

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2016

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THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.32683 of 2016 and

W.M.P.No.28314 of 2016

M.K.Sundaram

... Petitioner

vs.

1. The Housing Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8.

2. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8. ... Respondents

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of mandamus, directing the 2nd respondent to refund the premium FSI and infrastructure and development charges to a sum of Rs.31,83,000/- pursuant to the cancellation of the planning permission in Letter No.BC1/11524/2012 dated 01.11.2013 and adjustment by proceedings of the 2nd respondent in Letter No.BC1/2292/2016 dated 15.03.2016 with interest and time framed fixed by this Court.

For Petitioner : Mr.Mr.K.M.Vijayan,
Senior Counsel
for M/s.K.M.Vijayan Associates

For Respondents : Mr.P.Tamilmani

ORDER

This Writ Petition has been filed by Mr.M.K.Sundaram, seeking a direction, directing the 2nd respondent to refund the premium FSI and infrastructure and development charges to a sum of Rs.31,83,000/- pursuant to the cancellation of the planning permission in Letter No.BC1/11524/2012 dated 01.11.2013 and adjustment by proceedings of the 2nd respondent in Letter No.BC1/2292/2016 dated 15.03.2016 with interest and time frame to be fixed by this Court.

2. Mr.K.M.Vijayan, the learned Senior Counsel would submit that the petitioner applied for planning permission in respect of the property situated in Survey Nos.117/1, 118/1, 119/2A1, Goparasanallur, Poonamallee High Road, Chennai for construction of four blocks of building with ground plus four floors of 70 residential units. The 2nd respondent herein granted planning permission in his Letter No.BC1/11524/2012 dated 01.11.2013 with a condition to pay the following fees:

Sl.No.	Head	Amount Rs.
1	Development Charges	1,15,000
2	Scrutiny Fee	15,000
3	Regularization Charges	1,10,000
4	Open Space Reservation Charges	96,00,000
5	Security Deposit	4,50,000
6	Security Deposit for septic tank	75,000
7	Security Deposit for Display Board	10,000
8	Infrastructure and Amenity Charges	23,00,000
9	Premium FSI Charges	24,00,000
	Total	1,50,75,000/-

But, instead of obtaining planning permission, the petitioner has decided not to proceed with any construction. Therefore, the petitioner issued a letter to the 2nd respondent on 10.09.2015 to cancel the planning permission and return the fee and charges and by order dated 22.01.2016, the 2nd respondent directed to refund the fee and charges paid as stated above except the fees paid under column H and I, namely, infrastructure and premium FSI charges totalling to Rs.47,00,000/-. Subsequently, another developer, namely, owner of the premises themselves Mr.S.Virudhachalam and V.Vasanthi decided to develop on their own planning permission which was granted to them after deducting a sum of Rs.15,17,000/- under the same head and the petitioner was directed to give 'No Objection

Certificate'' Letter. Accordingly, the petitioner has given a letter dated 03.03.2015 for the proposal of adjustment of the infrastructure charges. Thereafter, the subsequent application of the owner was processed differently and not objected to by the petitioner and after permitting the adjustments of infrastructure charges of Rs.15,17,000/-, the remaining Rs.31,83,000/- to be refunded to the petitioner. Therefore, the petitioner made a representation dated 23.02.2016 followed by two more remainders dated 21.03.2016 and 26.05.2016. Since there was no response from the respondents, the petitioner issued a Legal Notice through his counsel on 01.07.2016 and 19.07.2016. Again there was no reply. Therefore, the petitioner is before this Court with this Writ Petition.

3. The learned Counsel for the respondents would submit that a sum of Rs.31,83,000/- is liable to be returned to the petitioner after the Chennai Metropolitan Development Authority has collected the Premium FSI and Infrastructure and Amenity Charges. However, since there is no provision to refund the charges in case of cancellation of the Planning Permission, the Government is competent to deal with the same, therefore, the same amount to be refunded by the Government. More over, there is no power to refund, hence, the CMDA is not in a position to release the payment.

4. This Court is not inclined to accept the said submission of the learned Counsel for the respondents because when the Chennai Metropolitan Development Authority has received the aforesaid amount from the petitioner and after cancellation of the planning permission, according to the CMDA itself, except the Premium FSI and infrastructure and amenities charges, balance amount is liable to be paid back to the petitioner, they cannot deposit the remaining amount with the Government on the ground that there is no provision to return the same. Therefore, the stand taken by the respondents that there is no provision to return the balance amount is not acceptable. Thus, as admitted by the respondents in their Counter Affidavit, a sum of Rs.31,83,000/- has to be refunded to the petitioner. When the CMDA has got power to receive money from the petitioner, they have power to refund the excess or balance to the petitioner.

5. In view of the above, the 2nd respondent is directed to refund a sum of Rs.31,83,000/- (Rupees Thirty One Lakhs and Eighty Three Thousand Only) to the

petitioner, within a period of three week from the date of receipt of a copy of this Order.

6. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Housing Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8.

+1cc to Mr.Tamilmani, Advocate, S.R.No.74147
+1cc to Mr.Vijayan, Advocate, S.R.No.74025

cnr (CO)
rs (10/01/2017)

W.P.No.32683 of 2016

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