

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16-10-2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.30874 of 2015

Mr.B.K.Venkatesan, aged 71 years,
Proprietor
M/s.Sriram Traders
S/o.B.D.Kothandapani
No.83,Acharappan Street,
George Town,
Chennai-600 001.

... Petitioner

Vs.

1. Chennai Metropolitan Development Authority
Rep. by its Member Secretary
No.1,Gandhi Irwin Road,
Egmore, Chennai-600 008.

2. Chennai Metropolitan Development Authority
Rep. by its Chief Executive Officer
No.1,Gandhi Irwin Road,
Egmore, Chennai-600 008.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, directing the respondents to allot a shop vide Application No.FGM 417, dated 23.08.2003, measuring to an extent of 600 sq.ft. In the category of Type-II in the Food Grains Market at Koyambedu Wholesale Market Complex, Koyambedu, Chennai-600 107 to the petitioner as per the representation of the petitioner dated 14.10.2009.

For Petitioner : Mr.M.Raja Sekhar

For Respondents : Mr.K.Raja Srinivas
Standing counsel for CMDA

ORDER

The petitioner's grant father, Dharmaraja Chettiar was the original trader. After the demise of the petitioner's grant father, the petitioner's father has been continuing the business and the petitioner is running the business now. He applied for allotment of a shop in the Food Grains Market at Koyambedu, through application FGM No.417 and remitted Rs.1,47,000/- towards initial payment for cost of the building and Rs.1000/- towards registration charges. Thereafter,

the respondents have not informed any development to the petitioner.

2. After waiting over a long time, in 2009, by a representation dated 14.10.2009, the petitioner sought for allotment of a shop, as per his application and also expressed his willingness to pay the consideration for the construction. However, nothing was informed to him even thereafter. Hence, the petitioner has come before this Court.

3. Heard Mr.M.Rajasekhar, learned counsel appearing for the petitioner and Mr.K.Rajasrinivas, learned counsel appearing for the respondents. Mr.K.Rajasrinivas, learned counsel appearing for the respondents, would submit that the petitioner has approached this court belatedly. He would submit by producing a file that the allotment order dated 12.7.2013 was despatched and even thereafter, the petitioner has not made the payment and therefore, he is not entitled for allotment of any shop.

4. It is an admitted fact that the petitioner applied for a shop through application FGM.No.417 with initial deposit of Rs.1,47,000/- towards cost of construction. According to the petitioner, nothing has been heard from the respondents. Whereas, according to the respondents, inspite of the allotment order, the petitioner has not come forward to pay the instalments as per the allotment order.

5. The files have been produced. A perusal of the files would reveal that there is an application made by the petitioner with other records and the allotment order said to have been despatched to the petitioner is found. The order dated 12.7.2013 itself would reveal, it is a newly made one and it is prepared for producing before this Court. In the acknowledgement card for having served upon the petitioner found in the file, no postal seal is found, nor petitioner's signature is found. It is nothing but, an attempt to mislead the court. There is no material to substantiate the contention of the respondent that the allotment order dated 12.7.2013 has been served upon the petitioner.

6. The contention of the learned counsel appearing for the respondent that the petitioner approached the respondent belatedly is liable to be rejected for the simple reason that the allotment order was not at all served upon the petitioner. Unless, the order is communicated, it will not take effect and it is well settled in law. When such is the position, the theory of allotment order served upon the petitioner and the failure to pay the instalments are liable to be rejected. If the allotment order was never served upon the petitioner, there is no question of failure of payment of instalments. Since the petitioner through representation dated 14.10.2009 offered to pay the sale consideration along with interest, the respondent may collect the sale consideration along with interest from 2009.

7. Therefore, the respondent is directed to send the allotment order to the petitioner within two weeks from the date of the receipt of a copy of the order and as per the allotment order, the petitioner is at liberty to pay the amount, either in lump sum or through

instalment scheme.

8. With the above the writ petition is disposed of. No costs. Consequently the connected M.P.No.1 of 2015 is closed.
vk

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub-Assistant Registrar

To:

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

+1 C.C. to MR.K.Rajasrinivas Advocate in Sr.NO.57441
+1 cc to M/s.M.Raja sekhar, Advocate (sr.57432) 27/10/2015

W.P.No.30874 of 2015

KU(CO)
sd : 26/10/2015

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