

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.9370 of 2020
and WMP.No.11455 of 2020

Malles Constructions Private Limited,
represented by its Managing Director,
Mr.U.Chandraprakasam,
19, Tanjore Road,
T.Nagar,
Chennai-600 017. ... Petitioner

Vs.

1. Government of Tamil Nadu,
represented by its Secretary,
The Housing and Urban Development Department,
Secretariat, Chennai-600 009.
2. The Housing Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai 600 008.
3. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600008. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus, calling for the records of the order passed by the 3rd respondent, dated 21.05.2020, in Proc.No.B1/20923/2019 and quash the same and consequently direct the 3rd respondent to refund the sum of Rs.59,85,000/- (Rupees Fifty nine lakh and eighty five thousand only) paid towards Infrastructure and Amenities Charges and the Premium FSI charges of Rs.1,43,00,000/- (Rupees One Crore and Forty Three Lakhs only), which was paid towards the surrendered Planning Permission in No.B/Spl.Bldg/142-Atoh/2014, Permit Number 8748 in Letter No.B2/18050/2012, dated 23.05.2014 to the petitioner and pass orders.

For Petitioner : M/s.Ganesh & Ganesh

For Respondents : Mr.K.Parameshwaran, for R1
Government Advocate.

Mr.Thiruvengadam, for R2 & R3
Standing Counsel (CMDA)

O R D E R

This writ petition has been filed challenging the order passed by the 3rd respondent dated 21.05.2020 and for a consequential direction to the 3rd respondent to refund the amount claimed under two heads by the petitioner.

2.The case of the petitioner is that planning permission was cancelled by CMDA and therefore, the respondents have to refund the entire amount that have been remitted by the petitioner. The grievance of the petitioner is that out of seven items, where refund was sought for, refund was made as against only five items and no refund was given for Infrastructure and Amenities (I&A) charges and premium FSI charges.

3.The issue involved in the present writ petition is squarely covered by the earlier orders passed by this Court. One such order made in W.A.No.1664 of 2017, dated 10.01.2018, is extracted hereunder:

"5.Taking note of the fact that the Government has to refund the amount and that CMDA is also one of the wing 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 copy of this 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.

6.With the above observations and direction, the Writ Appeal is disposed of. No costs. Consequently, C.M.P., is closed."

4.The above order was also followed and this Court had directed the respondents to refund the I & A charges and Premium FSI charges in all cases where the planning permission was cancelled.

5.In view of the above, the impugned order passed by the 3rd respondent dated 21.05.2020 is set aside insofar as refusing refund for I & A charges and Premium FSI charges. Consequently, the 3rd respondent is directed to refund the amount collected towards I & A charges and Premium FSI charges, to the petitioner within a period of six weeks from the date of receipt of copy of this order.

6.The petitioner is directed to make a representation to the 3rd respondent along with a copy of this order. The 3rd respondent shall comply with the order as directed by this Court.

7.This writ petition is allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu,
The Housing and Urban Development Department,
Secretariat, Chennai-600 009.

2. The Housing Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai 600 008.

3. The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600008.

+1cc to M/s.Ganesh & Ganesh, Advocate in SR.26171

W.P.No.9370 of 2020

RJI (CO)
RV (14/09/2020)



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