



ABSTRACT

Chennai Metropolitan Development Authority - Order dated 10.8.2017 of High Court of Madras in W.A. No.787 of 2017 and CMP No.10882 of 2017 filed by M/s.Nethrodaya, Mogappair, Chennai - Representation seeking exemption for payment of I&A charges - Administrative sanction for providing special grants-in-aid through a special budgetary provision for Welfare of Differently abled Person department to defray the Infrastructure & Amenities Charges amounting to Rs.7.925 Lakh to be payable by M/s. Nethrodaya to CMDA - Waiver of interest payable for the above charges in respect of their construction of Training Centre and Residential Home for visually impaired at S.No.47/2 (Part) and 47/3, Nolambur Village - Orders - Issued.

HOUSING AND URBAN DEVELOPMENT (UD1) DEPARTMENT

G.O.(Ms) No.31

Dated: 09.03.2018

தேவலிளம்பி வருடம், மார்ச் 25,
திருவள்ளூர் ஆண்டு 2048.

Read:

1. High Court of Madras Order dated 10.8.2017 in W.A. No.787/2017 and CMP No. 10882/2017 filed by Nethrodaya.
2. From the Managing Trustee, Nethrodaya Mogappair, Chennai representation dated 5.9.2017.
3. Government Letter No.20966/UD1(2)/2017-1, dated 15.9.2017.
4. From the Member Secretary, Chennai Metropolitan Development Authority Letter No.C4/17250/2015, dated 05.10.2017

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ORDER:

In the High Court order 1st read above, the High Court of Madras has partly allowed the Writ Appeal and directed the petitioner Viz., Managing Trustee, Nethrodaya Mogappair, Chennai to submit a representation seeking exemption from payment of I&A charges, within a period of two weeks from the date of receipt of a copy of the order to the 1st respondent, who upon receipt of the same, is directed to consider the said representation on merits and in accordance with law and in the light of the observations made in this judgement and pass appropriate orders within further period of twelve weeks thereafter and communicate the decision taken to the writ petitioner / appellant.

2. In letter 2nd read above, the Managing Trustee, Nethrodaya Mogappair, Chennai has made following submissions:-

- (i) M/s.Nethrodaya is a self-help institution exclusively run for the betterment of the differently-abled. Established in the year 2002, it provides a host of career-enabling facilities to under-privileged boys and girls, most of them hailing from rural areas. As the founder was awarded as the "Best Social worker 2010 by Government of Tamil Nadu in recognition of his outstanding services to the differently-abled community Further, in recognition of its outstanding services to the differently-abled community of Tamil Nadu, Nethrodaya was selected for the Award as the Best Social Service Institution 2012 by Government of Tamil Nadu.
- (ii) We had started a college offering B.Ed. Special Education (Visual Impairment). Nethrodaya runs a free special Higher Secondary School exclusively for the visually challenged and orthopedically challenged boys and girls, recognized by Government of Tamil Nadu. The school has user friendly facilities and admits students from 6th standard to 12th standard offering them free education with separate boarding and lodging facilities for girls and boys within the premises completely free of cost. By Virtue of G.O.No.748 dated 20.11.2006, the Secretary to Government, Department of Revenue had leased the land measuring to an extent of 0.115 Hectare to the Petitioner Nethrodaya, for a period of thirty years, for rendering services to the visually challenged. Therefore, the entire land is vested only with the Government, Nethrodaya is only under the control and possession of the property
- (iii) We had constructed ground floor and first floor in the year 2009 after getting due planning permission and approval from the Member Secretary, CMDA and they had requested us to remit the I&A charges for the same. We had represented to Government as well as the Member Secretary, CMDA that I&A and other charges are not applicable to us, as the land is vested with the Government. However, without ascertaining the exemption available to us

under the Act, the Government rejected the waiver of I&A charges by its letter dated 19.12.2011. The Member Secretary, CMDA by letter dated 21.4.2014 had requested us to remit the sum of Rs.5,62,500/- towards Infrastructure and Amenities charges along with interest at 6% per annum for the ground floor construction.

- (iv) We had applied for permission to the Member Secretary, Chennai Metropolitan Development Authority, for the construction of second floor measuring 6300 sq.ft for offering vocational training and hostel. The Member Secretary, CMDA by letter dated 31.8.2016 granted approval, subject to the payment of about Rs.4,78,500/-.
- (v) We had made a detailed representation to the Member Secretary, CMDA, seeking exemption from the payment of I&A charges and other charges under Section 59 (4) of the Act, as the land is vested with the Government. Further, the type of the building is covered under institutional building and hence, charging Rs.500/- per sq.mt. is not applicable to the petitioner. However, the Member Secretary, CMDA by its letter dated 4.10.2016, stated that "your request cannot be considered since the Government in its letter dated 19.12.2011 rejected the waiver of I&A charges" and directed us to remit all the charges within 10 days, otherwise planning permission application will be returned unapproved.
- (vi) Aggrieved by the same, we filed W.P. No. 37908 of 2016 to set-aside the order of the Member Secretary, Chennai Metropolitan Development Authority (2nd respondent in the writ petition No. 37908 of 2016) dated 04.10.2016 bearing letter No.C4/17250/2015 and consequently direct the Member Secretary, CMDA to issue the approved building plan permission for the second floor construction to us without insisting for Infrastructure and Amenities (I&A), regularization fee and security deposit. The said Writ Miscellaneous Petition (WMP. No. 1452 of 2016) in W.P. No. 37908 of 2016 was allowed by an order

dated 17.03.2017 subject to the condition that we have to pay a sum of Rs.5,00,000/- to the Member Secretary, CMDA within a period of eight weeks from the date of receipt of a copy of the order, and as and when such payment is made, the Member Secretary, CMDA shall issue appropriate orders, approving the building plan subject to any other compliance, within a further period of four weeks thereafter. Aggrieved by the same, we filed W.A.No. 787 of 2017 and the writ appeal was partly allowed by an order dated 10.08.2017. In the said order the Hon'ble Division Bench directed the State Government to amend the Section 63(B) of the Tamil Nadu Town and Country Planning Act, 1971 in tune with the Disabilities Act, 2016.

- (vii) Further the Hon'ble Division Bench had pointed out the section 113 of the Tamil Nadu Town and Country Planning Act, 1971. The operative portion is extracted below:

"13. It is also relevant to extract Section 113 of the Tamil Nadu Town and Country Planning Act, 1971:

113. Exemptions.- Notwithstanding anything contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder".

Hence, we come forward this representation to yourself as per the order of the Hon'ble Division Bench which directed you to comply this order and to consider this representation as such to be treated as the representation made under section 113 of the Town and Country Planning Act, 1971 within a span of twelve weeks. Thus accordingly the Hon'ble Division Bench has passed the below order. The operative portion is extract below:-

"14. In the considered opinion of this Court, in the light of the welfare acts being performed by the writ petitioner/Institution, as pointed out, it is entitled to apply for the exemption of payment of I&A charges under the above said provision. As and when any representation is received in that regard from the writ petitioner/appellant, the 1st respondent, shall positively consider the same within a stipulated time."

"16. In the result, the writ appeal is partly allowed and the impugned letter of the Member Secretary, CMDA dated 04.10.2016 as well as the order dated 17.03.2017 in WMP No. 1452 of 2017 in W.P. No. 37908 of 2016 are set aside and the petitioner is at liberty to submit a representation seeking exemption for payment of I&A charges, within a period of two weeks from the date of receipt of a copy of this order to the 1st respondent, who upon receipt of the same, is directed to consider the said representation on merits and in accordance with law and in the light of the observations made in this judgment and pass appropriate orders within further period of twelve weeks thereafter and communicate the decision taken to the writ Petitioner/appellant. No costs. Consequently, the connected miscellaneous petition is closed".

4. In the circumstances, the petitioner viz. Nethrodaya has requested to comply with the order of the Hon'ble Division Bench in W.A. No.787 of 2017 and CMP No. 10882 of 2017.

5. On examination of the case it has been found that there is no provision in the Rights of Persons with Disabilities Act, 2016 (49 of 2016) requiring exemption and a precedent need not be set as it would then be claimed by other departments. Further there are no scheme or provision to provide for any such grant to cover the Infrastructure & Amenities Charges. Infrastructure & Amenities Charges have an overall purpose to support the creation of Infrastructure and amenities when fresh development takes place. Introducing a provision for exemption or making a new exemption would not be desirable as it would create a new class or category of cases eligible for exemption. At the same time, to encourage NGOs and other agencies doing good work amongst the differently abled, specific provisions require to be made by Government to share the burden. Hence it was decided to take the following view in this case.

- i. An exemption from payment of Infrastructure & Amenities Charges need not be provided as proceeds go into a separate fund.
- ii. Instead as a special case M/s. Nethrodaya may be considered for a special grant-in-aid from the Government of Tamil Nadu to defray the cost of the Infrastructure & Amenities Charges payable by them to CMDA.
- iii. For this purpose, a special budgetary provision may be made in the budget for the Welfare of Differently abled Persons Department.

6. The Government after careful examination decided to implement the order dated 10.8.2017 of High Court of Madras in W.A. No.787 of 2017 and CMP No.10882 of 2017 filed by M/s. Nethrodaya to dispose off representation seeking exemption for payment of I&A charges and the Government accord Administrative sanction for providing special grants-in-aid through a special budgetary provision for Welfare of Differently

abled Person department to defray the Infrastructure & Amenities Charges amounting to Rs.7,92,500/- (Rupees Seven Lakhs Ninety two thousand and five hundred only) to be payable by M/s.Nethrodaya to CMDA. The Government also waive off the interest payable for the above charges in respect of their construction of Training Centre and Residential Home for visually impaired at S.No.47/2 (Part) and 47/3, Nolambur Village, Chennai.

7. The Principal Secretary to Government, Welfare of Differently Abled Persons Department or his authorized nominee shall take necessary action to settle the amount to Chennai Metropolitan Development Authority on behalf of M/s Nethrodaya.

8. Pending receipt of funds from the Government in Welfare of Differently abled Persons Department, the Chennai Metropolitan Development Authority is requested to issue appropriate orders approving the building plan of M/s. Nethrodaya in respect of their construction of Training Centre and Residential Home for visually impaired at S.No.47/2 (Part) and 47/3, Nolambur Village, Chennai.

9. This order issue with the concurrence of Finance Department vide its U.O.No.12095/Hg & UD/18, dated 08.03.2018.

(BY ORDER OF THE GOVERNOR)

S. Krishnan,
Principal Secretary to Government.

To
The Managing Trustee,
M/s.Nethrodaya, No.47/1, Phase II,
Mogappair West, Chennai - 600 037.
The Principal Secretary to Government,
Welfare of Differently Abled Persons Department,
Chennai-9.
The Member Secretary, CMDA, Chennai.
The Pay and Accounts Officer, Chennai-5/9/18.
The Accountant General, Chennai-9/18.

Copy to:

The Special Personal Assistant to Hon'ble Deputy Chief Minister, Chennai-9.
The Finance Department, Chennai-9.
The Senior Private Secretary to Principal Secretary to Government,
Housing and Urban Development Department, Chennai-9.
SF/SC.

//Forwarded by order//

cc: m 9/3/18
SECTION OFFICER.