special Economic Zone to Multi storied residential building with joint venture along with the writ petitioner, subject to certain conditions.

18.02.2012-Letter from the writ petitioner to CMWSSB, accepting the conditions.

07.03.2012-Letter from the writ petitioner to the appellant requesting them to process the planning permit and issue notice for Development Charges, to assess the fees amount involved and to make arrangement for funds.

27.03.2012-Advice sent by the appellant to the writ petitioner for remittance of Development Charges and other charges including I & A charges and Premium FSI charges, subject to conditions.

29.03.2012-Remittance of I & A charges and Premium FSI charges.

30.03.2012-Letter from CMWSSB to the writ petitioner to issue NOC for right to way with a copy marked to the appellant/CMDA.

30.03.2012-Letter from the writ petitioner informing remittance of Development Charges and other charges on 29.03.2012.

02.04.2012-Appellant received the copy of the NOC dated 30.03.2012 issued by CMWSSB.

03.05.2012-Letter from the appellant informing the registration of OSR Gift Document No. 3450/2012 along with OSR sketch duly hatched to identify the OSR area.

24.05.2012-Acknowledgment issued by the Assistant Engineer attached to the appellant with regard to the taking possession of road widening portion of 675 sq.mtrs and 236 sq.mtrs respectively at Govindaraja Nagar 3rd Street.

27.04.2012-Gift Deed executed by the landowner M/s. Extra I.T. Park limited in favour of the appellant, gifting the OSR portion of 10021 Sq.mtrs in various survey numbers.

22.08.2012-Impugned demand notice calling upon the writ petitioner to remit the balance I & A charges and Premium FSI charges.

13. The appellant/CMDA has issued advice dated 27.03.2012 to the first respondent/writ petitioner for remittance of Development charges, I & A charges, Premium FSI charges and other charges based on the letter 02.03.2012 of the writ petitioner and in para 7 of the said advice, it has been stated as follows:

"7. The issue of planning permission depends on the compliance/fulfillment of the conditions/payments stated above. The acceptance by the Authority of the pre-payment of the Development charge and other charges etc. shall not entitle the person to the Planning Permission but only refund of the Development Charge and other charges (excluding Scrutiny Fee) in cases of refusal of the permission for non-compliance of the conditions stated above (or any of the provision of DR) which has been complied before getting the planning permission or any other reason provided the construction is not commenced and claim for refund is made by the applicant."

14. The first respondent/writ petitioner has paid all the charges as per the advice dated 27.03.2012, on 29.03.2012. On 28.03.2012, the second respondent in the writ appeal issued G.O.Ms. No. 86 dated 28.03.2012, increasing I & A charges by 50% of the present prevailing rates in Town and Country Planning areas and for multi storied residential building in respect of Chennai Metropolitan Development Authority Areas it is 375/sq.mtrs and so also Chengalpattu, Coimbatore and other areas and it has been stated in the said Government Order that increased charges shall be calculated with effect from the date of issuance of the order and in para 6, the Commissioner of Town and Country Planning is directed to send

necessary proposal on amendment to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 to Government accordingly.

15. This Court, during the course of arguments, put a query to the learned Advocate General appearing for the appellant as to whether any proposal was sent for amending the said rules and in response to the same, the learned Advocate General produced Letter No. 20405/UDI/2012-6 dated 21.1.2013 of the appellant addressed to the learned Government Pleader, wherein it has been stated that action has already been taken by the Government to amend the above said rules in consultation with the Law and Finance Departments and final orders would be issued on obtained orders upto Hon"ble Chief Minister and it would take about two months time to amend the above said rules. Therefore, as on today, no amendment has been made to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 for increase of I & A charges.

16. On 22.08.2012, the impugned demand came to be issued calling upon the petitioner to pay the balance I & A charges to the tune of Rs. 4,17,15,000/- and the balance Premium FSI charges to the tune of Rs. 90,76,75,000/- and the reason for increase of the said charges have not been stated in the said letter. However, in the counter filed by the respondents 1 and 2, it has been stated that the Government has revised the guideline value upwardly with effect from 01.04.2012 and the revised guideline value for the site of the petitioner is Rs. 4,000/- per sq.ft. and when CMWSSB issued NOC on 30.03.2012, which was received by the appellant on 02.04.2012, the revised demand was made.

17. The decisions relied on by the learned Advocate General lay down the proposition that in the absence of any vested right, the application have to be dealt with according to the rules in force on the date of disposal of the application and since on the date of issuance of the impugned demand, sanctioned plan was not issued in favour of the first respondent/writ petitioner, the revised guideline value would have application and therefore, the impugned revised demand of I & A charges and Premium FSI charges is perfectly in order and also drawn the attention of this Court to condition No. 7 of the advice dated 27.03.2012 as well as condition No. 6 of the impugned demand notice dated 22.08.2012, wherein it has been stated among other things that the issuance of planning permission depends on the compliance/fulfillment of the conditions/ payments stated above and the acceptance by the Authority of the pre-payment of the Development charge and other charges etc., shall not entitle the person to the Planning Permission but only refund of the Development charge and other charges (excluding Scrutiny Fee) in cases of refusal of the permission for non-compliance of the conditions stated above or any of the provisions of Development Regulations etc. Though the said submission of the learned Advocate General appears to be convincing, this Court is of the view that it is unable to accept the said submission for the reason that the appellant

themselves has issued Office Order No. 7/2012 dated 16.04.2012 framing guidelines for collection of I & A charges and issued revised orders and it is very relevant to extract the same:

"CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY, CHENNAI-600 008
(ADMINISTRATION DIVISION) OFFICE ORDER NO. 07/2012

DATED: 16.04.2012

Sub: Area Plans Unit-CMDA-Guidelines for collection of Infrastructure & Amenities Charges-Revised Orders-Issued.

Read: 1. Office Order No. 6/2009 dated 03.06.2009.

2. Minutes of the Committee of Senior Officers meeting held on 04.06.2010

3. Office Order No. 14/2010 dt. 10.06.2010

4. G.O.Ms. No. 86, dt. 28.03.2012, H & UD (UD 4(1)) Department.

ORDER:

Government in the reference 4th read above, have revised the Infrastructure and Amenities charges with effect from 28.03.2012. Accordingly, the order issued in the reference 3rd read above is modified. The revised rates of Infrastructure & Amenities charges are leviable as per the following guidelines with effect from the date of issue of G.O. 4th read above i.e. 28.03.2012.

i. The revised rate of Infrastructure & Amenities charges are applicable for the Planning Permission Applications, where Development Charges advice was sent on or after 28.03.2012. In the cases of Planning Permission Applications for which DC advice dated prior to 28.03.2012, the pre-revised rates only applicable.

ii. The revised rate of Infrastructure & Amenities charges are not applicable for renewal of Planning Permission i.e. extension of the validity of the planning permission as provided in the Act (for the Planning Permission issued before 28.03.2012). It is immaterial whether the site is vacant or the building is in progress as per the approved plan, since the renewal is treated as an extension of Planning Permission issued.

iii. When Planning Permission Application is received for additional construction, Infrastructure & Amenities charges at the revised rates are collectable only for the additional area over and above the approval given by CMDA earlier.

iv. Infrastructure & Amenities charges are not collectable for the buildings covered under Building Regularisation Scheme as they are said to be completed on or before 28.02.1999.

v. Where Development Charges advice was sent before 28.03.2012 and all the charges remitted but Planning Permission was issued i.e., approved plan was released after 28.03.2012, collection of revised rate of Infrastructure & Amenities

charges are not applicable.

vi. Where Development Charges Advice was already sent for remittance of charges, the date of DC advice is applicable as far as rate of I & A charges is concerned i.e., date of DC Advice is crucial for deciding rate of I & A charges.

Sd./- R. VENKATESAN, MEMBER SECRETARY."

18. As per the above said office order, the revised I & A charges came into being with effect from 28.03.2012 and the said revised rates of I & A charges are leviable as per the guidelines with effect from the date of issuance of G.O.Ms. No. 86 dated 28.03.2012 issued by the second respondent in these writ appeals. Condition No. 1 of the said office order is very important as it stipulates that

"revised rate of Infrastructure & Amenities charges are applicable for the Planning Permission Applications, where Development Charges advice was sent on or after 28.03.2012. In the cases of Planning Permission Applications for which DC advice dated prior to 28.03.2012, the pre-revised rates only applicable"

(emphasis supplied)

19. It is the submission of the learned Advocate General appearing for the appellant/CMDA that since the first respondent/writ petitioner, vide letter dated 02.03.2012, made a request to issue notice for Development Charges for processing planning permit and to have assess the fees amount involved and also to make arrangement for funds required, the advice in letter No. C3(N)/4606/2011 dated 27.03.2012, calling upon the first respondent/writ petitioner to pay Development charges for Land and Building, Balance Scrutiny Fee, Regularization charge for unauthorized sub division & amalgamation, Security Deposit for Building, Display Board and STP and Infrastructure & Amenities Charges of Rs. 8,34,40,000/- and Premium FSI charges of Rs. 44,75,88,000/- for 78690.55 sq.mtrs. In the reference to the said letter, the letter dated 02.03.2012 sent by the first respondent/writ petitioner has not been referred and even in the body of the said letter, the purport of the request made by the writ petitioner has not been stated and the reason for raising such demand is to process the application for planning permission further.

20. Admittedly, the first respondent/writ petitioner remitted the I & A charges and Premium FSI charges on 29.03.2012 itself and also informed the same to the appellant vide letter dated 30.03.2012. As per para 1 of the above said office Order No. 07/2012 dated 16.04.2012, the revised rate of I & A charges are applicable for the Planning Permission Applications, where Development Charges advice was sent on or after 28.03.2012 and in the cases of Planning Permission Applications for which DC advice dated prior to 28.03.2012, the pre-revised rates only applicable. Admittedly, the advice for remittance for I & A charges and other charges was sent on 27.03.2012 and by virtue of clause No. 1 of Office Order No. 07/2012 dated 16.04.2012, the impugned demand notice dated 22.08.2012 was issued calling upon the first respondent/writ petitioner to pay balance I & A

charges and Premium FSI charges and therefore, it cannot be sustained. As already pointed out in the earlier paragraphs, in para 6 of G.O.Ms. No. 86 dated 28.03.2012 issued by the second respondent in these writ appeals, it has been clearly stated that the Commissioner of Town and Country Planning is directed to send necessary proposal on amendment to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 to Government accordingly.

21. The letter dated 21.01.2013 sent by the Joint Secretary to Government of the second respondent/appellant herein addressed to the Government Pleader of this Court would indicate that action has already been taken by the Government to amend the above said rules in consultation with the Law and Finance Departments and final orders would be issued on obtaining orders upto Hon'ble Chief Minister and it would take about two months time to amend the above said rules. The only reason assigned by the appellant, that too in the counter affidavit, is that the Government have revised the guideline value upwardly with effect from 01.04.2012 and as per the revised guidelines value, the site of the petitioner is Rs. 4,000/- per sq.ft. and NOC issued by CMWSSB dated 30.03.2012 was received on 02.04.2012 and in the interregnum, guideline value was revised and the impugned demand came to be made. Admittedly, the said reason is not found in the impugned demand notice and sought to be justified only through the counter affidavit and in the celebrated case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , wherein it has been held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and therefore, on that ground also, the impugned demand is unsustainable.

22. Therefore, in the light of the above facts and circumstances of this case, especially para 1 of the office Order No. 07/2012 dated 16.04.2012, coupled with the fact that the impugned order did not contain any reason as to the raising of the additional demand in the form of balance I & A charges and Premium FSI charges and further that, no amendment has been made so far to the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, the impugned demand is unsustainable. It is to be pointed out at this juncture that though the petitioner prayed for quashment of G.O.Ms. No. 161 dated 09.09.2009 issued by the second respondent herein, the learned Judge did not quash the same, but only quashed the impugned demand proceedings of the appellant/second respondent dated 22.08.2012 and to that extent W.A. No. 148/2013, which is preferred against the order passed in W.P. No. 25678/2012, requires modification and the issue as to the legality of the said Government Order is left open. In the result, W.A. No. 147/2013 is dismissed and W.A. No. 148/2013 is disposed of accordingly. The issue with regard to the legality of G.O.Ms. No. 161 dated 09.09.2009, is left open. No costs. Consequently, connected miscellaneous petitions are closed.