

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2018

CORAM

The Hon'ble Mr. Justice V.BHARATHIDASAN

Writ Petition No.22018 of 2018

Mr.K.Ravichandran,
Rep by its Power of attorney agent,
Mr.N.Sairam,
No.1, Jawaharlal Nehru Street,
T.Nagar, Chennai - 600 017.

... Petitioner

vs.

1.The Government of Tamil Nadu
Rep by its secretary,
The Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2.The Member Secretary,
CMDA, Egmore,
Chennai - 600 008.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Mandamus, directing the respondents to consider the petitioner representation dated 25.06.2018 to refund the charges paid towards (1) Infrastructure and Amenities charges and premium FSI charges which amounts to Rs.19,60,000/- within the time frame.

For Petitioner : Mr.V.Sundar raman

For 1st respondent : Mr.A.N.Thambidurai,
Special Government Pleader

For 2nd respondent : Mr.P.Tamilmani

O R D E R

This writ petition has been filed seeking a direction to the respondents to refund the Infrastructure and Amenities Charges and Premium FSI Charges paid by the petitioner while planning permission sanctioned by the second respondent.

2. According to the petitioner, he has applied for a planning permission for a proposed construction of stilt + 4 floors residential building with eight dwelling units before the second respondent. The planning permission was also granted by the second respondent by his proceedings in B/Spl.Bldg./126/2012, permit No.7054 in Letter No.BCI/20427/2011 dated 17.04.2012 and the petitioner also paid all the necessary charges and security deposit.

3. Thereafter, the petitioner has decided to call off the project and dropped the idea of proposed construction. Hence, the petitioner approached the second respondent for withdrawing the request for approval and also seeking for a refund of the amount paid by him to the tune of Rs.27,43,000/-. Considering the petitioner application, the second respondent also passed an order by his proceedings in Proceeding No.BCI/8025/2016 dated 26/05/2017 for refund of Rs.7,78,000/- alone but, refused to refund the amount paid by the petitioner towards the Infrastructure and Amenities Charges and Premium FSI Charges amounting to Rs.19,60,000/-. Thereafter, the petitioner made several representations to the respondents but, no order has been passed. Hence, the present writ petition has been filed.

4. The learned counsel for the petitioner submitted that the Chennai Metropolitan Development Authority (in short, "CMDA") / the second respondent has cancelled the planning permission. Since, the planning permission has been cancelled, the respondents cannot withhold the money paid by the petitioner, while granting approval. The learned counsel relied on a judgment of a Division Bench of this Court in The Member Secretary, Chennai Metropolitan Development Authority v. The Housing Secretary, Chennai Metropolitan Development Authority (W.A. No.1664 of 2017 dated 10.01.2018), wherein the Division Bench has held that CMDA cannot withhold the amount collected from the petitioner therein and the same has to be refunded to.

5. Mr. P. Tamilmani learned counsel for the second respondent, submitted that CMDA is only a collecting agent and hence, the entire amount collected from the petitioner has been deposited to the Government and that apart, there is no provision in the Tamil Nadu Town and Country Planning Act, for refund of the amount collected from the petitioner.

6. I have considered the rival submissions.

7. It is an admitted fact that the planning permission granted to the petitioner has been cancelled subsequently and as a part of the amount paid by the petitioner also refunded to him. Now, the only objection raised by the second respondent is that, there is no provision in the Tamil Nadu Town and Country

Planning Act, for refund of the amount paid by the petitioner, in respect of Infrastructure and Amenities Charges and Premium FSI Charges. But, the said contention cannot be countenanced, for the simple reason that, in a similar circumstances in The Member Secretary, Chennai Metropolitan Development Authority v. The Housing Secretary, Chennai Metropolitan Development Authority (cited supra), the Division Bench of this Court, has elaborately considered the similar submission and has held as follows:-

"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."

8. In such circumstances, now, it is not open to the second respondent CMDA, to contend that they have got no power to refund the amount collected from the petitioner. However, considering the submission that amount has been deposited to the Government, the first respondent is directed to return the

amount collected from the petitioner to the CMDA, within a period of three weeks from the date of copy of a receipt of this order and the second respondent is directed to refund the same to the petitioner, within a period of two weeks thereafter.

9. With the above directions, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Government of Tamil Nadu
Rep by its secretary,
The Housing and Urban Development Department,
Secretariat, Chennai - 600 009.

2. The Member Secretary,
CMDA, Egmore,
Chennai - 600 008.

+1cc to Mr.G.Vijayakumar, Advocate, S.R.No.63983

+1cc to the Government Pleader, S.R.No.64179

W.P.No.22018 of 2018

MG(CO)
GSP(30/10/2018)

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