

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 38194 of 2016

and

W.M.P.s 32742 & 32743 of 2016

1. M.Ravi
2. M.Kannan
C/o. ICMC Corporation Ltd.,
rep. through their Power Agent
M/s.Asvini Foundations,
by its Partner Ms.Aarti Razee Petitioners

Vs

1. The Commissioner,
Sembakkam Municipality,
Sembakkam,
Chennai-600 073.
2. The Secretary,
Tamil Nadu Construction Workers
Welfare Board,
No.8, Valluvar Kottam High Road,
Chennai-600 034.
3. Chennai Metropolitan Development
Authority,
rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the demand notice dated 05.07.2016 in LR.No.B.A.759/2011/A1 by the 1st respondent and quash the same in respect of the payment demand of Rs.51,91,300/- (Rupees fifty one lakhs ninety one thousand three hundred only) towards the Manual Workers General Welfare Fund and consequently, direct the 1st respondent to issue and release the building permission relating to the renewed planning permission granted by the 3rd respondent vide its letter dated 05.12.2012 bearing ref. No.B.A.759/2012.

For Petitioners : Mr.R.Mohan

For Respondents : Mr.P.Srinivas for R-1

Mr.A.N.Thambidurai,
Special Govt. Pleader for R-2

Mr.P.S.Ganesh for R-3

O R D E R

This Writ Petition has been filed challenging the demand notice issued by the 1st respondent directing the petitioner to pay a sum of Rs.51,91,300/- towards the Tamil Nadu Construction Workers Welfare Fund.

2. The grievance of the petitioners is that the petitioners are the joint owners of the various properties at Rajakilpakkam Village in Sembakkam Municipality limit, and a planning permission was obtained from the 3rd respondent C.M.D.A., on 02.11.2012, for developing the property. After obtaining the planning permission, the petitioners have paid all the charges, thereafter, the 1st respondent issued the building permit by an order dated 05.12.2012, and at the time of granting the building permit, the 1st respondent has demanded certain amount towards the Manual Workers Welfare Fund, as per the circular issued by the Tamil Nadu Construction Workers Welfare Fund Board dated 30.11.2012, and the petitioners also paid the sum of Rs.8,74,280/-. After obtaining the permission, the petitioners have put up a construction and 80% of the construction was over. In the meantime, the validity of the planning permit issued by the 3rd respondent was expired, hence, they have applied for renewal of the planning permit before the 3rd respondent and the 3rd respondent has also renewed the planning permit.

3. Thereafter, the petitioners have approached the 1st respondent for issuance of the building permit. Now, the 1st respondent had passed the impugned order directing the petitioners to pay a sum of Rs.51,91,300/- towards the Manual Workers Welfare Fund as per the revised G.O. at the rate of 1% for the total project cost based on the subsequent Government Order issued by the Board dated 17.12.2013. Challenging the above demand notice, the present Writ Petition has been filed by the petitioners.

4. Mr. R.Mohan, learned counsel appearing for the petitioners submitted that at the time of granting the planning permit, the petitioners have paid the entire cess as per the then prevailing rate. Thereafter, the petitioners have also completed 80% of the construction. Since they did not complete

the construction within the period of three years, they have applied for the renewal of planning permit and the same was also granted by the 3rd respondent C.M.D.A. But, the 1st respondent is now once again demanding the cess for the entire building cost that too based on the revised rate, which came into force in the year 2013, which is not permissible under law. The learned counsel had further submitted that, once the amount paid and the building permit was granted, for the renewal of building permit, the 1st respondent cannot insist for the payment of cess once again as if it is a new building permit.

5. The 1st respondent had filed the counter stating that the planning permit already granted to the petitioners has expired and there is no question of renewal, and it is only a fresh building permit, for that, the petitioners have to pay the cess calculating the total value of the construction, which has to be remitted to the Tamil Nadu Construction Workers Welfare Fund, in the said circumstances, the 1st respondent has raised the impugned demand. It is further stated that the petitioners had only completed 50% of the construction work and the remaining 50% of the construction has to be completed. Now, the petitioners without getting a building permit, should not proceed with the construction work. As it is a new building permit, the petitioners have to necessarily pay the cess amount as per the prevailing rate of 1% on the total cost of construction, and the petitioners cannot escape from the payment, which is a statutory cess.

6. Mr.P.Srinivas, the learned counsel appearing for the 1st respondent has contended that even as per Rule 4 of the Building and other Construction Workers Welfare Cess Rules, 1998, the petitioners have to pay the cess for the entire construction work.

7. I have considered the rival submissions and perused the materials available on record carefully.

8. The main question arise for consideration in the Writ Petition is that whether the petitioners are liable to pay fresh cess amount for the entire estimated cost of construction towards the Tamil Nadu Construction Workers Welfare Fund for getting the building permit.

9. The payment of cess is governed by Rule 3 of the Building and other Construction Workers Welfare Cess Rules, 1998 (hereinafter called as 'Rules'), which reads as follows:-

"Levy of cess - For the purpose of levy of cess under sub-section (1) of section 3 of the Act, cost of construction shall include all expenditure incurred by an employer in connection with the building or other

construction work, but shall not include--

- cost of land;
- any compensation paid or payable to a worker or his kin under the Workmen Compensation Act, 1923."

10. Rule 4 of the Rules deals with the Time and manner of collection, which reads as follows :-

"Time and manner of collection.-- (1) The cess levied under sub-section (1) of section 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalised, whichever is earlier to the cess collector.

(2) Notwithstanding the provisions of such rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work, and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

(3) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of cess payable at the notified rates on the estimated cost of construction.

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payments of cess due shall be made as per the provisions of sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under section 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located;

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of cess due

shall be made as per the provisions of sub-rule (2).

(6) Advance cess paid under sub-rules (3), (4) and (5) shall be adjusted in the final assessment made by the Assessing Officer."

Rule 4(2) of the Rules prescribes that in the event of construction period exceeds one year, the cess shall be paid within 30 days of completion of one year from the date of commencement of the work and every year thereafter at the notified rate on the cost of construction incurred during the relevant period. Sub-Rule 5 of Rule 4 (2) prescribes that an employer may pay cess in advance calculated on the basis of the estimated cost of construction along with notice and as per Sub-Rule 6, the advance cess paid shall be adjusted in the final assessment made by the Assessing Officer.

11. In the instant case, the petitioners have already paid the entire cess on the estimated cost of construction, but they could not complete the construction within a period of 3 years. Hence, they have applied for issuance of fresh building permit. As per Rule 4(2) of the Rules, if the petitioners did not complete the construction within a period of one year from the date of commencement of construction work, then they have to pay the cess every year thereafter on the cost of construction incurred during the relevant period at the notified rate.

12. According to the petitioners, before expiry of planning and building permission, they have completed 80% of the construction, but it was disputed by the respondents that they have only completed 50% of the construction and the remaining 50% is yet to be completed. Now, it is very difficult to ascertain the actual construction completed by the petitioner at this stage. The learned counsel appearing for the petitioners submitted even though the only 20% of the construction is yet to be completed, now the petitioners are willing to pay the cess for 35% of the total estimated construction cost, as the actual construction made at the time of expiry of the permit could not be ascertained at this stage, I am of the view that the offer made by the petitioner is fair enough and it can be accepted.

13. In the said circumstances, the petitioners are directed to pay the cess at the rate of 1%, which is the present notified rate for the remaining 35% of the estimated construction cost, and so far as the completed construction of 65%, the 1st respondent is directed to calculate the cess at the rate of 0.3%. As the petitioners have already paid a sum of Rs.8,74,280/-, the petitioners are directed to pay the remaining amount as per the above direction within a period of six weeks from the date of receipt of the copy of this order. On payment of remaining amount, the 1st respondent is directed to issue the building permit to the petitioners.

14. In the result, the Writ Petition stands disposed of with the above direction. No costs. Consequently, the connected Miscellaneous Petitions are also closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Commissioner,
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Chennai-600 073.
2. The Secretary,
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Chennai-600 034.
3. The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

+1 CC to Govt. Pleader sr 64949.
+1 CC to Mr.P.Srinivas, Advocate sr 64795.
+1 CC to Mr.R.Mohan, Advocate sr 64429.
+1 CC to Mr.P.S.Ganesh, Advocate sr 64415.

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SV(CO)
SP(27/11/2018)