

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.25212 of 2015

S.Thangamariappan

.. Petitioner

Vs

Chief Executive Officer,
Chennai Metropolitan
Development Authority,
No.1, Gandhi Irwin Salai,
Egmore, Chennai - 8.

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records and quash the letter No.FGM\3314\13 dated 30.6.2015 on the file of the Office of the respondent.

For Petitioner : Mr.R.Subramanian
For Respondent : Mr.C.Johnson
for Mr.P.Tamil Mani

ORDER

Heard Mr.R.Subramanian, 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 this Writ Petition challenging the order passed by the respondent/CMDA on 30.06.2015, cancelling the allotment made in his favour in Koyambedu Wholesale Market for trading food grains. The impugned order has been challenged primarily on two grounds. Firstly, by contending that it is in violation of principles of natural justice and the petitioner was not afforded with an opportunity before passing the same. The second ground will be that the order of allotment dated 12.07.2013 does not specify the instalments payable and all the columns are left blank in Page No.2 of the allotment order and only for the first time, the amounts payable by the petitioner has been mentioned in the counter affidavit filed by the respondent. Therefore, it is submitted that the impugned order is liable to be set aside.

3. It is the further submission of the learned counsel appearing for the petitioner that though in the counter affidavit, it is stated that, a communication was sent to the petitioner on 05.12.2013, no such communication has been received by the petitioner and therefore, this Court on earlier occasion, has directed the respondent to produce proof of service of such letter being served on the petitioner and till date the same has not been produced.

4. The learned counsel for the respondent/CMDA submitted that the petitioner is a defaulter, therefore the allotment was cancelled and the total amount the petitioner is liable to pay is Rs.22,97,970/- and the petitioner has paid Rs.1,68,970/- and the balance payable is Rs.21,29,000/-. Since the petitioner failed to pay the same, the allotment has been cancelled.

5. After hearing the learned counsel for the parties and perused the material placed on record, it is evidently clear that the impugned order is merely a total non-application of mind. It is a pre-prepared printed format and only the name of the petitioner and the allotment number has been filled up and prior to the issuance of cancellation order, no show cause notice was issued to the petitioner. On this ground alone, the impugned order is set aside. That apart, there is no proof produced by the respondents to show that the communication dated 05.12.2013 has been received by the petitioner and in the absence of the same, it has to be held that there is violation of principles of natural justice. Further, the allotment order dated 12.07.2013 does not state the amount of instalment payable by the petitioner. All the columns are left blank, this is one more reason to hold that the entire auction is vitiated on account of non-application of mind.

6. With all the above grounds, the petitioner is entitled to succeed. Accordingly Writ petition is allowed and the impugned order passed by the respondent dated 30.06.2015 is quashed and the petitioner is granted three months time to pay the balance amount due and payable to the respondents as in the said schedule. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ds

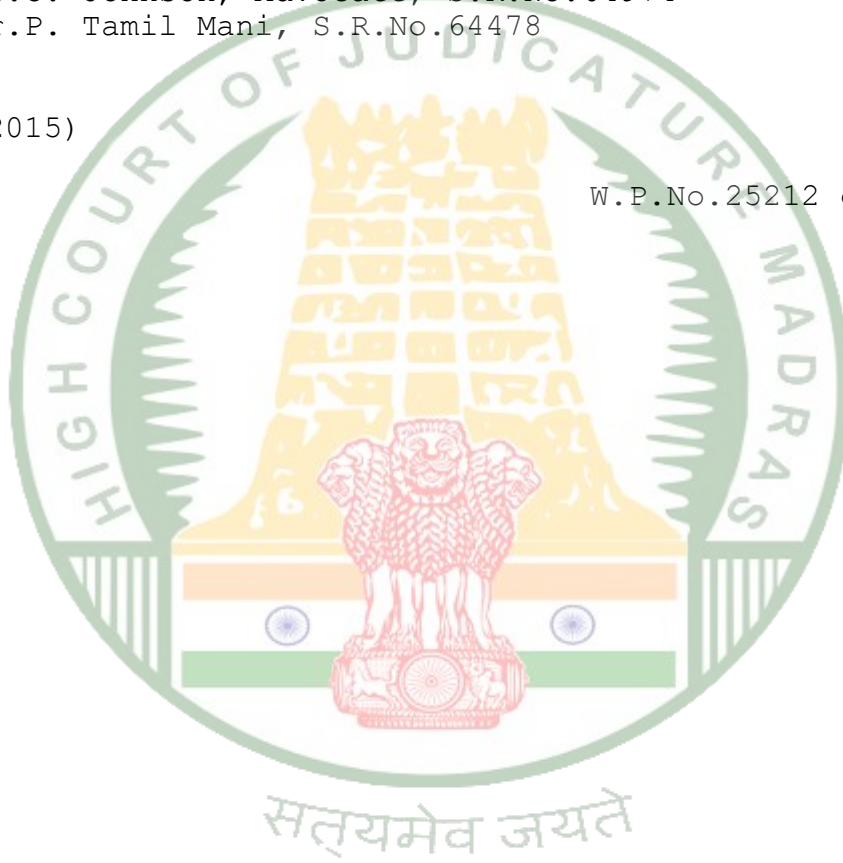
To:

Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Salai,
Egmore, Chennai - 8.

+lcc to Mr.R. Subramaniam, Advocate, S.R.No.65028
+lcc to Mr.C. Johnson, Advocate, S.R.No.64974
+lcc to Mr.P. Tamil Mani, S.R.No.64478

PA(CO)
EU(15/12/2015)

W.P.No.25212 of 2015



WEB COPY