



W.P.No.1388 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On:
27.11.2025

Pronounced On:
28.01.2026

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

W.P.No.1388 of 2010

1.P.K.Mohamed

2.P.K.Haris

3.P.K.Jameela

4.P.K.Hashin

5.P.K.Rafia

6.P.K.Mayan

7.Paramadevi Goyal

Rep by their Power of Agent

M/s.Chaitanya Builders & Leasing Pvt. Ltd.,

Rep by its Authorised Signatory Nirmala Rajan .. Petitioners

Vs.

1.State of Tamilnadu,

Rep by its Secretary to Government,

Ministry of Housing and Urban Development,

Fort.St.George, Chennai – 600 009.

2.The Member Secretary,

Chennai Metropolitan Development Authority,

Thalamuthu Natarajan Building,

No.8, Gandhi Irwin Road, Chennai – 600 008.

3.The Commissioner,

Corporation of Madras,

Chennai – 600 009.

.. Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the 2nd respondent vide their Letter No.C3/18463/2009 dated 05.01.2010 and to quash the same and directing the 2nd respondent to issue planning permit and Approved plan vide the approval of the Government in G.O.Ms.No.413, dated 06.11.1998 as directed by this Court in W.P.No.18154 of 1999 dated 14.11.2002 and W.P.No.12744 & 12745 of 2009 dated 19.11.2009.

For Petitioner : Mr.J.Sivanandaraaj
Senior Counsel
for Mr.Roshan Balasubramanian

For R1 : Mr.L.S.M.Hasan Fizal
Additional Government Pleader

For R2 : Mr.J.Ravindran
Additional Advocate General
Assisted by
Ms.P.Veenasuresh (CMDA)

For R3 : Mr.D.B.R.Prabhu
Standing Counsel

ORDER

The property situated at Nos.554 & 555, Anna Salai, Chennai – 600 018, originally belonged to one A.K.Khader Kutty. He passed away on 14.02.2001. On his death, the petitioners 1 to 6 inherited the same. A portion of the property bearing the aforesaid door numbers was owned by the 7th petitioner. All of them applied on 11.01.1996 for construction of



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an office complex consisting of a basement and 11 floors. The application was made to Chennai Metropolitan Development Authority (hereinafter referred to as “CMDA”). The proposal was not approved by the CMDA. Hence, the petitioners preferred an appeal before the State of Tamil Nadu on 23.01.1997. The State did not pass any orders on the said appeal. Hence, a writ petition was moved in W.P.No.2358 of 1998, seeking a mandamus to dispose of the appeal. This Court by an order dated 19.02.1998, directed the State to dispose of the appeal within a period of three months.

2.The Government issued G.O.Ms.No.413, on 06.11.1998, exempting the building from the plot restrictions covered by the Development Control Rules. It also permitted the provision of a car parking space. The 1st respondent directed the petitioners to furnish a Bank Guarantee at the rate of Rs.300/- per sq.ft for the stilt car parking space. The 1st respondent also directed the 2nd respondent to issue the planning permission on the basis of the order, after notifying the same in the Tamil Nadu Government Gazette.

3.After receipt of the order from the Government, the



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petitioners submitted their documents to the 2nd respondent. The 2nd respondent called upon the petitioners to pay the following charges:-

1.Development charge for land & building	-	Rs.2,22,000/-
2.Scrutiny Fee	-	Rs.7,600/-
3.Regularisation Charge	-	Rs.23,000/-
4.Security Deposit for Development	-	Rs.7,95,000/-
5.Security Deposit for display Board	-	Rs.10,000/-
6.Infrastructure Development charge for CMWSSB	-	Rs.5,07,600/-

4.Apart from these amounts, the 2nd respondent directed the petitioner to furnish a Bank guarantee for a sum of Rs.18,12,000/- as a security deposit for the stilt car parking. The petitioners were aggrieved by the said direction. Hence, they filed W.P.No.18154 of 1999, seeking for a certiorarified mandamus for quashing the order demanding a Bank guarantee of Rs.300/- per sq.ft for the proposed car parking and for a mandamus to grant planning permission. This Court heard both the parties and passed the following order:-

“10.Learned counsel for the respondent No.2 has also submitted that even though the petitioners have indicated that they would be using the first floor for car parking, subsequently after completion



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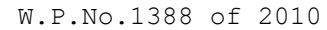


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of the building, the petitioners might convert it for any profitable use and for the aforesaid purpose the bank guarantee should be furnished by the petitioners. Such apprehension is misplaced and the submission is unjustified. Apart from the fact that the security deposit made by the petitioners can be forfeited, it would be always open to CMDA, the respondent No.2, to take appropriate action against the petitioners if there is violation of any building regulation or sanctioned plan. Moreover, the learned counsel for the petitioners has submitted that the petitioners are prepared to file an undertaking in the shape of affidavit in this Court undertaking that the first floor shall be used as car parking and at any point of time it would be used for any other purpose. The aforesaid affidavit may be filed within a period of one week from today.

11.In view of the above, the writ petition is allowed and the portion of the order passed by the Government calling upon the petitioners to furnish bank guarantee at the rate of Rs.300/- per sq.ft for car parking in the first floor is quashed. The respondent No.2 is directed to issue planning permission, subject to any other formalities, within a period of six weeks from the date of receipt of a copy of the order. There would be no order as to costs.”

5.As directed by this Court, on that very same day, an



“After receipt of the orders of the Court, site was inspected and found the plan submitted by you does not reflect the site condition. A part of the first floor shown as car park in the plan is converted as toilets and rooms. The driveway space connecting two ends is less than 3.5 mts. which violates the Development Control Rules. And moreover, one of the car lift entry has been closed at the first floor (parking floor level). Therefore, the proposal is found to be in violation to the set back and parking requirements and also not in compliance of the orders of the Government and Court. Therefore, your application cannot be taken up for further scrutiny and it is returned unapproved.”

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“We have receipt your letter No.C3/39002/2002 dated 22-01-2003 stating that the proposal has been returned unapproved. We wish to clarify the following:

- 1.The drive way space connecting two ends is 3.5 mts. and as per Development Control rules.*
- 2.The toilets and the room in the first floor are being demolished.*
- 3.There is no violation to the set back and car parking requirements.*

Therefore, we hereby request you to kindly review our proposal and issue the planning permission at the earliest.”

7.On receipt of the letter, CMDA informed the petitioners to make the construction either in conformity with the earlier plan on the basis of G.O.Ms.No.413, issued on 06.11.1998 or to comply with the Development Control Rules.

8.The petitioners, in the mean time, approached the Director of Fire and Rescue Services and got a license for the construction. Yet again, reiterating their letter dated 14.02.2003, the petitioners informed the CMDA of the measures that they have already taken and sought for planning permission.



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9.They also filed an application on 23.07.2003, seeking a completion certificate to be issued in their favour. Acting on the said letter dated 23.07.2003, the CMDA granted a completion certificate for the building, enabling the petitioners to obtain power and water supply and sewerage connection.

10.The application for planning permission was languishing with the 2nd respondent for over four years. On 01.06.2007, the Government issued G.O.Ms.No.191, through its Housing and Urban Development(OPI) Department, fixing infrastructure and basic amenities charges. Subsequently, the Tamil Nadu Town and Country Planning Act, 1971, was amended by inserting Section 63-B. Rule making power was given to the Government. The State framed the Tamil Nadu Town and Country Planning (Levy of Infrastructure and Amenities Charges) Rules, 2008.

11.As the petitioners' application for planning permission was still pending despite the orders of this Court and repeated reminders, the petitioners moved this Court, in W.P.Nos.12744 & 12745 of 2009. This Court directed the respondents to



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conduct an inspection and submit a report. The inspection report was also filed. Thereafter, the writ petitions were taken up for disposal. As Mr.A.K.Khader Kutty was no more, the petitioners herein filed the said writ petitions. Taking into consideration the inspection report and the counter affidavit that was filed by the CMDA, the writ petitions were disposed of on the following terms:-

“6.In the light of the stand taken by the second respondent – CMDA, the Writ Petitions are disposed of, with a direction to the petitioners to re-submit their plan and the second respondent – CMDA is directed to approve the plan in the light of G.O.Ms.No.413, Housing and Urban Development Department, dated 06.11.1998. If any such plan is submitted within two weeks from the date of receipt of a copy of this order, the second respondent – CMDA shall pass orders within four weeks thereafter. No costs. The Miscellaneous Petitions are closed.”

12.On the basis of this order, the respondents issued another order vide impugned letter No.C3/18463/2009, on 05.01.2010. Under this order, the petitioners were called upon to pay the following charges:-



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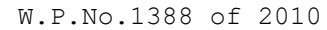
i)	Balance Regularisation charges for land	Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand Only)
ii)	Scrutiny Fee	Rs.12,000/- (Rupees Twelve Thousand Only)
iii)	ITA Charges	Rs.30,50,000/- (Rupees Thirty Lakhs and Fifty Thousand Only)
iv)	Bank Guarantee for Car Parking Area	Rs.18,12,000/- (Rupees Eighteen Lakhs and Twelve Thousand Only)

Aggrieved by the same, the present writ petition.

13.This Court entertained the writ petition and directed the respondents to file a counter.

14.The Member Secretary filed a counter on 14.11.2012. The counter accepted that an application had been filed in the year 1996 and that the same had been refused by the CMDA. The factum of the appeal of the petitioners having been accepted by the Government, regularizing the site inspection and imposition of bank guarantee was also accepted. It was stated that the Government was requested to issue a modified order by the CMDA in its letter No.C3/25632/98, dated 24.07.2000.

15.It is averred in the mean time, the order of this Court intervened and the respondents were directed not to insist upon



16. It was pleaded that, the petitioners had resubmitted their proposal to CMDA on 04.12.2009 and an impugned order was passed pursuant to the order of this Court. Since the petitioners had not paid the necessary charges, their proposal was not processed further. It is alleged that in terms of 2(a) of the Annexure-IX of the Development Control Rules, a floor over basement floor and ground floor will not qualify for being exempted from Floor Space Index and hence, the petitioners



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contentions are not correct and should not be accepted. It was pleaded that since the petitioners had filed a **fresh** planning permission application, the balance of regularization fee has to be paid.

17.It was further asserted that being a fresh planning permission application dated 04.12.2009, the infrastructure and amenities charges fixed as per the G.O.Ms.No.161 of Housing and Urban Development Department, on 09.09.2009 is applicable and as the petitioners had not paid the same, their application was not considered.

18.A status report was filed by the CMDA on 26.08.2025. After giving the factual details, the CMDA took a new stand that, as the petitioners have alienated the floor area to different individuals and had let out the property by way of lease deeds, they do not have any rights over the property and hence, cannot claim approval from the CMDA. It was further pleaded that since the regularization application having been returned, it had not been proved that the building was constructed prior to 28.02.1999. The status report blames the applicants for not having paid the charges, that are prevalent on the date of



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approval and that for the lapse of the writ petitioners, the authorities cannot be held responsible. Hence, they sought for appropriate orders in the writ petition. The pleadings having been completed, I took up the writ petition for disposal.

19.I heard Mr.J.Sivanandaraaj, Senior Counsel for Mr.Roshan Balasubramanian for the petitioners, Mr.J.Ravindran, Additional Advocate General assisted by Ms.P.Veenasuresh for the contesting respondents.

20.Mr.J.Sivanandaraaj, Senior Counsel urged as follows:-

*The petitioners cannot be called upon to pay the additional amounts as their application had been delayed despite the order of mandamus issued by this Court on 14.11.2002.

*He pleaded that there a vested right has been created in the petitioner by virtue of the order of the Government in G.O.Ms.No.413, Housing and Urban Development Department, dated 06.11.1998, as well as by virtue of the orders of this Court.



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*He urged that, though it was an application filed by the writ petitioners, the infrastructure and amenities charges imposed on the petitioners are erroneous, as consistently this Court had held that it would be only a re-submission and not a fresh application.

*For the aforesaid submissions, he relied upon the following judgments:-

- (i) ***Narayandas Gupta Vs. The Special Officer, (1980) 2 MLJ 39;***
- (ii) ***K.Ramanathan Vs. State of Tamil Nadu, MANU/TN/0897/2000;***
- (iii) ***Madan Mohan Pathak and another Vs. Union of India and others, (1978) 2 SCC 50;***
- (iv) ***Sharad VasANJI Vs. CMDA, (W.P.No.36022 of 2015 dated 07.01.2016) and***
- (v) ***The Member Secretary, CMDA Vs. Sharad VasANJI, (W.A.No.347 of 2016, dated 22.03.2016).***

21.Per contra, Mr.J.Ravindran, Additional Advocate

General urged as follows:-



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*There cannot be a mandamus against a law. If this Court orders this writ petition, it will be contrary to the infrastructure charges incorporated under Section 63-B of the Tamil Nadu Town and Country Planning Act, 1971, and the Notifications made by the Government invoking the said provisions.

*He pointed out that since the building had not been approved, this Court could not come to the rescue of such a litigant.

*He pleaded that if the building is as per G.O.Ms.No.413, Housing and Urban Development Department, dated 06.11.1998, the CMDA would have no issues in granting the planning permission.

22.He relied upon the judgment of the Supreme Court in ***CMDA Vs. Prestige Estates Project Limited, (2019) 15 SCC 212***, to urge that the petitioner would have to pay the charges prevailing as on the date of the application. In addition, he also relied upon the judgment in ***State of Tamil Nadu Vs. M/s.Hind***



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Stone and others, (1981) 2 SCC 205.

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23.I have carefully considered the submissions of Mr.J.Sivanandaraaj, Senior Counsel and Mr.J.Ravindran, Additional Advocate General, Mr.L.S.M.Hasan Fizal, Additional Government Pleader and Mr.D.B.R.Prabhu, Standing Counsel and have gone through the records.

24.Insofar as the objection of the respondents that as the writ petitioners had alienated portions of the property and had also leased out the same, they are not entitled to maintain the writ petition is concerned, I have the following the say:-

(i)Under the Transfer of Property Act, 1882, it is the duty of the vendor / seller to convey proper title to the purchaser. This is governed under Section 55 of the Transfer of Property Act. This Section outlines the rights and liabilities of both the seller and the buyer, in the absence of contract to the contrary. One of the essential requirements of Section 55 is that the seller assures to the buyer that the interest being transferred exist and the seller has the power to transfer the same. Under Section 55(1)(a), a seller has to disclose known material defects in the



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property or title to the buyer, which the latter cannot discover with ordinary care. This would include a situation where a property is subjected to proceedings by the town planning authority like the CMDA or payment of charges. In case, the petitioners do not convey proper title, they open themselves for damages to be paid to the purchaser. This duty of the vendor to convey proper title is sufficient locus for the petitioners to maintain this writ petition.

25.After hearing both the parties, it is clear that the grievance is only with respect to infrastructure and amenities charges found under clause:3 in the tabular column said forth above. Mr.J.Ravindran, fairly conceded that insofar as bank guarantee for car parking area is concerned, the CMDA is not entitled to ask for the same as the said issue has been concluded by Hon'ble Mr.Justice P.K.Misra. Insofar as the scrutiny fees is concerned, it is not in dispute that it was paid on 02.03.2001. The grievance of the petitioners seems to be with respect to Rs.30,50,000/-, which the petitioners have been called upon to pay under the infrastructure and amenities charges.

26.The narration of the facts show that CMDA had suffered



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a mandamus not once, but on two occasions. Hon'ble Mr. Justice P.K.Misra, (as his Lordship then was) had directed the CMDA to issue planning permission, subject to any other formalities within a period of six weeks. It is on record that despite the several letters dated 25.11.2002, 12.12.2002, 09.01.2003 and 03.02.2003, the CMDA did not comply with the mandamus.

27. Though a specious plea had been taken that the affidavit of undertaking, as directed by this Court, was not filed, a perusal of the affidavit found in Pg.No.20 of the convenience set shows that an endorsement had been made by the counsel for CMDA stating a copy had been received by him on 14.11.2002 itself at 07.45 PM. Furthermore, the letter dated 10.02.2003, issued by the Assistant Registrar (Admin-II) of this Court fortifies the case of the petitioners that within the stipulated time, the affidavit of undertaking had been filed by them on 15.11.2002. By that very letter, the Assistant Registrar had recalled the earlier letter issued by him on 21.11.2002, and had requested the CMDA to ignore the said letter. This makes it clear that the petitioners had acted in full compliance with the order of this Court dated 14.11.2002.



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28.The order of the CMDA stating that certain constructions had been made and therefore, the same were not in compliance with the order passed by the Government though is tenable, it is clear from the letter dated 14.02.2003 and 23.05.2003, that the petitioners had demolished the toilets on the first floor and the private way space, on the first floor connecting the two ends, is 3.5 mts and that there is no violation of set back or car parking requirements. Instead of causing inspection and granting an approval, the CMDA issued only a completion certificate but kept the application for planning permission pending. From 2003 till 2007, when the Government Order imposing infrastructure charges was passed, there was absolutely no action from the side of the CMDA.

29.When the petitioners approached this Court again by way of W.P.Nos.12744 & 12745 of 2009, the CMDA only sought for re-submission of the application and had assured this Court that the plan will be approved after payment of necessary charges. This Court accepting the plea of the CMDA, directed the petitioners to **re-submit** the application, but did not accept the request made by the CMDA for the payment of extra charges.



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30.If CMDA was aggrieved by the portion not accepting the payment of the charges, the remedy for the authority is to have preferred an appeal against the said order. Having left that order to reach a finality, it is not open to the CMDA to plead that it was under the impression that this Court had ordered the writ petition permitting the re-submission and at the same time had tacitly approved its demand for the payment of extra charges.

31.Though the provisions of Code of Civil Procedure, 1908, do not apply to writ petitions as is clear from Section 141 of Code of Civil Procedure, 1908, it has been settled by a Constitution Bench of the Supreme Court in ***Daryao Vs. State of Uttar Pradesh, (1962) 1 SCR 574***, that principles of *res judicata* apply to writ petitions also.

32.When a plea has been raised and not expressly granted, it must be deemed to have been refused.

33.The relief that was claimed by CMDA was “**payment of necessary charges**” by the petitioners at the prevailing rate. This is clear from the extract from paragraph No.5 of the order



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passed in W.P.Nos.12744 & 12745 of 2009. The concluding portion of the order accepted the re-submission of the plan, but did not call upon the petitioners to pay any extra charges. On the contrary, it directed the petitioners to re-submit their plan, within two weeks from the date of the order, and the CMDA was directed to pass orders within four weeks thereafter.

34.Any relief not explicitly granted has to be considered as a part of the final decision and the parties are prevented from raising the very same issue all over again. A legal presumption is raised that if a Court has not expressly granted a relief, it has refused it. This deems that a litigant should be diligent and if aggrieved by the order, should challenge the same immediately. Not having done so, from the year 2009 and that plea having been denied atleast 16 years ago, I am not inclined to resurrect the same for the benefit of the respondents.

35.I am in entire agreement of the submission of Mr.J.Sivanandaraaj that a mandamus earlier issued has created a vested right in the petitioners. This is clear from the majority view taken by the Supreme Court in ***Madras Bar Association Vs. Union of India and another, (2022) 12 SCC 455***. Justice



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L.Nageswara Rao, specifically held that a mandamus which has been issued cannot be qualified, even by the State resorting to a legislative action and that even interim directions issued by the Court cannot be reversed by a legislation. (See, paragraph No.15.3 of the SCC citation).

36.This view of Justice L.Nageswara Rao finds acceptance in the verdict rendered by Justice S.Ravindra Bhatt, as is clear from paragraph No.113 of the very same order. As rightly contended by Mr.J.Sivanandaraaj, even prior to **Madras Bar Association** judgment, a Constitution Bench of the Supreme Court had considered the issue of the effect of mandamus and held that a judgment giving effect to the right of parties by issuance of a mandamus, cannot be disregarded or ignored and must be implemented by the parties. If a party feels that the order is erroneous, then the remedy is only by way of an appeal or by review, but not to attempt to side step the order so issued. [See, **Madan Mohan Pathak and anr. Vs. Union of India and others, (1978) 2 SCC 50**, para Nos.9, 31 & 32 of SCC citation]

37.In addition to this Court in **K.Ramanathan's** case, cited *supra*, has held that once the Government passes an order



exempting the petitioner from a rigor of the Development Control Rules, the grant of planning permission is a mere formality at the hands of the CMDA. The Government Order had been issued nearly 30 years ago on 06.11.1998 and still the formal order to be issued by the CMDA, has not yet followed through.

38.Mr.J.Ravindran, pleaded that as there has been a change in law, the petitioner would have to comply with the requirements of the new demands of the infrastructure and amenities charges. He relies upon a judgment in **Prestige Estates** case. A careful perusal of the judgment shows that the application for planning permission had been made in that case on 22.03.2011, by which time, the infrastructure and amenities regime had come into force. It was the plea of the Prestige Estate therein, that a subsequent revision made by the Government on 28.03.2012 would not affect its application, however this plea was rejected by the Supreme Court holding that the revised charges for the premium FSI had come into force, even before the application could have been processed.

39.I carefully went through the judgment, but could not find an order of the Government or an order of mandamus that



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had been issued, as in the present case. These two instances make an ocean of difference between the judgment in **Prestige** case and the present one.

40.It is here that I have to take note the plea of the CMDA, that the application filed by the petitioners after the order of mandamus and so it has to be considered as a fresh application. Here too, I am not in agreement with Mr.J.Ravindran. This is because, a perusal of the order passed by this Court in W.P.Nos.12744 & 12745 of 2009 makes it clear that this Court had only called upon the petitioners to re-submit the plan and not file a fresh application.

41.As to what is the effect of such an order is clear from the order passed by Justice T.S.Sivagnanam in **Sharad Vasanji's** case. The learned Judge held that, as long as the application has been returned but not rejected, it cannot be treated as a fresh application. He further held that to such a re-submitted application, the payment of differential amount is unsustainable. Consequently, he quashed the demand so made. The view taken by Justice T.S.Sivagnanam put to challenge by the respondents herein. They challenged the same by way of a



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writ appeal in W.A.No.347 of 2016. The Division Bench confirmed the order of Justice T.S.Sivagnanam and dismissed the appeal. Hence, the plea that it has to be treated as a fresh application and the respondents are entitled to impose fresh charges, is unacceptable.

42.In the light of the above discussion, the writ petition succeeds. The order calling upon the petitioners to pay a sum of Rs.30,50,000/- as infrastructure and amenities charges is quashed. There shall be a mandamus to the 2nd respondent to process the planning permit application re-submitted by the petitioners in terms of the Government Order in G.O.Ms.No.413, Housing and Urban Development Department, dated 06.11.1998, and pass the formal orders within a period of four (4) weeks from today.

43.At the conclusion of the arguments, Mr.J.Ravindran submitted that the building is not in conformity with the plan approved by the Government Order.

44.This Court in W.P.No.18154 of 1999, had observed that in case there is any violation, the CMDA is always entitled to



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take action. That need not be linked to the grant of planning permission, which the petitioners are entitled to.

45.With the above observations, the Writ Petition is allowed. No costs.

28.01.2026

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.State of Tamilnadu,
Rep by its Secretary to Government,
Ministry of Housing and Urban Development,
Fort.St.George,
Chennai – 600 009.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Building,
No.8, Gandhi Irwin Road, Chennai – 600 008.

3.The Commissioner,
Corporation of Madras,
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