

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

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THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.24952 of 2015

and M.P.No.1 of 2015

L.Amirthavalli .. Petitioner

Vs

The Member Secretary & Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Salai,
Egmore, Chennai - 600 008. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mamdamus calling for the records relating to order passed by the respondent herein, the Member Secretary & Chief Executive Officer, Chennai Metropolitan Development Authority in Letter No.FGM3314/13 dated 30.06.2015 in cancelling the order of allotment of shop and quash the same consequently direct the respondent to confirm the order of allotment passed in letter No.FM/3314/13 dated 12.07.2013 permitting the petitioner to pay the balance sale consideration in instalments as per terms and conditions of allotment order through Canara Bank or any other Bank.

For Petitioner : Mr.Govinda Reddy
For Respondent : Mr.C.Johnson
for Mr.P.Tamil Mani

ORDER

Heard Mr.Govinda Reddy, learned counsel appearing for the petitioner and Mr.C.Johnson, learned counsel appearing on behalf of Mr.P.Tamil Mani, learned counsel on record for the

respondent-CMDA and with their consent, this writ petition is taken up for final disposal.

2. The petitioner has filed an application for allotment of a shop in Koyambedu Wholesale Market for sale of food grains. This application was made by the petitioner in the year 2003, however, the petitioner was allotted the shop in the year 2013. The specific case of the petitioner is that, a copy of the order of allotment dated 12.07.2013 was not served on him and only when the petitioner approached the respondent in person during May 2014, a copy of the allotment order was served on the petitioner. However, it is submitted by the learned counsel appearing for the petitioner that the allotment order served on the petitioner states that CMDA has made an option to the food grain traders either to avail financial assistance from Canara Bank of Park Town Branch, Chennai, for making 90% payment of the shop price subject to the terms and conditions specified in the Tripartite Agreement to be entered with Canara Bank of Park Town Branch or to make lump sum payment directly to CMDA, by Demand Draft. By referring to the said condition, it is submitted that the petitioner had specifically requested the respondent to issue necessary communication to the Canara Bank to avail financial assistance and this was submitted to the respondent in writing on 28.05.2014 and thereafter, the petitioner has remitted an amount of Rs.5,00,000/-. It is submitted that while the fact stood thus that the petitioner was shocked to receive the impugned order dated 30.06.2015, cancelling the allotment. The grounds on which the impugned order is challenged are contending that the order of allotment was not served on the petitioner till May 2014 and only when he personally met the respondent, he was given a copy of the same. Secondly, unless and until the CMDA makes arrangement with Canara Bank, the petitioner is finding it difficult to mobilize finance and respondent having not fully discharged their obligation as stated in the allotment order, cannot cancel the allotment alleging that the petitioner is a defaulter. Thirdly, it is contended that the allotment order does not specify what is the quantum of amount payable for each instalment.

3. The learned Standing Counsel appearing for the respondent/CMDA submitted that the total demand payable by the petitioner is Rs.25,87,455/- , out of which, the petitioner has paid Rs.5,65,300/- and the balance is Rs.20,22,155/-. Further, it is submitted that the petitioner has herself sent a communication on 05.06.2014 stating that she is unable to arrange finance and this itself will show that she has received the allotment order.

4. On an earlier occasion, this Court adjourned the matter to enable the learned counsel for the respondent to get specific instructions and produce record to show that the order of allotment, complete in all respects, was served on the petitioner. Today, when the matter is taken up for hearing, it is candidly admitted by the learned Standing counsel appearing for the respondent that there is no proof to show that the order of allotment was served on the petitioner. If such is the case, the impugned order cancelling the allotment on the ground of default is not tenable. That apart, the order of allotment does not specify the instalments payable by the petitioner and relevant columns in Page 2 of the allotment order are left blank. This clearly shows non-application of mind. That apart, the impugned order is bereft of particulars, it is a cyclostyle format and only the name and allotment number have been filled in and appears to have been sent to several such allottees. The impugned order was not preceded by a show cause notice and the petitioner did not had an opportunity to rebut the allegations made against her. Hence, owing to all these glaring defects, the impugned order is liable to be set aside.

5. Accordingly, the Writ Petition is allowed. The impugned order passed by the respondent dated 30.06.2015 is set aside and the allotment is restored in favour of the petitioner. The petitioner is directed to approach the respondent/CMDA within two weeks from the date of receipt of a copy of this order and the petitioner on approaching the respondent, the respondent shall assist the petitioner in approaching the Canara Bank to enable her to secure financial assistance, as provided in Clause 2 of the allotment order dated 12.07.2013 and thereafter effect payment which is due and payable by the petitioner. In the event, the Bank does not sanction financial assistance within a reasonable time, then the petitioner has to remit the money by arranging finances from other sources for which eight weeks time is granted to the petitioner from the date of which the Canara Bank of Park Town Branch, Chennai takes a decision on the petitioner's loan application. No costs. Consequently, connected miscellaneous petition is closed.

sd/
ASSISTANT REGISTRAR (CO)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

ds

To:

The Member Secretary & Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Salai,
Egmore, Chennai - 600 008.

+1 CC to MR.C.Johnson Advocate. SR.NO. 64976
+1 CC to MR.Govinda Reddy Advocate. SR.NO. 64655
+1 CC to MR.P.Tamil Mani Advocate. SR.NO. 64476

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CO-KK
JD 14/12/2015



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