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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2022

CORAM

THE HON'BLE MR.JUSTICE PARESH UPADHYAY
AND
THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.NO.2941 OF 2021

AND

C.M.P.NOS.19935 & 19940 OF 2021

M/s.ParsnManere Welfare Society,
Rep. By its Secretary,
Mr.Ramesh,
S/o.Jeevarathinam,
602, Anna Salai,
Thousand Lights,
Chennai.

...Appellant / Petitioner

Vs

1.The Executive Engineer,
Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, 7th Street,
Nungambakkam,
Chennai 600 034.

2.The Commissioner,
Corporation of Chennai.

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

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

...Respondents / Respondents

Appeal preferred under Clause XV of Letters Patent against the order dated 03.08.2021 made in W.P.No.26966 of 2018.

Prayer in W.P.No.26966 of 2018 : 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 Appellant : Mr.P.H.Arvinth Pandian,
Senior Advocate
for Mr.Vikram Veerasamy

For Respondents : Mr.M.Vijayakumar
for R1 & R3
Mr.K.Raja Shrinivas for R2

JUDGMENT

(Delivered by PARESH UPADHYAY, J.)

Challenge in this appeal is made to the order passed by learned single Judge dated 03.08.2021 recorded on W.P.No.26966 of 2018. The appellant/ original writ petitioner is M/s.Parsn Manere Welfare Society.

2. The prayer in the writ petition was for issuance of 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.

3. After hearing the parties, learned single Judge gave direction to the respondent authorities on certain conditions to be complied with by the petitioner Society. It is this order which is challenged by the writ petitioner.

4. Learned senior advocate for the appellant/ original writ petitioner has submitted that in the writ petition filed by the Society, ultimately direction came to be issued against the original writ petitioner itself that too in contravention of the statutory provisions. Reference is made to different Sections of Chennai Metropolitan and Water Supply and Sewerage Act, 1978 with specific reference to Sections 6, 34, 47, 59 and 74 thereof to contend that not only the power but the duty cast upon the State authorities are shifted on the original writ petitioner Society which is against the statutory provisions coupled with the fact that the request to clear the sewerage line was more in public interest and no individual interest could be said to be served by the original writ petitioner Society. It is submitted that the impugned order needs to be interfered with. It is noted that learned senior advocate for the appellant has also taken this Court through the statement of the persons who are in arrears at page Nos.1 to 8, who, according to learned senior advocate for the appellant, are incidentally the members of the original writ petitioner Society. It is submitted that this appeal be entertained.



5. On the other hand, learned advocates for the respondents have submitted that number of persons do not pay even taxes and the complaints are attended from time to time but the cause sought to be espoused by the petitioner Society was of those members who do not pay taxes required under the Act and therefore the discretion exercised by learned single Judge under Article 226 of The Constitution of India, casting certain obligations on the writ petitioner qua its own members can not be said to be an error which may call for any interference. It is submitted that the appeal be dismissed.

6. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under:

6.1 The appellant/ original writ petitioner is the Welfare Society of the members, whose details are placed on record at page Nos.1 to 8. It is noted that they are not the only members, there are other members as well. The dispute was not about non-payment of taxes or demand raised by the State authorities. It is the association of those persons, which moved this Court invoking Article 226 of The Constitution of India praying for discretionary relief from this Court seeking direction to the State authorities to do needful with regard to sewerage line.

6.2 It was put to the notice of the Court by the authorities that the work in question would involve huge expenditure and even the statutory dues are not being paid by many of the members whose cause is sought to be espoused by the writ petitioner society. It is under these circumstances the learned single Judge, while granting relief, also gave certain directions to the writ petitioner, the relevant of which reads as under:

"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



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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."

6.3 We find that, though the learned senior advocate for the appellant may be right to the extent that the provisions of Chennai Metropolitan and Water Supply and Sewerage Act, 1978 cast not only the power but duty as well on the State authorities, the exercise of discretion by learned single Judge giving composite direction in favour of the writ petitioner Society, casting certain duty upon it, can not be termed to be erroneous. The petitioner society is ultimately directed to do something, for the persons, who according to learned senior advocate for the appellant, are 'incidentally' their members. The said society can not be permitted to disown it. If it is not willing, it need not espouse their cause. We do not see any error apparent on the face of record in the impugned order, which may call for any interference in this intra-court appeal. This appeal therefore needs to be dismissed.

6.4 It is noted that, in the event the directions issued by learned single Judge are not complied with, the same is not



to be treated as contempt of Court. It is for the petitioner Society which has to take call, it is willing to have the relief as asked for it by its members at the cost indicated in the impugned order.

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7. With the above observation, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

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2.The Commissioner,
Corporation of Chennai.

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

+1cc to M/s.M.Vijayakumar, Advocate SR.No.1329

+1cc to M/s.Vikram Veerasamy, Advocate SR.No.1201

W.A.No.2941 of 2021

RR(CO)
RVM(25/01/2022)