

(2009) 08 MAD CK 0431

In the Madras High Court

Case No : Writ Petition No. 5317 of 2009 and M.P. No's. 1, 2 and 3 of 2009

Kumaran

APPELLANT

Vs

State of Tamil Nadu and The Chennai Metropolitan
Development Authority

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0431

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : Satish Parasaran, for the Appellant; R. Neelakandan, G.A. for Respondent-1 and D. Veerasekaran, for Respondent-2, for the Respondent

Final Decision : Allowed

Judgement

S. Rajeswaran, J.—The case of the petitioner is as follows:

The petitioner is challenging the action of the second respondent/C.M.D.A. in demanding a sum of Rs. 95,50,000/- towards Open Space Reservation Charges as a precondition for grant of planning permit in respect of the proposed development of Commercial building in petitioner's land.

2. M/s. Salem Murasu (P) Ltd. purchased an extent of 21 cents of lands from a former Maharaja of Travancore in Urur Village, Saidapet Taluk under a Deed of Sale dt.30.04.1985. The lands measuring an extent of 21 cents were part of a larger extent of land measuring 3 acres and 41 cents owned by the former Maharaja Salem Murasu (P) Ltd. in 1986 applied for planning permission and building permit for a commercial building to be put up on the lands. The Corporation of Chennai sanctioned the planning permission and building permit in March 1987 after collecting all necessary charges. Thereafter, a commercial building was constructed and the said lands of 27 cents together with the building was sold to one Mr. S. Balasubramanian under a sale deed dt.19.3.1987. The petitioner purchased the above said property from the said Balasubramanian

under a sale deed dt.27.03.2000. In 2004, the petitioner submitted an application to the Corporation for demolition of the building as he proposed to put up stilt + 4 floors commercial building in the subject property. The Corporation granted the permission for demolition on 26.8.2004 and the petitioner also obtained an approval for re-classification of the site as mixed residential use zone. Thereafter, he submitted an application for planning permission to the second respondent, but the second respondent by letter dt.12.12.2008 called upon the petitioner to remit the charges mentioned therein within 30 days as a precondition for considering his application. Of the various charges mentioned in the letter dt.12.12.2008, the petitioner is objecting to the demand of a sum of Rs. 95,50,000/- towards Open Space Reservation charges which according to him is illegal. As the representations sent by him in this regard were not considered positively, he has filed the above writ petition for the aforesaid relief.

3. The second respondent entered appearance through their Counsel and filed a counter affidavit opposing the writ petition.

4. I have heard the learned Counsel appearing for the petitioner and the learned Counsel for the first respondent and the learned Counsel for the second respondent. I have perused the entire documents made available by the parties.

5. The learned Counsel for the petitioner submits that already in the year 1986 itself the second respondent issued planning permission for the very same land and therefore, they cannot demand Open Space Reservation Charges now. Relying on the Development Control Rules, he submits that O.S.R. Charges is inapplicable in a case of development involving an area less than 3000 sq.m. He points out that in the present case, the land in question is measuring an extent of 851.322 sq.m. He further urges that it is not open to the C.M.D.A. to question the grant of planning permission in the year 1986 and therefore, he prays for allowing the writ petition.

6. Per contra, the learned Counsel for the second respondent, the contesting respondent, while reiterating the averments contained in the counter affidavit submits that the grant of plan and the building permit on 13.03.1987 was by the Corporation and not by the second respondent. Therefore, they can very well raise the issue now if it appears that it was not properly granted. He further points out that the Corporation of Chennai is a necessary party. According to the learned Counsel for the second respondent the entire action beginning from purchasing the property on 30.04.1985 and ending in selling the property to Mr. S. Balasubramanian on 19.03.1987 and thereafter to the petitioner on 27.03.2000 appears to be dubious and the same has been done only to avoid O.S.R. charges. He further contends that no O.S.R. charges were paid in 1987 when the Corporation granted the building permit. Therefore, according to him, O.S.R. charges have been ascertained now as per rules and therefore there is no illegality in the demand made by the second respondent towards O.S.R. charges.

7. I have considered the rival submissions carefully.

8. The following facts are not in dispute and in fact admitted by the second respondent also.

(i) The former Maharaja of Travancore owned a large extent of land in old Survey No. 57/1 and he sold an extent of 25.67 cents to M/s. Salem Murasu (P) Ltd.,

(ii) Thereafter, Salem Murasu (P) Ltd., applied for approval for planning and building permit to the Corporation of Chennai and the Corporation of Chennai granted the permission on 13.03.1987.

(iii) Thereafter, the property along with the building was sold to Mr. S. Balasubramanian, and

(iv) From Mr. S. Balasubramanian, the petitioner purchased the subject property.

9. From the above, it is very clear that the Salem Murasu (P) Ltd., purchased the property and obtained approval of planning and building permit in the year 1987 itself. The petitioner is the present owner of the property who now wants to put up a new commercial building on the subject property after demolishing the old building. When he sought for planning permission on 01.08.2007, the second respondent is now demanding a sum of Rs. 95,50,000/- towards O.S.R. charges as a precondition along with other charges.

10. The main reason adduced by the second respondent for demanding Rs. 95,50,000/- towards O.S.R. charges is that the property is to be treated as a part of an unauthorised sub division. When it was pointed out by the petitioner that the erstwhile owner of the property obtained planning and building permit in the year 1987 itself, the stand taken by the second respondent is that they have not sanctioned the planning and building permit in the year 1987 and it was only the Corporation of Chennai which granted the approval. Therefore, the second respondent maintains that this issue could be raised now and their demand is in order and justified.

11. I am unable to accept the stand of the second respondent in questioning the planning permission and building permit granted by the Corporation of Chennai in the year 1987 itself by totally disassociating itself.

12. As rightly pointed by the learned Counsel for the petitioner, the Corporation of Chennai has been delegated with the powers by the second respondent during the relevant point of time. It is an admitted fact that a valid planning permission was granted in the year 1987 to the erstwhile owner of the property. When it is not established before this Court that the grant of approval in the year 1987 is tainted with illegality, it is not open to the second respondent to assume and presume so many things in the year 2008 to question the grant of valid planning permission granted by the Corporation of Chennai. When the approval was granted in the year 1987, the legal presumption is that the same has been granted in accordance with the rules and regulations and after complying with all

the formalities. To rebut that legal presumption, sufficient and cogent evidence should be produced, that too, within a reasonable period. In the present case, not only second respondent is questioning the approval granted by the Corporation of Chennai, the delegated authority, in the year 1987, after 21 years, but failed to establish their stand that all is not well in the grant of the approval in the year 1987. The second respondent cannot disassociate themselves from the granting of the approval by the Corporation in the year 1987 and contend that the Corporation is a necessary party to come before this Court to explain how it granted the approval 21 years back.

13. From the records, I find that the petitioner is the lawful owner of the property and after obtaining the permission to demolish the existing superstructure he pulled down the building which was in existence. Further, he has been repeatedly knocking the doors of C.M.D.A. but his request for removing the O.S.R. Charges was turned down mainly on the ground that there was no proper sub division in the year 1986.

14. Therefore, I am of the considered view that the demand of the first respondent, demanding a sum of Rs. 95,50,000/- towards O.S.R. charges alone is not sustainable and therefore the same is set aside.

15. Consequently, I direct the second respondent to consider issuing planning permission to the petitioner in respect of the subject property, namely, the petitioner's land comprised in T.S.No.13/280 Block No. 21, Urur Village, Chennai, where the petitioner proposed to put up a commercial building consisting of stilt + 4 floors within a period of 30 days from the date of receipt of a copy of this order.

16. In the result, the writ petition is allowed. No cost. Consequently connected M.P. No. 1, 2, 3 of 2009 are closed.