

P. Suresh and Another Vs. State through by the Inspector of Police, Vigilance and Anti-Corruption, City-2, Detachment, Chennai

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Court : Chennai

Decided On : Aug-03-2016

Judge : R. Subbiah

Appeal No. : Crl.R.C.Nos. 822 & 226 of 2016 & Crl.M.P.Nos. 1545, 6194 & 6195 of 2016

Appellant : P. Suresh and Another

Respondent : State through by the Inspector of Police, Vigilance and Anti-Corruption, City-2, Detachment, Chennai

Judgement :

(Prayer: Criminal Revision Case No.822 of 2016 filed under Section 397 read with 401 Cr.P.C. to call for the records in Spl.Case No.3 of 2014 on the file of the Special Judge-cum-Chief Judicial Magistrate, Chengalpattu and set aside the charges framed on 27.04.2016 as against the petitioners.

Criminal Revision Case No.226 of 2016 filed under Section 397 Cr.P.C. to call for the records and set aside the order dated 02.02.2016 passed in Crl.M.P.No.1843 of 2014 in Spl.Case No.3 of 2014 on the file of the Special Judge-cum-Chief Judicial Magistrate, Chengalpattu.)

Common Order:

Criminal Revision Case No.822 of 2016 is filed to call for the records in Spl.Case No.3 of 2014 on the file of the Special Judge-cum-Chief Judicial Magistrate, Chengalpattu and set aside the charges framed on 27.04.2016 as against the petitioners/A3 and A4.

2. Criminal Revision Case No.226 of 2016 filed to call for the records and set aside the order dated 02.02.2016 passed in Crl.M.P.No.1843 of 2014 in Spl.Case No.3 of 2014 on the file of the Special Judge-cum-Chief Judicial Magistrate, Chengalpattu.

3. Since the parties are same in both the revision petitions and the issue involved in these revision petitions are one and the same, both these revision petitions are disposed of by this common order.

4. The petitioners in both the revision petitions are A3 and A4 in Spl.C.No.3 of 2014 on the file of the Special Judge-cum-Chief Judicial Magistrate, Chengalpattu. The petitioners/A3 and A4 are charged along with A1 and A2, by stating that A3 and A4, with criminal intention to cause wrongful loss to the Government, have influenced public servants - A1 and A2 who processed CCTP Proceedings No.19432/CP/Spl.Cell, dated 18.11.2008 and raised only a demand of Rs.3,10,88,750/-, thereby incurred loss to the Government to the tune of Rs.8,68,41,250/-. Hence, the petitioners/A3 and A4 are charged for the offences under Sections 120-B and 420 IPC.

5. Earlier, the petitioners/A3 and A4, and also A1 and A2, have filed discharge petitions in Crl.M.P.Nos.1841, 1842 and 1843 of 2014 in Spl.C.No.3 of 2014 before the trial Court and by the impugned order, dated 02.02.2016, the said discharge petitions were dismissed. Challenging the same, the petitioners/A3 and A4 filed Crl.R.C.No.226 of 2016 before this Court. Since no interim stay was granted in Crl.R.C.No.226 of 2016, during the pendency of Crl.R.C.No.226 of 2016, the trial Court framed charges against all the accused persons on 27.04.2016. Hence, the petitioners/A3 and A4 have subsequently filed Crl.R.C.No.822 of 2016 before this Court praying to set aside the charges framed on 27.04.2016 against them.

6. Brief facts which are necessary for disposal of these revision petitions are as follows:

(a) The first petitioner / A3 is the Managing Director of M/s.Arun Excello Infrastructure Private Limited. The second petitioner / A4 is the Director of the said Company. The said Company belongs to the petitioners herein, engaged in property development and connected activities. The petitioners have purchased the properties in, inter-alia S.No.25/2B situated in Potheri Village, Chengalpattu Taluk, Kancheepuram District, for their Company, namely M/s.Arun Excello Infrastructure Private Limited in order to develop the same into residential units. The said Company had applied for necessary permit and approvals before the Regional Deputy Director, Town and Country Planning, Chengalpattu Zone, for residential development of 1,83,720 Sq.M. All necessary approvals were granted on 29.03.2007 for putting up residential units. At the time of granting the above said approval on 29.03.2007, there was no concept of collecting "infrastructure and basic amenities charges". Therefore, payment of infrastructure and basic amenities charges for the said planning permission for 1,83,720 Sq.M. did not arise at all.

(b) While so, the Government of Tamil Nadu, by G.O.Ms.No.191, Housing and Urban Development (OPI) Department, dated 01.06.2007, introduced the scheme of collection of infrastructure and basic amenities charges. As per the said G.O.Ms.No.191, the infrastructure and basic amenities charges for multi-storeyed buildings, were fixed at the rate of Rs.1,000/- per Sq.M. Subsequently, the said G.O.Ms.No.191 has been replaced by the Tamil Nadu Act 34 of 2007 (The Tamil Nadu Town and Country Planning Act), and on 18.10.2007, the Government introduced Section 63-B in the said Act with retrospective effect from 01.06.2007. After introduction of Section 63-B, another Government Order was passed in G.O.Ms.No.22, Housing and Urban Development (UD4-1) Department, dated 25.01.2008, whereby, the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, were framed. While so, the petitioners/A3 and A4 have applied for additional construction of 1,17,940 Sq.M. on 18.03.2008. In this situation, another Government Order in G.O.Ms.No.84, Housing and Urban Development (UD4-1) Department, dated 08.04.2008 was

passed, whereby, the Government directed that the maximum and minimum rates of the infrastructure and amenities charges (hereinafter referred to as "I and A charges") shall continue to be the same as prescribed under Rule 4 of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008.

(c) On 18.11.2008, the Commissioner of Town and Country Planning, Chennai granted planning permission for construction of 1903 apartments with club house, with conditions and special conditions specified therein. Thereafter, by letter dated 01.12.2008, Deputy Director of Town and Country Planning, Chengalpattu Region, demanded 50% of I and A charges for the entire FSI area 3,01,660 Sq.Mtrs. (1,83,720 Sq.Mtrs. + 1,17,940 Sq.Mtrs.) at the rate of Rs.1,000/- per Sq.Mtr., i.e., it was demanded to pay 50% of charges i.e. Rs.15,08,25,000/-, out of total charges at Rs.30,16,50,000/-, as per clause in the said G.O.Ms.No.84, dated 08.04.2008.

(d) While so, the petitioners' Company made a representation to the Commissioner of Town and Country Planning, Chennai, requesting to exclude the FSI area of 1,83,720 Sq.Mtrs., which was accorded with planning permission prior to the introduction of the scheme of imposing I and A charges. Based on the said representation, the Commissioner of Town and Country Planning, Chennai, by letter dated 26.03.2009, informed the authorities concerned to exclude the floor areas for which final approval has been issued by local body prior to 31.05.2007 (inclusive) for calculation of I and A charges.

(e) In the meantime, the Tamil Nadu Town and Country Planning (Second Amendment) Act, 2007 and the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 were challenged before this Court, in Writ Petition in W.P.No.2683 of 2009 by CREDAI (Confederation of Real Estate Developers' Association of India) South Chennai, Tamil Nadu, in which, this Court, by order dated 10.06.2009, granted interim stay of operation of the said provisions of the said Act and Rules. Therefore, the Government was not able to demand I and A charges. Hence, the petitioners' Company, through CREDAI has been continuously making various representations over a period of two years for reduction of I and A charges as levied initially from 01.06.2007. Subsequently, the

Government issued G.O.Ms.No.161, Housing and Urban Development (UD-4(1) Department, dated 09.09.2009 and modified the earlier Government Order in G.O.Ms.No.84, dated 08.04.2008 and revised the I and A charges. By the said G.O.Ms.No.161, the revised I and A charges for multi-storeyed residential buildings were fixed at Rs.250/- per Sq.M.

(f) Thereafter, the petitioner's Company received a letter dated 22.01.2010 from the Deputy Director of Town and Country Planning, Chengalpattu, directing the petitioners to remit Rs,3,10,88,750/- towards I and A charges, based on the above said G.O.Ms.No.161, dated 09.09.2009 and the said amount was duly paid. On receipt of the same and on satisfying all the formalities, planning permission for FSI area of 1,17,940 Sq.Mtrs., i.e. for 1903 residential units, was accorded by the proceedings of the Deputy Director of Town and Country Planning, Chengalpattu, with certain conditions, dated 01.02.2010.

(g) While so, based on the complaint, dated 10.08.2011, given by the Director of Town and Country Planning, Chennai, a case was registered by the respondent-Police in F.I.R.No.04/AC/2011/CC-II, against A1 to A4. A-1 is M.Sankareeswaran, Assistant Director, Coimbatore Region, formerly R.D.D (i/c), DTCP/CPT Region; A-2 is S.Sundar, Supervisor, DTCP/CPT Region; A-3 is P.Suresh, Managing Director, M/s.Arun Excello Infrastructure Pvt. Ltd. and A-4 is P.Karthikeyan, Director M/s.Arun Excello Infrastructure Pvt. Ltd. The FIR was registered for the alleged offences punishable under Sections 167, 120-B, 409, 420, 467 and 477(a) IPC and Section 13(1)(c) and (d) of the Prevention of Corruption Act. After investigation, charge sheet/final report, dated 03.06.2014, was filed before the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu, for the charges under Sections 420, 120-B IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, against the accused persons. It is useful to quote the relevant portion of the charges as mentioned in the above said charge sheet filed against A1 to A4, which reads as follows:

"...

A1 and A2 being Government servants had issued a notice dated 01.12.2008 to A3 and A4 instructing to pay an amount of Rs.15,08,25,000/- as infrastructure and

amenities charges at the rate of Rs.1,000/- per Sq.Mt. this notice was given a go-by by A1 and A2 while issuing a fresh notice dated 22.01.2010 based on G.O.161 where the rates were revised and only an amount of Rs.3,10,88,750/- at the rate of Rs.250/- per Sq.Mt. was raised and this amount was duly remitted by A3 and A4 ignoring the earlier instructions.

In pursuance of the conspiracy and in furtherance of common intention, A1 and A2 noted in the margin paved way to A3 and A4 to remit lesser amount in the Government account and made A3 and A4 to obtain wrongful gain and caused wrongful loss to the tune of Rs.8,68,41,250/-.

The builders are required to pay charges as per the provisions of the Government Order which were prevalent when the planning permission was issued. The planning permission was issued for Ms.Arun Excello Infrastructure Pvt. Ltd. on 18.11.2008. Hence the G.O. issued on G.O.Ms.No.191 and the rates prescribed in that G.O. alone is applicable and the accused is not eligible to any benefit of revision of rates on account of the subsequent orders. Knowing fully well that the G.O. issued subsequently in G.O.Ms.No.161 dated 09.09.2009 is not applicable, in order to obtain wrongful gain and in order to help A3 and A4, the accused A1 and A2 paved way with criminal intention to obtain wrongful gain and caused wrongful loss to the Government to the tune of Rs.8.68 Crores and committed the offence of criminal conduct.

The case of the accused was dealt with by the earlier order (G.O.Ms.191) which was in force. In pursuance of the above said criminal conspiracy and in furthermore of common intention the A3 and A4 has collected Rs.1,000/- per Sq.Mt. towards infrastructure and amenities charges from all the buyers but remitted only a sum of Rs.250/- Sq.Mt. and thereby cheated their customers and caused wrongful loss to the Government and obtained wrongful gain.

During the period between March 2007 - Feb 2010 at Chengalpattu A1 to A4 were parties to a criminal conspiracy, having agreed to commit and abet one another, in the commission of the offence of cheating, criminal misconduct in connection with the payment of Infrastructure and Amenities charges to the Government.

In pursuance of the above said criminal conspiracy and in furtherance of common intention and in the course of the same transaction, A1 and A2 being public servants abused their official position, and paved way to A3 and A4 to obtain wrongful gain for A3 and A4, by violating the procedures and by not complying with the conditions imposed in Commissioner for Town and Country Planning proceedings vide Roc.No.19432/08/CP (Spl.Cell) dated 18.11.2008.

Further, anticipating reduction in infrastructure and amenities charges from Government, A1 and A2 with criminal intention aided A3 and A4 to keep the file Roc.No.19432/08/CP (Spl.Cell) in abyss and intentionally delayed the process, and thereby facilitated A3 and A4 to make use of G.O.Ms.No.161 for which A3 and A4 were not entitled. A3 and A4 with criminal intention to obtain wrongful gain for themselves and to cause wrongful loss to the Government, influenced the Public Servants A1 and A2, who proceeded the file No.Roc.No.19432/08/CP (Spl.Cell), dated 18.11.2008, and raised a demand of Rs.3.10 Crores as per G.O.Ms.161, knowing that A3 and A4 are not entitled to G.O.Ms.161, resulting in loss to the Government to the tune of Rs.8.68 Crores.

Thus A1 and A2 intentionally aided and abetted A3 and A4 in the commission of the offences to obtain wrongful gain and thereby committed offence of misconduct and correspondingly caused wrongful loss to the Government.

Hence, A1 and A2 appear to have committed the offences punishable u/s 120(b), 420 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988. A3 and A4 appear to have committed the offences punishable u/s 120(b) and 420 IPC."

7. The trial Court framed charges on 27.04.2016 in Spl.C.No.3 of 2014 against A1 to A4, which reads as follows:

Tamil

8. The crux of the case of the prosecution is that the petitioners / A3 and A4 in conspiracy with A1 and A2, anticipating some reductions in I and A charges, initially dragged on the issue without paying the amount to the Government; A1 and A2 being Government servants, abused the official position, delayed the issue

and paved way for A3 and A4 to get the benefit of G.O.Ms.No.161, dated 09.09.2009, which stated that I and A charges for multi-storeyed residential building will be Rs.250/- per Sq.M; A1 and A2, inspite of knowing that the latest G.O. is not applicable to A3 and A4, raised a revised amount of Rs.3,10,88,750/-, which was remitted by A3 and A4, thereby, in order to obtain wrongful gain and in order to help A3 and A4, A1 and A2, paved way with criminal intention to obtain wrongful gain and caused wrongful loss to the Government to the tune of Rs.8,68,41,250/- and thereby, committed the offence of criminal misconduct.

9. Learned Senior Counsel appearing for the petitioners/A3 and A4 submitted that the sum and substance of the charges framed against the petitioners/A3 and A4 is that the petitioners/A3 and A4 are bound to pay the I and A charges prescribed under G.O.Ms.No.191, dated 01.06.2007; the planning permission was granted to them on 18.11.2008 and as on date, the petitioners are liable to pay the I and A charges as prescribed under the said G.O.Ms.No.191 alone, whereas, it is charged against them that pursuant to the conspiracy with A1 and A2, they have caused wrongful loss to the Government by adopting the rates prescribed under G.O.Ms.No.161, dated 09.09.2009, instead of G.O.Ms.No.191, dated 01.06.2007, in order to favour A3 and A4. Learned Senior Counsel further submitted that the Government of Tamil Nadu, for the first time, introduced the scheme of I and A charges for the buildings as per G.O.Ms.No.191 with effect from 01.06.2007. He further stated that subsequently, on 18.10.2007, the Government introduced Section 63-B in the Tamil Nadu Town and Country Planning Act, with retrospective effect from 01.06.2007 and therefore, G.O.Ms.No.191 stands impliedly replaced and got obliterated and hence, G.O.Ms.No.191 did not have any statutory backing.

10. To strengthen his argument that G.O.Ms.No.191 got obliterated by introduction of Section 63-B in the said Act, learned Senior Counsel appearing for the petitioners invited the attention of this Court to a judgment of a Division Bench of this Court, reported in 2013 (5) CTC 494 (D.Manikandan Vs. State of Tamil Nadu) and submitted that the vires of the newly introduced Sections 63-B and also 63-C of the Tamil Nadu Town and Country Planning Act, had been challenged before this Court by filing several Writ Petitions/Writ Appeals, which were dismissed and the relevant observations made by the Division Bench are as follows:

"1. At that juncture, the Government realised that the Government Orders, which have been passed for levying and collecting, these charges did not have any statutory backing. Accordingly, the Government introduced the Tamil Nadu Town and Country Planning (Second Amendment) Act, 2007, inserting new Sections 63-B and 63-C in the Town and Country Planning Act, 1971, which dealt with levy of infrastructure and amenity charges and constitution of State Infrastructure and Amenities Fund respectively. "

11. Learned Senior Counsel further submitted that originally, as per G.O.Ms.No.191, a sum of Rs.1,000/- per Sq.Mtr was fixed as infrastructure and basic amenities charges for multi-storeyed buildings. But subsequently, it was replaced by Section 63-B, as per which, the rates prescribed under G.O.Ms.No.191 are not in vogue and thereby, G.O.Ms.No.191 was given a go-by by introduction of Section 63-B in the said Act. He further submitted that, thereafter, the I and A charges underwent modification as per G.O.Ms.No.4, dated 04.01.2008, as per which, the payment of I and A charges was directed to be collected in three instalments, namely 50% of the charges in the first instalment, 25% of the charges in the second instalment and 25% of the charges in the third instalment. Learned Senior Counsel further submitted that thereafter, the Government passed G.O.Ms.No.22, dated 25.01.2008 framing Rules under Section 63-B of the said Act, i.e. the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008, by fixing maximum and minimum rates.

12. It is the further submission of the learned Senior Counsel appearing for the petitioners/A3 and A4 that, subsequently, by G.O.Ms.No.84, dated 08.04.2008, the Government stated that the maximum and minimum rates of the I and A charges shall continue to be the same as prescribed under Rule 4 of the said Rules, 2008. He further submitted that in view of the continuous representations by CREDAI on behalf of the Companies, another Government Order in G.O.Ms.No.161, dated 09.09.2009 was introduced, whereby Rs.250/- per Sq.M. was fixed in respect of multi-storeyed residential buildings. Hence, as per the above said G.O.Ms.No.161, the petitioners' Company received a letter dated 22.01.2010 from the Deputy Director of Town and Country Planning, Chengalpattu Region, directing them to

remit Rs.3,10,88,750/- at the rate of Rs.250/- per Sq.M. Learned Senior Counsel appearing for the petitioners therefore submitted that, as G.O.Ms.No.191 got obliterated by introduction of Section 63-B in the Act with retrospective effect from 01.06.2007, the charges framed against the petitioners by the Court below to the effect that the petitioners are liable to pay the amount as per G.O.Ms.No.191, dated 01.06.2007, are not justified. Learned Senior Counsel further submitted that the trial Court, while dismissing the discharge petitions of the accused, has erroneously given a finding that G.O.Ms.No.161 did not have retrospective effect. Learned Senior Counsel further submitted that the petitioners/A3 and A4 have abandoned to proceed with the additional construction and therefore, the amount of Rs.3,10,88,750/- paid by the Company, is liable to be repaid by the Government, and therefore, no criminal liability could be fastened against the petitioners/A3 and A4, and hence, he prayed for allowing the revision petitions.

13. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the planning permission for construction of 1903 residential units with club house, was granted on 18.11.2008 and as on that date, only G.O.Ms.No.191, dated 01.06.2007 was in force, by which the infrastructure and basic amenities charges for multi-storeyed buildings were fixed at Rs.1,000/- per Sq.M., and G.O.Ms.No.161 was issued only on 09.09.2009, wherein, I and A charges of Rs.250/- per Sq.M. was fixed for multi-storeyed residential buildings. He further submitted that the petitioners/A3 and A4, in collusion with A1 and A2, have criminally conspired together and paid the I and A charges only at the rate of Rs.250/- per Sq.M, but they collected Rs.1,000/- per Sq.M. from the persons who booked the residential flats, and thereby caused wrongful loss to the Government to the tune of Rs.8,68,41,250/-. Therefore, learned Additional Public Prosecutor submitted that it is incorrect to allege that G.O.Ms.No.161, dated 09.09.2009 will have retrospective effect. Thus, a clear case of cheating under Section 420 IPC is made out against the petitioners/A3 and A4. He further contended that there is no infirmity in the impugned order of dismissal of discharge petitions and also framing of charges against the petitioners and the petitioners have to face trial before the Court below. Hence, he prayed for dismissal of the revision petitions.

14. I have carefully considered the submissions made on both sides and perused the materials available on record.

15. In view of the charges framed against A1 to A4 by the trial Court, the only question that arises for consideration in these revision petitions is as to whether the said charges framed against the petitioners/A3 and A4, are supported by any material.

16. It is seen that for the first time, the Government introduced payment of infrastructure and basic amenities charges by passing G.O.Ms.No.191, Housing and Urban Development (OPI) Department, dated 01.06.2007, wherein, the rates of infrastructure and basic amenities charges were specified as follows:

Infrastructure and Basic Amenities Charges

Sl.No.	Types of Building	Ceiling of the Rates
1	Commercial and IT Building	Rs.500/- per Sq.M.
2	Multistoreyed Building	Rs.1000/- per Sq.M.
3	Institutions	Rs.200/- per Sq.M.
4	Industrial use	Rs.300/- per Sq.M.

17. The petitioners' Company applied for additional construction of 1,17,940 Sq.M. on 18.03.2008. The Commissioner of Town and Country Planning, Chennai, granted approval/permission on 18.11.2008 for multi-storeyed construction of 1903 apartments and club house with conditions and special conditions. Therefore, it is the case of the prosecution that as on the date of granting planning permission on 18.11.2008, the petitioners are liable to pay I and A charges only at the rate of Rs.1,000/- per Sq.M. for multi-storeyed buildings, as per G.O.Ms.No.191, dated 01.06.2007. But, according to the learned Senior Counsel appearing for the petitioners/A3 and A4, later on, G.O.Ms.No.161 was introduced on 09.09.2009, wherein, I and A charges for multi-storeyed residential buildings were fixed at Rs.250/- per Sq.M. He further submitted that the petitioners have received a letter, dated 22.01.2010 from the Deputy Director of Town and Country Planning, Chengalpattu, directing them to pay a sum of Rs.3,10,88,750/- based on the calculation of I and A charges at the rate of Rs.250/- per Sq.M., and therefore,

according to the learned Senior Counsel, absolutely, there cannot be any criminal liability on the part of the petitioners.

18. According to the prosecution, G.O.Ms.No.161, dated 09.09.2009 will not have retrospective effect from 18.11.2008 on which date the petitioners were granted approval for construction of residential apartments and therefore, the petitioners are liable to pay the I and A charges only at the rate of Rs.1,000/- per Sq.M. as per G.O.Ms.No.191, dated 01.06.2007. Knowing fully well that only G.O.Ms.No.191, dated 01.06.2007 is applicable to the petitioners, the petitioners/A3 and A4 have collected Rs.1,000/- from the persons who booked the residential apartments, and the petitioners/A3 and A4 have conspired with A1 and A2, and in pursuance of the conspiracy and in order to make wrongful gain to themselves and to cause wrongful loss to the Government, they have flexibly interpreted G.O.Ms.No.161, dated 09.09.2009 and only a sum of Rs.3,10,88,750/- was paid by the petitioners/A3 and A4 as per G.O.Ms.No.161, dated 09.09.2009, thereby the petitioners/A3 and A4, in collusion with A1 and A2, have caused loss to the Government at Rs.8,68,41,250/-.

19. It is the main contention of the learned Senior Counsel appearing for the petitioners that G.O.Ms.No.191, dated 01.06.2007 got obliterated when Section 63-B was subsequently introduced having retrospective effect from 01.06.2007, and therefore, G.O.Ms.No.191 will not have any force. Section 63-B reads as follows:

"Section 63-B: Levy of infrastructure and amenities charges:--

(1) Every local authority or the planning authority, as the case may be, while according building permit under the relevant laws or according permission under this act, as the case may be shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area so as to meet the impact of development and for ensuring sustainable development area so as to meet the impact of development and for ensuring sustainable development of urban and rural areas by providing adequate infrastructure and basic amenities at the rates as determined in accordance with such procedure as may be prescribed which shall not be less

than minimum and not more than the maximum as may be prescribed, and different rates may be prescribed for different parts of the planning area and for different uses.

(2) The infrastructure and amenities charges shall be leviable on any person who undertakes or carries out any such development or institutes any use or charges any such use.

(3) The collection of the infrastructure and amenities charges shall be made in such manner as may be prescribed."

20. On a perusal of the materials available on record, this Court is of the opinion that no doubt, originally, by G.O.Ms.No.191, dated 01.06.2007, the infrastructure and basic amenities charges were fixed at the rate of Rs.1,000/- for multi-storeyed building and merely by introduction of Section 63-B, the said G.O.Ms.No.191 will not get obliterated. This is evident from the subsequent Government Orders. After G.O.Ms.No.191, dated 01.06.2007, another Government Order in G.O.Ms.No.4, Housing and Urban Development (UD4-2) Department, dated 04.01.2008 was passed, in which, G.O.Ms.No.191 was referred. In the said G.O.Ms.No.4, the I and A charges at the rate of Rs.1,000/- per Sq.M. for multi-storied buildings, were retained and the direction was issued to collect the amount in three instalments, namely 50%, 25% and 25%.

21. Thereafter, by G.O.Ms.No.22, Housing and Urban Development (UD4-1), dated 25.01.2008, the Tamil Nadu Town and Country Planing (Levy of Infrastructure and Amenities Charges) Rules, 2008, were framed. Subsequently, another Government Order in G.O.Ms.No.84, Housing and Urban Development (UD4-1) Department, dated 08.04.2008 was issued, in which, the Government directed that the maximum and minimum rates of the I and A charges shall continue to be the same as prescribed under Rule 4 of the said Rules, 2008. In all the Government Orders, G.O.Ms.No.191 was referred. For the first time, in G.O.Ms.No.161, Housing and Urban Development (UD-4(1)), dated 09.09.2009, the I and A charges were fixed at the rate of Rs.250/- for multi-storeyed residential building. Even much earlier to the issuance of G.O.Ms.No.161, dated 09.09.2009, the planning permission for construction of 1903 residential units with club house,

was granted on 18.11.2008. But, according to the learned Senior Counsel appearing for the petitioners/A3 and A4, G.O.Ms.No.161, dated 09.09.2009 will have retrospective effect, as the planning permission was granted on 18.11.2008, and therefore, they are entitled to the benefits of G.O.Ms.No.161.

22. In the above context, it is worthwhile to quote the relevant portion of G.O.Ms.No.84, dated 08.04.2008 and G.O.Ms.No.161, dated 09.09.2009, which reads as follows:

"G.O.Ms.No.84, dated 08.04.2008:

.....

4. The Government direct that the maximum and minimum rates of the infrastructure and amenities charges shall continue to be the same as prescribed under Rule 4 of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008 viz.,

Sl.No.	Type of building	Minimum rates per square metre	Maximum rates per square metre
1	Multi-storeyed building accommodating residential commercial or Information Technology or industrial or institutional or combination of such activities	Rs.500/-	Rs.1000/-

2	Commercial building, Information Technology building, Group development and Special building (not covered under S.No.1)	Rs.250/-	Rs.500/-
3	Institutional building (not covered under S.No.1)	Rs.100/-	Rs.200/-
4	Industrial building (not covered under S.No.1)	Rs.150/-	Rs.300/-

They shall be collected in three instalments as prescribed under rule (9) of these rules, viz., 50%, 25% and 25% as first, second and third instalments respectively.

5. The Government also direct that in respect of the Chennai Metropolitan area and Chengalpattu Region, the maximum rates of the charges shall be fixed and collected, in respect of the Coimbatore and Tiruppur Local Planning areas and Kurichi New Town Development area 75% of the maximum rates of charges and in respect of the other areas 50% of the maximum rates of charges shall be fixed and collected.

6. The Government further direct that the powers delegated to the Vice-Chairman, Chennai Metropolitan Development Authority, and the Commissioner of Town and Country Planning for fixing the rates of charges of charges be withdrawn. In future the rates shall be fixed by the Government.

7. Necessary amendments to Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules 2008 shall be issued separately.

8. The Commissioner of Town and Country Planning is requested to send necessary proposal to amend rule 5 of the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008.

....."

G.O.Ms.No.161, dated 09.09.2009:

"Read:

(i) G.O.Ms.No.191, Housing and Urban Development Department, dated 01.06.2007.

2. G.O.Ms.No.4, Housing and Urban Development Department, dated 04.01.2008.

3. G.O.Ms.No.22, Housing and Urban Development Department, dated 25.01.2008.

4. G.O.Ms.No.84, Housing and Urban Development Department, dated 08.04.2008.

Read also:

5. From the President, Confederation of Real Estate Developers' Associations of India, Representation No.TN/061/08-09, dated Nil.

6. From the Commissioner of Town and Country Planning, Letter No.15071/2009/BA1, dated 31.07.2009.

7. From the Additional Chief Secretary and Vice-Chairperson, Chennai Metropolitan Development Authority, Letter No.C3/12933/07, dated 31.07.2009.

ORDER

".."

3. In his representation fifth read above, the President of Confederation of Real Estate Developers' Associations of India has represented that the levy of charges is over and above the development charges that is collected under various other heads and that in other States the rates are much lower. Pointing out that the real estate market is very much depressed and the sales have dipped as a result of high rates of interest on home loans, he has requested that the Infrastructure and Amenities charges for the various types of buildings may be reduced; that the charges may be made effective from 08.04.2008, the date of issue of G.O. in the reference fourth read above and that Infrastructure and Amenities charges may be

paid in two instalments.

4. The Government have examined the request in para 3 above in the light of the reports sent by the Commissioner of Town and Country Planning and the Additional Chief Secretary and Vice-Chairperson, Chennai Metropolitan Development Authority in their letters 6th and 7th read above. The Government took note of the slump in the construction industry, the need to provide relief to construction industry, while at the same time, recognising the need for generating funds and the need to give impetus to the residential construction which will ultimately benefit the general public. The Government after careful consideration direct as follows:

(i) The minimum and maximum rates specified in the rule 4 of Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules 2008 shall be done away with.

(ii) The Infrastructure and Amenities charges for different categories in different areas shall be as given in the table below:

Sl.No.	Type of building	Chennai Metropolitan Development Authority	Commissioner of Town and Country Planning		
		Chennai Metropolitan Area	Chengapptu Region	Coimbatore, Tiruppur and Kurichi	Other areas
		Rs. Rates per Sq. Mtr			

1	<u>Multi Storeyed Building:</u> Commercial or Information Technology or Industrial or Institutional or Combination of such activities	500	500	375	250
2	<u>Multi storeyed residential</u>	250	250	250	250
3	<u>Other than Multi-storeyed Building</u> Commercial building, Information Technology building, Group Development and Special Building	250	250	190	125
4	Institutional building (not covered under Sl.No.1)	100	100	75	50
5	Industrial building (not covered under Sl.No.1)	150	150	112.50	75

iii) The Infrastructure and Amenities charges shall be paid in one lumpsum, before issue of Planning Permission.

iv) The above rates of Infrastructure and Amenities charges shall take place with immediate effect.

v) The revised rates of Infrastructure and Amenities charges shall be revised at a later date whenever necessity arises.

5. Orders already issued in the G.O.4th read above shall stand modified to the extent indicated in para 4 above. The Member-Secretary, Chennai Metropolitan Development Authority and the Commissioner of Town and Country Planning are directed to pursue action accordingly.

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."

23. On a reading of the above extracted G.O.Ms.No.161, dated 09.09.2009, it is seen that no retrospective effect was given as contended by the learned Senior Counsel appearing for the petitioners. Only in paragraph 3 of the above said G.O.Ms.No.161, it is just mentioned that it was requested by CREDAI that I and A charges for various types of buildings may be reduced and that the charges may be made effective from 08.04.2008, i.e. the date of issuance of earlier G.O.Ms.No.84 and the CREDAI prayed for payment of I and A charges in two instalments. But, in the said G.O.Ms.No.161, dated 09.09.2009, it has been specifically stated in paragraph 4(iv) that the rates of I and A charges shall have immediate effect. In the case on hand, the crucial date is 18.11.2008 on which the planning permission for construction of 1903 multi-storeyed residential units with club house, was granted to the petitioners' Company and as on that date, prima-facie, it appears that only G.O.Ms.No.191, dated 01.06.2007 will have application. When it has been specifically stated in G.O.Ms.No.161, dated 09.09.2009 that the I and A charges shall take place with immediate effect, it has to be construed that the amount of Rs.250/- per Sq.M. stated therein for multi-storeyed buildings, will take effect only from 09.09.2009 and since the petitioners/A3 and A4 were granted planning permission on 18.11.2008 itself in respect of construction of 1903 residential units and club house, they will have to pay the I and A charges only at the rate of Rs.1,000/- per Sq.M. for multi-storeyed buildings as per G.O.Ms.No.191, dated 01.06.2007.

24. Hence, the charges were framed on 27.04.2016 by the trial Court with regard to the criminal conspiracy made by A1 to A4 , thereby causing wrongful loss to the Government by wrong application of G.O.Ms.No.161, dated 09.09.2009, instead of G.O.Ms.No.191, dated 01.06.2007, so as to obtain wrongful gain to themselves. Therefore, I find that prima-facie materials are available to frame charges against A1 to A4. The probative value of the charges framed against A1 to A4 cannot be gone into at this stage, more particularly, when the accused persons have to face trial based on the said charges. Hence, this Court has not discussed the various decisions of Courts, relied on by the counsel for the parties and those decisions cannot be made applicable to this case, since in those decisions, there was no material to frame charge against the accused therein. But in this case, this Court finds that there are materials to frame charge against A1 to A4. Moreover, it is the specific case of the prosecution that that the petitioners/A3 and A4 in connivance and in conspiracy with A1 and A2, have wrongfully paid the I and A charges at the rate of Rs.250/- per Sq.M. fixed by G.O.Ms.No.161, dated 09.09.2009, instead of paying the I and A charges as per G.O.Ms.No.191, dated 01.06.2007, in which Rs.1,000/- per Sq.M. was fixed. Therefore, absolutely I do not find any infirmity in the charges framed by the trial Court against A1 to A4.

25. Therefore, for the foregoing reasons, I do not find any merit in Crl.R.C.No.822 of 2016, which is accordingly dismissed. Crl.R.C.No.226 of 2016 is dismissed as having become infructuous. Crl.M.Ps. are closed.

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