

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

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THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.Nos.12759 & 21637 of 2005

and

W.M.P.Nos.13971, 23562, 27449, 27450 of 2005

G.Adaikkalasamy

....Petitioner in both W.Ps

Vs.

1.Chennai Metropolitan Development
Authority represented by its
Member Secretary, Chennai 600 008

2.The State of Tamil Nadu
represented by is Secretary to
Government, Housing and Urban
Development Department
Fort St. George, Chennai 600 009 ... Respondents in W.P.12759/2005

1.Chennai Metropolitan Development
Authority represented by its
Member Secretary, Chennai 600 008

2.Chennai Metropolitan Water Supply and
Sewerage Board
Chennai-2

3.Tamil Nadu Electricity Board
Chennai-2.

... Respondents in W.P.21637/2005

Prayer in W.P.No.12759 of 2005: The writ petition filed
under Article 226 of the Constitution of India, to issue a writ of
Declaration, to declare that the first respondent C.M.D.A. is entitled to

collect only a sum of Rs.1,02,687/- (Rupees one lakh two thousand six hundred and eighty seven only) from the petitioner as per the directions given in the Judgment dated 16.06.2004 and made in Writ Appeal No.3098 of 2003 on the file of this Court.

Prayer in W.P.No.21637 of 2005: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the respondent from taking any steps to disconnect either water or drainage or electricity supply or to suspend or cancel police licence for the petitioner's building with door Nos.38 and 39, Thiruvengadam Street, Periamet, Chennai-3.

For Petitioner in both W.Ps : Mrs.A.L.Gandhimathi

For Respondents in W.P.12759/2005 : Mrs.P.Veena Suresh for R1
Mr.J.Ramesh, AGP for R2

For Respondents in W.P.21637/2005 : Mrs.P.Veena Suresh for R1&2
Mr.J.Ramesh, AGP for R3

COMMON ORDER

These petitions have been filed by the petitioner to issue a writ of Declaration, to declare that the first respondent C.M.D.A. is entitled to collect only a sum of Rs.1,02,687/- (Rupees one lakh two thousand six hundred and eighty seven only) from the petitioner as per the directions given in the Judgment dated 16.06.2004 and made in Writ Appeal No.3098 of 2003 on the file of this Court and to issue a writ of Mandamus, forbearing the respondent from taking any steps to

disconnect either water or drainage or electricity supply or to suspend or cancel police licence for the petitioner's building with door Nos.38 and 39, Thiruvengadam Street, Periamet, Chennai-3.

2.The case of the petitioner is that the petitioner is the owner of the land and building with Door Nos.38 and 39, Thiruvangadam Street, Periamet, Chennai-600 003. The building is a commercial building. It has got basement, ground, first, second, third, fourth and fifth floors. There is no sixth floor in the property. Since some of the portions in the said building were constructed without authorisation, C.M.D.A. passed an order dated 23.07.2002, directing the petitioner to pay a total sum of Rs.42,04,395/- for regularisation. As against the said order, the petitioner preferred a writ petition in W.P.No.16736 of 2003 before this Court and the said writ petition was dismissed on 08.09.2003. Thereafter, the petitioner filed a writ appeal in W.A.No.3098 of 2003. The said appeal came up for final disposal before the Division Bench, the Division Bench observed that major portion of the principal has been deposited by the petitioner and since the petitioner is prepared to pay the balance amount of Rs.16 lakhs, showed some concession in the interest and other charges and directed the 1st respondent to calculate the interest at 12% per annum

on that arrears from 01.11.2003 to 16.06.2004. Contrary to the said decision, the respondent was claiming interest to the extent of Rs.16,74,564/-, against which, the present writ petition has been filed.

3.The learned counsel for the petitioner would submit that as per the order of the Division Bench, the petitioner has to pay only the balance principal amount of Rs.16 lakhs with 12% interest from 01.11.2003 to 16.06.2004.

4.Mrs.Veena Suresh, learned counsel appearing for the 1st respondent would submit that the decision of the Division Bench reads as follows:

"3.Now, the learned counsel for the appellant says that he is prepared to pay the remainder of the amount with interest. That amount, according to him, is Rs.16,00,000/- approximately.

4.There is no objection on the part of Mr.Perumal, learned counsel for the first respondent, to accept the amount and to regularise the illegal construction.

5.In that view, the petitioner is allowed to pay the remainder of the amount. The first respondent will calculate the interest at 12% per annum on that arrears from 01.11.2003 till today (16.06.2004). The petitioner shall approach the first respondent by tomorrow (17.06.2004) and after calculations are

made, the petitioner shall be informed the exact amount to be paid. After that information is received, the petitioner is directed to pay the amount within eight days from that date. If the amount is not paid within eight days, the appeal shall be treated as dismissed without any further reference to the Court. The writ appeal is disposed of with the above terms."

Accordingly, the respondent calculated the interest on the balance regularisation fee at 18% upto 31.10.2003. From 01.11.2003 to 16.06.2004, 12% interest was charged as per the Court order and from 17.06.2004 onwards 18% interest was charged on the balance Regularisation fee as per the Regularisation Rule 7(3) of Regularisation fees Rules. The Regularisation fee means the penalty plus the interest payable by the petitioner. The interest arose only because of his deliberate low valuation, after having opted to get his violations regularised under the scheme, the petitioner cannot pay part amount and question the ingredients of the scheme. Even now, the petitioner is free to set right the building violations and apply for planning provision as per DCR.

5. Heard the learned counsel on either side.

6. On a perusal of the Division Bench Judgment, it is clear that

the petitioner has to pay the principal amount of Rs.16,00,000/- out of Rs.42,04,395/- with interest at 12% p.a. from 01.11.2003 to 16.06.2004 that comes to Rs.1,20,687/-. The learned counsel for the petitioner did not dispute that the said amount was not paid as on date. Hence, the petitioner is hereby directed to pay the interest amount of Rs.1,20,687/- for the period from 01.11.2003 to 16.06.2004 as ordered by the Division Bench of this Court in W.A.No.3098 of 2003 dated 16.06.2004 with 12% interest from 16.06.2004 till the date of making payment within a period of four weeks from the date of receipt of a copy of this order, failing which, the respondent shall proceed the matter in accordance with law.

7. With the above direction, these petitions stand disposed of. The respondent is granted liberty to work out the remedy in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes /No
Internet : Yes / No
Speaking / Non Speaking order

To.

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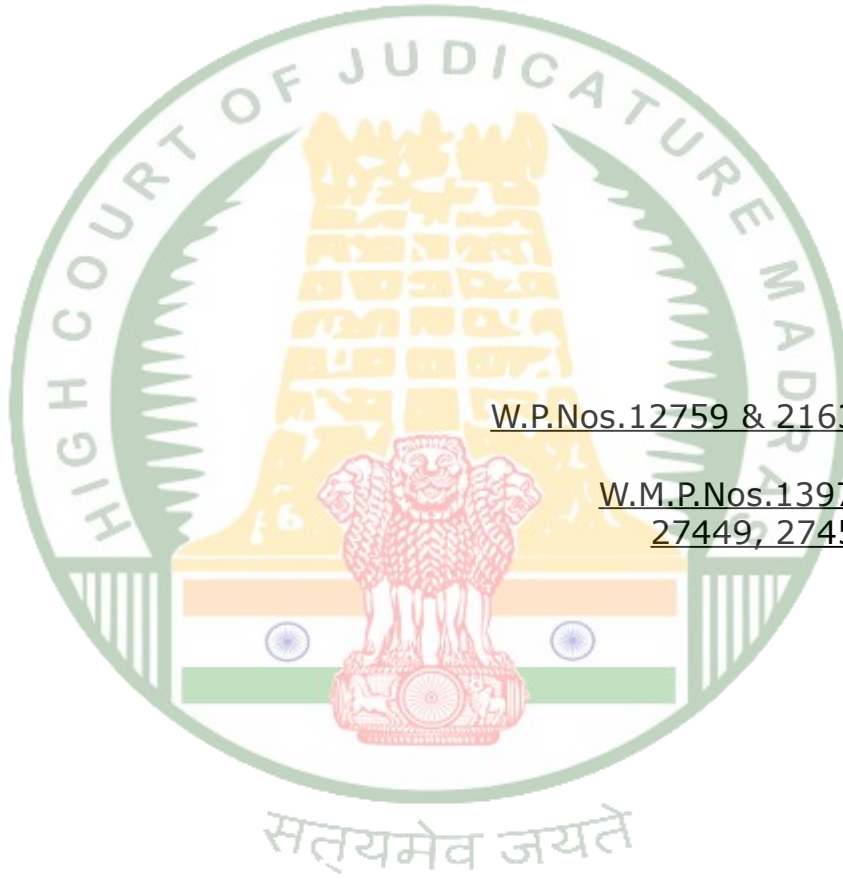
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M.DHANDAPANI, J.

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