CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY REPRESENTED BY ITS MEMBER SECRETARY

v.

D. RAJAN DEV AND OTHERS

(Civil Appeal No. 9336 of 2019)

December 11, 2019

[R. BANUMATHI, A. S. BOPANNA AND HRISHIKESH ROY, JJ.]

Housing – Residential-cum-Shopping Building – Calculation of Premium FSI charges – First Respondent, a developer was carrying on construction activities on basis of a planning permission granted to him – Thereafter, the State Government introduced a scheme called 'Premium FSI Scheme', wherein the Government permitted any builder willing to pay FSI charges to increase FSI above the normally permitted FSI – On 04.05.2011, the first respondent made an application with revised proposal for permission to have additional FSI area – The revised plan of the first respondent was considered and forwarded to the Government with recommendation for approval – In the meanwhile, the Registration Department revised and notified the revised guideline value w.e.f. 01.04.2012 as per which the guideline value was increased from Rs.1650/- per sq.ft. to Rs.5,000/- per sq.ft. – On 29.05.2012, the Government granted approval to the revised plan of the first respondent – The premium was levied as Rs.7,61, 40,000/- – The respondent made the representation against the calculation and also regarding the area, however, the same was rejected – Writ petition – First Respondent contended that the date of application should be considered for the purpose of calculating Premium FSI charges and not as per the guideline value prevailing on the date of approval of the plan – The writ petition was dismissed by the Single Judge of the High Court – However, the Division Bench of the High Court set aside the order of the Single Judge – On appeal, held: No right accrues to the builder by mere submission of a plan for construction of a building which has not been sanctioned by the Competent Authority – The rates prevailing at the time of granting of permission are the rates which an

applicant has to pay – The respondent/applicant cannot claim the benefit of the earlier guideline value existing prior to the date when approval was granted by the Government – Therefore, the respondent will have to pay FSI Premium charges based on the guideline value as existing on the date of grant of approval – When the Government sanctioned the approval on 29.05.2012, the Division Bench of the High Court erred in directing the appellant to calculate the FSI charges as per the guideline value as on 04.05.2011 – The impugned Judgment of the Division Bench of the High Court, therefore, set aside.

Allowing the appeal, the Court

HELD: 1. In the impugned judgment, the Division Bench of the High Court has relied upon *Union of India and Others v. Dev Raj Gupta and Others* and *Union of India and another v. Mahajan Industries Ltd. and another*. The ratio of those decisions is not applicable to the case in hand as those decisions relate to application for conversion of the land and not building permission application. That apart, in those cases, there was a delay of more than three years in deciding the application. In the present case, there was no delay on the part of the appellant-CMDA or the Government to consider the first respondent's application for approval. [Para 24] [1108-G-H]

2. As submitted by the appellant-CMDA, the conduct of the first respondent is also to be taken note of. After the levy of Premium FSI charges calling upon the first respondent to pay a sum of Rs.7,61,40,000/-, the first respondent submitted a representation on 19.07.2012 requesting to revise the Premium FSI charges by considering the guideline value prevailing as on the date of the application i.e. 04.05.2011. The said representation was rejected by the appellant-CMDA by its letter dated 31.08.2012 and the first respondent was directed to make payment of Premium FSI Charges. The first respondent was also informed that if the payment was not made within sixty days, the application will be returned. The first respondent's further representation dated 14.12.2012 also came to be rejected. Thereafter, by letters dated 23.05.2013 and 14.06.2013, the first respondent had prayed for thirty days' time for remitting the Premium FSI charges as demanded by the appellant-CMDA. By

communication dated 19.06.2013, the first respondent was granted time upto 15.07.2013 to pay Premium FSI charges. After so getting extension of time, the first respondent filed writ petition before the High Court challenging the order of CMDA dated 31.08.2012 and prayed for quashing the demand. It is to be pointed out that the Single Judge also commented on the conduct of first respondent in obtaining extension of time to remit the Premium FSI charges and thereafter, filing the writ petition before the High Court challenging the demand. [Para 25] [1109-A-E]

3. The Division Bench did not keep in view the well settled principle that no right accrued to the applicant-builder by mere filing of application for approval and the right accrues only after approval is granted by the Government/concerned authorities. The impugned judgment is contrary to the well settled principle that the applicant does not acquire any right under law till his application is considered and sanctioned. Regulation 36 clearly provides that the Premium FSI shall be allowed in specific areas only with the approval of the Government. Unless and until the Government grants approval, no right accrued to the first respondent. When the Government sanctioned the approval on 29.05.2012, the Division Bench erred in directing the appellant to calculate the FSI charges as per the guideline value as on 04.05.2011. The impugned judgment is therefore liable to be set aside. [Para 26] [1109-E-G]

Usman Gani J. Khatri of Bombay v. Cantonment Board and Others **(1992) 3 SCC 455 : [1992] 3 SCR 1 ;** *Chennai Metropolitan Development Authority represented by its Member-Secretary and another v. Prestige Estates Project Ltd.* **(2019) 10 SCALE 78 – relied on.**

Union of India and another v. Mahajan Industries Ltd. and another **(2005) 10 SCC 203 ;** *Union of India and Others v. Dev Raj Gupta and Others* **(1991) 1 SCC 63 : [1990] 2 Suppl. SCR 300 – held inapplicable.**

State of W.B. v. Terra Firma Investments & Trading Pvt. Ltd. **(1995) 1 SCC 125 : [1994] 5 Suppl. SCR 485 – referred to.**

A **Case Law Reference**

(2005) 10 SCC 203	**held inapplicable**	**Para 8, 9, 20**
[1992] 3 SCR 1	**relied on**	**Paras 9, 18**
[1994] 5 Suppl. SCR 485	**referred to**	**Para 19**
B **(2019) 10 Scale 78**	**relied on**	**Paras 9, 22**
[1990] 2 Suppl. SCR 300	**held inapplicable**	**Paras 9, 24**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9336 of 2019.

C From the Judgment and Order dated 03.08.2016 of the High Court of Judicature at Madras in W.A. No. 2376 of 2013.

Jayanth Muthuraj, Sr. Adv., Ms. A. Jaswathi, K. V. Vijayakumar, Advs. for the Appellant.

D K.V. Viswanathan, Sr. Adv., Gagan Gupta, K.V. Dhanapalan, Vinodh Kanna B., Lenin Rajasehar, Advs. for the Respondents.

The Judgment of the Court was delivered by

R. BANUMATHI, J.

E 1. Leave granted.

2. This appeal arises out of the impugned judgment dated 03.08.2016 passed by the Division Bench of the High Court of Madras in W.A. No. 2376 of 2013 filed by the first respondent in and by which the Division Bench set aside the order of Single Judge and allowed the writ appeal thereby directing the appellant Chennai Metropolitan F Development Authority (CMDA) to calculate the Premium FSI charges at the rate prevalent as on the date of filing of application by the first respondent Rajan Dev.

3. Respondent No.1 is a developer carrying on construction G activities under the name and style of M/s. Ben Foundation. He submitted an application dated 07.05.2009 for planning permission to construct a residential-cum-shopping building at Survey Nos. 223, 224 and 225, Padi Village, Padi Kuppam Road, Chennai for 196 dwelling units. He proposed construction of Block A – Stilt floor(part) + GF(part) + 6 floors + 7th floor part; Block B and C – Stilt + 6 floors and Block H D – Stilt + 7 floors with floor area of 14082.26 sq.mt. and height of

22.80 mt. The planning permission was granted by the appellant CMDA on 01.07.2009. Initially, the sanction was mistakenly accorded for 14889 sq.mts. (1.84 FSI) instead of 14164 sq.mts. (1.75 FSI). The excess area for which sanction was wrongly granted is 725 sq.mts. While the construction was in progress, on 09.09.2009 vide G.O.Ms.No.163-Housing and Urban Development, respondent No.2-Government of Tamil Nadu introduced a scheme called "Premium FSI Scheme", wherein the Government permitted any builder willing to pay FSI charges to increase FSI above the normally permitted FSI. Additional benefit by way of Premium FSI accrued to the developer is related to the proportionate land extent. As per the guidelines for Premium FSI, the amount payable by the applicant towards the Premium FSI charge shall be equivalent to the cost of the proportionate land as per the Guideline value of the Registration Department. On 04.05.2011, the first respondent made an application along with revised proposal for permission to have additional FSI area of 11,860 sq.ft. (= 1102 sq. mt.) under the "Premium FSI Scheme" for extra fourteen dwelling units i.e. one floor each in two blocks. The said application was returned by the appellant on 10.02.2012 with the direction to furnish revised plan for rectifying sixteen defects as pointed out by the appellant. The first respondent submitted revised plans on 24.02.2012. The appellant-CMDA vide its letter dated 30.03.2012 forwarded the revised plan to the Government seeking to accord approval to the recommendation of the Multi-storeyed building panel and for issue of planning permission. In the meantime, the State Government revised the guideline value of the land w.e.f. 01.04.2012.

4. While the application of the first respondent for revised proposal was pending, the guideline value of the land was revised w.e.f. 01.04.2012 from Rs.1,650/- per sq.ft. to Rs.5,000/- per sq.ft. for the area which the first respondent has put up construction. After inspection of the site and recommendation of the multi-storeyed building panel, on 29.05.2012, the Government granted approval for the Premium FSI. Pursuant to the sanction granted by the Government, the appellant-CMDA vide letter dated 02.07.2012 called upon the first respondent to remit "Premium FSI Charges" quantified at Rs.7,96,50,000/- for 1479.81 sq.mts. of the land area based on the revised guideline value of the property as revised w.e.f. 01.04.2012 by the Government and as provided at the time of the approval for the proposed construction.

5. Vide letter dated 19.07.2012, the first respondent raised objections to the aforesaid calculation and also as regards the area. The first respondent submitted that the first respondent originally proposed to construct 14,889 sq.mts. of built up area of an extent of land of 8093.64 sq.mts. It was stated that the projected FSI at 1.74 by adopting the total built up area was calculated as 14089 sq.mts. as against 14,889 sq.mts. and the same was a human error and the same led to all the confusion. The first respondent has also raised objection stating that he made the application during May, 2011 itself and that he may be allowed to make payment of "Premium FSI Charges" by adopting the guideline value existed on both the dates of their application (04.05.2011) and the approval by the CMDA panel (30.03.2012). In the representation, the first respondent stated that they are ready to pay the "Premium FSI Charges" for both the projected built up area of 800 sq.mt. in the already approved plan and for the proposed built up area of 1102 sq.mts. (proposed extra FSI of 0.24) by adopting the guideline value existed on the date of their application i.e. 04.05.2011. The said representation was rejected by the CMDA vide letter dated 31.08.2012. The appellant by its letter dated 19.07.2012 modified the revised "Premium FSI Charges" for 1479.81 sq.mts. of the land area from Rs.7,96,50,000/- to Rs.7,61,40,000/-. By the time the plan was sanctioned, the guideline value had increased from Rs.1,650/- per sq.ft. to Rs.5,000/- per sq.ft. As per the revised guideline, the Premium FSI charges were calculated at the rate of Rs.5,000/- per sq.ft. and the same was quantified at Rs.7,61,05,480/-.

6. The first respondent made further representation dated 14.12.2012 requesting the appellant-CMDA to calculate the "Premium FSI Charges" taking into account the guideline value prevailing as on the date on which the application was submitted and not to levy "Premium FSI Charges" as per the revised guideline value. The first respondent also requested to deduct all balcony and duct wall area which is within the limit of 10% allowance. The representation made by the first respondent requesting for reduction of "Premium FSI Charges" was rejected by the appellant-CMDA by order dated 19.04.2013, affirming its earlier order dated 31.08.2012. By its letters dated 23.05.2013 and 14.06.2013, first respondent sought for further thirty days' time for remitting the Premium FSI charges as demanded by the appellant. By communication dated 19.06.2013, the appellant-CMDA granted time till 15.07.2013 to pay Premium FSI charges.

7. After so taking time, the first respondent filed the writ petition in WP No.18238 of 2013 before the Madras High Court. During the pendency of the writ petition, construction of 196 dwelling units was completed and a partial completion certificate dated 17.06.2013 was granted. The learned Single Judge dismissed the writ petition by holding that the first respondent is liable to pay the "Premium FSI Charges" as per the guideline value prevailing on the date of approval of the plan. The learned Single Judge held that the builder would not acquire any right by merely submitting application for building plan and the right to the builder would accrue only after the approval of the plan. The learned Single Judge also held that there was no undue delay on the part of CMDA or the second respondent-Government in disposing of the application of the first respondent.

8. Being aggrieved by the dismissal of the writ petition, the first respondent preferred the writ appeal before the Division Bench which came to be allowed by the impugned judgment. Relying upon *Union of India and another v. Mahajan Industries Ltd. and another* **(2005) 10 SCC 203**, the Division Bench held that the appellant-CMDA is entitled to calculate levy of "Premium FSI Charges" taking into account the guideline value prevalent as on the date of the application for approval of the additional construction and not from the date on which the approval is being granted. During the pendency of the writ appeal, an amount of Rs.3,80,00,000/- was deposited by the first respondent pursuant to the order dated 17.02.2014 passed by the Division Bench. A provisional completion certificate dated 16.10.2014 was granted for a total of 210 dwelling units. Being aggrieved, the appellant-CMDA has preferred this appeal.

9. Mr. Jayanth Muthuraj, learned Senior counsel appearing for the appellant-CMDA submitted that under the "Premium FSI Scheme", the application was returned for rectification of defects on 10.02.2012 and the first respondent resubmitted the application on 25.02.2012. Placing reliance upon *Chennai Metropolitan Development Authority represented by its Member-Secretary and another v. Prestige Estates Project Ltd.* **2019 (10) SCALE 78**, it was submitted that the crucial date for determining the applicable rate for Premium FSI Charges is the date on which the authority grants planning permission. It was submitted that mere pendency of the application or any payment made does not create any right under law in favour of the applicant till his application is considered and sanction is granted as laid down by the

Supreme Court in *Usman Gani J. Khatri of Bombay v. Cantonment Board and others* **(1992) 3 SCC 455**. The learned Senior counsel submitted that the judgments relied upon by the Division Bench viz. *Union of India and others v. Dev Raj Gupta and others* **(1991) 1 SCC 63** and *Union of India and another v. Mahajan Industries Ltd. and another* **(2005) 10 SCC 203** are not applicable to the case in hand as both the judgments deal with the application for conversion and not application for building permission. The learned Senior counsel further submitted that the first respondent being an experienced builder with for more than three decades experience, is well aware of the procedure to be followed in making an application seeking planning permission, but had deliberately filed a defective application and therefore, the first respondent is not right in contending that there was delay on the part of the appellant-CMDA in processing the application.

10. Per contra, reiterating the findings of the Division Bench, Mr. K.V. Vishwanathan, learned Senior counsel appearing for the first respondent submitted that as rightly held by the Division Bench that the crucial date for determining Premium FSI has to be the date of receipt of the application by the first respondent. It was submitted that the first respondent has submitted the application for permission to have additional FSI under the "Premium FSI Scheme" way back on 04.05.2011 and the same was returned on 10.02.2012 by the appellant for rectifying the defects nearly after a delay of nine months. It was further submitted that the application of the first respondent was pending consideration for quite some time with the appellant-CMDA and the Multi-Storeyed Building Panel discussed the application of the first respondent and forwarded the proposal to the Government with recommendation for approval even on 30.03.2012. The learned Senior counsel further submitted that the Division Bench of the High Court rightly held that the FSI charges is payable on the date of filing of the application for conversion and not on the date of the approval and the impugned judgment warrants no interference.

11. We have considered the submissions and carefully perused the impugned judgment and other materials on record. The point falling for consideration is whether the High Court was right in holding that the Premium FSI charges are payable only as per the pre-revised guideline value as on 04.05.2011 i.e. the date of filing of application with revised plan, by the first respondent?

12. On 07.05.2009, the first respondent submitted an application for construction of residential-cum-shopping complex at Padi Village, Padi Kuppam Road, Chennai. The planning permission was granted for the original plan by the appellant-CMDA on 01.07.2009. When the construction was in progress, the Government of Tamil Nadu introduced the "Premium FSI (Floor space Index) Scheme" vide G.O.Ms.No.163, Housing and Urban Development (UD-I) dated 09.09.2009 as per which the Government permitted willing builders to increase FSI above the normally permitted FSI subject to a maximum of one relating the same to the road width parameters by paying premium FSI charges.

13. Regulation 36 deals with "Premium FSI", which reads as under:-

"**36. <u>Premium FSI</u>:-** The Authority may allow Premium FSI over and above the normally allowable FSI subject to a maximum of 1 (one) relating the same to the road width parameters as follows:-

Serial Number	**Road width**	**Premium FSI (% of normally allowable FSI)**
(i)	18 meters and above (60' and above)	40%
(ii)	12 meters – below 18 meters(40' – below 60')	30%
(iii)	9 meters – below 12 meters (30' – below 40')	20%

The premium FSI shall be allowed in specific areas as may be notified, subject to Guidelines and on collection of charge at the rates as may be prescribed by the Authority with the approval of the Government. The amount so collected towards the award of Premium FSI shall be remitted into the Government account to be allotted separately for the purpose for utilizing it for infrastructure development in that area as may be directed by the Government."

14. The first respondent sought to avail the benefits of Premium FSI and submitted an application on 04.05.2011 seeking approval of additional FSI under the Premium FSI Scheme. The said application was returned by the appellant-CMDA on 10.02.2012 for rectification

of defects. Thereafter, on 24.02.2012, first respondent submitted the revised plan after rectification of the defects.

15. The Multi-Storeyed Building Panel considered the revised plan of the first respondent and the appellant-CMDA by its letter dated 30.03.2012 forwarded the proposal to the Government with recommendation for approval subject to the conditions indicated thereon. In the meanwhile, the Registration Department revised and notified the revised guideline value w.e.f. 01.04.2012 as per which the guideline value of Padi Kuppam Road was increased from Rs.1,650/- per sq.ft. to Rs.5,000/- per sq.ft. On 29.05.2012, the Government granted approval to the revised plan of the first respondent. Based upon the revised guideline value, the appellant-CMDA by its letter dated 02.07.2012 informed the first respondent that the Premium FSI has been levied at Rs.7,96,50,000/-. The same was later modified as Rs.7,61,40,000/-.

16. Learned Senior counsel for the respondent contended that only the date of application for revised building plan has to be taken into consideration and the first respondent cannot be levied with the revised FSI Premium charges because of the time taken by CMDA in processing the application. The learned Senior counsel mainly relied upon the recommendation made by the appellant-CMDA to content that pre-revised guideline would only be applicable for calculation of the Premium FSI charges. The forwarding of the revised proposal by the appellant-CMDA to the Government reads as under:-

"**AGENDA ITEM NO:2/203 FILE NO: C3(N)/6476/2011**

Sub: CMDA – APU – MSB (North) Division – Planning Permission Application for the revised approval for the construction of Block A: Stilt/GF (Shop cum Parking) + 7 Floors; Block-B, C and D: Stilt + 7 Floors Commercial cum Residential building with 210 dwelling units at T.S.No.113/2, Block No.65, Ward I, Old S.No.224/1 (part) of Padi Village, Padikuppam Road, Mogappair, Chennai – Applied by **Thiru. D. Rajan Dev** – Recommended for Approval – Reg

The MSB Panel discussed the subject in detail and recommended to forward the proposal to the Government recommending for approval subject to the following conditions:

i) undertaking accepting conditions of NOCs to be obtained before issue of Planning Permission; and

ii) undertaking to furnish IAF NOC before issue of completion certificate to be obtained before issue of Planning Permission.

Sd.XXXX
30.3.2012
MEMBER SECRETARY"

By reading of the above, it is seen that it is only forwarding of the proposal to the Government with recommendation for approval of the revised plan which is as per the procedure involved. Such forwarding of the proposal to the Government with recommendation for approval, does not create any right in favour of the respondent. In terms of Regulation 36, Premium FSI shall be allowed in specific areas as notified subject to guidelines with the approval of the Government and on collection of charges at the rates as may be prescribed by the authority. Thus, for the award of Premium FSI, inter-alia the conditions "collection of charges at the rates as may be prescribed by the authority" and "approval of the Government", are mandatory. The collection of FSI Premium charges is subject to the guidelines. The revised guideline came into force w.e.f. 01.04.2012. Be it noted that the first respondent's application was considered and finally approval was granted by the Government on 29.05.2012 only after revised guideline came into force. At the time of granting approval by the Government on 29.05.2012, when the revised guideline was in force, the High Court ought not to have held that the guideline value as on 04.05.2011, that is, the date of application of the first respondent, should be considered for the purpose of calculating Premium FSI charges. The right would accrue to the first respondent only after the Government grants approval to the revised plan sanctioning the Premium FSI. Thus, the date on which the approval was granted by the Government i.e. 29.05.2012 ought to have been taken into consideration for calculating the Premium FSI charges.

17. It is well settled that no right accrues to an applicant until the application for approval is considered and sanctioned. The first respondent has given the proposal for revised building plan under Regulation 36 with a view to avail the benefit of Premium FSI. As pointed out earlier, the process of grant of Premium FSI is completed only after the grant of approval by the Government. Regulation 36 clearly provides that the Premium FSI shall be allowed in specific areas with the approval of the Government and the approval of the

A Government therefore is mandatory. Only when the Government grants approval, the right would accrue to the builder and not before that. Therefore, the date of approval is the crucial date.

18. Learned Senior counsel for the appellant has submitted that the builder would not acquire any legal right by merely submitting an B application for approval of the building plan and the right would accrue only after sanction of the revised plan by the Government. In this regard, we may usefully refer to *Usman Gani J. Khatri of Bombay v. Cantonment Board and Others* **(1992) 3 SCC 455** which has been referred to by the learned Single Judge in the order passed in the writ petition wherein, the Supreme Court held as under:- C

> **"24.** …….The petitioners did not acquire any legal right in respect of building plans until the same were sanctioned in their favour after having paid the total amount of conversion charges in lump sum or in terms of sanctioned instalments and getting conversion of their land in freehold tenure…….". D

19. As pointed out by the learned Single Judge, in *Usman Gani*, the Supreme Court in order to explain the unsustainability of the claim made by the builders has also explained a reverse case as under:-

> **"24.** ……..If we consider a reverse case where building regulations are amended more favourably to the builders before E sanctioning of building plans already submitted, the builders would certainly claim and get the advantage of the regulations amended to their benefit."

Learned Single Judge has also referred to *State of W.B. v. Terra Firma Investments & Trading Pvt. Ltd.* **(1995) 1 SCC 125** and other F judgments wherein, the Supreme Court held that no right accrues to the builder by mere submission of a plan for construction of a building which has not been sanctioned by the competent authority.

20. In the impugned judgment, the High Court relied upon the G decision in *Union of India and Another v. Mahajan Industries Ltd. And Another* **(2005) 10 SCC 203** wherein, the Supreme Court had followed the decision of the Delhi High Court in the case of *Ansal & Saigal Properties (P) Lts. bs. L & DO*, holding that the crucial date for calculating the conversion charges has to be the date of receipt of application for conversion of land use. It is the submission of the H appellant that the decision in the said case is not applicable to the case

in hand as the said judgment deals with application for conversion of land and not the application for building permission. Apart from that, there was delay of more than three years in deciding the said application. We find merit in the submission of the appellant that the decision in *Mahajan Industries* is not applicable to the facts of the present case. Though the application was filed on 04.05.2011 and resubmitted after rectification of defects on 24.02.2012, the Government approved the revised proposal only on 29.05.2012. In the meanwhile, the revised guideline value was introduced for implementation w.e.f. 01.04.2012. As rightly held by the learned Single Judge that the first respondent/ builder does not acquire any legal right until the plan is sanctioned.

21. Mere pendency of the application for planning permission does not create a vested right in an applicant. Right accrues only when the permission/sanction is granted by the Government/concerned authorities. This is because planning permission is accorded on the basis of scrutiny of application form and the concerned documents. There is always possibility of an application not meeting the requisite criteria for carrying out the proposed development and being rejected. Until and unless an application complete in all respect is approved, it remains a mere application and no right can be claimed on the basis of such an application. A proposal cannot be equated with an approval, otherwise the later will lose all significance. The obvious logical conclusion is that the right to an applicant accrues when the permission has been granted. Further, as a corollary, it can be said that the rates prevailing at the time of granting of permission are the rates which an applicant has to pay. The respondent/applicant cannot claim the benefit of the earlier guideline value existing prior to the date when approval was granted by the government. In our considered view, the respondent will have to pay FSI Premium charges based on the guideline value as existing on the date of grant of approval.

22. Learned Senior counsel for the appellant has placed reliance upon *Chennai Municipal Development Authority v. Prestige Estates Projects Limited* **2019 (10) Scale 78.** In *Prestige Estates*, despite the payment having been made by the builder on 28.03.2012, the Supreme Court held that the developer is liable to pay Premium FSI charges based on the revised guideline value which are applicable post 01.04.2012. In *Prestige Estates*, after referring to *Usman Gani* and other judgments, the Supreme Court held that the demand on account of Premium FSI charges arises only upon the grant of approval by the

A Government to avail Premium FSI. The ratio of the decision in *Prestige Estates* is squarely applicable to the present case. In the present case, since the sanction for revised plan was granted by the Government on 29.05.2012, the first respondent in the present case is liable to pay the Premium FSI charges based on the revised guideline value which came into force w.e.f. 01.04.2012.

B

23. Learned Senior counsel for the first respondent inter-alia contended that there was inordinate delay on the part of appellant-CMDA in processing the application and the first respondent cannot be burdened with extra charges on account of delay caused by the appellant. Learned Senior counsel further submitted that the application C of the first respondent dated 04.05.2011 for revised proposal was returned after nine months on 10.02.2012 and the respondent cannot be blamed for the delay caused by the appellant in processing the application of the first respondent. This contention does not merit acceptance. The appellant-CMDA is a body entrusted with the task of examination and approval of multitude of building applications throughout D the planning area. That apart, the appellant-CMDA is a single window system and it has to verify various documents with the connected Departments at various levels. The application was processed at various levels and it was sent to the departments like police, Fire, etc. for clearance. Considering the fact that different departments and agencies E are involved with the process of approval, we feel that, there was no undue delay on the part of the appellant-CMDA or the State Government. As rightly pointed out by the learned Single Judge, the first respondent submitted the application after rectification of defects only on 24.02.2012 and within a period of one month, the application was placed before the meeting. Therefore, it cannot be said that there F was undue delay on the part of the appellant-CMDA or Government to consider the first respondent's application for approval of the revised plan.

24. In the impugned judgment, the Division Bench has relied upon *Union of India and Others v. Dev Raj Gupta and Others* **(1991) 1 SCC 63** and *Mahajan Industries Limited*. The ratio of those decisions G is not applicable to the case in hand as those decisions relate to application for conversion of the land and not building permission application. That apart, in those cases, there was a delay of more than three years in deciding the application. In the present case, as discussed above, there was no delay on the part of the appellant-CMDA or the H Government to consider the first respondent's application for approval.

25.As submitted by the learned Senior counsel for the appellant-CMDA, the conduct of the first respondent is also to be taken note of. After the levy of Premium FSI charges calling upon the first respondent to pay a sum of Rs.7,61,40,000/-, the first respondent submitted a representation on 19.07.2012 requesting to revise the Premium FSI charges by considering the guideline value prevailing as on the date of the application i.e. 04.05.2011. The said representation was rejected by the appellant-CMDA by its letter dated 31.08.2012 and the first respondent was directed to make payment of Premium FSI Charges. The first respondent was also informed that if the payment was not made within sixty days, the application will be returned. The first respondent's further representation dated 14.12.2012 also came to be rejected. Thereafter, by letters dated 23.05.2013 and 14.06.2013, the first respondent had prayed for thirty days' time for remitting the Premium FSI charges as demanded by the appellant-CMDA. By communication dated 19.06.2013, the first respondent was granted time upto 15.07.2013 to pay Premium FSI charges. After so getting extension of time, the first respondent filed writ petition before the High Court challenging the order of CMDA dated 31.08.2012 and prayed for quashing the demand. It is to be pointed out that the learned Single Judge also commented on the conduct of first respondent in obtaining extension of time to remit the Premium FSI charges and thereafter, filing the writ petition before the High Court challenging the demand.

26. The Division Bench did not keep in view the well settled principle that no right accrued to the applicant-builder by mere filing of application for approval and the right accrues only after approval is granted by the Government/concerned authorities. The impugned judgment is contrary to the well settled principle that the applicant does not acquire any right under law till his application is considered and sanctioned. Regulation 36 clearly provides that the Premium FSI shall be allowed in specific areas only with the approval of the Government. Unless and until the Government grants approval, no right accrued to the first respondent. When the Government sanctioned the approval on 29.05.2012, the Division Bench erred in directing the appellant to calculate the FSI charges as per the guideline value as on 04.05.2011. The impugned judgment is therefore liable to be set aside.

27. In the result, the impugned judgment dated 03.08.2016 passed by the High Court of Madras in W.A. No.2376 of 2013 is set aside and this appeal is allowed. The appellant-CMDA is at liberty to recover

A the balance Premium FSI charges from the first respondent in accordance with its regulations and rules. No costs.

Ankit Gyan Appeal allowed.