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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.10102 of 2021

and

WMP.Nos.10732, 10733 & 29525 of 2021

Green Garden Owner's Welfare Association,
Rep. by its Secretary
K.Naresh Kumar
Flat No.4/4, Annai Avenue, Thiruvalluvar Street,
Om Shakthi Nagar, Kallikuppam,
Ambattur, Chennai-600 053.

...Petitioner

Vs

1. The Chairman & Managing Director,
Chennai Metropolitan Water Service &
Sewerage Board (CMWSSB),
No.1, Pumping Station Road,
Chintadripet, Chennai-600 002.
 2. The Deputy Area Engineer-VII,
CMWSS Board, No.1, School Road,
T.S.Krishna Nagar Main Road,
Mogappair, Chennai-600 101.
 3. The Area Engineer - VII,
CMWSS Board, Depot 82,
Pilliar Koil Street, Library Room,
Kallikuppam, Ambattur,
Chennai-600 053.
 4. M/s.Vyas Builders (P) Ltd.,
18/19, Venkatamaistri Street,
1st Floor, Chennai-600 001.
 5. M/s.Loyal Housing Development Pvt. Ltd.,
Plot No.1402, H-Block, 15th Main Road,
Anna Nagar, Chennai-600 040.
at New No.44, 1st Cross Street,
Kennedy Square, Sembium,
Chennai - 600 011.
- ...Respondents
- (R4 & R5 impleaded vide order dated 2.7.2021 made in
WMP.No.11747 of 2021 in WP.10102 of 2021)



Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the 2nd Respondent and quashing the impugned Letter in Lr.No.CMWSSB/ Area VII/ DAE- 18/ Depot-82/ Spl./ 2021 dated 16/03/2021 by the 2nd Respondent making false and vexatious demand of Rs.41,68,760/- which was affixed on the wall of the Petitioner Association on 03/04/2021 with regard to the Door Nos.1 to 13, 13 to 47 Annai Avenue, Thiruvalluvar Street, Om Sakthi Nagar, Kallikuppam, Ambattur, Chennai- 600 053, as the same is ultra virus, unconstitutional, perverse, arbitrary, biased, illegal and against all principles of law and natural justice and further direct the Respondents to consider the Petitioners Association representation dated 30/12/2020 by providing an opportunity of hearing, site inspection and perusal of records and consequently forbearing the Respondents, their men, agents, servants and subordinates from taking any coercive steps by disconnecting the Water and Sewerage connections or in any other manner proceeding against the Petitioners Association property detailed above pursuant to the impugned notice dated 16/03/2021 affixed on the wall on 03/04/2021.

For Petitioner : Ms.R.Umamaheshwari

For Respondents : Mr.C.Vigneswaran (for R1 to R3)
Ms.Gayathri (for R4 & R5)
for M/s.Nathan & Associates

O R D E R

It is the case of the petitioner/Owners' Welfare Association that there are several discrepancies in impugned communication dated 16.03.2021. As an illustration, they would submit that the computation, arriving at a demand of a sum of Rs.41,68,760/- as arrears of CMWSSB charges is incorrect, insofar as R1 has, in the counter filed, conceded to the position that 38 out of the 128 occupants have remitted connection charges in respect of sewerage.

2.That apart, it is also the petitioner's specific case that as per the agreement entered into qua the builder and the owner, all occupants have remitted the charges towards water and sewerage connection as well as infrastructure development and thus the collection of amounts remaining, if any, by R1, would only have to be from the owner/developer and not from the occupants of the individual units.

3.Per contra, Ms.Gayathri, learned counsel, appearing for Nathan and Associates, who have entered appearance for both R4



and R5 draws attention to Clauses-5 and 6 the joint venture agreement entered into between the builder and the owner especially dealing with the obligations, duties, liabilities and entitlement of the owner and developer respectively.

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4.I find it piquant that both R4 and R5 are represented by the same counsel, particularly when the parties take contra positions and each in fact, pass responsibility to the other. To be noted that the impugned communication dated 16.03.2021 has been issued to R4, the owner, who has retained under the joint developmental agreement, one portion of the constructed area for itself.

5.As rightly pointed out by Mr.Vigneswaran, learned counsel appearing for official respondents, section 81 of the Chennai Metropolitan Water Supply and Sewerage Act, 1978 (in short 'Act') mulcts liability in respect of water and sewerage charges, either upon the owner or the occupier. In this case, the petitioner which owners of the apartments maintain that they have remitted all charges to the owner/developer and thus it boils down to an examination and verification of facts.

6.It is thus appropriate that the officials of the Chennai Metropolitan Water Supply and Sewerage Board/R1 to R3 have a re-look at the dispute raised by the petitioner in regard to arrears of charges in respect of sewerage, water, meter testing and infrastructure development, hearing the petitioner, R4 and R5.

7.For this purpose, the representation filed by the petitioner, placed at pages-7 and 8 of compilation dated 09.04.2021 along with enclosures will be considered by R1, after issuing notice to R4 and R5 as well. Thereafter, let a speaking order be passed determining the amounts to be paid.

8.The setting aside of the impugned order is necessitated on account of the patent error in computation as noticed in paragraph (1) above and it is thus the considered opinion of the Court that the matter has to be re-looked at, afresh. Let this exercise be completed within a period of twelve (12) weeks from today. This writ petition is disposed as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

vs



To

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2. The Deputy Area Engineer-VII,
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Depot 82,
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+2cc to Mr.P.R.Umamaheswari, Advocate, S.R.No.15614

W.P.No.10102 of 2021
and
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RSI (CO)
RGA (30/03/2022)