

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.A.No.1664 of 2017
and
C.M.P.No.21541 of 2017

The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.

.. Appellant

Vs.

1. The Housing Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.
2. M.K.Sundaram
3. The Government of Tamil Nadu,
Rep. by its Secretary,
The Housing and Urban Development Department,
Secretariat,
Chennai-600 009.

(Third respondent is impleaded, vide order of
Court, dated 10.01.2018 in C.M.P.No.557 of 2018
in W.A.No.1664 of 2017)

.. Respondents

Writ Appeal filed Clause 15 of the Letters Patent against
the order dated 19.12.2016 passed by learned single Judge in
W.P.No.32683 of 2016 on the file of this Court.

Prayer in WP.No.32683 of 2016:Writ petition 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 appellant : Ms.Narmadha Sampath, Addl. Advocate General,
assisted by Mr.C.Johnson

For respondents: Mr.A.N.Thambidurai, Spl.G.P. for RR-1 and 3
Mr.R.Suresh Kumar for M/s.K.M.Vijayan Associates
for R-2

JUDGMENT

(The judgment of the Court was delivered by S.Vaidyanathan, J)

Against the order dated 19.12.2016 in W.P.No.32683 of 2016, C.M.D.A. has filed the present Writ Appeal, questioning the order of the learned single Judge, directing refund of Rs.31,83,000/- to the second respondent herein/writ petitioner towards premium FSI and infrastructure and development charges.

2. According to the appellant/CMDA, they are only collecting agent and that they have collected the amount and remitted the amount to the Government and that they have no powers to get back the amount from the Government to refund the amount to the writ petitioner. As there is no provision to refund the charges in cases of cancellation of the planning permission after remitting the said amount to the credit of the Government, the learned single Judge ought not to have directed the CMDA to refund the amount to the writ petitioner. It is further contended that the Government has not been made as party and hence, the Writ Petition ought to have been dismissed by the learned single Judge on the ground of non-joinder of necessary and proper party.

3. In reply, learned counsel for the second respondent/writ petitioner contended that when once there is power to collect the amount, the appellant/CMDA is bound to refund the amount. Apart from that, the appellant/CMDA has not taken a stand before the learned single Judge with regard to the non-joinder of necessary party.

4. Heard both sides and perused the materials available on record.

5. Taking note of the fact that the Government has to refund the amount and that CMDA is also one of the wings of the Government, this Court, today, has allowed the impleading petition in C.M.P.No.557 of 2018. When the CMDA has got power to collect the amount, certainly, they will have to refund the amount to the parties concerned in case of cancellation of planning permission. When there is a demand, it is true that the CMDA is the collecting agent and when once there is cancellation

of planning permission and when there is a request by the CMDA to the Government, the said amount will have to be refunded to the CMDA, which in turn will have to refund the said amount after adjusting any amount due to the CMDA in respect of any charges concerned, we are the view that when there is a power to collect the amount, they have got inherent powers to refund the amount. The only hurdle is that they have to get the amount from the Government and when there is proper demand from the CMDA to the Government, the Government will have to pay the amount so deposited by the collecting agent/CMDA, within a period of 15 days from the date of receipt of a copy of the order. After receipt of the amount, taking note of any amount, if any, due to the CMDA, the remaining amount shall be refunded by the CMDA to the writ petitioner, within 30 days from the date of receipt of the amount from the Government.

6. With the above observations and direction, the Writ Appeal is disposed of. No costs. Consequently, C.M.P. is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.
2. The Housing Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008.
3. The Secretary,
The Housing and Urban Development Department,
Secretariat,
Chennai-600 009.

+1cc to M/s.K.M.Vijayan, Advocate Sr.No.2008
+1cc to Mr.C.Johnson, Advocate Sr.No.2509
+1cc to Government Pleader SR.No.2348

GMR(CO)
sm:15.2.2018

W.A.No.1664 of 2017