

Vgn Developers Pvt Ltd Vs. Chennai Metropolitan Development Authority

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Court : Chennai

Decided On : Jun-24-2014

Judge : B. Rajendran

Appellant : Vgn Developers Pvt Ltd

Respondent : Chennai Metropolitan Development Authority

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

24. 06-2014 CORAM: THE HONOURABLE MR.JUSTICE B. RAJENDRAN Writ Petition No.7603 of 2014 and M.P. Nos. 1 to 3 of 2014 VGN Developers Pvt Ltd Rep. By Authorised Signatory No.15, Wallace Garden 2nd Street Nungambakkam, Chennai 600 006 .. Petitioner Versus 1. Chennai Metropolitan Development Authority Rep. By its Member Secretary Thalamuthu Natarajan Building No.1, Gandhi Irwin Road Egmore, Chennai 600 008 2. The Additional Commissioner of Police Traffic Greater Chennai Police Kilpauk, Chennai .. Respondents Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent in Letter Rc.No.Tr./Licence/1336/32715/2013 dated 10.02.2014 and quash the same and consequently direct the second respondent to issue No Objection Certificate in favour of the petitioner for the proposed construction of MSB Residential Building to an extent of 10.46 acres in the developed plot in Guindy Thiru.Vi.Ka. Industrial Estate vide Town Survey No.22/5, 23/4, 24/4, 25/2, 29/2, 30/1, 30/4, 31/2, 32/2,

33/2 and 34/2 of Alandur Village within Sub-Registration office at Alandur, Block No.2, Revenue Taluk of Mambalam Guindy of Madras District and consequently direct the first respondent to issue planning permission to the petitioner's project proposed in the latter mentioned premises. For Petitioner : Mr. R. Muthukumarasamy, Senior Advocate for Mr. A. Jenasen For Respondents : Mr. A. Kumar for R1 Mr. K.V. Dhanapalan Additional Government Pleader for R2

ORDER

In this writ petition, the petitioner, a construction company, has challenged the order dated 10.02.2014 of the second respondent refusing to issue No Objection Certificate to the proposed construction of the petitioner company.

2. According to the petitioner, they have submitted an application seeking planning permission to the first respondent for the proposed construction of Multi-storeyed Building residential complex consisting of Blocks A, B, C and D with 3 combined Basement floor plus ground floor part/stilt floor part + 10 floors. As per the Rules, the petitioner has to obtain No Objection/Approval from several authorities such as Fire and Rescue Services Department, Airport Authority of India, CMWSS Board, Housing and Urban Development Department etc., as a condition precedent for obtaining Building Planning Permission from the first respondent. According to the petitioner, they have obtained such permission from the Fire and Rescue Services Department, Airport Authority of India, CMWSS Board etc., In the meanwhile, the first respondent appears to have sent a letter on 03.02.2013 to the second respondent to offer their remarks or recommendations on permissibility of the proposed construction within a month's time. According to the petitioner, as per the Development Control Rules and Regulations, such a No Objection Certificate is not required to be obtained from the second respondent when the other authorities have issued No Objection Certificate in favour of the petitioner. While so, the second respondent, in the impugned communication dated 10.02.2014 stated that No Objection Certificate in respect of the petitioner's project could not be recommended from traffic point of view as the vehicle flow in Jawaharlal Nehru Road (100 feet) is already exceeding Indian Road Congress norms and that the 100 feet road is very near to the side. Therefore, the second respondent observed that the additional vehicles as a result of the proposed project will have an adverse

impact on the free flow of traffic on the 100 feet road. It is this letter dated 10.02.2014 of the second respondent which is questioned in this writ petition.

3. The learned senior counsel appearing for the petitioner would contend that the petitioner has set apart sufficient space for parking in the premises as per the Development Control Rules and Regulations. According to the learned senior counsel for the petitioner, the Indian Road Congress (IRC) norms do not apply to the proposed development project especially when the proposed site is not situated near the 100 feet road, as alleged by the second respondent. It is further pointed out that the traffic from the site is evenly distributed among 3 sub-arterial roads and there is no heavy flow of traffic as pointed out by the second respondent in the impugned communication. According to the learned senior counsel for the petitioner, by virtue of the impugned communication of the second respondent, the proposed project of the petitioner is getting delayed and it causes acute loss and prejudice to the petitioner company. The learned senior counsel for the petitioner also pointed out that such a No Objection Certificate from the second respondent is not contemplated under the Rules. Further, the second respondent has chosen to issue such No Objection Certificate to other builders in the locality and the petitioner company alone was singled out. It is also pointed out that in respect of similarly placed persons who intended to put up such multi-storeyed building construction in Lattice Bridge Road, Adyar, the second respondent has chosen to grant No Objection Certificate, but when similar request was made by the petitioner, it was rejected.

4. The learned senior counsel for the petitioner brought to the notice of this Court that in identical circumstances, this Court, in the order dated 21.03.2013 in WP No.1665 of 2013 quashed the impugned communication of the very same second respondent in respect of the project proposed in the very same locality. The learned senior counsel for the petitioner also brought to the notice of this Court that for considering the grant of planning permission in favour of the petitioner, the first respondent has convened a meeting on 08.10.2013 in which various officers representing various departments have participated in which the second respondent also participated. In the meeting, it was resolved to taking into consideration various aspects for grant of planning permission in favour of the

petitioner subject to some conditions. In the meeting, the second respondent has not raised any objections for grant of No Objection Certificate to the petitioner, while so, it is not open to the second respondent to refuse to grant the No Objection sought for by the petitioner.

5. The learned standing counsel appearing for the first respondent, relying upon the counter affidavit filed, would only contend that in the meeting of the MSB panel held on 08.10.2013, reference was made to the Government Letter in Letter (Ms) No.302, H & UD Department dated 30.12.2013 to accord approval for the proposed project subject to certain conditions. One of the conditions is to obtain No Objection Certificate from the second respondent before issuing advice for Development charges. Accordingly, the first respondent has issued a letter to the second respondent seeking to offer their remarks. On receipt of the same, the second respondent in the communication dated 26.09.2013 stated that the No Objection Certificate in favour of the petitioner cannot be recommended from the traffic point of view for issuing planning permission to the proposed construction especially when the vehicle flow in the proposed location is already exceeding Indian Road Congress (IRC) norms. Therefore, the first respondent called for revised plan and other particulars from the petitioner by a communication dated 18.10.2013. On receipt of the communication dated 18.10.2013, the petitioner, by their letter dated 05.12.2013 requested to re-consider the grant of issuance of planning permission. Such a request made by the petitioner in their communication dated 05.12.2013 was forwarded to the second respondent by the first respondent on 10.12.2013. On receipt of the same, the second respondent has passed the impugned communication stating that they are not recommending for issuing No Objection Certificate in favour of the petitioner considering the traffic pattern and the inflow and outflow of traffic in the area in which the site is located. The second respondent is one of the members of the MSB panel and each individual proposal will be forwarded to the second respondent for obtaining No Objection Certificate. While offering No Objection, the second respondent is expected to offer their remarks pertaining to traffic management on the proposed development of the MSB objectively as per the Rules in force.

6. The learned Additional Government Pleader appearing for the second respondent, relying on the counter affidavit of the second respondent, would contend that the second respondent has evaluated the project with regard to management of traffic vis-a-vis the construction of MSB together with the traffic inflow and outflow in the area of construction, more specifically in Guindy area. The No Objection was refused only from the traffic point of view after evaluation of the traffic pattern in the area. The communication, which is impugned in this writ petition, is based on assessment of various parameters in respect of traffic management in respect of new construction. According to the learned Additional Government Pleader, the contention of the petitioner that Indian Road Congress will have no application to the present case is incorrect. The comparison made by the petitioner with regard to the No Objection granted by the second respondent is untenable inasmuch as the flow of traffic pattern will differ from one area to the other. In any event, the order of rejection passed by the second respondent is not arbitrary inasmuch as the second respondent has taken note of the inflow and outflow of traffic in the area. Therefore, the learned Additional Government Pleader prayed for dismissal of the writ petition.

7. I heard the learned counsel on either side and perused the materials placed on record. The petitioner has submitted an application to the first respondent seeking building planning permission for the proposed construction of Multi Storeyed Building. The first respondent has scrutinised the application and it was placed before the MSB panel meeting held on 08.10.2013 and building planning permission was issued to the petitioner subject to certain conditions. In the panel meeting, various officials representing several departments, including the second respondent participated. The other departments that took part in the panel meeting includes officials of Airports Authority of India, CMWSS Board, Electricity Board, Fire and Rescue Services Board etc., At the time of such meeting, the second respondent did not object to grant of No Objection Certificate in favour of the petitioner. In this context, it is contended that the second respondent, on behalf of the traffic police wing, has participated in the meeting as one of the members of the MSB panel and it is the duty of the second respondent to assess and evaluate the request for issuing No Objection Certificate on case to case basis independently. It is further contended by the second respondent that before

issuing such No Objection Certificate, it will be the duty of the second respondent to evaluate the flow of traffic and the traffic pattern in the locality.

8. The learned senior counsel for the petitioner pointed out that in the impugned communication, the second respondent has only stated that since vehicle flow in Jawaharlal Nehru Road (100 feet) is exceeding IRC norms and 100 feet road is very near the site and also the additional vehicles of the project will have an impact on free flow of traffic on 100 feet road. However, the order does not specifically states as to how the proposed project will affect the traffic flow in 100 feet road. According to the learned senior counsel for the petitioner, the project site is not near 100 feet road and it is off the 100 feet road. The learned senior counsel also pointed out that the the second respondent represented the traffic department in the panel meeting and at that point of time, they did not object to the grant of no objection. Even otherwise, IRC norms will not apply to grant of No Objection in favour of the petitioner.

9. It is seen from the records that in respect of the very same area, at the instance of another builder, this Court, in the order dated 21.03.2013 in WP No.1665 of 2013 held that the order of rejection is unreasonable. In Para Nos. 8 to 10 of the order, it was held as follows:- 8. I have heard the rival submission carefully.

9. The point for consideration in this writ petition is whether the refusal to give No Objection Certificate by the second respondent police for the proposed multi-storeyed building on a new ground set out in the impugned order dated 13.12.2012 is sustainable or not. As rightly contended by the learned counsel appearing for the petitioner, the petitioner has duly complied with all the other requirements stipulated in the Development Control Rules and by the second respondent in his letter dated 01.02.2012. The four discrepancies namely (i) the applicant should provide bell shaped entry and exit gates with 4.5 meters width as per the CMDA norms (ii) to provide space for road widening in front of the site (iii) to keep the distance between the road and parking area atleast 100 meters and (iv) in the Northern side, open car parking area should be avoided, pointed out by the second respondent has been duly complied with and intimated to the respondents. While so, putting a new condition that No Objection Certificate

cannot be granted due to the discrepancies found that the vehicle flow in Jawaharlal Nehru Road, Ekkattuthangal, Multi Storeied Building exceeds the IRC guidelines (Indian Road Congress 86-1983) is, in my opinion, totally arbitrary and unreasonable. It is needless to add that the petitioner has absolutely no control over the vehicular traffic in Jawaharlal Nehru Road or to ensure the vehicle flow in accordance with the IRC Road or to ensure the vehicle flow in accordance with the IRC guidelines. The reasoning given in the impugned order is beyond the control of the petitioner and incapable of performance by them. The petitioner, after having invested a huge amount of Rs.2 Crores and more, has been made to wait for the last two years to get the No Objection Certificate. The entire project is held back on account of this unreasonable condition imposed. They have been made to run from pillar to post, despite having complied with all the other requirements which are possible of compliance. In fact, the records produced and submitted before the authorities would show that the petitioner has made sufficient provision, as per the approved plan for parking 67 Nos. Of Cars and 62 Nos. Of two wheelers in the proposal. While so, the impugned order passed is certainly unreasonable and impossible of compliance and on that score, the request for No Objection Certificate cannot be rejected by the respondent police. The learned counsel for the respondent/CMDA does not complain/object about any non-compliance of their requirements set out in the development control rules.

10. Therefore, the writ petition is allowed and the impugned order dated 13.12.2012 issued by the second respondent in R.C.No.Tr./Licence/639/24531/2012 is set aside and consequently the second respondent is hereby directed to issue No Objection Certificate to the petitioner Company for construction of residential cum office building at No.73/7, Jawaharlal Nehru Road, Ekkaduthangal, Chennai 32, within a period of three weeks from the date of receipt of a copy of this order as the petitioner has been waiting for more than two years to commence the project. 10. The learned senior counsel for the petitioner also brought to the notice of this Court that in respect of the very same petitioner with regard to his own project at Nungambakkam, a similar letter was issued by the second respondent and that was challenged by the petitioner by filing WP No.7604 of 2014. During the pendency of that writ petition, the very same second respondent, who refused No Objection Certificate in favour of the petitioner, has recommended

for giving No Objection Certificate by proceedings dated 08.04.2014 in respect of the project at Nungambakkam, which again is an area with heavy traffic flow. The relevant portion of the proceedings dated 08.04.2014 is extracted below:- Please refer to the reference cited.

2. In this connection, it is stated that the NOC is Recommended from traffic point of view for issuing Planning Permission for the proposed construction of Basement (3 Level Mechanical Stack Parking) + Ground Floor (part)/Stilt Floor (part) + 14 Floors Residential Building with 71 Dwelling Units, Club House at 14th Floor level and Swimming Pool at the 15th Floor level at Old S.No.351, New S.No.123/1, Block No.21, Nungambakkam Village, Chennai applied by M/s. VGN Developers Pvt Ltd., No.15, Wallace Garden, 2nd Street, Nungambakkam, Chennai 6 as the applicant has fulfilled the parking requirements as per plan, subject to the following conditions:- (i) The Entry and Exit gate should not be provided on Nungambakkam High Road. Both Exit and Entry gates should be provided only on the Krishnamma Road. (ii) The applicant shall give 1m wide of his land along Nungambakkam High Road, for road widening as committed by him (iii) The applicant should maintain 7.2m driveway, which can be used for holding up of project vehicles, in case of traffic pileup on N.H.Road. (iv) The Parking space provided by the applicant should be maintained properly (v) The Entry and Exit gate should be provided with bell mouth shape having easy access for the vehicle movement (vi) The drive way provided by the applicant should be maintained properly (vii) The applicant on completion of the construction has to deploy sufficient number of personnel to manage the movement of vehicles at the entry and exit gates of the building (viii) The applicant has to ensure that the parking plan inside the campus is strictly followed. The markings for vehicular parking should be clearly maintained for easy and free movement of vehicles. 11. In view of the above order dated 08.04.2014 passed by the second respondent, the petitioner has withdrew the WP No.7604 of 2014 and it was dismissed as withdrawn.

12. It is the contention of the petitioner that in respect of the very same area at the instance of some other builder, the second respondent has recommended for grant of No Objection Certificate. In those areas also, multi-storeyed buildings have come up. As far as the petitioner is concerned, the petitioner has earmarked

sufficient space for car parking and provisions of ingress and egress for vehicular movement.

13. No doubt, the Government or the CMDA are the authorities who have to take note of various aspects before issuing planning permission, including the flow of traffic in the area and the impact that may be caused on account of the proposed site for free flow of traffic. However, that alone cannot be cited as a reason for rejecting the claim for planning permission. The IRC norms claimed by the second respondent is with reference to standard of roads. Furthermore, in the impugned communication, the second respondent has not specifically stated as to how the proposed construction will be against the IRC norms.

14. In the impugned communication of the second respondent, reference was made to the proceedings dated 03.12.2013 of the Member Secretary (Development), CMDA. In the letter dated 03.12.2013 of the Member Secretary of CMDA, Chennai, it has been clearly stated that planning permission approval has been received from the petitioner on 22.11.2013 and the second respondent was only asked to offer their remarks and specific recommendation on permissibility of the proposal within one month time failing which, it will be presumed that there is no objection on the above planning permission. A copy of the proceedings dated 03.12.2013 has also been marked to the petitioner. Even though the first respondent specifically requested the second respondent to respond within a month, the impugned communication was sent by the second respondent only on 10.02.2014 much after 30 days time stipulated by the first respondent. Therefore, when the second respondent did not respond to the request of the first respondent within one month, it shall be deemed that there is no objection on the part of the second respondent to accord planning permission to the petitioner.

15. It is seen from the Government letter dated 21.02.2014 that the Government has decided to accord approval to the recommendation of the Multi-Storeyed Building panel in favour of the petitioner. Accordingly, the Government approved the recommendation for multi-storeyed building panel for issue of planning permission in favour of the petitioner subject to certain conditions. One of the conditions is to obtain No Objection from the second respondent. In this

Government letter dated 21.02.2014, the Government has already taken note of the objections raised by the second respondent in the impugned communication dated 10.02.2014. The Government, having given approval for issuing planning permission, it is not known as to whether still the No Objection from the second respondent is necessary or not. When the Government itself had granted No Objection for issuance of planning permission, the question of any No Objection from the second respondent does not arise. In any view of the matter, the petitioner has obtained No Objection from the other competent authorities. In the Government letter dated 21.02.2014, in para-4, it is stated that I am therefore to request you to take necessary further action accordingly for issue of planning permission. This Government letter dated 21.02.2014 assumes importance in this case.

16. As mentioned above, in identical circumstance, this court, in the order dated 21.03.2013 made in WP No.1665 of 2013 has held that insistence of No Objection Certificate from the second respondent after grant of planning approval in respect of the very same locality does not arise. Therefore, following the above order passed by this Court, I am of the view that the impugned communication of the second respondent is liable to be set aside. It is made clear that this order should not be interpreted to say that the Government or the Chennai Metropolitan Development Authority have no power to seek for No Objection Certificate from the Police (Traffic wing). The second respondent, representing the Traffic Department, one of the wings of the Police Department, is competent to reasonably assess and evaluate the traffic pattern in the locality where a proposed project is to come up and offer their views. As far as the case on hand is concerned, a peculiar circumstance arise where in respect of the very same locality No Objection Certificate was granted by the second respondent on the basis of the order dated 21.03.2013 passed by this Court in WP No.1665 of 2013. In this order, this Court also take into account the fact that inspite of the specific direction given by the first respondent to submit or offer their views within one month, the second respondent has chosen to issue the impugned communication after one month and therefore, the deemed clause stipulated in the letter dated 03.12.2013 of the first respondent will come into play.

17. In those circumstances, the impugned order of the second respondent dated 10.02.2014 is set aside. The writ petition is allowed directing the first respondent to pass appropriate orders in accordance with law for issuing planning permission to the petitioner company within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed. It is further made clear that this order shall not be cited as a precedent as, in this order, this Court taken note of the peculiar facts and circumstances involved to grant the relief sought for by the petitioner company. 24.06.2014 rsh Index : Yes / No Internet : Yes / No To 1. Chennai Metropolitan Development Authority Rep. By its Member Secretary Thalamuthu Natarajan Building No.1, Gandhi Irwin Road Egmore, Chennai 600 008 2. The Additional Commissioner of Police Traffic Greater Chennai Police Kilpauk, Chennai B. RAJENDRAN, J rsh WP No.7603 of 2014 24-06-2014

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