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Court : Chennai

Decided On : Aug-03-2016

Judge : Huluvadi G. Ramesh &Amp; M.V. Muralidaran

Appeal No. : W.A. No. 2376 of 2013

Appellant : D. Rajan Dev

Respondent : The Government of Tamil Nadu rep. by its Secretary Housing and Urban Development Department and Others

Judgement :

(Prayer: Appeal under Clause 15 of the Letters Patent, against the order dated 22.10.2013 made in W.P.No.18238 of 2013.)

Huluvadi G.Ramesh, J.

1. This appeal by the writ petitioner is against the order passed by the learned single Judge, holding that the appellant/writ petitioner is liable to pay the premium FSI charges at the rates prevailing on the date of approval, solely on the ground that the second respondent-CMDA is entitled to calculate the levy of premium FSI charges taking into account the guideline rate prevalent as on the date of filing of the application for approval of the additional construction and not from the date on

which the approval is being granted. In this regard, the learned counsel for the appellant has relied upon a judgment of the Apex Court in the case of Union of India and another v. Mahajan Industries Ltd., and another, (2005) 10 SCC 203.

2. Heard the learned counsel for the parties.

3. It appears that the appellant/writ petitioner, being a developer, is said to have submitted an application for planning permission to construct a residential-cum-shopping building at Survey Nos.223, 224 and 225, Padi Village, Padikuppam Road, Chennai and the approval was also granted by the second respondent-CMDA on 1.7.2009. Thereafter, while the construction was in progress, on the introduction of a Scheme called premium FSI by the Government of Tamil Nadu, the appellant/writ petitioner is said to have submitted an application under the said scheme on 4.5.2011 for approval of the additional FSI area and such revised approval is also said to have been granted by the first respondent-Government on 29.5.2012. However, on the issue as to whether the builder is liable to pay the premium FSI charges to the CMDA as per the guideline rate prevailing on the date of sanctioning the application for planning permission or the rate prevalent as on the date of filing of the application, the learned single Judge, by the impugned order, has opined that the guideline rate applicable as on the date on which approval was granted by the Government alone would apply in a case of this nature, as there was no undue delay on the part of the Government to consider the application for approval.

4. We have gone through the judgment of the Apex Court in the case of Union of India and another v. Mahajan Industries Ltd., and another, (2005) 10 SCC 203, wherein the Apex Court, while dealing with the finding recorded by the High Court that the application filed on 25.3.81 for conversion of land use from residential to multi-storeyed complex was still pending and had not been finally disposed of, referring to the judgment of the Delhi High Court in Ansal and Saigal Properties (P) Ltd., v. L and D.O., (1998) 74 DLT 152 holding that the crucial date for calculating the conversion charges has to be the date of receipt of application for conversion of land use, has laid down the ratio that the authorities are bound to grant the permission for change of land use by charging the rates prevalent as on the date

of the filing of the application for conversion.

5. In the instant case, the application said to have been filed by the appellant/writ petitioner was pending consideration and the authorities have demanded the premium FSI charges as on the date of approval, instead of as on the date of filing of the application for conversion etc. In such circumstances, in the light of the ratio laid down by the Apex Court in the judgment cited supra, this writ appeal is allowed, modifying the order of the learned single Judge, directing the second respondent-CMDA to calculate the premium FSI charges at the rates prevalent as on the date of filing of the application by the appellant/writ petitioner. Pursuant to the interim order of this Court dated 29.11.2013, the appellant/writ petitioner is said to have deposited a sum of Rs.3,80,00,000/-. Hence, it is for the second respondent-CMDA to arrive at the calculation of premium FSI charges as on the date of filing of the application and to do the needful in this regard. Consequently, M.P.Nos.1 and 2 of 2013 are closed. No costs.