2025 INSC 1200

NON- REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3051 OF 2015

CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY **…APPELLANT(S)**

VERSUS

DR. KAMALA SELVARAJ **…RESPONDENT(S)**

J U D G M E N T

ARAVIND KUMAR, J.

1. This appeal, is directed against the judgment and final order dated 21.12.2011 passed by the Division Bench of the High Court of Judicature at Madras in Writ Appeal No. 303 of 2011 affirming the judgment dated 13.07.2010 rendered by the Single Judge in Writ Petition No. 6495 of 2010, whereby the demand raised by the appellant–Authority for a sum of ₹1,64,50,000/– (Rupees One Crore Sixty Four Lakhs Fifty Thousand Only) towards Open Space Reservation charges was quashed and a

direction was issued to refund the said sum with interest at the rate of 8 (eight) per cent per annum.

2. In order to appreciate the controversy, it becomes necessary to narrate the facts in some detail.

3. The property in question traces its lineage to the estate of one Haji Syed Ali Akbar Ispahani, who died leaving behind his widow, his sons, and daughters. The heirs, in order to bring about a complete division of their respective rights, executed a registered partition deed dated 23 April 1949 (Document No. 6119 of 1949, Registrar of Madras). Under the terms of this instrument, an extent of about 21 (twenty-one grounds) situated in Survey No. 126/2 of Nungambakkam Village fell to the share of Syed Jawad Ispahani, one of the sons.

4. In the years that followed, the members of the Ispahani family dealt with their shares through a series of registered conveyances. By two gift deeds dated 30.03.1972 and 20.02.1973 (registered as Document Nos. 4138 of 1972 and 1372 of 1973), Syed Jawad Ispahani gifted to his son Syed Ali Ispahani two parcels measuring 5¼ grounds and 5¾ grounds, in all 11 grounds. By a further family arrangement and gifts *interse*, Syed Mehdi Ispahani, another son, came to hold about 10 grounds, while Syed Ali Ispahani remained in possession of the 11 grounds.

5. The materials on record disclose that even prior to the coming into force of the First Master Plan on 05 August 1975, these divisions were recognised, and separate *pattas* were issued in the name of Syed Ali Ispahani for his holding of 11 grounds and 52 sq. ft**.**, thereby evidencing official recognition of the sub-division.

6. On 20.11.1984, out of his holding of 11 grounds, Syed Ali Ispahani executed a gift deed (Document No. 519 of 1984, Sub-Registrar, Thousand Lights) gifting away a small portion of 125 sq. ft. to the Laymen's Evangelical Fellowship. This left with him a balance extent of 10 grounds and 2275 sq. ft.

7. On 08 February 2008, the respondent herein, a medical professional intending to establish a super-speciality hospital, purchased from Syed Ali Ispahani under a registered sale deed (Doc. No. 1215 of 2008) the aforesaid 10 grounds and 2275 sq. ft**.**, equivalent to about 2229 square metres.

8. Upon purchase, the respondent applied on 28.01.2009 to the appellant–Authority for planning permission. The application was initially rejected on the ground that the proposal was hit by Regulation 26(2) of the Development Regulations. The State Government, however, by G.O.Ms. No. 84 dated 02.06.2009, granted exemption from Regulation 26(2), subject to compliance with technical conditions.

9. Thereafter, by communication dated 30.10.2009, the appellant–Authority demanded, *inter alia,* a sum of ₹1,64,50,000/– (Rupees One Crore Sixty Four Lakhs Fifty Thousand Only) as Open Space Reservation charges (*hereinafter referred to as* **"OSR"**), calculated in lieu of land. The respondent made a representation pointing out that her site was less than 3000 square metres in extent and hence exempt under Annexure XX of the Development Regulations. By order dated 03.02.2010, Chennai Metropolitan Development Authority (*hereinafter referred to as* **"CMDA"**) rejected this representation and insisted on payment.

10. In order to secure permission and avoid delay, the respondent, under protest, deposited the demanded sum [i.e., ₹1,64,50,000/– (Rupees One Crore Sixty Four Lakhs Fifty Thousand Only)] on 06.04.2010 and simultaneously approached the High Court under Article 226 of the Constitution. The learned Single Judge, by judgment dated 13.07.2010, held that the levy was unsustainable and directed refund. The Division Bench, by the impugned judgment dated 21.12.2011, concurred with the Single Judge and dismissed the appeal.

11. Shri Balaji Subramaniam, Learned Counsel on behalf of the Appellant vehemently contended that High Court had erred in overlooking the fact that the respondent's holding formed part of a larger property measuring twenty-one grounds, equivalent to about 4682 square metres.

He urged that the purchase of 2008 amounted to a fresh sub-division and, therefore, Regulation 29 of the Development Regulations was attracted. He further submitted that the exemption contemplated for sites below 3000 square metres could not be claimed, since the parent holding was above the threshold. Lastly, he submitted that *pattas* or private family arrangements cannot take the place of statutory sub-division approval, and that the levy of OSR charges was, therefore, valid.

12. Shri Vikas Mehta, Learned Counsel on behalf of the Respondent supported the reasoning of the courts below. He submitted that the documentary trail commencing with the partition deed of 1949, followed by the gift deeds of 1972 and 1973, conclusively established that the respondent's vendor held an independent parcel of 11 grounds long before 1975. He also specifically urged that the issuance of separate *pattas*, placed the matter beyond the pale of controversy. He further submitted that out of the 11 grounds, 125 sq. ft. had been gifted away in 1984, leaving 10 grounds and 2275 sq. ft., which were conveyed to the respondent in 2008. The argument that the purchase constituted a fresh sub-division was wholly misconceived. Learned counsel further contended that Annexure XX of the Development Regulations, by its plain terms, exempts the first 3000 square metres, and since the respondent's site is 2229 square metres, no OSR is leviable. Hence, he prayed for dismissal of the appeal.

13. We have heard Shri Balaji Subramaniam, Learned Counsel appearing on behalf of the appellant–Authority and Shri Vikas Mehta, Learned Counsel appearing on behalf of the respondent and we have given anxious consideration to the rival submissions and minutely examined the material on record.

14. The fulcrum of the appellant's case rests on the proposition that the property must be viewed with reference to the parent extent of 21 (twenty-one) grounds and that the sub-division occurred only in 2008 namely after regulation coming into force. We find no merit in this contention. The documentary record demonstrates otherwise. The partition deed dated 23.04.1949 (Doc. No. 6119/1949) clearly disclose 21 (twenty-one) grounds in Survey No. 126/2, Nungambakkam Village, was allotted to Syed Jawad Ispahani. By two registered gift deeds, namely, one dated 30.03.1972 (Doc. No. 4138/1972) gifting 5¼ grounds, and another dated 20.02.1973 (Doc. No. 1372/1973) gifting 5¾ grounds, said Syed Jawad Ispahani conveyed in total 11 (eleven) grounds to his son Syed Ali Ispahani. These deeds, executed years prior to 05 August 1975, are unimpeached, form part of the record, and signify a lawful familial conveyance or arrangement.

15. In pursuance of these gifts, separate *pattas* were issued recognising 11(eleven) grounds and 52 sq. ft. in the name of Syed Ali

Ispahani. The issuance of *pattas*, a public act of the revenue authority, evidences official acknowledgment of an independent parcel. It is well settled that revenue entries, though not constituting title, corroborate possession and demarcation, and when read alongside registered conveyances, they establish the existence of a separate holding. Subsequently, on 20.11.1984, Syed Ali further gifted 125 sq. ft. out of his 11 (eleven) grounds to a charitable body, leaving 10 grounds and 2275 sq. ft. This sequence of transactions shows, with clarity, that well before the respondent's purchase in 2008, the land had long been treated as a separate, identifiable holding. The respondent's sale deed of 08.02.2008 (Doc. No. 1215/2008), conveying 10 grounds from Syed Ali, is therefore but the culmination of this historical chain of transactions.

16. Once this series of registered deeds and *pattas* were produced and the initial evidentiary burden was discharged, same shifted to the appellant–Authority to establish that, notwithstanding these instruments, the property was not lawfully sub-divided prior to 05 August 1975. This burden has not been discharged. No material has been placed to show that the *pattas* were procured post-1975, nor is there any evidence that the sub-division lacked recognition under planning law as it then stood. The appellant's bald assertion that sub-division occurred in 2008 is a mere *ipse dixit*, devoid of proof, and cannot prevail over contemporaneous registered

instruments whose authenticity is not in dispute. The High Court was right in relying upon these materials to hold that the sub-division existed prior to 1975 and same cannot be faulted. To disturb such a finding would amount to reappreciation of evidence, which this Court in exercise of its jurisdiction under Article 136 will not ordinarily undertake, particularly where the findings are concurrent, supported by public documents, and findings suffer from no perversity.

17. On the second limb, Annexure XX of the Development Regulations is categorical: *"for the first 3000 square metres — Nil."* The respondent's holding being 2229 square metres falls squarely within the Nil slab. The attempt to recombine it notionally with the erstwhile 21-ground parent estate is contrary both to fact and to the text of the regulation. To accept such a construction would be to ignore the legislative exemption and retroactively enlarge the liability.

18. The High Court was also correct in observing that the respondent had not formed any layout. Consequently, there was no occasion to invoke provisions meant for layout promoters. The respondent merely sought to develop her site by constructing a hospital.

19. We find ourselves in respectful agreement with the conclusions of the Single Judge and the Division Bench. The findings are based upon an

appreciation of registered instruments and public records, and cannot be characterised as perverse.

20. This Court has consistently held that in the exercise of jurisdiction under Article 136, interference is warranted only where manifest illegality, perversity, or grave miscarriage of justice is demonstrated. No such infirmity is made out here. On the contrary, the concurrent reasoning of the courts below is in consonance with both fact and law.

21. In the result, the appeal being bereft of merit and is accordingly dismissed. The direction of the High Court to refund the sum of ₹1,64,50,000/– (Rupees One Crore Sixty Four Lakhs Fifty Thousand Only) with interest at 8% per annum, to the extent not already complied with, shall stand affirmed and appellant is directed to pay the said amount to the respondent(s) within six (6) weeks from today. There shall be no order as to costs. All pending applications stands disposed.

……., J.
[ARAVIND KUMAR]

……., J.
[N.V. ANJARIA]

New Delhi;
October 08th, 2025.