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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No.26966 of 2018

and

W.M.P.No.31350 of 2018

ParsnManere Welfare Society
represented by its Secretary
(Reg. No.209 of 1992)
Ramesh

...Petitioner

Vs.

1.The Executive Officer,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, 7th street,
Nungambakkam,
Chennai 600034.

2.The Commissioner,
Corporation of Chennai.

3.The Executive Engineer,
Chennai Metropolitan Water Supply & Sewerage Board,
Division III Greaves Road
Chennai.

4.The Park,
Rep. By its Manager,
No.601 Anna Salai
Chennai.

...Respondents

(R3 and R4 are impleaded vide
order of this Court dated 03.06.2020
in WMP No.34503/2018)

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents to take action on the complaints dated 18.05.2018, 27.06.2018, 28.06.2018, 25.07.2018, 26.09.2018 and to clear the sewerage line.



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For Petitioner : Ms.S.Kanimozhi Mathi
For Respondents : Mr.Gowthaman for R1 and R3
Mr.M.Ganesan for R2
Mr.R.Parthasarathy for R4

O R D E R

This writ petition has been filed by the petitioner Association for the issue of a writ of mandamus directing the respondents 1 to 3 to act upon the complaints given by the petitioners and to clear the sewerage line within the time limit fixed by this Court.

2.The case of the petitioner is that there was a block in the sewerage line, which resulted in the overflow of the drainage water causing inundation around the building. The petitioner gave various complaints to the respondents 1 to 3 requesting for clearing the sewerage line. Since the same did not evoke any response, the present writ petition has been filed before this Court seeking for appropriate directions.

3.During the pendency of this writ petition, this Court thought it fit to direct the second and third respondents to make an inspection of the building and to attend to the complaint given by the petitioner and file a report before this Court. An order to that effect was passed on 26.04.2021.

4.Pursuant to the above order, the Assistant Engineer of Chennai Corporation conducted an inspection on 23.06.2021. A status report has been filed on behalf of the Chennai Corporation along with photographs. The relevant portions in the status report is extracted hereunder:

"6.In presence of the writ petitioner, the Assistant Engineer, Ward-III had inspected the property and noticed that the building consists of ground floor plus 9 floors. In the course of such inspection, it was noticed that the drainage chamber of the building was opened and found that the drainage water was moving slowly to the main sewer line because of the damaged pipe line owned by the writ petitioner.

7.The other drainage chambers of the Parsn Manere Complex building & the main sewer line also inspected and main sewer line manhole door which is connecting to Parsn Manere complex building has been identified at main sewer line of Nungambakkam high road during the inspection. Also it is found that there is no sewer connection to storm water drain while it was inspected.

8.It is submitted that to resolve the issue agitated by the writ petitioner, the damaged sewer pipeline which



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is connecting from last disposal point chamber of Parsn Manere complex building to main sewer line is to be replaced to avoid further drainage leakage problem. In this regard, Parsn Manere Welfare Society has to apply for the sewer renewal connection application to CMWSSB and should be processed by the CMWSSB."

5. After the above status report was filed, the next issue that arose for consideration is as to who will incur the expenses for replacement of the main sewerage line to avoid further drainage leakage problem in future. At that point of time, the learned counsel appearing on behalf of CMWSSB submitted that out of 219 units, 215 units are commercial establishments and the property in question is basically a commercial complex. It was further submitted that there is arrears towards water tax and charges to the tune of Rs.1,28,02,708/- due and payable by the petitioner and until the arrears amount is paid, the water and sewerage connection will not be provided to the association. This Court directed the learned counsel appearing on behalf of the petitioner to take instructions with regard to the payment of the arrears of tax and charges and report before this Court.

6. When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that there is an ongoing dispute among the members of the building complex and even though many of the owners are willing to pay the arrears of tax and charges, there is resistance from others and as a result of the same, the entire arrears as claimed by CMWSSB cannot be settled immediately.

7. The fourth respondent was initially added as a party in this writ petition mainly on the apprehension that they are the cause for the block in the sewerage connection and ultimately it was found that the fourth respondent had no role to play. The fourth respondent had in fact filed a counter affidavit and denied all the allegations made against them. After the inspection was conducted, it is now clear that the fourth respondent has not contributed to any of the problems that are faced by the petitioner association. Therefore, the fourth respondent is an unnecessary party in this writ petition.

8. This Court has to balance the rights of the petitioner association on the one hand and that of the CMWSSB on the other. The arrears that is claimed by CMWSSB is quite huge and if such arrears keep mounting, the CMWSSB may not be able to effectively perform its functions. Therefore, it must be ensured that CMWSSB is able to recover the amount.

9. Considering the fact that the overall amount that is due



and payable is Rs.1,28,02,708/-, it may not be possible for the petitioner association to pay this amount in one go. Therefore, this Court has to necessarily consider the payment of the amount by way of instalments.

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10. The dispute among the members of the building complex makes it difficult for the association to collect the arrears amount and make the payment to CMWSSB. There is only one connection that is provided by CMWSSB to the building complex and therefore, insofar as CMWSSB is concerned, they will not have anything to do with the internal dispute in the association and they will be more interested in collecting the tax and charges for the water and sewage connection given to the building complex. Unfortunately, even if some of the members do not make the payment, it will adversely affect the interest of the others, who are willing to pay the tax and charges. In the prevailing system, it is also difficult for the association to enforce the collection of the arrears of tax and charges and it is more easier said than what actually happens in reality.

11. In view of the above discussion, this writ petition is disposed of with the following directions:

(a) The petitioner association shall pay a sum of Rs.40,00,000/- (Rupees forty lakhs only) to the third respondent out of the total arrears amount of Rs.1,28,02,708/-.

(b) Immediately on payment of this amount, the third respondent is directed to undertake the repair work by replacing the main sewerage line within a period of six weeks from the date of receipt of the first instalment from the petitioner.

(c) The petitioner shall pay a sum of Rs.5,00,000/- (Rupees five lakhs only) every month starting from November 2021 on or before the 5th of every month for a period of 15 months without fail.

(d) The balance amount of Rs.13,02,708/- (Rupees thirteen lakhs two thousand seven hundred and eight only) shall be paid as the 16th and final instalment by the petitioner association to the third respondent.

(e) The above payments only pertains to the arrears of the tax and charges and it goes without saying that any current demand made by the CMWSSB for the subsequent assessment years must be paid by the petitioner association without fail.

(f) On clearance of the entire arrears of tax and charges, the third respondent shall regularise the water and sewage connection to the petitioner association.

(g) If in case any of the conditions imposed by this Court is not complied with by the petitioner association, it is left open to the third respondent to proceed further in accordance with law without any further reference to this Court and if any of the members belonging to the petitioner association do not cooperate in the payment of arrears of tax and charges, it is



left open to the petitioner association to initiate action against those members for recovery of the amount including the disconnection of the water and sewerage connection of the respective unit.

No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

RR

To

1.The Executive Officer,
Chennai Metropolitan Water Supply and Sewerage Board,
No.1, 7th street,
Nungambakkam,
Chennai 600034.

2.The Commissioner,
Corporation of Chennai.

3.The Executive Engineer,
Chennai Metropolitan Water Supply & Sewerage Board,
Division III Greaves Road
Chennai.

+lcc to Mr.T.Gowthaman, Advocate, S.R.No.38540

+lcc to Mrs.Kanimozhi, Advocate, S.R.No.37942

W.P.No.26966 of 2018

GPL(CO)
SB(18/08/2021)