



WEB COPY

W.A.No.2182 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 28.06.2024**

CORAM

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM  
AND**

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.A.No.2182 of 2018**

**and**

**C.M.P.Nos.16919 & 16920 of 2018**

The Commissioner,  
Thiruverkadu Municipality,  
Office of Thiruverkadu Municipality,  
Chennai – 600 077.

... Appellant

Vs.

1.M/s.Jamals

A Partnership Firm,  
Represented by its Partnership  
and Power of Attorney Holder  
Mr.J.C.Shameem Cassim,  
Mount Chambers, Ground Floor,  
758, Anna Salai, Chennai – 600 002.

2.The Secretary to Government,  
Housing and Urban Development Authority,  
Fort St. George, Chennai – 600 009.

3.The Chennai Metropolitan Development Authority,  
Represented by Member Secretary,  
No.1, Gandhi Erwin Road,  
Egmore, Chennai – 600 008.

... Respondents



W.A.No.2182 of 2018

**Prayer:** Writ Appeal filed under Clause 15 of Letters Patent to allow this writ appeal by setting aside the order dated 29.11.2017 made in W.P.No.19675 of 2017 passed by the Learned Judge.

|               |                                                                                                                |
|---------------|----------------------------------------------------------------------------------------------------------------|
| For Appellant | : Mr.R.Mohan Doss                                                                                              |
| For R1        | : Mr.V.Raghavachari<br>Senior Counsel<br>For Mrs.V.Srimathhi                                                   |
| For R2        | : Mr.S.John J.Raja Singh<br>Additional Government Pleader                                                      |
| For R3        | : Mr.P.Kumaresan<br>Additional Advocate General<br>Assisted by Mrs.Veena Suresh<br>Standing Counsel [For CMDA] |

### **J U D G M E N T**

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The undisputed facts are that 1<sup>st</sup> respondent submitted an application seeking permission from Chennai Metropolitan Development Authority (CMDA) under the CMDA Development Regulations. The Member Secretary, CMDA vide letter dated 17.10.2013 intimated to the 1<sup>st</sup> respondent about the remittance of development charges and other charges as applicable under the Regulations. The 1<sup>st</sup> respondent has paid the same. One of the Clause stipulated in the letter would indicate that the demand notice (DC



W.A.No.2182 of 2018

advice) pertaining to the proposed construction falls within the jurisdiction of Thiruverkadu Municipality. The 1<sup>st</sup> respondent paid the charges as demanded by CMDA. Consequently, the Member Secretary, CMDA transmitted the permission granted under the CMDA Regulation to the Commissioner, Thiruverkadu Municipality vide letter dated 05.12.2013. The Clause stipulated in the letter would indicate that the permission granted by CMDA is not final one under the Tamil Nadu District Municipalities Act, 1920. The 1<sup>st</sup> respondent has to approach Thiruverkadu Municipality and obtain building permit and commence construction of the proposed building.

2. It is not in dispute that CMDA granted planning permission on 05.12.2012, which is valid for three years and expired on 04.12.2016. Consequently, Thiruverkadu Municipality granted building permit on 17.01.2014 for three years and expired on 16.01.2017. Since the proposed construction is for over and above G+2 Floors in Chennai Metropolitan area, permission from the CMDA is to be obtained. Permission granted by the CMDA by collecting development charges will be transmitted to the Municipality concerned and the Municipality has to grant building permit. The 1<sup>st</sup> respondent paid developmental charges to CMDA and after transmission of the permission to the Thiruverkadu Municipality, he paid the



W.A.No.2182 of 2018

building permit charges and other infrastructure facility charges as demanded by Thiruverkadu Municipality. The charges prescribed by CMDA and Thiruverkadu Municipality are independent and unconnected with each other.

3. Thiruverkadu Municipality in its building plan permission dated 17.01.2014, imposed conditions to the 1<sup>st</sup> respondent builder stating that they have to abide by the restrictions imposed by CMDA and the provisions of the Tamil Nadu District Municipalities Act, 1920. Pertinently, Clause 5 of the building permit dated 17.01.2014 states that the building in all respects must be completed within the time limit stipulated in the building permit. In the event of non-completion, the 1<sup>st</sup> respondent should submit a fresh application for seeking building permit from the Municipality.

4. Accepting the conditions, the 1<sup>st</sup> respondent commenced building construction. Admittedly, the 1<sup>st</sup> respondent had not completed the building within the time limit stipulated by CMDA and Thiruverkadu Municipality. Consequently, the 1<sup>st</sup> respondent submitted a renewal application for renewal of planning permission to CMDA. CMDA granted renewal of planning permission and again transmitted to Thiruverkadu Municipality. Thiruverkadu Municipality in turn granted building permit a fresh in



W.A.No.2182 of 2018

proceedings dated 24.03.2017. While granting renewal of building permit, the Commissioner, Thiruverkadu Municipality demanded a sum of Rs.35,20,093/- towards charges. The said amount was directed to be remitted within a period of seven days. The said order of the appellant came to be challenged in the writ petition.

5. The Writ Court allowed the writ petition relying on the fact that the CMDA renewed the planning permission without collecting charges. Therefore, Thiruverkadu Municipality cannot demand charges for renewal of building permit. The building permit charges were originally collected in the year 2014 by the Municipality. Therefore, they are not empowered to collect once again the building permit charges from the 1<sup>st</sup> respondent. In this context, the learned Single Judge relied on Section 321 (9-A) and 11 of the Tamil Nadu District Municipalities Act, 1920.

6. Mr.R.Mohan Doss, learned counsel appearing on behalf of the appellant would submit that the conditions are unambiguously stipulated both by CMDA in its planning permission and by Thiruverkadu Municipality in its building permit orders. Having accepted all those conditions, the 1<sup>st</sup> respondent cannot turn around and refuse to pay the building permit charges



W.A.No.2182 of 2018

as demanded in accordance with the provisions of the District Municipalities Act. The conditions stipulated in the orders passed by CMDA and Thiruverkadu Municipality are not in dispute between the parties.

7. Mr.R.Mohan Doss, would contend that under Section 321 (2) (3) (b) of the Tamil Nadu District Municipalities Act, 1920, the appellant is empowered to collect charges afresh, since the 1<sup>st</sup> respondent failed to complete the building within a period of three years as stipulated in the original building permit granted by the Municipality.

8. Mr.Mohan Doss, Learned counsel for the petitioner would contend that Section 204 of Tamil Nadu District Municipalities Act, 1920 stipulates Lapse of Permission, after expiry of the time limit granted by the competent authority. In the present case, time limit of three years was granted to the 1<sup>st</sup> respondent to complete the building. Admittedly, they have not completed the construction of building. Therefore, the building permit granted in the year 2014 lapsed in the year 2017 in view of Section 204 of the Tamil Nadu District Municipalities Act, 1920. Therefore, the renewal application subsequently submitted would be treated as a fresh application and the 1<sup>st</sup> respondent is liable to pay the building permit charges.



W.A.No.2182 of 2018

WEB COPY

9. In support of the said contention, Mr.R.Mohan Doss relied on the rullings of the Hon'ble Supreme Court of India in the case of ***the Commissioner Poonamalle Municipality vs. M/s.Golden Homes Private Limited and Others<sup>1</sup>***;

*“Section 197 mandates that a person who intends to construct or reconstruct a building, other than a hut, shall send the proposals to the executive authority along with a written application for approval and a site plan or map. Certain documents such as ground plan, elevations and sections of the building, and a specification of the work are also required to be submitted.*

*Section 321 states that every licence and permission granted under the Act or any rule or by-law shall specify the period for which the permission is granted, and such a licence for permission can impose restrictions, limitations, and conditions. Sub-section (2) to Section 321 states that for the grant of every licence or permission, the municipality would be liable to charge fee on such units and at such rates as may be fixed by the Municipal Council.*

---

<sup>1</sup> Civil Appeal No.3034 of 2022, dated 20<sup>th</sup> April, 2022



W.A.No.2182 of 2018

*Sub-section (2) may not apply where an exclusion is expressly provided or prescribed under the Act. It is not the case of the respondent-builder that there is an express exclusion prescribed under the Act. Sub-section (9-A) to Section 321 states that every application for renewal for a licence or permission or restriction shall not be made less than thirty or more than ninety days before the commencement of the year or such other period as may be mentioned in the application.*

*Sub-Section (9-A) prescribes the period during which the application for renewal of the licence or permission or registration is to be filed. It is clear to us that the objective of sub-section (9-A) to Section 321 is not to bar or prohibit the Municipality from charging fee for the renewal of a licence or permission or registration. If the application for renewal is not made within the said period, it would be treated as a fresh application. Sub-section (9-A) to Section 321 neither expressly nor by necessary implication states that only one time fee shall be charged. The matter is put beyond doubt by the Resolution No. 390 dated 31.12.2012, which prescribes that building construction fee shall be charged on annual basis and for a three-*



WEB COPY



W.A.No.2182 of 2018

*year period. Old and new rates are specified. Thus, we are in agreement with the stand taken by the appellant-municipality that the respondent- builder would be liable to pay fee in terms of sub-section (2) to section 321, when the respondent-builder had made an application for renewal of permission. Sub-section (2) to Section 321 would equally apply to applications made for renewal of licence or permission or registration.*

*Accordingly, the respondent-builder would be liable to pay the renewal fee in terms of Resolution No. 390 dated 31.12.2012 on the application made for renewal of licence/permission for construction.”*

10. Mr.V.Raghavachari, learned Senior Counsel appearing on behalf of the 1<sup>st</sup> respondent would oppose by stating that once the planning charges are collected by CMDA, Thiruverkadu Municipality is estopped from collecting any further charges. There cannot be collection of charges twice for providing infrastructural and other amenities. Such double collection is opposed to public policy. In the present case, the 1<sup>st</sup> respondent paid all necessary building charges to CMDA at the first instance and CMDA granted planning permission on 05.12.2013. Unfortunately the 1<sup>st</sup> respondent could not able to



W.A.No.2182 of 2018

complete the building within a period of three years but completed 80 percent of the building. On expiry of period of three years as stipulated in the planing permission and the building permit granted by the Municipality, the 1<sup>st</sup> respondent submitted renewal application to CMDA. The renewal application was approved and permission was granted without collecting any charges by CMDA. While so Thiruverkadu Municipality cannot raise demand for collection of building permit charges. Once CMDA has renewed the planning permission, Municipality has to pass consequential order renewing the building permit without collecting charges. Therefore, the demand issued by the Municipality is not in consonance with the provisions of the District Municipalities Act.

11. To substantiate the said claim, Mr.V.Raghavachari, learned Senior Counsel relied on Sections 49 and 50 of the Tamil Nadu Town and Country Planning Act, 1971, wherein, Section 49 speaks about application for permission. Section 50 denotes duration of permission and not in dispute between the parties. The learned Senior Counsel referred Sections 197, 204 and 321 of the District Municipalities Act and would submit that even as per the said provisions double collection of development and infrastructural charges by the Municipality is impermissible.



W.A.No.2182 of 2018

WEB COPY 12. **Heard the parties.**

13. The issue to be considered by this Court is, whether the demand notice issued by Thiruverkadu Municipality demanding charges for renewal of building permit on expiry of the period of three years is valid or not?

14. Development Regulations for Chennai Metropolitan area was originally approved by the Government of Tamil Nadu in G.O.Ms.No.119, Housing and Urban Development Department dated 02.09.2008 and notified in the Tamil Nadu Government Gazette dated 2<sup>nd</sup> September, 2008. Development Regulations for Chennai Metropolitan area would apply to the whole of Chennai Metropolitan area including Thiruverkadu Municipality. Therefore, the 1<sup>st</sup> respondent has rightly obtained planing permission from CMDA and the CMDA transmitted the permission to Thiruverkadu Municipality for grant of building permit by collecting necessary charges.

15. It is not in dispute that the period for completion of building was three years. The 1<sup>st</sup> respondent failed to comply with the condition and filed renewal application. Renewal was granted by CMDA. Consequently,



W.A.No.2182 of 2018

Thiruverkadu Municipality granted building permit. The charges demanded for building permit is disputed by the 1<sup>st</sup> respondent.

16. The following provisions of the Tamil Nadu District Municipalities Act, 1920 would be relevant to consider the factual matrix of the case on hand.

17. Section 197 of the Act deals with application to construct or reconstruct building. Section 204 of the Act reads as under;

***“Lapse of permission- If the construction or reconstruction of any building is not completed within the period specified, the permission shall lapse and a fresh application shall be made before the work is continued”.***

18. Section 321 of the Act provides General provisions regarding licences and permissions and Sub Section (1) (2) (3) reads as under;

***“(1)Every licence and permission granted under this Act or any rule or by-law made under this Act shall specify the period, if any, for which, and the restrictions, limitations and conditions, subject to which the same is granted, and shall be signed by the Executive Authority;***



WEB COPY



W.A.No.2182 of 2018

***(2) Save as otherwise expressly provided in or may be prescribed under this Act, for every such licence or permission, fees may be charged on such units and at such rates as may be fixed by the Municipal Council.***

***(3) The Council may — (a) place the collection of such fees under the management of such persons as may appear to it proper ; or (b) farm out such collection for any period not exceeding three years at a time and on such terms and conditions as it may think fit.”***

19. Section 204 unambiguously provides, if the construction or reconstruction of any building is not completed within the period specified, the permission shall lapse and a fresh application is to be made before further continuation of construction. Section 204 contemplates following circumstances;

- (1) Construction or reconstruction building is not completed within the specified period. In the present case, the period specified was admittedly three years.
- (2) If the construction is not completed within a the specified period the permission shall lapse. Thus, the permission granted in favour of the 1<sup>st</sup> respondent lapsed in the present case in view of Section 204.



W.A.No.2182 of 2018

WEB COPY

(3) A fresh application shall be made before the work is continued. In the event of lapse of the period specified, the builder can submit an application before the work is continued. In the present case, the 1<sup>st</sup> respondent submitted an application initially to CMDA, which was considered and extension was granted and the papers were transmitted to Thiruverkadu Municipality, who in turn granted building permit by demanding charges.

20. Section 204 is unambiguous that if the building permit is lapsed on the ground that the construction work was not completed within the period specified, then the application submitted for continuance of construction work must be treated as fresh application. In this context, renewal or extension of time sought for in the application is to be treated as fresh application, since the building permission granted became lapsed on expiry of three years.

21. Once the building permit lapsed question of extension of time for continuing the work also to be treated as an application submitted as fresh.

22. With reference to Section 204 of the Act, Section 321 of the Act is



W.A.No.2182 of 2018

to be considered. Sub Section (1) to Section 321 indicates that the building permit granted shall specify the period. Restriction, limitation and condition shall be prescribed by the Executive Authority. Sub Section (2) to Section 321 stipulates that every permission granted may be charged on such units and such rates as may be fixed by the Municipal Council.

23. Section 321 (3) (b) stipulates that the Council may farm out such collection for any period not exceeding three years at a time and on such terms and conditions as it may think fit. Therefore, the charges collected for building permit is for the period not exceeding three years at a time.

24. In the present case, the permission granted by the Municipality on 17.01.2014 was upto 16.01.2017. The building permit lapsed in view of Section 204 of the Act. Therefore, the renewal or extension application submitted is to be treated as fresh application under Section 204. By virtue of Section 321 (3)(b), the Municipality is empowered to collect fresh charges for granting building permit to continue the construction works.

25. The above provisions contemplated under the Tamil Nadu Municipalities Act, 1920 has been considered by the Hon'ble Supreme Court



W.A.No.2182 of 2018

of India in the case of *the Commissioner Poonamallee Municipality* cited supra. The Hon'ble Supreme Court considered Section (9-A) that every application for renewal of the licence or permission or registration of the renewal of the licence or permission or registration shall be made not more than 90 days before the commencement of the year or on such less period as it is mentioned in the application. The Apex Court agreed with the stand taken by the Commissioner, Poonamallee Municipality that the builder would be liable to pay fee in terms of Sub Section (2) to Section 321, when the respondent builder has made an application for renewal of permission. Sub Section (2) to Section 321 would equally apply to applications made for renewal of licence or permission or registration. Accordingly, the builder would be liable to pay the renewal fees in terms of resolution passed by the Council.

26. In the present case, the resolution was passed by the Council of Thiruverkadu Municipality. Section 321 (2) stipulates, for every permission, fee may be charged on such units. Since the building permit granted to the 1<sup>st</sup> respondent lapsed on expiry of period of three years on 16.01.2017, the application submitted for renewal / extension of time thereafter is to be construed as fresh application under Section 204 of the Act. The fresh



W.A.No.2182 of 2018

application can be considered by collecting building permit charges as permissible under Section 321 (2) of the Tamil Nadu District Municipalities Act, 1920.

27. The collection of planning charges by the CMDA under its regulation is unconnected with the collection of building permit charges by the Local Authority under the Tamil Nadu District Municipalities Act, 1920. The planning permission from CMDA is to be obtained, if the proposed construction is over and above the ceiling fixed. If the proposed construction is for G+2 Floors, the Municipality itself is empowered to grant building permit. If it is multi-storey building, the planning permission from CMDA becomes mandatory. The charges collected by CMDA are development charges, scrutiny fee, regulations charges, development charges for land, security deposit for the building, security deposit for the septic tank, security deposit for the display board, internal structure convenience fee, additional allowable floor area charges. However, the charges collected by Thiruverkadu Municipality is for grant of building permit or building ownership fees, rainwater harvesting centre, road development fees, inspection fees, drainage fees, other fees. Therefore, the infrastructural facilities to be provided by the Municipality is taken care of from the amount



W.A.No.2182 of 2018

collected towards building permit. Therefore, the charges collected by CMDA is unconnected with the charges collected by the Municipality under the Tamil Nadu District Municipalities Act, 1920.

28. That apart, the planning permission granted by CMDA would be insufficient to construct building within the jurisdictional area of the Municipality concerned. The building permit from the Municipality is mandatory and the “Planning Permission” and “Building Permit” cannot be equated. That is the reason why the CMDA after granting planning permission is transmitting the permission to the Local Body Authority for grant of building permit enabling the applicant to construct the building within the time stipulated in the permission order.

29. Thus, the arguments advanced on behalf of the 1<sup>st</sup> respondent is unacceptable and the contention of the appellants are in consonance with the provisions of the Act.

30. In view of the facts and circumstances, we are inclined to interfere with the writ order impugned. Accordingly, the order dated 29.11.2017 passed in W.P.No.19675 of 2017 is set aside and the Writ Appeal stands



W.A.No.2182 of 2018

allowed. Consequently, connected Miscellaneous Petitions are closed.

However, there shall be no order as to costs.

[S.M.S., J.] [C.K., J.]  
28.06.2024

Jeni  
Index : Yes  
Speaking order  
Neutral Citation : Yes



W.A.No.2182 of 2018

To

WEB COPY

- 1.The Secretary to Government,  
Housing and Urban Development Authority,  
Fort St. George, Chennai – 600 009.
  
- 2.The Member Secretary,  
The Chennai Metropolitan Development Authority,  
No.1, Gandhi Erwin Road,  
Egmore, Chennai – 600 008.



WEB COPY



W.A.No.2182 of 2018

**S.M.SUBRAMANIAM, J.**  
**and**  
**C.KUMARAPPAN, J.**

Jeni

**W.A.No.2182 of 2018**

**28.06.2024**