

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.11.2015

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.23687 of 2009

and

M.P.No.2 of 2009

Pravin Jain

...Petitioner

Vs.

Chennai Metropolitan Development Authority,
rep. by its Member-Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for records of the respondent in Letter No.F5/22537/2008, dated 12.11.2009, with regard to the release of amount furnished by way of Bank Guarantee through Punjab National Bank, Purasawakkam Branch, Chennai - 7, towards Infrastructure and Amenities Charges for the development of property at D.No.298 to 302, Anna Salai, No.91 Eldams Raod, 42 Ramalingeswara Koil Street, Vannia Teynampet, Chennai - 18, comprised in S.No.1506/4, 1507/1, 2, 3815/1, 3816/3, 8, 9 of Block Nos.29 and 75 of Mylapore Village by quashing the same and consequently to forbear the respondent from invoking the Bank Guarantee furnished by the petitioner through his Banker Punjab National Bank Purasawakkam Branch, Chennai - 7 on 26.05.2009, towards the demand of infrastructure and amenities charges.

For Petitioner : Mr.R.Mohan

For Respondent : Mr.A.Kumar

Special Government Pleader

O R D E R

The prayer sought for in the Writ Petition, is for issuance of Certiorarified Mandamus, to quash the order passed by the respondent- Chennai Metropolitan Development Authority (CMDA), dated 12.11.2009, in and by which, the respondent-CMDA informed the Chief Manager, Punjab National Bank, to the release the amount of Rs.29,84,500/- furnished by the petitioner by way of bank guarantee in favour of CMDA.

2. On perusal of the impugned communication, dated 12.11.2009, it is seen that the Bank Guarantee was sought to be invoked, as it was expiring on 25.11.2009. The petitioner has approached this Court, filing present Writ Petition, contending

that the demand of infrastructure and amenity charges at the rate of Rs.1000/- per sq.ft cannot be made applicable to the petitioner, as the Government themselves, by order, dated 09.09.2009, made in G.O.(Ms).No.161 of Housing and Urban Development [UD 4(1)] Department, have reduced the infrastructure and amenity charges by 50% from the original demand. Further, it is contended that the respondent-CMDA should have taken note of the fact that the petitioner has already paid 50% of the amount towards the infrastructure and amenity charges as per the original charges before invoking the bank guarantee. Thus, the petitioner would state that, when the Government themselves have reduced the infrastructure and amenity charges by 50% and the petitioner has also paid 50% of the amount earlier, there was no reason for invoking the bank guarantee.

3. At the time, when the Writ Petition was entertained, i.e., on 18.11.2009, order of interim injunction was granted by this Court. Though the Writ Petition is pending for all these years, no counter affidavit has been filed by the respondent-CMDA till date. Since this Court granted interim injunction on 18.11.2009, the respondent could not have invoked the bank guarantee, and the bank guarantee itself expired on 25.11.2009. Therefore, the reason assigned by the respondent-CMDA in the impugned communication, dated 12.11.2009, does not any longer survive. However, the other issues to be seen are as to whether the petitioner is liable to pay the infrastructure and amenity charges and what would be the effect of G.O.(Ms).No.161 in the petitioner's case. These issues can be considered by the respondent-CMDA fresh in the light of the amended Government Order. Accordingly, this Court, while holding that the impugned communication, dated 12.11.2009, does not any longer survive, while setting aside the the same, and remands the matter to the respondent-CMDA for fresh consideration by taking note of the subsequent Government Orders and pass appropriate orders on merits and in accordance with law.

4. With the above observation, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Asst.Registrar (CS IV)

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Sub Asst. Registrar

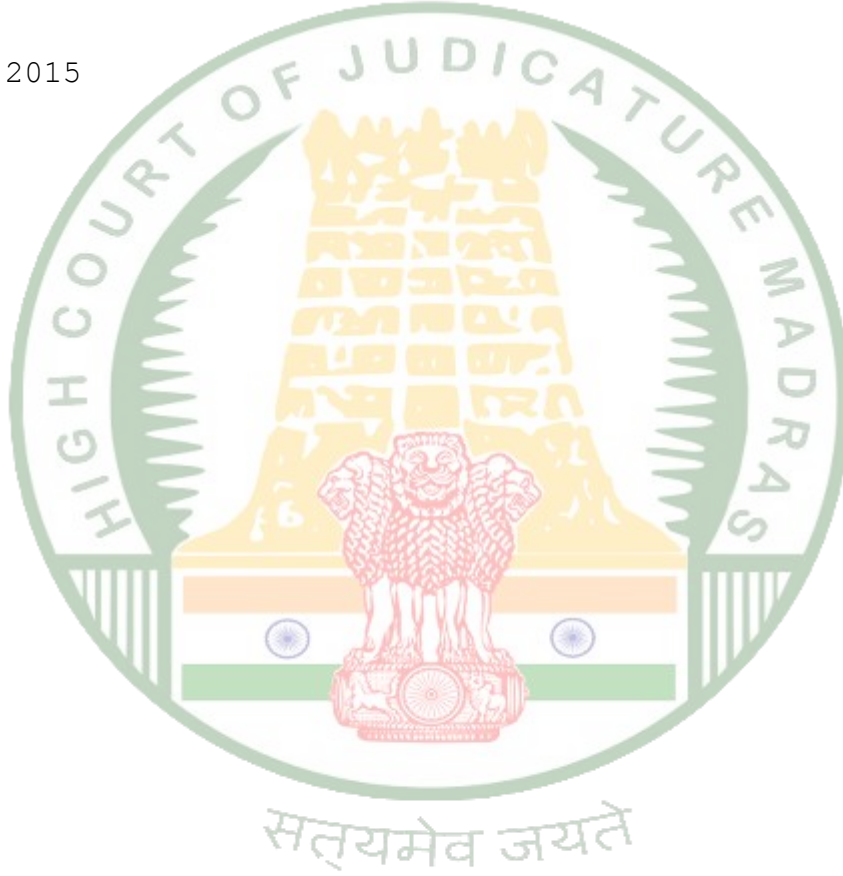
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To
Chennai Metropolitan Development Authority,
rep. by its Member-Secretary,
No.1, Gandhi Irwin Road, Egmore,
Chennai - 600 008.

+1 cc to R.Mohan, Advocate, sr.60182
+1 cc to A.Kumar, Advocate, sr.60329

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