

(2011) 12 MAD CK 0328

In the Madras High Court

Case No : Writ Petition (MD) No. 1165 of 2006 and Second Appeal (MD) No. 967 of 2007

Kamala Thope Street Welfare Association (Civil Exonera)
Madurai and Others

APPELLANT

Vs

The Commissioner, Madurai City Municipal Corporation,
Arignar Anna Maligai, Tallakulam, Madurai-625002 and
Others
The Commissioner, Corporation of Madurai,
Arignar Anna Maligai, Thallakulam, Madurai Vs Kamalathopu
Street Welfare Association

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 243W, 243X, 284, 285, 289
Madurai City Municipal Corporation Act, 1971 — Section 115, 120, 173, 207, 208
Sea Customs Act, 1878 — Section 20(3)

Citation : (2011) 12 MAD CK 0328

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : G. Prabhu Rajadurai, Mr. M.P. Senthil, Mr. N.S. Ponnaiah, Mr. R.A. Mohanram and Mr. M. Saravanan in W. Ps. SAMD967/2007, for the Appellant; G.R. Swaminathan, (Standing Counsel for Madurai Corporation) Mr. M. Govindan, Spl. G.P. (for State Govt. and for Commissioner for Municipal Administration) in all W.Ps., Mr. G. Prabhu Rajadurai and Mr. M.P. Senthil in SA(MD).867/2007, for the Respondent

Final Decision : Allowed

Judgement

Honorable Mr. Justice K. Chandru

1. The short question that arises for consideration in these batch of writ petitions is whether the Marurai City Municipal Corporation constituted under the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15/1971) (for short MCMC Act) is empowered to levy Drainage charges and to claim nonrefundable security deposit for giving new Underground Drainage connections ?

2. Before dealing with the grievances projected in the individual writ petitions filed by the residents and residents welfare associations in various writ petitions and the legal issues raised in the second appeal filed by the Corporation of Madurai, it is necessary to recapitulate the circumstances that led to the levy of drainage charges as well as nonrefundable deposit by the Madurai Corporation.

3. The Madurai City Municipal Corporation in its municipal council meeting held on 28.4.1982 had passed a resolution No. 35 and decided to frame bylaws in respect of drainage connections. The bylaws apart from providing conditions under which an individual house owner can be provided connection to the drainage pipes and linked it to the underground drainage system laid by the corporation, also provided for levy of nonrefundable deposits and drainage charges for the purpose of cleaning the drainage water in case of any congestion in the system. The nonrefundable deposit was fixed at Rs. 200/- in respect of each application seeking for the connection. Apart from submitting a plan for laying drainage pipes through a plumber and on an estimate to be made by the corporation, it provided for collection of 10% supervision charge. After getting a work order, a house owner should execute the work through a licensed plumber under the supervision of the corporation staff. It also provided for collection of Rs. 2/-per month in respect of each connection for the purpose of removing the block in the drainages and to release the sewage water. In case of any repair, it can be carried out only through a licensed plumber. The bylaws so framed was published in the Special Supplementary Edition of the Madurai District Gazette by a notification issued by the Commissioner of Madurai, dated 29.8.1982.

4. A general notice was issued in terms of Section 439 of the MCMC Act. Under the said provision, bylaws are to be published in the gazette and required copies can also be sold to the public. The gazette notification informed the public that from three months from the date of the gazette, those bylaws will come into operation. No aggrieved person had challenged those bylaws. It is now contended by some counsels that they were not aware of the publication and very little or no publicity was given to the publication. The text of the bylaw Nos. 63 and 63(a), reads as follows:

5. Since the bylaws traced its power to Sections 209 to 213 of the MCMC Act, it is necessary to refer to those provisions, since arguments in these writ petitions revolved around the power of the Corporation to levy drainage charges. Sections 209 to 213 of the MCMC Act reads as follows:

209. Control over house drains, privies and cesspools :- All house-drains whether within or without the premises to which they belong, and all latrines, and cesspools within the City shall be under the control of the corporation but shall be altered, repaired and kept in proper order, at the expense of the owner of the premises to which the same belong or for the use of which they were constructed and in conformity with by-laws framed by the council in this behalf.

210. Connection of House Drains with Public Drains :-

(1)The commissioner shall, on application by the owner or occupier of any premises or the owner of a private street, arrange, in accordance with by-laws for the connection, if practicable, of the applicant's drain with a public drain at the applicant's expense.

(2) If there is a public drain or other place set apart by the corporation for discharge of the drainage within a distance not exceeding thirty meters of the nearest point of any premises or if within such distance, a public drain or other place for the discharge of drainage is about to be provided or is in the process of construction, the commissioner may

(a) by notice direct the owner of the said premises to construct a drain leading there from to such drain or place and to execute all such works as may be necessary in accordance with by-laws at such owner's expense, or

(b) cause to be constructed a drain leading from the said premises to such public drain or place and cause to be executed all such works as may be necessary.

Provided that

(i) not less than fifteen days before constructing any drain or executing any work under clause (b), the commissioner shall give notice to the owner of the nature of the intended work and the estimated expenses recoverable from the owner, and

(ii) the expenses incurred by the commissioner in constructing any drain or executing any work under clause (b) shall be recoverable from the owner in such installments as the standing committee may think fit and in the same manner as the property tax.

(3) If any premises are in the opinion of the commissioner without sufficient means of effectual drainage, but no part thereof is situated within thirty meters of a public drain or other place set apart the corporation for the discharge of drainage, the commissioner may by notice direct the owner of the said premises to construct a closed cesspool or other sewage disposal plant of such material, dimensions and description, in such position and at such level as the commissioner thinks necessary and to construct a drain or drains emptying into such cesspool and to execute all such works as may be necessary in accordance with by-laws.

(4) It shall not be lawful for the owner of any building constructed or reconstructed after the commencement of this Act to occupy it or cause or permit it to be occupied until he has obtained a certificate from the commissioner that the said building is provided with such means of drainage as appear to the commissioner to be sufficient.

211. Commissioner's power to drain premises in combination :

(1)When the commissioner is of opinion that any group or block of premises, any part of which is situate within thirty meters of a public drain, already existing or

about to be provided or in the process of construction, may be drained more economically or advantageously in combination than separately, the commissioner may, with the approval of the standing committee, cause such group or block of premises, to be drained by such method as appears to be commissioner to be best suited therefore and the expenses incurred by the commissioner in so doing shall be paid by the owners in such proportions as the standing committee may think fit and shall be recoverable in the same manner as the property tax.

(2) Not less than fifteen days before any work under this section is commenced, the commissioner shall give written notice to the owners of

(a) the nature of the intended work

(b) the estimated expenses thereof, and

(c) the proportion of such expenses payable by each owner.,

(3) The owners for the time being of the several premises constituting a group or block drained under sub-section (1) shall be the joint owners of every drain, constructed, erected or fixed, or continued for the special use and benefit only of such premises and shall in the proportion in which it is determined that they are to be contribute to the expenses incurred by the commissioner under sub-section (1), be responsible for the expense of maintaining every such drain in good repair and efficient condition.

212. Commissioner's power to close or limit the use of existing private drains :

(1) Where a drain connecting any premises with a public drain or other place set apart by the corporation for the discharge of drainage is sufficient for the effectual drainage thereof and is otherwise unobjectionable, but is not, in the opinion of the commissioner, adapted to the general drainage system of the City, or of the part of the City in which such drain is situated the commissioner, with the approval of the standing committed concerned, may

(a) subject to the provisions of sub-section (2) close, discontinue or destroy the said drain and do any work necessary for that purpose; or

(b) direct that such drain shall, from such date as he fixes in this behalf, be used for sewage only, or for water unpolluted with sewage only, and may construct at the cost of the corporation an entirely distinct drain either for water unpolluted with sewage or for sewage.

(2) No drain may be closed, discontinued or destroyed by the commissioner under clause (a) of sub-section (1) except on condition of his providing another drain as effectual for the drainage of the premises and communicating with a public drain or other place aforesaid and the expense of the construction of any drain so provided by the commissioner and of any work done shall be paid by the corporation.

213. Building, etc., not to be erected without permission, over drains :

(1) Without the permission of the commissioner no person shall place or construct any fence, building, culvert, pipe drain, drain covering or other structure or any street, railway or cable over, under, in or across any public drain or stop up, divert, obstruct, or in anyway interfere with any public drain, whether it passes through public or private ground.

(2) The commissioner may remove or otherwise deal with anything placed or constructed in contravention of sub-section (1) as he shall think fit, and the cost of so doing shall be recoverable from the owner thereof in the manner provided in section 479.

6. The obligation of the corporation to provide public drainage are set out in Sections 207 and 208 of the MCMC Act, which reads as follows:

207. Vesting of Drains in Corporation. All public drain, pipes and drainage works existing at the date of commencement of this act or afterwards made at the cost of the corporation or otherwise, and all works, materials and things appertaining thereto shall vest in the corporation.

208. Maintenance of System of Drainage by the Corporation - The corporation shall so far as the means at their disposal permit, provide and maintain a sufficient systems of public drains throughout the City.

7. The corporation subsequently had passed a resolution on 27.5.1987 informing the public in terms of Section 437 of the MCMC Act about the amending certain bylaws and notified the same for being brought into force within one month from the date of the publication of the notification. Suggestions were welcomed from public. In that notification, they have stated that the drainage charge per month at the rate of Rs. 2/- will come into operation from 8.2.1983. Subsequently, the drainage charges were revised by a further council resolution No. 206, dated 5.2.1999 revising the rate for drainage charge in respect of residential usage and it was fixed at Rs. 30/- per month. In respect of commercial use, it was fixed at Rs. 90/- p.m., for hostels, hotels, theatres, hospitals and wedding halls, it was fixed at Rs. 90/- p.m. and for industrial purpose, it was fixed at Rs. 150/- p.m. The connection charge was also suitably revised. For an individual house it was fixed at Rs. 5000/-, for commercial connection it was RS.10000/-. For others, including hostels, hotels, theatres, hospitals, wedding halls as well as for industrial use, it was fixed at Rs. 10000/- as one time nonrefundable payment. From the time when the underground drainage system comes into operation, the maintenance charge was fixed for each connection. For residential purpose it was fixed at Rs. 125/- per month, for commercial use it was at Rs. 250/- per month, for hostels, hotels, theatres, hospitals, wedding halls, it was fixed at Rs. 250/- p.m., and for industrial use it was fixed at Rs. 375/- per month.

8. Subsequently, an office order No. 8/99 was released on 8.6.1999. It was stipulated that the corporation will have to maintain several registers and collect

statistics and also to provide demand notices for collecting arrears from 8.2.1983 onwards. Copies of the order were marked to all Zonal Assistant Commissioners, Revenue Officers, Drainage Inspectors and Meter Readers. On 10.11.1999, the matter was once again placed before the Corporation Council meeting. It was informed that the security deposit for each connection should be based on the property tax charges collected on six months basis. Upto Rs. 300/- property tax, it was fixed for new connection at Rs. 500/-; from Rs. 301/- to Rs. 500/-, it was at Rs. 1000/-; property tax from Rs. 501/- to Rs. 1000/-, it was at Rs. 2000/-; from Rs. 1001/- to Rs. 2000/-, it was fixed at Rs. 3000/-; and the property tax above Rs. 2000/-, it was fixed at Rs. 4000/-. The project cost for laying underground drainage pipes was estimated to cost Rs. 1250/- lakhs. The subsidy that they may get for basic amenities will be Rs. 250/- lakhs and the loan to be raised was about Rs. 1000/- lakhs. The period for repayment was 15 years and interest to be paid by the Corporation will be at 16%. The approximate repayment for 15 years worked out to Rs. 179.35 lakhs per year. The council in its meeting hence revised the nonrefundable deposit on the following rates :-

Property tax upto Rs. 300/- Rs. 200/-

Property tax from Rs. 301/- to 500/- Rs. 250/-

Property tax from Rs. 501/- to Rs. 1000 Rs. 400/-

Property Tax from Rs. 1001/- to Rs. 2000/- Rs. 1000/-

Property tax above Rs. 2000/- Rs. 2000/-

9. Once again, the matter was placed before the council for revision of security deposit based on the total expenditure involved and amount were fixed. It was at this stage, when demand notices were sent to house owners, a resident welfare association at Kamala thope (the petitioner in W.P.(MD) No. 1165 of 2006), filed a suit before the Principal District Munsif, Madurai being O.S. No. 723 of 2000. In the suit it was claimed that the house taxes have been increased by 2% more and the demand notice dated 1.4.2000 asking them to pay the amounts was illegal and therefore a declaratory relief was asked for. They also asked for a permanent injunction not to collect the revised tax. They also asked for a declaratory relief that the announcement made for the revision of drainage tax (wrongly described as tax) was illegal and not valid. They also sought for perpetual injunction restraining the Commissioner from demanding and charging the amount.

10. The case of the association before the Principal District Munsif was that there was no provision under the MCMC Act for collecting drainage maintenance. The increase of house tax by 2% with effect from 1.4.2000 and in the demand for arrears for drainage maintenance charges from 1983 to 31.3.2000, they were warned by stating that if the amounts were not paid, the Corporation will disconnect the drainage connections. Along with house tax even drainage maintenance have been collected. That any demand from the year 1983 was

barred by limitation. The threat of disconnection, if given effect to, their toilet facilities will be affected. Since another suit was also filed being O.S. No. 581 of 2000 by another association, the corporation filed a written statement in that suit and it filed a similar written statement in O.S. No. 723 of 2000 also.

11. The Corporation claimed that u/s 120 of the MCMC Act, the Government had permitted them to levy tax upto 35%, whereas the tax levied was only 27%. There is shortage of funds for the corporation and without raising the funds, they cannot maintain even the street lights. The claim for drainage charge were made only as per law and as per the resolution passed by the Corporation.

12. Before the civil court, on behalf of the association, one Gurumurthy was examined. They filed four documents. Ex.P.1 was Form-2, dated 30.3.1994. Exs.P.2 to P.4 were demand notices. Unfortunately, on the side of the Corporation, there was no evidence let in and no documents were filed. On the basis of these materials, the trial court had decreed the suit by holding that there was no power with the Corporation to levy drainage tax separately. The property tax collected encompassed in itself the drainage tax also. Since bylaws were not produced by the defendant Corporation, the trial court decreed the suit by a judgment and decree dated 30.4.2003.

13. Aggrieved by the said judgment and decree, the Corporation through its Commissioner filed an appeal before the I Additional Sub Judge, Madurai being A.S. No. 232 of 2003. Even before the lower appellate court, they did not seek permission to file any document and contended only with their memo of grounds of Appeal. The lower appellate court also did not look into the legal provisions. It merely went by the legal provisions u/s 115(a) of the MCMC Act, where the term property tax also included drainage Tax. The drainage system in respect of the members of the association had been implemented long before. Hence there was only the necessity to maintain the system. Since the property tax already collected included drainage tax, there was no provision for levying of drainage "tax". Section 213 of the MCMC Act do not empower the levy of new tax as drainage tax. Therefore, the levy of separate charge for drainage was not maintainable. Thus saying the appeal was dismissed by a judgment and decree dated 29.3.2005.

14. As against the judgment of the trial court as well as the lower appellate court, the Corporation filed a second appeal u/s 100 of CPC being S.A.(MD) No. 967 of 2007. The Second appeal was admitted on 26.11.2007 and the following questions of law were framed :

1. Whether the suit is not maintainable in view of the availability of the alternative remedy, namely an appeal before the Taxation Appeal Tribunal?
2. Whether the lower appellate court has cited a wrong provision of law to say that the Corporation does not have the power to levy tax on a particular item?
3. Whether the Courts below have given a perverse findings by observing that

the Corporation has not proved the power to levy additional tax?

15. Though an application in MP(MD) No. 3 of 2007 for suspending the injunction granted by the lower appellate court was filed, in that application only notice was ordered. In the meanwhile, the respondent in the second appeal filed the first writ petition being W.P.(MD) No. 1165 of 2006. In that writ petition, the prayer was sought to forbear the Corporation from demanding drainage tax or contribution for drainage deposit in respect of the members of the petitioner association. That writ petition was admitted on 7.2.2006. Pending the writ petition, this court had granted an interim stay only in respect of the claim regarding the deposit for the underground drainage provided the members of the petitioner association are parties to the civil suit. In other respects, this court declined to grant any stay. If the members have paid any amounts already, that will be adjusted in the claim made by the corporation.

16. After admission of that writ petition, several writ petitions began to be filed. The second writ petition in W.P.(MD) No. 2867 of 2006 was filed by the Madurai Corporation 38th Ward Public Welfare Association. The prayer in the writ petition was similar to the first writ petition in W.P.(MD) No. 1165 of 2006, which was filed by a different association. But curiously, reliance was placed upon the judgment of the trial court in O.S. No. 723 of 2000 filed by another association. That writ petition was admitted on 27.3.2006. Pending the writ petition, this court had granted an interim injunction only relating to drainage contribution charges in respect of the premises of the members of the petitioner association.

17. W.P.(MD) No. 3332 of 2006 was filed by Madurai K.K. Nagar Residents Welfare Association through its Secretary for an identical prayer in respect of its members. That writ petition was admitted on 10.4.2006. Pending the writ petition, this court had granted an interim injunction in respect of the demand for deposit for underground drainage charges provided the members of the said petitioner association were parties to the civil suit in which decree was obtained on 30.4.2003. In respect of the other claims, there was no stay. In that case, the said association had filed O.S. No. 541 of 2000 before the Principal District Munsif Court for an identical prayer as that of the other O.S. No. 723 of 2000. In that suit, resisting the claim of the resident welfare association, the Corporation informed that the revenue was not enough even to pay salary for sanitary workers numbering around 2700. The levy was made properly. In that suit, on behalf of the corporation, an advertisement given in the paper was marked as Ex.D.1. A copy of the District Gazette notification regarding the bylaws was marked as Ex.D.2. The Government Order in GO.Ms. No. 14, MA&WS Department, dated 7.1.1999 was marked as Ex.D.3. The municipal council resolutions were marked as Exs.D.4 to D.6. The agenda and the minutes of the corporation were marked as Exs.D.8, D.10 and D.12. G.O.Ms. No. 119, MA&WS Department, dated 19.5.1999 was marked as Ex.D.15. The copy of the Madurai District Gazette dated 08.11.1982 was marked as Ex.D.16 and another gazette was marked as Ex.D.18. On behalf of the residents, one N.S. Ponniah,

who is the counsel on record in the writ petition, had deposed as P.W.1.

18. But the trial court without reference to these documents found that the Corporation had created charges only to make good its financial losses. But the Corporation failed to follow the procedures in bringing the bylaws. Even assuming that the Government had accepted the resolution of the Corporation, the Corporation had failed to prove that it had followed due procedures. Thereafter, it went at a tangent and held that 2% of levy was not legally proved. Hence it decreed the suit. As against the said judgment and decree, the Corporation had filed an appeal before the Additional Sub Judge, Madurai. Even before the corporation could proceed to file an appeal. The very same association, i.e., K.K. Nagar Residents Welfare Association wrote a letter to the Commissioner seeking for an exemption from levy of drainage "tax". The lower appellate court before which the appeal suit in A.S. No. 231 of 2003 came up for hearing found that the corporation had failed to prove its power to levy drainage "tax" for the drainage system. Since already when the housing board had entrusted the K.K. Nagar Housing Scheme to be maintained by the Corporation, the maintenance deposit kept by them were entrusted to the corporation. There was no power u/s 115(a) of the MCMC Act to levy separately a drainage tax. It was not made clear as to whether the corporation had filed any second appeal against the said order.

19. W.P.(MD) No. 2421 of 2008 was filed by one individual who is the resident of Door No. 48, Melaponnagaram 4th street, Ward No. 26, Madurai, claiming similar relief. Though the said petitioner was not a resident under K.K. Nagar Scheme, which filed O.S. No. 541 of 2000, the petitioner relied upon the said suit as the basis for her claim. The said writ petition was admitted on 17.3.2008. Pending the writ petition, the court had granted an interim injunction on condition that the petitioner deposits 50% of the impugned demand notice. Subsequently, by an order dated 21.6.2010, this court held that if the condition is complied with, the interim order will become absolute and if the condition is not complied with, the interim order will be vacated. Though Mr. N.S. Ponnaiah was the original counsel, a change of vakalat was filed by one S. Tamilzarasan on 30.6.2010 to appear on behalf of the petitioner.

20. In W.P.(MD) No. 2425 of 2008, the petitioner who was the resident of Ward No. 34, Door Nos. 8 and 23, Petchyamman Padithurai Road, claimed similar relief in respect of the demand of drainage tax. That writ petition was admitted on 17.3.2008 and similar interim order was passed as noted above.

21. W.P.(MD) No. 2434 of 2008 was filed by the petitioner who was the resident of No. 11, north Street, Singarayar Colony, Wart No. 14, Madurai for similar relief. That writ petition was admitted on 17.3.2008 and an identical interim order was passed. Subsequently, it was noted that as against the conditional order that was made in W.P.(MD) Nos. 2421, 2425 and 2434 of 2008, writ appeals were filed before a division bench in W.A. Nos. 354 to 356 of 2008. The division bench had granted stay of the condition. Hence that condition was not

complied with.

22. W.P.(MD) Nos. 2802 and 2803 of 2008 were filed by one and the same person. In the first writ petition, the prayer of the petitioner was to challenge the tax assessment notice dated 31.5.2007 and the reminder notice in demanding drainage maintenance charges and drainage contribution deposit in respect of Door No. 31, Chairman Muthurama Iyer Road, Madurai. In the second writ petition, her prayer was for a demand notice dated 31.5.2007 and also the reminder notice in respect of Door No. 31A in the same street. In both writ petitions, notices were ordered on 26.03.2008. Pending writ petitions, an interim stay was granted. It is not clear whether the petitioner had complied with the order or not. In any event, when the matter came up on 14.10.2009, the counsel for the petitioner sought time for amending the prayer so to challenge G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003. But no such amendment petition was forthcoming.

23. W.P.(MD) No. 6922 of 2008 was filed by one T.J. Sethuram Babu at No. 55, Manjanakkara Street, Madurai challenging G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003 and for a consequential direction to forbear the respondents from implementing the said G.O. That writ petition was admitted on 1.8.2008. Pending the writ petition, an order to maintain status quo was given. In the cause title, the petitioner had described the first respondent as the State represented by the Secretary to Government of Tamilnadu, St. George Fort, Chennai. Therefore, when notice was sent from this court it came back undelivered for want of furnishing the correct name of the department. It was rather unfortunate that the counsel must make a party without proper description. But nevertheless they challenged the G.O. issued by the Government in the name of MA&WS Department and got a status quo order. Till date, the first respondent has not been served and no steps were taken to provide a correct description of the party. On notice from this court, on behalf of the Commissioner, Corporation of Madurai, a counter affidavit, dated 21.11.2009 was filed.

24. In W.P.(MD) No. 3936 of 2009, the petitioner is the Lakeview Garden Residents Welfare Association at K.K. Nagar praying for the similar relief in respect of demand for drainage tax or maintenance or contribution of deposit from the members of the petitioner association. Reliance was placed upon a suit filed by an another association in O.S. No. 541 of 2000 and an interim order obtained by the association before this court. In the writ petition, notice was ordered on 30.4.2009. Pending the notice, no interim order was granted. A counter affidavit was filed by the Corporation on 28.11.2011.

25. In W.P.(MD) No. 9980 of 2009, the petitioner is the Madurai Mandapa Owner's Welfare Association, represented by its President. They filed the writ petition seeking to restrain the corporation from claiming drainage maintenance charges for the marriage halls run by the members of the petitioner association. In that writ petition, private notice was directed to be served to the corporation.

But no interim order was granted. A counter affidavit, dated 22.01.2011 was filed by the Corporation.

26. Since all the writ petitions as well as the second appeal raised identical questions, they were grouped together and arguments were heard. Heard the arguments of M/s. R.A. Mohanram, N.S. Ponnaiah, G. Prabhu Rajadurai, M. Saravanan and M.P. Senthil, counsels for the petitioners. In W.P.(MD) No. 2421 of 2008, no arguments were advanced on the side of the petitioner. Mr. G.R. Swaminathan, learned counsel appearing for the Madurai City Municipal Corporation and Mr. M. Govindan, learned Special Government Pleader appearing for the respondent State in some of the writ petitions.

27. The narration of the above facts will clearly show that the petitioners have confused themselves with the levy of property tax which included a component of drainage tax and also the levy of fee in respect of laying down underground drainage system and the nonrefundable security deposit for providing new connections and the monthly maintenance charges in respect of the connections from the year 1983. In none of the writ petitions, bylaw Nos. 63 and 63(a) framed and notified in the gazette were under challenge. Even during the pendency of some writ petitions, the State Government had issued a Government Order in G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003 and only in one writ petition, the said G.O is under challenge. Since that G.O was attacked, it is necessary to refer to the said G.O in its entirety so as to understand the issues involved and it reads as follows:

GOVERNMENT OF TAMIL NADU

ABSTRACT

MADURAI CORPORATION implementation of Under Ground Drainage Scheme within Madurai Corporation area under National River Conservation Project with Central Government Assistance and Augmentation of Financial Source-Non refundable deposit and monthly maintenance charges from the beneficiaries of Drainage connection holders of old and new connection - issue of orders for Amendment & Clarification to the Govt. Orders already issued in this regard.

Municipal Administration and Water Supply (MCII) Department

G.O.Ms. No. 213

Date: 31.12.2003

Again Read

1. G.O.Ms. No. 119/MA&WS (MC II) Dept./dt.19.05.99

2. G.O.Ms. No. 189/MA&WS (MC II) Dept./dt.30.12.2000.

Further Read

3. Commissioner, Madurai Corporation, MA&WS Letter Ma.P.O.The6/26177/2000,

dt.18.12.2003.

4. CMA, Chennai Lr. No. 77803/00/WS.3, dated 22.12.2003.

Order

1. In the Govt. order first cited, it has been ordered as per the council resolution about the upgradation of existing underground drainage scheme and implementation of UGD in the unsewered area of Madurai Corporation and to meet out the expenditure by collecting the non-refundable deposit from the drainage connection holders of new connection and monthly maintenance charges thereon.

2. In the G.O.2nd cited, order have been issued for the statement of pollution of River Vaigai and financial pattern allocated among Government of India, Government of Tamilnadu, Lock Body and Public contribution for the implementation of UGD Scheme at a cost of Rs. 150 Crores in the entire Madurai Corporation area under NRCP by the Environment & Forest Department by Government of India in accordance with this the approximate cost for the UGC Scheme including 10% of escalation cost is Rs. 165 Crores have been fixed and financial sources have been allocated as follows:

S. No.

Details

Rs. in Crores

(A)

Government of India National River Conservation Department Ministry of Urban Development

44.00

44.00

(B)

Government of Tamilnadu

22.00

(C)

Assistance from MLA & MP Fund

11.00

(D)

Madurai Corporation

22.00

(E)

Public Contribution

22.00

TOTAL

165.00

3. As the UGD Scheme is functioning in the western part of River Vaigai before 1924 and in some area of North of River Vaigai the UGD Scheme is functioning since 1984, it is essential to upgrade this old sewage system and to prevent the entering of excess sewage into the River Vaigai by strengthening the existing canals, so as to carry the excess sewer by interception and Division works and to replace the damaged drainage sewer pipe and to clear all bottleneck and to replace the 450 mm dis pumping main by new one from sub pumping station at Block 8, further to lay new drainage pumping main from sub pumping station 2,3 & 4 so as to pump the excess sewage without interruption. Besides this, to prevent the pollution of River Vaigai by entering of excess sewage, it is necessary to convey the sewage outside the Madurai Corporation area and to treat this sewage and let out for other usage, it is inevitable to improve the existing old sewage and to integrate the new sewage system with the existing one, so as to implement the UGD Scheme in the whole part of Madurai Corporation, based on this implement this UGD Scheme as a whole, resolution has been passed by Madurai Corporation vide resolution No. 20, dt.25.04.2003 as per the decision taken in the all party meeting held on 23.04.2003 earlier in which it has been decided to collect non refundable deposit from the existing and new drainage connection in accordance with the property tax and to collect maintenance charges as per the resolution No. 138, dt.28.03.2002.

4. Considering the financial position of Madurai Corporation and as per the Council resolution it has been requested by the Commissioner, Madurai Corporation as read in the letter cited third to issue necessary orders to permit to collect the maintenance charges and deposits from the (old) existing and new drainage connection holders. The same has been recommended by the Commissioner of Municipal Administration, Chennai as read in the letter cited 4th.

5. After careful consideration of all the matters explained above, the Govt. have ordered as follows.

(A) Based on the matter explained above in para 3, it has been accepted to collect non refundable deposit for the UGD Scheme now under execution, from all the drainage connection holders which include old and new connections, in accordance with the property tax as per the Council resolution No. 20, dated 25.04.03 and Madurai Corporation has been permitted to collect the deposit as mentioned below, subject to the condition mentioned below in "C".

House Tax Domestic connection deposit Domestic cum commercial deposit

Commercial and institution and other item deposit Upto Rs. 500 Rs. 501 to 1500
Rs. 1501 and above 2500 3500

5000 5000 7500

10000

10000 10000

10000

Institution where property tax exempted - Rs. 10,000/

(B) In the Council resolution No. 138, dated 22.03.2002, it has been recommended for the reduction of maintenance charges from monthly charges to annual charges and this resolution has been discarded by the Govt. and the recommendation of the resolution No. 208, dated 05.02.1999 has been accepted as follows:

Description	Domestic	Commercial	Institution	Date for which collection from
	01.04.99	Rs. 30	Rs. 90	Rs. 150
After completion UGD Scheme	Rs. 125	Rs. 250	Rs. 375	

(C) The operation and maintenance cost for UGD Scheme have to be met out wholly from the maintenance charges collected from beneficiaries and it should not be met out from the General Fund of Madurai Corporation. The maintenance charges are to be fixed so that it includes the periodic increase of the cost and also it should be correlated to the inflation and the fixation of the charges should be inflation linked one necessary resolution has to be got passed in the council in accordance in the matters explained above and in (B) also.

6) This G.O. has been issued with the permission of Finance Department vide m/rh/F/ No. 4210/FS/P/03, dated 18.12.2003.

//As per the order of the Government //

L.N. Vijayaragavan Secretary to Govt.

28. Thereafter, the corporation council held a meeting on 30.6.2009 and passed a resolution No. 709 and amended the bylaw No. 63(a) after noting that the work relating to laying down underground drainage was completed as per the order of the State Government in G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003. The amendment proposed by the council reads as follows:

The rate at present (1)

As per the amendment (2)

For one drainage connection maintenance charge per month

For one drainage connection maintenance charge per month

Residential use - Rs. 30

Residential use - Rs. 125

Commercial use - Rs. 90

Commercial use - Rs. 250

Hostels, Hotels, theatres, hospitals, wedding hall - Rs. 90

Hostels, Hotels, theatres, hospitals, wedding hall - Rs. 250

Industrial use - Rs. 150

Industrial use - Rs. 375

Since the work relating to underground drainage was over by them, the maintenance charges were sought to be levied with effect from 1.5.2010.

29. The amendment made to bylaw No. 63(a) was published in the Madurai District Gazette (Special Edition), dated 19.7.2010. It was notified that the new rate will come into force within three months from the date of publication in the gazette.

30. The petitioners have also not challenged even the amendments made to the bylaws relating to collection of drainage charges. In fact, all the writ petitions are liable to be dismissed on the short ground that the petitioners have only sought for a direction without challenging the bylaws introduced for collection of charges for drainage maintenance, authorizing levy of fee and nonrefundable security deposit as well as revision. It must be noted that when similar writ petitions were filed earlier being W.P. Nos. 20343 to 20345, 38861 and 38862 of 2003 by individual petitioners as well as by the welfare association of Tax payers and when conditional interim order was made, the matter was taken up on appeal by the individual private parties and a division bench of this court withdrew these writ petitions on its board. On being informed that subsequent to the filing of the writ petitions, the State Government had issued G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003, all the writ petitions were dismissed with liberty given to them to challenge the G.O vide its common order dated 16.4.2004. It is necessary to refer to the order passed by the division bench in those writ petitions and it reads as follows:

The writ petitions have been filed questioning the demand of nonrefundable security deposit and monthly maintenance charges without there being any Government Order. It is now represented that during the pendency of the writ petitions, the Government has come up with G.O.Ms. No. 213, Municipal Administration and Water Supply (MCII) Department, dated 31.12.2003 and the petitioners have also questioned the said Government Order in W.P. Nos. 3307 and 3308 of 2004.

2. In view of the above, no adjudication is necessary in the present writ petitions, as the petitioners are entitled to canvass all the points in the above two writ

petitions. Hence, the writ petitions are dismissed. Consequently, W.P.M.P. Nos. 47070 to 47081 of 2003 are also dismissed.

(Emphasis added)

31. However, this court do not wish to dispose it of on a technical ground especially when some of the cases are pending for more than 5 years and the matters are likely to be raised again and again. Therefore, the counsels were allowed to argue their cases on their merits also.

32. Except in W.P.(MD) No. 6922 of 2008, in none of the cases, there is any challenge to the bylaws authorizing the Corporation to levy drainage charge including demand of non refundable deposit and after the completion of the project claiming monthly maintenance charges. The entire edifice of the two suits laid by the two associations before the civil court and these writ petitions was that the Corporation has no power to collect drainage "tax". The petitioners are under a misconception. They have not noted the difference between the tax and fee. The misconception is not only on the side of the petitioners, but they have made the civil courts in agreeing with their submissions to the effect that what was collected was a drainage tax, for which there was already a provision for collecting property tax and apportioning it into various heads including for drainage tax. Even after they came to realize that there is difference between the two, i.e., drainage tax and drainage charge, no amendments were made to the petitions. But oral arguments were advanced by stating that the rate fixed were exorbitant and the jurisdiction to separately levy of such charge was not authorized by the MCMC Act. It is unnecessary for this court to go into the question of authority to collect drainage tax, which component was already included in the property tax collection made by the corporation. It was also revised from time to time.

33. After realizing their folly, the petitioners started contending that there was no publicity given to the bylaws. As noted already, bylaws were published validly by the exercise of power under the relevant provisions and a notification was issued in the official gazette. When once the MCMC Act provided for their bylaws to be published in a particular manner and the same having been published, no person can be heard to contend that they were not aware of such bylaws. On the contrary, in the written statements filed in two suits, the corporation had specifically stated that the collection of Rs. 2/- per month as a drainage charge was authorized by the Act. No attempt was made to explore the basis for that averment. Further, in O.S. No. 723 of 2000, the gazette notification was also filed as Ex.D.2. The relevant municipal resolutions were also filed as Exs.D.4 to D.6. Neither the counsel for the petitioners nor the trial court and the lower appellate court took care to look into those documents and understood the basis of the claim. It cannot be said that there are no valid bylaws made by the corporation.

34. As to whether the particular rate fixed for levy of drainage charge which is not a tax, but a fee collected towards the service rendered, this court cannot go

beyond the wisdom of the rates fixed. In fact, the original rate was fixed in the year 1982 and the revisions were made only after three decades (28 years). But the attempt made by the counsels appearing for the parties to submit that it was the duty of the corporation to provide drains and for that purpose, they cannot collect any money from the residents of Madurai and they should ask the Government for grant or borrow money from other institutions also does not stand to reason. On the other hand, the municipal council's resolution followed by the State Government G.O., clearly stipulated that apart from the funds provided by the Government and other sources, local resources will have to be mobilized.

35. The levy of taxes prescribed earlier were not adequate to the present day conditions and are not in commensurate with the cost of that facilities provided. This had resulted in depending upon the Government sources finally posing a serious financial crisis to the local bodies.

36. Infrastructures are foundations on which superstructure of urban areas is built and quality of life is determined. In our Country, urban centers offer inadequate services in terms of potable water supply, sewerage disposal and solid waste management. In the result, urban areas are becoming centers of dirt and diseases. Environment conditions prevailing in urban sectors are highly conducive to spread diseases making urban life unsafe for the majority of people living in slums and squatter colonies. Lack of capacity to pay for the services concerned on the part of the most of the urban users coupled with the lack of resources with service providing Government agencies results in non-provision of the services and as such quality of life suffers. In the years to come, magnitude of demand for amenities and infrastructures would be colossal and making available huge resources by the local bodies from budgetary mechanism would be impossible. Hence mechanism for funding the infrastructure and amenities would have to be found out. Maintenance charges are to be collected to improve the quality of life. In essence, "principle of users must pay" will have to be followed.

37. The urban areas in our country particularly in the State of Tamil Nadu are witnessing rapid growth and massive scale of urbanization, technological advancement particularly with the advent of electronic revolution, fast changing urban structure and urban life style, increase in complexities of urban problem, inadequacy of shelter and basic civic services, unmanageable urban sprawl would become acute in the days to come and pose a greater challenge to the efficient planning development and management to town and cities. It is stated that the urban population has been growing at the rate of 30% to 35% and expected to be more or less same rate during coming years. As per the 10th Five year Plan report, the growth of the population has put urban infrastructure and services under severe strain on urban areas in the country and present a grim picture with regard to the availability of basic infrastructure. Therefore, effective steps must be taken to meet out the grave situation, lest urbanization will paralyze

everything in all aspects. Due to the policy of economic liberalization, globalization and deregulation, urban centers in general and large urban centers in particular are going to attract lot of growth and investment. They will be fast emerging as an hub around which Indian economy will gravitate. Therefore, it becomes essential that appropriate environment in these centers is created which will help them to attract investments, provide employment, ensure quality of life and make them more sustainable and productive.

38. When the Chennai Metropolitan Development Authority was collecting development charges in terms of Section 59 of the Act, the said levy was questioned before this court. A division bench of this court in Anjali, Manjula, Easwari and Padmavathy Vs. The Secretary to the Government, Prohibition and Excise Dept. and The Commissioner of Police, had upheld the said power. The matter was taken to the Supreme Court. The Supreme Court in M. Chandru Vs. The Member Secretary, Chennai Metropolitan Development Authority and Another, had held that the levy of development charges u/s 59 is only a fee and it can be levied..

39. The counsel for the petitioners had referred to certain decisions which termed the collection of tax, procedure for assessment of tax and revision of tax etc. Since it has been clarified with the help of bylaws and amended bylaws framed by the Corporation, no counsel can contradict the stand of the corporation that it was not a tax but drainage charge. Hence it is unnecessary to refer to those judgments which has no relevance to the case on hand.

40. The next contention of the counsels turned out that if it is accepted as a fee, there must be some amount of quid pro quo involved and some of the residents represented by their association have built houses even before the Corporation came into existence and that the corporation was demanding it. Since they are already connected to the drainage system, the question of demanding money from them towards nonrefundable deposit or connection charges will not arise. Even this argument overlooks the facts that with the fast increase in the urban population and the congestion in the limited area, the pipes will have to be relaid with larger capacities to carry the additional load. The volume of sewage that is to be pumped out is huge. It requires not only relaying pipes but also to find out from the modern system of pumping of such sewage water, taking it to the treatment plant and for further treatment of the sewage water. It was also not necessary that levy of fee must always be co-related to the service rendered to a particular house owner.

41. The Supreme Court in Sreenivasa General Traders and Others Vs. State of Andhra Pradesh and Others, held that the co-relationship between levy and service rendered is one of general character and not of mathematical exactitude. All that is necessary is that there should be reasonable relationship between levy of fee and service rendered.

42. The Supreme Court in B.S.E. Brokers Forum, Bombay and Others etc. Vs.

Securities and Exchange Board of India and Others etc., held that there was sea change in the judicial thinking as to the difference between a tax and a fee. The traditional concept of quid pro quo in a fee has undergone considerable transformation. So far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. Once the levy is in public interest, then confining the services rendered only to the contributories does not arise. The entire benefit of levy need not accrue only to the contributories.

43. The Supreme Court in *Sona Chandi Oal Committee and Others Vs. State of Maharashtra*, quoted its earlier case in *B.S.E. Brokers Forum, Bombay and Others etc. Vs. Securities and Exchange Board of India and Others etc.*, with approval. In the said judgment it was held that the services to be rendered is not a condition precedent if there is reasonable relationship between levy of fee and service rendered is sufficient. Though ordinarily fee should be uniform, but the absence of uniformity by itself will not indicate that the levy is a tax.

44. In *Novva ADS Vs. Secretary, Deptt. of Municipal Administration and Water Supply and Another*, , the Supreme Court held that delegated legislation can be declared invalid by the court only on grounds that it violates the provisions of the Constitution or that it violates the enabling Act. In this regard it is necessary to refer to the following passages found in paragraphs 37 to 41 of the said judgment, which reads as follows: 37. The provisions contained in Rule 3 do not restrict or control the scope of Section 326-J which operates on a wider plane. While failure to obtain a no-objection certificate in terms of Rule 3(iii) itself would disentitle an applicant for the grant of a license to erect a hoarding, Section 326-J, prohibits erection of hazardous hoardings and also mandates the Commissioner (now District Collector) not to grant any license u/s 326-C in respect of such hoardings. It also authorizes the Commissioner to order confiscation and removal of such hoardings which are erected in contravention of the mandate therein.

38. 20. A delegated legislation can be declared invalid by the Court mainly on two grounds: firstly, that it violates any provision of the Constitution and secondly, it is violative of the enabling Act. If the delegate which has been given a rule-making authority exceeds its authority and makes any provision inconsistent with the Act and thus overrides it, it can be held to be a case of violating the provisions of the enabling Act but where the enabling Act itself permits ancillary and subsidiary functions of the legislature to be performed by the executive as its delegate, the delegated legislation cannot be held to be in violation of the enabling Act. [See vide *State of M.P. v. Bholu*¹⁰, (SCC p. 10, para 20).]

39. In *St. Johns Teachers Training Institute v. National Council for Teacher Education*¹¹ this Court has held that: (SCC pp. 331-32, para 10)

10.. Delegated legislation permits utilization of experience and consultation with

interests affected by the practical operation of statutes. Rules and regulations made by reason of the specific power conferred by the statutes to make rules and regulations establish the pattern of conduct to be followed. Regulations are in aid of enforcement of the provisions of the statute. The process of legislation by departmental regulations saves time and is intended to deal with local variations and the power to legislate by statutory instrument in the form of rules and regulations is conferred by Parliament. The main justification for delegated legislation is that the legislature being overburdened and the needs of the modern day society being complex, it cannot possibly foresee every administrative difficulty that may arise after the statute has begun to operate. Delegated legislation fills those needs.

40. It is well settled that a delegated legislation would have to be read in the context of the primary statute under which it is made and, in case of any conflict, it is primary legislation that will prevail.

41. In *ITW Signode India Ltd. v. CCE*¹² this Court has held as under: (SCC p. 71, para 56)

56.. It is a well-settled principle of law that in case of a conflict between a substantive Act and delegated legislation, the former shall prevail inasmuch as delegated legislation must be read in the context of the primary/legislative Act and not vice versa.

45. The Supreme Court while dealing with the power of the municipality to levy sewage charges in respect of the building owned by the Union of India which is otherwise exempted from tax under Article 284 of the Constitution held that the sewage charges claimed by the municipality is only a fee even though it was loosely labeled as tax in the Act and that the Union of India is not exempted from levying of such sewage fee vide its judgment in *Union of India (UOI) and Others Vs. State of U.P. and Others*, and in paragraphs 10,11 and 23, it was held as follows:

10. From a perusal of Article 285 it is clear that no property of the Union of India shall be subject to tax imposed by the State, save as Parliament may otherwise provide. The question is whether "the charges for" supply of water and maintenance of sewerage is in the nature of a tax or a fee for the services rendered by the Jal Sansthan. There is a distinction between a tax and a fee, and hence one has to see the nature of the levy whether it is in the nature of tax or whether it is in the nature of fee for the services rendered by any instrumentality of the State like the Jal Sansthan. There are no two opinions in the matter that so far as supply of water and maintenance of sewerage is concerned, the Jal Sansthan is to maintain it and it is they who bear all the expenses for the maintenance of sewerage and supply of water. It has to create its own funds and therefore, levy under the Act is a must. In order to supply water and maintain sewerage system, the Jal Sansthan has to incur the expenditure for the same. It is in fact a service which is being rendered by the Jal Sansthan to the Railways,

and the Railways cannot take this service from the Jal Sansthan without paying the charges for the same. Though the expression tax has been used in the Act of 1975 but in fact it is in the nature of a fee for the services rendered by the Jal Sansthan. What is contemplated under Article 285 is taxation on the property of the Union. In our opinion the Jal Sansthan is not charging any tax on the property of the Union; what is being charged is a fee for services rendered to the Union through the Railways. Therefore, it is a plain and simple charge for service rendered by the Jal Sansthan for which the Jal Sansthan has to maintain staff for regular supply of water as well as for sewerage system of the effluent discharged by the railway over their platforms or from their staff quarters. It is in the nature of a fee for service rendered and not any tax on the property of the Railways.

11. The distinction has to be kept in mind between a tax and a fee. Exemption under Article 285 is on the levy of any tax on the property of the Union by the State, and exemption is not for charges for the services rendered by the State or its instrumentality which in reality amounts to a fee. In this connection, a reference was made to the decision of this Court in *Sea Customs Act (1878)*, S. 20(2), *In re3*. This was a case in which a reference was made by the President of India with regard to levy of customs and excise duties on the State under Article 289 of the Constitution of India wherein Sinha, C.J., Gajendragadkar, Wanchoo and Shah, JJ. answered the question at para 31 as follows: (AIR p. 1777)

31. For the reasons given above, it must be held that the immunity granted to the States in respect of Union taxation does not extend to duties of customs including export duties or duties of excise. The answer to the three questions referred to us must, therefore, be in the negative.

23. In this case what is being charged is for service rendered by the Jal Sansthan i.e. an instrumentality of the State under the Act of 1975. Section 52 of the Act states that the Jal Sansthan can levy tax, fee and charge for water supply and for sewerage services rendered by it as water tax and sewerage tax at the rates mentioned therein. Though the charge was loosely termed as "tax" but as already mentioned before, nomenclature is not important. In substance what is being charged is fee for the supply of water as well as maintenance of the sewerage system. Therefore, in our opinion, such service charges are a fee and cannot be said to be hit by Article 285 of the Constitution. In this context it is to be made clear that what is exempted by Article 285 is a tax on the property of the Union of India but not a charge for services which are being rendered in the nature of water supply, for maintenance of sewerage system. Therefore, in our opinion, the view taken by the Division Bench of the Allahabad High Court is correct that the charge is a fee, being service charges for supply of water and maintenance of sewerage system, which cannot be said to be tax on the property of the Union. Hence it is not violative of the provisions of Article 285 of the Constitution.

46. It will not be out of place to note that when Infrastructure and Amenities Charges were sought to be levied under the Town and Country Planning Act, that

came to be challenged in a batch of writ petitions. The levy of infrastructure and amenities charges was upheld by this court vide its judgment in Sundaram Auto Components Limited Vs. State of Tamil Nadu reported in 2011 (4) CTC 240. In the light of the above, the submissions made by the counsels for the petitioners cannot be countenanced.

47. Further, the challenge to the G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003 in W.P.(MD) No. 6922 of 2008 has no relevance. In fact even without the Government Order, the Corporation was entitled to charge from the residents for the services rendered towards drainage maintenance. The contents of the G.O had already been reproduced elsewhere. The grounds raised in that writ petition was that the Government Order was ultra vires and amending the earlier G.O.Ms. Nos. 119 and 189, MA&WS Department, dated 19.05.1999 and 30.12.2000 was illegal and ultra vires. It cannot be passed on the basis of the resolution based by the Madurai City Municipal Corporation. Under the MCMC Act, they can direct the Corporation to go for other resources instead of collecting money from the local residents. The Government Order contravened Section 173 of the MCMC Act. u/s 173, there is a provision for getting contributions from the other authorities.

48. Such arguments betting ignorance of elementary principles of taxation of power or levy charge for the service rendered. In fact, the Corporation of Madurai being a local body not only covered by the provisions of the Act, but also by the introduction of Part XI-A to the Constitution and under Article 243-X, the legislature can authorize the municipality to levy collection of appropriate taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. Under Article 243-W, the powers, authority and responsibility of the municipality subject to provisions of this Constitution have been set out. The legislature has been mandated by law to endow the municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government and such law may contain provisions for the devolution of powers and responsibilities upon municipalities with respect to the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the XII Schedule. The XII Schedule to the Constitution in Entry 1 provides for urban planning including town planning. Entry 3 provides for planning for economic and social development and Entry 6 relates to public health, sanitation, conservancy and solid waste management. Apart from this, the MCMC Act itself provides for collection of tax as well as fees as noted elsewhere. This court had more than once distinguished the difference between a tax and a fee. In the light of the above, there is no case made out to entertain the writ petitions. Hence all writ petitions are liable to be rejected including the writ petition challenging the G.O.Ms. No. 213, MA&WS Department, dated 31.12.2003.

49. In the suit before the Principal District Munsif, Madurai, the corporation had not produced any document in O.S. No. 723 of 2000, but produced documents in

the other suit in O.S. No. 541 of 2000. The written statements in both suits were filed on identical basis. The fact of the corporation being legally authorized to collect Rs. 2/- per month towards drainage charges was set out in the written statement. It is in one case documents were marked. But the trial court and the lower appellate court did not deal with those documents. Whether the Corporation had filed any second appeal in that case is not spelt out in the pleadings. But at the same time, in the second appeal before this court, the attention was only based upon an erroneous presumption that the drainage charge is the same as the drainage tax which itself is a misnomer. Therefore, even if this issue is remanded back to the courts below, it cannot pass any different order than what has been set out in this judgment. It will only result in an empty formality of a remand. Under these circumstances, this court is of the opinion that both the trial court and the lower appellate court have thoroughly missed the real issue and tried an issue without noticing relevant legal provisions. As it is a pure question of law, it is unnecessary to make an order of remand. The respondent association in the second appeal was also heard in the writ petition filed by them to enforce the decree of the lower court.

50. Under these circumstances, the second appeal will stand allowed. The judgment and decree passed by the trial court in O.S. No. 723 of 2000, dated 30.04.2003 confirmed in judgment and decree of the lower appellate court in A.S. No. 232 of 2003, dated 29.03.2005 will stand set aside for the reasons set out above.

51. All the writ petitions also will stand dismissed. Parties are allowed to bear their own costs. Consequently connected miscellaneous petitions stand closed. In case of any demand notice and there are calculation errors with reference to collection of charges, it is always open to them to find remedies within the provisions of law.

52. Before parting with these cases, it must be recorded that the entire exercise of many litigations spreading over two decades arose because of thorough incompetence on the part of the officials of the Corporation and its legal wing in not taking up a proper stand before the legal forums and to contest the cases in its seriousness. Allowing one suit to be decreed had led to proliferation of several litigations in the form of writ petitions. It is high time the Corporation tone up its legal cell so as to meet future challenges to the actions initiated by them lawfully and in the interest of general public.