

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2019

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.10017 of 2019

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

/versus/

1. The Commissioner,
Greater Chennai Corporation,
Ribbon Building,
Chennai - 600 003.
2. The Executive Engineer,
Zone XII,
Greater Chennai Corporation,
No.1, New Street,
Near GST Road, Alandur,
Chennai - 600 016. Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to consider the petitioner representation dated 12.12.2018 to refund the charges paid towards building license fees, Tentative improvement charges, scrutiny fees, Road cutting charges TNEB, Road Cut Charges CMWSSB sewerage and Road cut charges CMWSSB water supply which amounts to Rs.5,22,600/-, within the time frame.

For Petitioner : Mr.G.Vijayakumar

For R1 & R2 : Mrs.Karthikaa Ashok

O R D E R

Heard the Learned Counsel for the petitioner and the Learned Counsel for the respondents 1 & 2.

2. The case of the petitioner is that he applied for Planning permission for the proposed construction of stilt floor + 4 floor residential building with 8 dwelling units before the 2nd respondent/the Executive Engineer, Greater Chennai Corporation and same was approved on 07.04.2012. Pursuant to that, he has paid a sum of Rs.5,22,600/- to the Greater Corporation, Chennai, vide demand draft drawn at Indian Overseas Bank, T.Nagar Branch, dated 30.05.2012 towards Building Licence Fees, Scrutiny Fees, Road cutting charges etc. Subsequently, considering the safety aspects of the proposed construction, the petitioner has dropped the proposal of putting up construction and therefore sought for refund of the money paid to the Chennai Corporation. The said request for refund was made on 14.12.2018. The representation given to the 1st respondent/the Commissioner, Greater Chennai Corporation, was forwarded to the 2nd respondent/the Executive Engineer for consideration. Till date, there is no order passed by the 2nd respondent. Hence, the present Writ Petition is filed.

3. In the counter affidavit filed by the 2nd respondent, it is stated that the building permission was accorded by Chennai Corporation on 17.04.2012 pursuant to that, the petitioner has remitted fees on 30.05.2012. The demand for refund is made after lapse of more than 5 years. Whereas, Section 50 of the Tamil Nadu Town and Country Planning Act, 1971 reads as below:

"Section 50. Duration of Permission. Every permission for development granted under Section 49 shall remain in force for a period of three years from the date of such permission.

Provided that the appropriate planning authority may, on application made in this behalf before the expiry of the aforesaid period, extend such period of such time as it may think proper, but such extended period shall, in no case, exceed three year;

Provided further that any expiry of permission shall not bar any subsequent application for fresh permission under this Act."

4. Thus, the planning permit and the fees paid by the petitioner is valid for the period of one year, which is extended three years. By that time the petitioner should have put up construction as per the planning permit, which the petitioner failed to do. Hence, after the lapse of 5 years, he cannot seek for refund, due to efflux of time and laches. The Greater Corporation, Chennai, is not liable to re-pay the money

collected. On reading of Section 50 of the Tamil Nadu Town and Country Planning Act, it clear that the person who has obtained planning permit has to commence the project one year or within three years. After obtaining orders for extension, however, this is a peculiar case, where the petitioner is not intended to proceed with the construction but requested the authorities to withdraw the planning permission, which has also been ordered.

5. In such circumstances, the fees collected by the Greater Corporation, Chennai, for an excepted service has to be refunded or else it will be an unjust enrichment on the part of the state.

6. On perusing the receipt issued by the Corporation for the receipt of Rs.5,22,600/-, it appears that a sum of Rs.3,73,000/- has been collected for the building license fees, Rs.600/- is collected towards Scrutiny fees, Rs.89,000/- is towards Tentative Improvement charges, Rs.20,000/- each has been collected towards Road Cutting Charges by TNEB, water supplies and sewerage. Except the scrutiny fees, no service has been rendered for money collected as against other heads. Hence, the petitioner is entitled for refund of Rs.5,22,000/- without interest, which has been collected by the Greater Corporation, Chennai, for building license fees, improvement charges and Road cutting charges, which never happened. The time to refund the charges by the Greater Corporation, Chennai, to the petitioner is within a period of four weeks, from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

bsm

To,

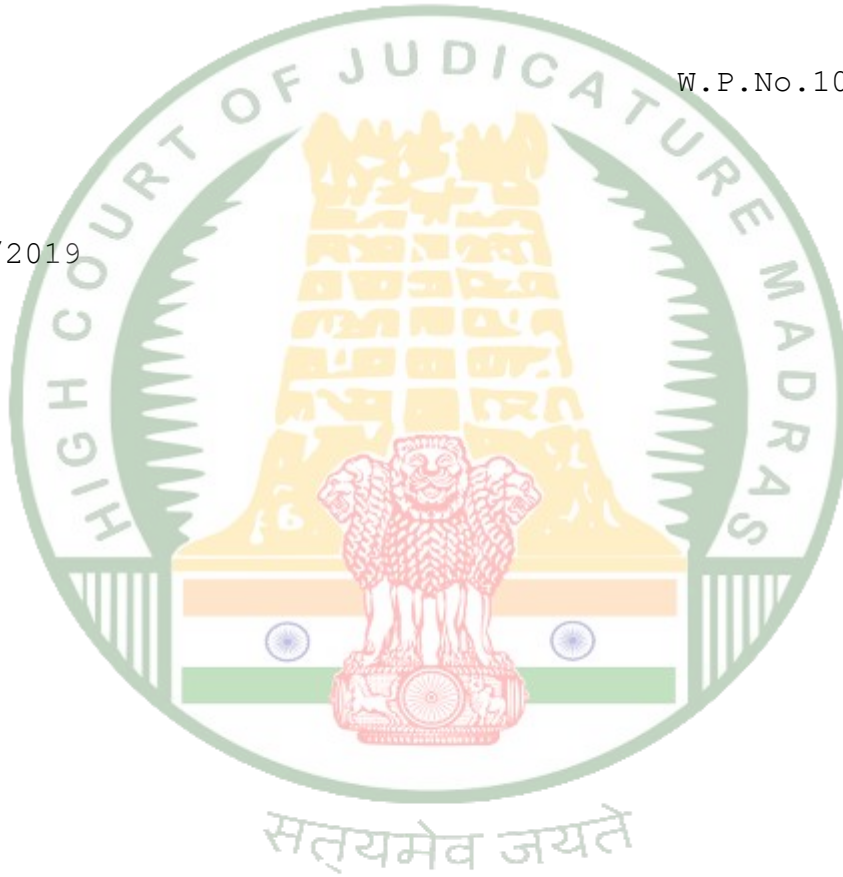
1. The Commissioner,
Greater Chennai Corporation,
Ribbon Building,
Chennai - 600 003.

2. The Executive Engineer,
Zone XII,
Greater Chennai Corporation,
No.1, New Street,
Near GST Road, Alandur,
Chennai - 600 016.

+lcc to M/s.Vijayakumar, Advocate Sr.50944
+lcc to M/s.Karthika Ashok, Advocate Sr.51276

W.P.No.10017 of 2019

gp[col]
srg 23/07/2019



WEB COPY