

(2011) 06 MAD CK 0081

In the Madras High Court

Case No : Writ Petition No. 3722 and M.P. No's. 1 and 2 of 2009

Rajamuthaiah Chettiar and Charitable Educational Trust

APPELLANT

Vs

Chairman cum Managing Director and Area Engineer,
CMWSSB

RESPONDENT

Date of Decision : 27-06-2011

Acts Referred:

Citation : (2011) 06 MAD CK 0081

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : S. Sundaresan, for the Appellant; V. Manoharan, for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The Petitioner Rajamuthaiah Chettiar and Charitable Educational Trust has come to this Court by filing the present writ petition

to call for the records relating to the impugned proceedings of the 2nd Respondent vide their letter No. CMWSSB/AreaXA/ Depot150/spl/2009

dated 23.02.2009 and to quash the same.

2. The learned Counsel for the Petitioner submits that the Petitioner being a trust had applied for planning permission for construction of B.F. + stilt

+ 13 floors residential flats at R.S. No. 4288/8, Block No. 94, MRC Nagar Main Road, Raja Annamalai Puram, Chennai-28, which was

received by the 1st Respondent on 16.03.2004. Thereafter, the 1st Respondent in his letter No. C3/8002/2004, dated 21.03.2005, directed the

Petitioner to pay the following charges within 30 days for scrutiny of the application (i) development charges for land and building Rs. 1,46,000/-

(ii) Scrutiny fee Rs. 16,000/- (iii) Registration charges Rs. 56,000/- (iv) Security

Deposit (for the proposed development) Rs. 7,87,000/-(v)

Security Deposit (for display board) Rs. 10,000/-and (vi) Infrastructure Development Charge payable to CMWSSB Rs. 5,02,000/-. Aggrieved

by the said communication issued by the 1st Respondent dated 21.03.2005, earlier the Petitioner filed writ petition in WP. No. 1821 of 2005. The

said writ petition was dismissed by this Court on 20.12.2006. Against which, the Petitioner filed an SLP before the Supreme Court along with a

batch of cases in SLP (Civil) Appeal No. 1079 of 2009 and the same was allowed by the Supreme Court by order dated 17.02.2008 setting

aside the order of this Court and remitting the matter back for fresh consideration with certain directions and the matter is still pending before this

Court.

3. In the meanwhile, the Petitioner has completed the construction. On completion of the construction, the Petitioner applied for water connection

on 27.01.2008. The Respondents have demanded a sum of Rs. 5,37,040/-on various heads. Accepting the demand made by the Respondents,

the Petitioner paid the entire amount on the same day by way of D.D. No. 202363 dated 27.01.2007 for effecting the water and sewage

connections, thereby, the entire issue was put at rest. The personnel of the 2nd Respondent, though commenced the work by laying pipelines,

suddenly abandoned the work without making any progress and the impugned notice came to be issued demanding further sum of Rs. 3,99,360/-

towards difference in service connection charges to provide water and sewage connection. The said impugned notice is under challenge in this writ

petition.

4. The learned Counsel for the Petitioner placed the following submissions:

(i) After completion of the construction, when the Petitioner applied for water and sewage connection, the Respondents demanded Rs. 5,37,040/-

and the said amount was paid on the very same day on 27.01.2007. Therefore, the entire amount towards water and sewage connection charges

having been paid by the Petitioner on 27.01.2007, the question of issuing one more demand notice by the Respondents towards water and sewage

connection will not arise.

(ii) If the purpose of issuance of the present impugned notice, calling upon the Petitioner to pay the difference of service connection charges, is due

to the delay in effecting the service connection in time, the Petitioner should not be held responsible. Further, the Respondents, while demanding

Rs. 5,37,040/-, did not mention that the said amount was only a tentative demand towards water and sewage connections, therefore, bereft of

particulars, the second Respondent cannot once again demand by way of impugned notice, calling upon the Petitioner to pay a further sum of Rs.

3,99,360/-.

5. A detailed counter affidavit has been filed by the first Respondent, supporting their stand for demanding a sum of Rs. 3,99,360/-towards water

and sewage connection charges. However, nowhere in the counter, the Respondents have mentioned on what basis, they have collected the earlier

amount of Rs. 5,37,040/-.

6. It is an admitted case that, after completion of the construction on 27.01.2007, the Petitioner has made an application to the authorities for

providing water and sewage connections. After receiving the said application, the second Respondent has demanded a sum of Rs. 5,37,040/-viz.,

connection charges for water at Rs. 2530/-x 52 = 1,31,560/-; Sewage connection at Rs. 4790/-x 52 = 2,49,080/-; Advance Tax at Rs. 3000/-x

52 = 1,56,000/-and Meter testing charges Rs. 400/-, and the said amount of Rs. 5,37,040/-has been paid on the same day on 27.01.2007. For

the reason that the Respondents have taken their own time in effecting the water and sewage connections, the Petitioner cannot be held

responsible. It seems that the present stand taken by the Respondents is only in view of the Circular dated 30.01.2008, as per which, the Board

has resolved vide Resolution No. 29 of 2008 to revise the water and sewerage connection charges from 01.02.2008. This Circular cannot be

made applicable to the case of the Petitioner since the Petitioner has already paid a sum of Rs. 5,37,040/-on 27.01.2007 towards water and

sewerage connection and further, the Circular does not mention that it will have retrospective effect so as to apply the same to the case of the

Petitioner as well.

7. Therefore, I do not find any merit in the present impugned notice, demanding a sum of Rs. 3,99,360/-, and the same is accordingly set aside.

However, it is made clear that this Court by an order dated 28.04.2009 made in M.P. No. 2 of 2009, directed the Petitioner to pay a sum of Rs.

2,00,000/-within one week and on such payment, the Respondents shall complete the process of giving water and sewage connection to the

Petitioner within seven days thereafter and payment has already been made without prejudice to the Petitioner's contentions in this writ petition. In

view of setting aside the impugned notice dated 23.02.2009 now this Court directs the Respondents to refund the amount of Rs. 2,00,000/-paid

by the Petitioner as per the order of this Court dated 28.4.2009 in MP.2/2009.

8. In the result, the writ petition is allowed as prayed for. No costs. Consequently, connected miscellaneous petitions are closed.