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Court : Chennai

Decided On : May-02-1990

Reported in : (1990)2MLJ73

Appellant : A. Balaraman and ors.

Respondent : Madras Metropolitan Development Authority Represented by the Member Secretary, Thalamuthu Natarajan

Advocate for Pet/Ap. : Mr. R. Janakiraman

Judgement :
ORDER

K.S. Bakthavatsalam, J.

1. This writ petition is for a declaration to declare Rule 19(b)II Group Development VI of the Development Control Rules framed under the Tamil Nadu Town and Country Planning Act 1971 as null and void.

2. The petitioners are owners of vacant land measuring 27 grounds in T.S.No.1,3,5, and 6 Block Nos.24, 25 Jeevarathanam Nagar, Urur Village. In order to develop the land by putting up a multistoried building, the petitioners submitted a plan to the respondents for planning permission to construct a multistoried

building consisting of five blocks with ground plus four floors for residential purpose. On the petitioners' application the Government granted exemption under Section 113 of the Town and Country Planning Act from the provisions of Rules 17 of the Development Control Rules in respect of the proposed construction. After getting exemption under G.O.176 (Housing and Urban Development Department) dated 20.1.89, the petitioners filed an application with the plan for planning permission to the first respondent. The first respondent by communication in Letter No.1/1435/89 dated 21.7.1989 asked petitioners to remit a sum of Rs. 56,200/- towards the development charges, a sum of Rs.6,000/- towards scrutiny charges and a sum of Rs.5,06,000/-towards open space reservation charges and a sum of Rs. 10,01,000/- towards security deposit within ten days from the date of receipt of that communication. The petitioners accordingly produced demand drafts for the abovesaid amounts excepting Rs. 10,01,000/- and requested them to accept bank guarantee for the said amount of Rs.10,01,000/-. It is alleged that the petitioners asked the first respondent to furnish basis for the open space reservation charges. The petitioners also stated that they informed the first respondent that the demand of open space reservation charges is high, arbitrary and unreasonable and hence correct charges may be levied. The first respondent refused to give the basis for the open space reservation charges and refused to accept the bank guarantee furnished towards security deposit. The first respondent also declined to receive the development charges and scrutiny charges unless the petitioners deposit all the amounts together. It is alleged in the affidavit that the action of the first respondent in refusing to accept the bank guarantee and also fixing the open space reservation charges at Rs.5,06,000/- is arbitrary, illegal and without authority of law without any basis and violative of Articles 14,19, 19(1)(g) and 300-A of the Constitution of India. It is alleged that the Rule 19(b) demanding the market value of the land equivalent to 10% reserve for open space is arbitrary and violative of the petitioners' right guaranteed under Article 14,19(1)(g) and 300-A of the Constitution of India. The case of the petitioners in their affidavit is that there is no basis for fixing either the 10% or demand of market value from the petitioners. After referring to Rule 19(b)(ii), Group Development VI, the petitioners allege that the respondent could demand only the value as per the valuation of the registration department. In the present case, according to the petitioners, the value

per ground as per the valuation of the registration department is Rs.1,00,000/- and the value of 10% area in the present case would be rupees 1,25,000/- and accordingly, the first respondent can ask for only a sum of Rs. 1,25,000/- and the present demand is illegal. The contention of the petitioners is that the value of the land in Urur Village is Rs. 1,00,000/-per ground and the demand on the part of the first respondent and the valuation arrived at by it, is arbitrary and is not correct.

3. A counter affidavit has been filed on behalf of the first respondent. The facts are not disputed. It is stated in the counter affidavit that as far as the Development charges are concerned, as per Section 61 of the Town and Country Planning Act, there is a specific provision for levying Development charges which is a statutory requirement under the Act and insofar as security deposit is concerned it is stated in the counter that it is a subject matter of the special leave petition No. 100 of 1988 pending before the Supreme Court. With regard to open space reservation charges is concerned, it is one of the charges to be collected under Rule 11 of the Development Control Rules. It is stated in the counter affidavit that the open space reservation is required to keep the environment free from congestion and to have a lung space in every cluster of building units which is coming up in accordance with the rules. It is also stated that the open space reservation area would normally be insisted only when the area utilised for construction exceeds more than 10,000 sq.mtrs. and the space shall be maintained for communal and recreational purposes. If it is less than 10,000 sq.mets. the applicant has the option either to hand over the 10% open space or in the alternative, he shall pay the market value of equivalent land excluding the first 3000 sq.ft. as per the valuation of the Registration Department plus 20% of the total amount. It is stated that the open space reservation charges would be collected from the applicants and the same may be spent to maintain the communal and recreational spaces within the Madras Metropolitan Area. It is stated that if the space is not available then the charges so collected is distributed to the local bodies under a Local Bodies Assistance Program (LAP) to utilise the moneys to fund the various projects that benefit the entire community. It is staled that the open space reservation charges are only used for developing and maintaining the public parks, play ground and recreational purposes for the public. It is stated that the open space reservation thus become a compulsory one under the Development Control

Rules and the rule is enforceable till date from the date of inception. It is also stated in the counter that the Elliots Beach garden strip, formation of park and children play ground around the town in Anna Nagar Improvement to Valluvarkottam area, Improvement to the play ground at B.V. Colony, Vyasarpadi, Formation of Parks in I & II stages of West Kamaraj Nagar of Thiruvanmiyur Neighbourhood scheme and construction of sports Pavilion in Ambattur Township are some of the schemes for which the abovesaid funds have been utilised. It is stated that the open space reservation charges is nominal and it is fixed as per the guideline value of the Registration Department plus 20% of the value. It is also stated that if the open space reservation charges is not collected, then it will not be possible to have any open spaces in between the cluster of fast developments by this kind of developers, that too wherever this kind of multi-storyed building is allowed the open space reservation is an essential one to keep title people hale and healthy who are residing in the developments. It is stated in the counter affidavit that the first respondent as the planning authority for Madras Metropolitan area has to enforce the orderly development of the city in accordance with the Master Plan.

4. Mr. R. Janakiraman, learned Counsel for the petitioners referred to Section 19(b) of the Development Control Rules especially Rule 19(b)(i)(c) and contends that there is no specific provision for payment of open space charges and it is also stated that there is no power for the first respondent to ask for the value of Registration Department plus 20% of that value. It is stated by him that the petitioners are prepared to pay as per the valuation of the Registration Department but the demand of the value of the Registration Department plus 20% of that value is wholly arbitrary.

5. Mr. A. Chellakumar, learned Counsel appearing for the first respondent contends that the open space reservation charges are collected from the applicants and the same is spent to maintain the communal and recreational spaces within the Madras Metropolitan area, and that the open space reservation charges are only used for developing and maintaining the public parks, play ground ard recreational purposes for the public. He would further submit that there is no rule which empowers them to ask for over and above the valuation of

registration department. But normally it is asked for to be utilised for developing the other areas and to have a healthy environment. Learned Counsel for the first respondent is not able to lay his hands on any provision either in the Act or in the rules for demanding 20% more on the valuation of the registration department, apart from the valuation of the registration department Learned Counsel refers to Rule 17 of the Development Control Rules and contends that the demand made under Rule 19 has to be taken in along with Rule 17. Learned Counsel also refers to rules framed under Section 32(4) of the Tamil Nadu Town and Country Planning Act, 1971.

6. I considered the arguments of the learned Counsel for the petitioner and the respondents. I am not able to agree that the Madras Metropolitan Development Authority is entitled to ask for more, than what is prescribed under Rule 19(b)II(i)(c) of the Development Control Rules. Rule 19(b)II(i)(c) of the said Rules reads as follows:

(b) II (vi) Open space:- Reservation of land for communal and recreational purposes shall be as follows:Extent of site Reservation(1) (2)a. For the Nil.first 3,000metresb. Between 3,000 10 per centsq.metres and of the area10,000 sq. excluding roadsmetres or in the alt-ernative he/sheshall pay themarket valueof the equivalentland excluding thefirst 3,000 sq.metres as per thevaluation of theregistration de-partment. The spaceso reserved shall bemaintained as communaland recreational space.c. Above 10,000 10 per cent dfsq. metres. the area exc-luding roadsshall be rese-rved and thisspace shall betransferred tothe Authorityor to the localbody designatedby it

A reading of the above rule clearly shows that between 3,000 square metres and 10,000 square metres, 10 per cent of the area excluding roads or in the alternative the market value of the equivalent land excluding the first 3,000 square metres as per the valuation of the registration department, has to be paid. It is also stated in the rule that the space so reserved shall be maintained as communal and recreational space. So, a reading of the above rule clearly shows that the present demand made on the petitioners by the Madras Metropolitan Development Authority asking for the amount more than the value of the registration department

is unsustainable. There is no basis for asking for the amount over and above the value of the registration department, i.e. the value of the registration department plus 20% of the value of the registration department. No doubt, the first respondent has justified its demand in paragraph 4 of its counter. But I am not able to see any section or rule which enables the Madras Metropolitan Development Authority to collect such amount. It cannot be done by way of administrative order and as such, the demand made on the petitioner as stated above, cannot be sustained.

7. With regard to validity of Rule 19(b)II(i)(c) I am of the view that the idea of collecting the amount seems to be to develop and maintain public parks, playgrounds and for recreational purposes. But I find from Para 6 of the counter affidavit that the funds are utilised in some other area where multi - storied buildings come up. At any rate, since the petitioner is prepared to pay according to the valuation of the Registration Department, I do not think that it is necessary for me to decide the question whether the rule is valid or not at this stage. In so far as the security deposit is concerned, the matter is pending before the Supreme Court and I am not concerned about it in this writ petition.

8. Though the writ petition is for a declaration that the Rule 19(b)II Group Development VI of the Development Control Rules is null and void, this Court can mould the prayer to suit the situation. As such, I have called for the records from the Sub-Registrar's office and the learned Government Advocate produced the registers before me and according to the register the market value of Block No.24 is Rs.1,71,290/- and the market value of Block No.25 is Rs.1,49,334/- by the end of 1989. If at all the first respondent can ask for the charges, it can be based only on this amount and not more than that. There is no other evidence contra produced by the respondents to show that the valuation of the registration department is more than this at the time when the planning permission was granted. As such, the order of the first respondent dated 21.7.1989 is partly quashed in so far the demand of open space reservation charges of Rs.5,06,000/-. It is open to the first respondent to ask for the exact amount as per the value of registration department. The writ petition is ordered accordingly. No costs.

9. I am told by the learned Counsel for the petitioners that as per the interim order of this Court, the petitioners have paid the entire amount demanded, As such I direct it is open to the first respondent to deduct the exact amount to be paid by the petitioners and pay the balance to them with interest as fixed by Srinivasan, J., in the petition for interim orders.