



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.31719 of 2014

and

M.P.No.1 of 2014

S.Lakshmi

...Petitioner

Vs.

Chennai Metropolitan Development Authority,
Represented by its Member Secretary,
Egmore,
Chennai - 600 008.

...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to refund a sum of Rs.37,21,334/- due and payable to the petitioner forthwith, together with the interest at the rate of 12% with effect from 19.09.2014.

For Petitioner : Mrs.Narmadha Sampath

For Respondent : Mrs.P.Veena Suresh
For [CMDA]

O R D E R

The writ on hand has been instituted seeking refund of a sum of Rs.37,21,334/- together with the interest at the rate of 12% with effect from 19.09.2014.

2. The petitioner states that a construction of Stilt Floor + 3 Floors Residential building with seven dwelling units at Old Door No.10, New Door No.23, Valliammal Street, Alagappa Nagar, Kilpauk, Chennai -10 in R.S.No.91/49, Block No.9, Purasawakkam Village was done in accordance with the development control rules.

3. The petitioner sought for completion certificate from the respondent / Chennai Metropolitan Development Authority (CMDA) and the said application was rejected. The petitioner preferred an appeal under Section 79 of the Tamil Nadu Town and Country Planning Act, 1971 to the State Government. The State Government vide G.O.(3D) No.30 Housing and Urban Development (UD-V) Department dated 23.06.2014 had allowed the appeal filed by the petitioner with a direction to



pay premium FSI charges for excess as over and above the eligible FSI for the building. Thus, the Government granted some concession to the petitioner by allowing the appeal.

4. In fact, the petitioner even before the order passed by the appellate authority paid the premium FSI charges over and above the eligible FSI for the building.

5. In view of the fact that the petitioner has already paid the said amount the writ petition is filed seeking for the refund of the premium FSI charges on the ground that the charges are excessive and wrongfully collected for issuance of completion certificate which is not in consonance with the provisions of the Act.

6. The learned counsel appearing on behalf of the petitioner contended that as per the notification, rules and requirements, the petitioner is not liable to pay the premium FSI charges and it was wrongfully collected from the petitioner. The petitioner has paid a sum of Rs.37,21,334/-, which is excess. Therefore, the writ petition is filed seeking refund of the said amount along with the interest for eligible FSI.

7. The learned counsel for the petitioner reiterated that excess charges are calculated without considering the eligibility as per the rules in force. Thus, the case has to be re-considered by the competent authority and restrict the charges by considering the eligibility criteria.

8. The learned counsel appearing on behalf of the respondent / Chennai Metropolitan Development Authority (CMDA) relying on the counter made a submission that the completion certificate application was rejected in proceedings dated 21.03.2014 and admittedly the appeal filed by the petitioner was allowed. Even in the appeal, the petitioner was directed to pay premium FSI charges for excess as over and above the eligible FSI for the building as prescribed by the Chennai Metropolitan Development Authority (CMDA).

9. Admittedly, additional constructions were made in violations of the building plan approval. The fact regarding the violations are not disputed by the petitioner. Tolerable violations and large scale violations were distinguished by the authorities. Accordingly, the Government thought it fit and passed an order directing the petitioner to pay premium FSI charges for excess as over and above the eligible FSI for the building.

10. The petitioner even before the appellate order deposited the said amount. Completion certificate was also issued by the competent authorities. The calculations were made as per the appellate order passed by the Government. The Chennai Metropolitan Development Authority (CMDA) has



calculated the charges in accordance with the appellate order and no excess amount was calculated.

11. The Government order passed by the Housing and Urban Development (UD-V) Department in the Tamil Nadu Gazette Notification No.26, dated 09.07.2014 states as follows:

"the Appeal Committee went through the records and observed that the appellant in her affidavit dated 03.04.2014 has promised to pay premium FSI charges for excess as over and above the eligible FSI for the building. The Appeal Committee has therefore decided to allow the appeal and direct the appellant to pay premium FSI charges for excess as over and above the eligible FSI for the building as prescribed by the CMDA and to relax the Development Regulation in respect of length and width of the building, setback all around and car parking."

12. The petitioner in her letter dated 14.07.2014 has requested for waiver of 50 sq.mt. from the total excess area (94.62 sq.mt) and requested to collect premium FSI charges for the balance area and to issue the completion certificate. The respondent rejected the said request made by the petitioner on the ground that the excess area over and above the permissible FSI of 1.5 is chargeable as premium FSI as per the Court order. Calculation for the excess area over and above the approved area (758.84 sq.mt.) is calculated as under:

Plot Area	:	516.68 sq.mt.
Eligible FSI	:	516.68 sq.mt. x 1.50 = 775.02 sq.mt. (1.50)
FSI achieved (i.e. Constructed area)	:	853.46 sq.mt. (1.65)
Excess FSI	:	853.46 sq.mt. - 775.02 sq.mt = 78.44 sq.mt.
The Premium FSI / Equivalent Land Area	:	78.44 sq.mt. x 0.67=52.55 sq.mt x 10.764=565.65 sq.mt.

13. It is contended that the charges have been worked out based on the guideline value of the property and also as per the prevailing rules and regulations. The excess area and excess amount stated by the petitioner is incorrect. As the deviation caused to the approved plan by the petitioner by constructing additional area over and above the approved plan has been compounded by collecting the equivalent premium FSI charges, the refund of the charges already collected would not arise at all.



WEB COPY

14. This Court is of the considered opinion that violation of building plan approval is causing greater hardship to the people residing near by. Already metropolitan cities like Chennai and Coimbatore are converted as concrete jungles. People are going on violating the building plan approval confidently by thinking that no actions will be taken by the competent authorities.

15. No doubt, illegalities are continuing with the active or passive collusion of the Chennai Metropolitan Development Authority (CMDA) and local bodies. Large scale corrupt activities are also involved, but no actions are taken. The inaction on the part of the State in this aspect result in infringement of fundamental rights of the citizen of this great nation.

16. Environmental protection norms and rules are violated. Safety and security of the neighbors are also not taken into consideration. In the event of decision for demolition, fire or otherwise no safety procedures can be adopted in case of such large scale violations of buildings in urban areas. The very purpose and the object of prescription of FSI norms in the rules itself is defeated. People are taking it granted that no authority will question such violations. If such mindset is permitted, no doubt, the same will lead to disastrous consequences, wherein, there is no safety and security for human life. Further, the fundamental right to life under Article 21 will also be infringed on account of such large scale violations which is being witnessed by the competent authorities, who all are bound to initiate action and prevent all such illegalities.

17. Therefore, a person who has committed an act of violation is not entitled to seek any relief from the Court of law. The Government is also expected to act in lawful manner and not to take lenient view in respect of those violators. Allowing the persons to construct by violating a building plan approval and thereafter ratifying by collecting some more amount itself is against public policy and not in consonance with the basic principles and the fundamental law of right to life enunciated under the constitution of India.

18. In the event of allowing such violations or ratifying by collecting some amount, they are risking the life of other people who all are residing in the nearby area. When an accident occurs, then the Government and every authorities are attempting to blame the building owners, developers or the builders. Contrarily, they are not taking any preventive actions at the time of construction of building by violating the approval plan.

19. Such conducts of the public authorities are intolerable and those authorities are to be prosecuted under the criminal law. They are colluding with the builders,



developers and violaters by compromising the fundamental rights of the citizens for right to life and creating lot of nuisance and other inconveniences which causes environmental damages, etc.,

WEB COPY

20. In the present case, the respondent could able to establish that the completion certificate was not initially granted as there were violation on building plan approval and thereafter, the petitioner deposited the premium FSI charges and then completion certificate was issued in favour of the petitioner.

21. The respondent has also established that the deviation caused to the approved plan by the petitioner by constructing additional area over and above the approved plan has been compounded by collecting the equivalent premium FSI charges. When the equivalent premium FSI charges were collected from the petitioner and the completion certificate was issued and further there were various Court orders already passed in respect of such violations, this Court is of the opinion that the relief of refund cannot be considered.

22. Accordingly, the Writ Petition fails and stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jeni/kan

To

The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore,
Chennai - 600 008.

+1cc to M/s.Narmatha Sampath, Advocate SR. No.1195
+1cc to M/s.P.Veena Suresh, Advocate SR. No.1298

W.P.No.31719 of 2014

SS (CO)
PR (27/01/2022)