

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2018

CORAM

The Hon'ble Mr. Justice V.BHARATHIDASAN

Writ Petition No.22070 of 2018

and

W.M.P.Nos.25863 & 25864 of 2018

Mr.Ramaniyam Real Estates Pvt. Ltd,
Represented by its Managing Director,
V.Jaggannathan,
No.17/35, 2nd Main Road,
Gandhi Nagar, Adyar,
Chennai 600 020

...Petitioner

vs.

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

2.The Government of Tamil Nadu,
Represented by its Secretary,
The Housing and Urban Development Department,
Secretariat, Chennai 600 009.

. . . Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records relating to the first respondent vide his letter no. B1/15305/2015 dated 25.05.2018 and to quash the same and directing the first respondent to refund the infrastructure and amenities charges collected from the petitioner as demanded by the petitioner in the letter dated 08.05.2018.

For Petitioner : Mr.V.Sundar raman

For 1st respondent : Mr.P.Tamilmani

For 2nd respondent : Mr.A.N.Thambidurai,
Special Government Pleader

O R D E R

This writ petition has been filed calling for the records relating to the first respondent vide his letter no. B1/15305/2015 dated 25.05.2018 and to quash the same and directing the first respondent to refund the infrastructure and amenities charges collected from the petitioner as demanded by the petitioner in the letter dated 08.05.2018.

2. According to the petitioner, he has applied for a planning permission for a proposed residential apartment having basement floor part + stilt + 4 floors of residential complex with 176 dwelling units including 40 LIG Flats before the first respondent. The planning permission was also granted by the first respondent vide their advice Letter No. B1/15305/2015 dated 28.04.2017 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 first respondent for withdrawing the request for approval and also seeking for a refund of the amount paid by him to the tune of Rs.90,67,850/-. Considering the petitioner application, the first respondent also passed an order by his proceedings in Proceeding No. B1/15305/2015 dated 07/02/2018 for refund of Rs.15,82,330/- alone but, refused to refund the amount paid by the petitioner towards the Infrastructure and Amenities Charges amounting to Rs.74,85,520/-. 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 first 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 first 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 first 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 first 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 second 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 first 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. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

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

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

+1cc to Mr.S.Sundaresan, Advocate, S.R.No.63989

+1cc to the Government Pleader, S.R.No.64180

W.P.No.22070 of 2018

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