

(2008) 03 MAD CK 0051

In the Madras High Court

Case No : Writ Petition No. 19147 of 1998

S.M.M. Ahamed Meeran

APPELLANT

Vs

State of Tamil Nadu, The Chennai Metropolitan Development
Authority and The Chennai Metropolitan Water Supply and
Sewerage Board

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Chennai Metropolitan Water Supply and Sewerage Board Act, 1978 — Section 6, 81
Tamil Nadu Town and Country Planning Act, 1971 — Section 59, 60, 9E(1)

Citation : (2008) 03 MAD CK 0051

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : T.T. Ravichandran, for Satish Parasaran, for the Appellant; N. Senthil Kumar, Government Advocate, C. Kathiravan for CMDA for Respondent 2, Elango, Special Government Pleader for Respondent 3, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—This writ petition is filed challenging the proceedings of the second respondent Chennai Metropolitan Development

Authority (CMDA) dated 29.09.1998, under which the second respondent while considering the planning permission application made by the

petitioner dated 04.04.1997 which was for the addition of 4-9 flats in T.S. No. 15/3, Block No. 8, Door No. 174, NSK Salai, Vadapalani,

Chennai, has imposed infrastructure development charges payable to Chennai Metropolitan Water Supply and Sewerage Board (CMWSSB) to

an extent of Rs. 17,11,000/- calculated at the rate of Rs. 64 per square metre. Even though in the impugned order, a sum of Rs. 19,42,000/- has

also been imposed as Security Deposit for the proposed development, the

petitioner makes it clear that in as much as the Security Deposit is liable to be refunded when the plan stands approved by the competent authority and will stand forfeited in case of finding of deviation by competent authority and therefore the charging of security deposit of Rs. 19,42,000/- is not pressed in this writ petition. Therefore, the only question in this writ petition that is to be decided is as to whether imposing of the sum of Rs. 17,11,000/- as infrastructure development charges by the CMDA payable to CMWSSB in respect of the petitioner's application dated 04.04.1997 is permissible or not.

2. Certain facts which are not in dispute are as follows:

The petitioner made application for planning permission originally on 15.12.1996, for construction of residential-cum-commercial building

consisting of ground floor + 3 floors (3 blocks). The second respondent CMDA has directed the petitioner to pay a sum of Rs. 16,500/- towards

development charges as per the provisions of the Tamil Nadu Town and Country Planning Act, 1971 which is as per Section 59 of the said Act.

An additional amount of Rs. 15,000/- was charged towards security fees and security deposit of Rs. 7,30,000/- for considering the application.

The petitioner has paid all the said amounts claimed. The second respondent has informed the petitioner that planning application made was

returned for the reason that Metro Water would not be in a position to provide water supply. Hence, the petitioner filed a writ petition in W.P. No.

6477 of 1997 against the said order and the petitioner has also filed another writ petition in W.P. No. 13897 of 1997 which relates to additional

construction of 4 to 9 flats over the Ground + 3 floor in the above said property. This Court by a common order dated 18.10.1997, has allowed

the writ petitions on the basis that the CMWSSB has mechanically passed orders without application of mind and by reading the provision of the

Madras Metropolitan Water Supply and Sewerage Act along with Tamil Nadu Town and Country Planning Act, 1971 with specific reference to

Section 9-E(1), directed the CMWSSB to provide water and sewerage facilities as sought for by the applicant in his planning permission filed

before the second respondent CMDA. In the said order there was a further direction to the second respondent CMDA to pass final orders on the

application within one months from the date of receipt of a copy of the order. The

operative portion of the said order is as follows:

8. It is the usual practice of the 4th respondent to return the application without applying mind, stating that the existing infrastructure is inadequate

to provide the services. 4th respondent cannot disown its responsibility in such a way by returning the application. There is a duty cast on it to

provide the facility (as far as practicable). Even without making an attempt to provide the facility, to reject or return an application is the most

improper act on its part. In the present case, 4th respondent has returned the applications of the petitioner without any reason, or without any

application of mind. Consequently, I am of the view that the reliefs prayed for in both the writ petitions are to be granted and the writ petitions are

to be allowed, and I do so accordingly, respondents 3 and 4 are directed to provide water and sewerage facilities as sought for by the applicant in

his planning permission application filed before the second respondent, and the second respondent is further directed to pass final orders on the

applications within one month from the date of receipt of this order. Writ petitions are allowed as indicated above. No costs. Connected W.M.P.s

are dismissed.

3. It is relevant to point out that before the said common order came to be passed by this Court, the petitioner has filed another application before

the second respondent CMDA dated 04.04.1997, seeking permission to put up additional construction namely 4 to 9 blocks. Therefore, the

direction issued by this Court in the above said writ petitions to the second respondent to consider the application relates to the application of the

petitioner dated 04.04.1997 in respect of the additional construction of floor Nos. 4 to 9. Pursuant to the direction in the above writ petition, water

connection was granted. However, the second respondent by an order dated 10.11.1997, by referring to the order passed by this Court in W.P.

Nos. 6477 & 13897 of 1997 dated 18.10.1997, has granted the provisional approval clearly stating that the said approval relates to the

construction of Ground + 3 floors. It is relevant to point out that in the said order of the second respondent dated 10.11.1997, the second

respondent has referred, both the original application as well as the subsequent application for additional construction dated 15.11.1996 &

04.04.1997 respectively. However, provisional approval was granted only in

respect of construction of Ground + 3 floors.

4. In the meantime, the Government has passed G.O. D. No. 146, Housing and Urban Development (UD.I) Department, dated 02.06.1998,

issuing modified instructions regarding prior concurrence of CMWSSB for granting planning permission in respect of construction of Multistoreyed

Buildings and Special Buildings. In the said order, it is stated as per the modified instructions, the CMDA shall consider the planning permission for

the construction of Multistoreyed Buildings after following the procedure suggested by CMWSSB by collection of a flat rate of Rs. 64/- per sq.m.

from the applicants towards infrastructure development charges and pass on the said charges to CMWSSB. It was pursuant to the said

Government Order, the second respondent has passed the impugned order dated 29.09.1998, by referring the application of the petitioner dated

04.04.1997, which relates to the permission to put up additional construction of 4 + 9 flats. It was by the impugned order as stated above, the

second respondent has demanded the infrastructure development charges of Rs. 17,11,000/- on behalf of CMWSSB in accordance with G.O. D.

No. 146, dated 02.06.1998. It is also not in dispute that out of the claimed amount i.e., the infrastructure development charges as claimed in the

impugned order apart from the development charges, the petitioner has paid 60% of the amount claimed in the impugned order to the second

respondent CMDA as per the interim order of this Court.

5. In the meantime, the Government has passed the Tamil Nadu Ordinance No. 7 of 1998 called Chennai Metropolitan Water Supply and

Sewerage (Second Amendment) Ordinance, 1998 and that ordinance came into force from 08.10.1998. As per the said ordinance, the concept of

infrastructure development charges to be payable to CMWSSB has been introduced in respect of applicants putting up Multistoreyed Building or

Special Buildings. Subsequently, the Government has passed Act No. 49 of 1998, incorporating the said amendment by legislative process to the

Chennai Metropolitan Water Supply and Sewerage Act, 1978 and that Act came into existence on 22.12.1998.

6. Therefore, it is clear that the concept of infrastructure development charges had started from the date the Government passed G.O. D. No. 146,

dated 02.06.1998, which has crystallised into legislative process by Ordinance

dated 08.10.1998 which has formed part of the Act with effect from 22.12.1998. The validity of imposition of the infrastructure development charges by the second respondent CMDA on behalf of the CMWSSB came to be challenged before this Court in the batch of writ petitions and a Division Bench headed by Mr. Justice P. Sathasivam (as he then was) has upheld the validity of the Amendment Act and also the concept of the infrastructure development charges in the Judgment rendered in Anjali, Manjula, Easwari and Padmavathy Vs. The Secretary to the Government, Prohibition and Excise Dept. and The Commissioner of Police, . In the said judgment, the levy of Rs. 64/- per square metre as infrastructure development charges to be payable to CMWSSB after the same is collected by CMDA has been upheld with effect from 05.03.1998, even though the above said regulation was actually framed on 03.12.1998.

7. The contention of the learned Counsel appearing for the petitioner is that even taking the above said date namely 05.03.1998 as the date of validity of the regulation, the application filled by the petitioner for additional construction was on 04.04.1997, therefore, the said application which has been pending before the second respondent is much before the date of effect of the regulations and it has to be considered as a pending application and therefore the infrastructure development charges which are levied by the Ordinance which came into force on 07.10.98 and the Act which came into force on 22.12.1998 and even the G.O. D. No. 146, Housing and Urban Development (UD.I) Department, dated 02.06.1998, which was effective from 02.06.1998 cannot have any application to such pending application of the petitioner dated 04.04.1997.

8. On the other hand, Mr. Elango, learned Special Government Pleader appearing for the 3rd respondent would submit that it is factually true that the application for additional construction was filed by the petitioner on 04.04.1997, but by the time when the second respondent has considered the said application for additional construction, the amendment has come into existence apart from the G.O.(D)No. 146, dated 02.06.1998 by incorporating the special provision regarding infrastructure development charges. Therefore, it is the duty on the part of the second respondent to apply the law which is in existence on the date when the competent authority under the Tamil Nadu Town and Country Planning Act, 1971 was

considering and scrutinizing the application for grant of approval. The contentions of the learned Counsel appearing for the second and third

respondents is that even after the earlier order passed by this Court allowing the two writ petitions filed by the petitioner which was on

18.10.1997, the second respondent has passed the order on 10.11.1997, specifically stating that the provisional approval granted was only in

respect of Ground + 3 floors and that has never been challenged at any point of time and therefore the application for additional construction for 4

to 9 floors was not at all considered when the second respondent passed the provisional approval order dated 10.11.1997 relating to Ground + 3

Floors.

9. Heard Mr.T.T.Ravichandran, learned Counsel appearing for the petitioner, Mr.N.Senthil Kumar, learned Government Advocate appearing for

the first respondent, Mr.C.Kathiravan, learned standing counsel for CMDA appearing for the second respondent and Mr.Elango, learned Special

Government Pleader appearing for the third respondent CMWSSB.

10. It is true that on the earlier occasion when two writ petitions were filed by the petitioner viz., W.P. Nos. 6477 and 13897 of 1997 the same

was allowed by a common order dated 18.10.1997, but the direction was specifically for providing water supply by CMWSSB but as far as the

application for approval of planning permission is concerned, this Court has only given a direction to the CMDA to pass appropriate final orders.

Even though by the time when the order came to be passed, the petitioner has filed 2nd application dated 04.04.1997 for additional construction

of 4 to 9 floors the second respondent which has passed orders on 10.11.1997, pursuant to the direction of this Court dated 18.10.1997, has

specifically dealt with the application relating to the planning permission for Ground + 3 floors alone stating that the said approval is provisional in

nature. The following are the contents of the said letter:

Letter No. B2/27800/96 Dated: 10.11.97

Sir

Sub: CMDA - Planning Permission - Construction of Residential cum Commercial Building of B+G+3F(2 Block) and G+3F residential Building (3

blocks) at R.S. No. 184/2, T.S. No. 15/3, B. No. 8, Saligramam D. No. 174, N.S.K. Salai, Vadapalani, Chennai.

Ref: i) PPA received dated 15.11.96.

ii) T.O. Ir. even No. dtd. 14.2.97.

iii) Your Ir. dtd. 4.4.97

iv) T.O.Lr. even No. dtd 13.06.97

v) Your letter dtd 23-9-97.

vi) W.P. Nos. 6477 & 13897 dt. 18.10.97.

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The Planning Permission application received in the reference 1st cited for the construction of Basement * Ground + 3 floor residential-cum-

commercial building (2 blocks) and Ground + 3 floor residential building (3 blocks) at R.S. No. 184/2, T.S. No. 15/3, Block No. 8, Saligramam,

Door No. 174, N.S.K. Salai, Vadapalani, Chennai has been approved subject to the conditions incorporated in the reference 2nd cited.

2. The applicant has remitted the necessary charges in Challan No. 81672 dated 4-4-97 and 88132 dated 23-9-97. Accepting the conditions

stipulated by CMDA vide in the reference 3rd cited and furnished Bank Guarantee for a sum of Rs. 7,30,000/- (Rupees Seven lakhs and thirty

thousand only) towards Security Deposit for building which is valid upto 2-4-2002.

3. As per the High Court order in the reference 6th cited, the Chennai Metropolitan Water Supply and Sewerage Board has been directed to

provide water and sewerage facilities as sought for by the applicant.

4. Two sets of approved plans numbered as Planning Permit No. B/25594/443/A to K, dated 10.11.97 are sent herewith. The Planning permit is

valid for the period from 10.11.97 to 09.11.2000.

5. This approval is not final. The applicant has to approach the Chennai Corporation for issue of building permit under the Local Body Acts, only

after which the proposed construction can be commenced.

When the order of the second respondent has clearly stated that the provisional approval is only for Ground + 3 floor, the petitioner has not

chosen to challenge the same and he has not even raised his objection stating that his application for additional construction dated 04.04.1997, was

pending and therefore the same should also be considered by the second respondent. Therefore, it has to be taken that the order of the second

respondent dated 10.11.1997 relates to Ground + 3 floor and the same has become final.

11. It is true that the very concept of infrastructure development charges came into existence for the first time vide. G.O. D. No. 146, Housing and

Urban Development (UD.I) Department, dated 02.06.1998. A reading of the said G.O. makes it clear that it has nothing to do with the

development charges which are computable and chargeable by CMDA as per Section 59 of the Tamil Nadu Town and Country Planning Act,

1971, the said Section reads as follows:

Section 59. Levy of Development Charges:

(1) Subject to the provisions of this Act and the rules made thereunder, every planning authority including a local authority, where such local

authority is the planning authority, shall levy charges (hereinafter called the development charges) on the institution of use or change of use of land

or building or development of any land or building for which permission is required under this Act in the whole area or any part of the planning area

within the maximum rates specified in Section 60:

Provided that the rates of development charges may be different for different parts of planning area and for different uses:

Provided further that the previous sanction of the Government has been obtained for the rates of levy.

(2) When a planning authority, including a local authority, where such local authority is the planning authority, shall have determined to levy

development charges for the first time or at a new rate, such authority shall, forthwith, publish a notification in the Tamil Nadu Government Gazette

specifying the rates of levy of development charges.

(3) The development charges shall be leviable on any person who undertakes or carries out any such development or institutes or changes any

such use.

(4) Notwithstanding anything contained in Sub-sections (1) and (2), no development charges shall be levied on development, or institution of use

or of change of use of, any land or building vested in or under the control or possession of the Central or any State Government or of any local

authority.

12. While imposing the infrastructure development charges, the Government for the first time introduced the same for the benefit of CMWSSB

which was of course subsequently incorporated by statutory incorporation in The Chennai Metropolitan Water Supply and Sewerage Act, 1978,

which came into force on 22.12.1998. Originally as it was intended by the Government to impose infrastructure development charges vide.

G.O.Ms. No. 146, dated 02.06.1998, it was made clear that the CMDA will be entitled to claim Rs. 64/- per sq.m. from the applicants towards

infrastructure development charges to be payable by the CMDA to CMWSSB after collecting the same from the applicant while the applicant files

the necessary application for planning permission. Therefore, the amount of Rs. 64/- per square metre as introduced, the infrastructure

development charges is not for the benefit of CMDA in respect of grant of planning permission, but the same is collected for being transmitted to

the CMWSSB and there is no difficulty to come to the conclusion that there is remarkable distinction between development charges claimed by the

CMDA u/s 59 of the Tamil Nadu Town and Country Planning Act, 1971 and infrastructure development charges collected by the CMDA for and

on behalf of CMWSSB to be payable to the CMWSSB after collection. The relevant portion of the said G.O. is as follows:

4. The Government after careful consideration have decided to accept the request of the Vice Chairman, Chennai Metropolitan Development

Authority to modify the instructions already issued by the Government in their letter dated 31.12.1992 first read above. They accordingly direct

that in modification of the instructions referred to in para 1 above, planning permission for the construction of Multistoreyed Buildings be

considered by Chennai Metropolitan Development Authority after following the procedure suggested by Chennai Metropolitan Water Supply and

Sewerage Board for collection of a flat rate of Rs. 64/- per sq.m. from the applicants towards infrastructure development charges and pass on the

same to Chennai Metropolitan Water Supply and Sewerage Board without referring the individual cases to the Chennai Metropolitan Water

Supply and Sewerage Board, prior to placing the proposals before Multistoreyed Building Panel. The collection of such charges for special

buildings will have to wait till the Chennai Metropolitan Water Supply and Sewerage Board Act is amended.

13. Thereafter the concept of infrastructure development charges was statutorily incorporated by necessary amendment originally by Tamil Nadu

Ordinance No. 7 of 1998 in the Chennai Metropolitan Water Supply and Sewerage (Second Amendment) Ordinance, 1998. Accordingly the

clause regarding the collection of infrastructure development charges was included u/s 6 of the Chennai Metropolitan Water Supply and Sewerage

Act, 1978, by adding a new sub-section namely,

(xiii-a) : to collect infrastructure development charges from the applicant, builder or developer, of such multi-storeyed building or special building as

may be prescribed, for the provision of adequate water supply or sewerage;

Further u/s 81 of the Principal Act of 1978, in Sub-section (2), after Clause (j), the following Clause (jj) was incorporated which is as follows:

(jj) the manner of and the basis on which the infrastructure development charges shall be collected;

that relates to the power of the Board to frame necessary regulations.

14. The said Tamilnadu Ordinance No. 7 of 1998 came to be replaced by Amendment Act, 49 of 1998 called the Chennai Metropolitan Water

Supply and Sewerage (Second Amendment) Act, 1998 by which the above said two inclusions have been statutorily made forming part of the

original Act viz., Chennai Metropolitan Water Supply and Sewerage Act, 1978 (Tamil Nadu Act 28 of 1978).

15. Pursuant to the powers conferred under the amendment to Tamil Nadu Act 28 of 1978, the CMWSSB has framed regulations called Chennai

Metropolitan Water Supply and Sewerage Board Infrastructure Development Charges (Levy and Collection) Regulation, 1998. It is in that

regulation, Clause No. 4 empowers the Board to collect the flat rate of Rs. 64/- per sq.metre of the built up area for the provision of adequate

water supply and sewerage facilities in respect of multi-storeyed buildings or special buildings to be calculated by the CMDA from the applicants

when they apply for approval of the plan. The said rule is as follows:

4. The Board shall collect infrastructure development charges through Chennai Metropolitan Development Authority from the applicant of multi-

storeyed buildings or special building as the case may be for the provision of adequate water supply or sewerage and the matters connected

thereto at the flat rate of Rs. 64/- per sq.metre (of the built up area).

16. The Division Bench in the above referred case reported in Anjali, Manjula, Easwari and Padmavathy Vs. The Secretary to the Government,

Prohibition and Excise Dept. and The Commissioner of Police, has considered the said regulation as well as the statutory amendment as stated

supra and held that the said amendments are legal and valid. It was also held by the Division Bench that the regulations framed by the Board

imposing flat rate of Rs. 64/- as infrastructure development charges is not ultra virus.

17. On the face of the regulation it is clear that the amount of infrastructure development charges have no connection with the Tamil Nadu Town

and Country Planning Act, 1971, which enables the CMDA to grant approval on planning permission application. Merely because the CMDA is

authorised by the Amendment Act No. 49 of 1998, to collect the infrastructure development charges, at the above said rate, to be payable to

CMWSSB, it cannot be said that the application is for the purpose of planning permission especially in the light of Regulation No. 4 which clearly

shows that the amount is collected for the purpose of providing adequate water supply or sewerage, which is the statutory duty of the third

respondent.

18. The further contentions raised by the learned Counsel appearing for the petitioner that the application for additional construction was filed by

the petitioner which is as early as on 04.04.1997, the time when the concept of infrastructure development charges were not known to the

respondents and therefore such charges cannot be levied on the petitioner since it would amount to levying of charges on retrospective basis is also

untenable. As rightly pointed out by the learned Counsel appearing for the respondents 2 & 3, even though the application for additional

construction was filed on 04.04.1997, by virtue of the order of the second respondent dated 10.11.1997, granting provisional permission only in

respect of Ground + 3 floor, it cannot be said that on 10.11.1997, the second respondent has considered the application of the petitioner dated

04.04.1997, for additional construction also. While so, the stand taken by the second and third respondent that by the time when the application

dated 04.04.1997, for additional construction came to be considered by virtue of the G.O. D. No. 146, Housing and Urban Development (UD.I)

Department, dated 02.06.1998, the infrastructure development charges has also came into existence. Therefore, it cannot be said that the second respondent is not entitled to collect the amount of infrastructure development charges on behalf of the third respondent. The contentions of the learned Counsel appearing for the second respondent are well founded. When the concept of infrastructure development charges itself is for enabling the CMWSSB to provide adequate water supply or sewerage, admittedly in respect of flat 4 to 9, there is no approval granted by the CMDA as on date, the second respondent is certainly entitled to impose infrastructure development charges for the purpose of providing adequate water supply or sewerage.

19. In view of the same, it cannot be said that the impugned order of the second respondent in imposing the infrastructure development charges payable to the CMWSSB to the extent of Rs. 17,11,000/- is either arbitrary or illegal. The writ petition fails and the same is dismissed. As it is seen in the order of the second respondent dated 13.04.1999, the second respondent has granted revised planning permission permitting the petitioner to put up 4 to 9 floors in addition to Ground + 3 floors pursuant to the interim order passed by this Court in this writ petition. In as much as it is not in dispute that as per the interim order of this Court in this writ petition, the petitioner has paid 60% of the amount claimed in the impugned order, it is open to the second respondent to collect the balance amount of 40% from the petitioner. The writ petition is dismissed on the above terms. No costs.