

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2016

Coram:

The Hon'ble Mr.Justice N.KIRUBAKARAN

Writ Petition No.5052 of 2015
and
M.P.Nos. 1 and 2 of 2015

R.Subramani

... Petitioner

Versus

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, Food Grains Market,
Chennai, No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records in respect of the 2nd Respondent Letter No.FGM/5613/2013 dated 13.02.2015 to quash the same and to direct the Respondent to consider the Petitioner's Application No.FGM 986 dated 29.08.2003 and Representation dated 17.07.2014 for allotment of the Type-I shop in Food Grains Market having an area of approximately 367 sq. ft.

For Petitioner .. Mr.M.Rajasekhar

For Respondents .. Mr.Venkat Ramani, Addl.Adv.Gen.
Assisted by Mr.P.Tamilmani.

ORDER

The Petitioner was running a business in a rented premises at Govindappa Street, Seven Wells, Chennai and thereafter, he applied for Type-I shop having an approximate extent of 367 sq. ft in Food Grains Market, Koyambedu, through Application No.FGM986, dated 29.08.2003. He has paid Rs.58,000/- by way of Demand Draft, to the second respondent, towards initial deposit of 10% value of the Type-I shop having an approximate extent of 367 sq. ft. Even after the said

application and payment of Rs.58,000/-, there was no communication from the respondents regarding allotment. Therefore, the petitioner made a representation to the second respondent on 17.07.2004 regarding non communication of any of the orders. However, the second respondent stated that they sent a letter dated 11.11.2013 allotting a shop to the petitioner and as per the said allotment order, the petitioner has not paid the amount on or before 30.11.2013.

2. Thereafter, the petitioner issued two legal notices dated 12.12.2014 and 05.02.2015 and sought for allotment of Type-I shop, stating that he was ready to pay the entire amount towards the cost of the shop. The respondent sent replies dated 02.01.2015 and 13.02.2015 stating that the CMDA has allotted a Shop in Type-I category with an approximate extent of 367 sq. ft. at Rs.6446/- per sq. ft. vide Allotment order dated 12.07.2013 and a letter has been sent to the petitioner to remit the payment as intimated in the allotment order with interest on or before 30.11.2013 vide letter dated 11.11.2013 and since the petitioner has not remitted any amount towards cost of the shop, the allotment got cancelled. The respondent further directed the petitioner to surrender the original receipt for refund of amount remitted to CMDA towards request for allotment of shops made in Application No.986. Therefore, the petitioner has come before this Court challenging the communication dated 13.12.2015 by which the petitioner's allotment was cancelled.

3. Heard Mr.M.Rajasekhar, learned counsel appearing for the petitioner and Mr.Venkat Ramani, learned Additional Advocate General, appearing for the respondents.

4. Since the petitioner contended that after payment of 10% of the actual costs of the shop, no communication was sent to the petitioner, this Court directed the respondent to produce the records. A perusal of the records would reveal that the alleged allotment order dated 11.11.2013 is found place and there is no evidence of communicating the said order to the petitioner. Similarly, for the cancellation order dated 02.01.2015, there is no proof for having sent and received the said communication by the petitioner available by way of receipt or acknowledgment. Therefore, it is clear that except an endorsement recorded in those communications to the effect that they have been despatched by post, nothing is available for having served upon the petitioner.

5. It is trite law that any order would take effect only when it is served upon/communicated to the concerned person. The file produced by the respondent itself would prove that absence of any material regarding communication of the orders. Therefore, this Court is of the opinion that without serving upon the petitioner, the allotment order and cancellation orders

have been made only to defeat the rights of the petitioner. Therefore, both the orders are liable to be set aside as they are become ineffective.

6. Moreover, the petitioner has already made a representation dated 17.07.2004 to the second respondent, offering to pay the entire sale consideration for Type-I shop having an approximate extent of 367 sq. ft., which is also found place in the affidavit filed before this Court.

7. This Court while passing this order took note of the order passed by this Court in a similar circumstance, in B.K.Venkatesan vs. Chennai Metropolitan Development Authority and another in Writ Petition No.30874 of 2015 on 16.10.2015. In the said order also, this Court directed the respondent to send the allotment order to the petitioner therein within two weeks from the date of receipt of copy of the order. Para 7 of the said order reads as follows:-

"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. In view of the above, the respondents shall make allotment of Type-I shop having an approximate extent of 367 sq. ft. in Food Grains Market, Koyambedu, to the petitioner, within two weeks from the date of receipt of a copy of this order and the same shall be communicated to the petitioner. On such reception of the order, the petitioner shall pay the entire sale consideration of the shop within 8 weeks. On such payment, the respondent shall hand over possession of the shop within one week and thereafter, other formalities including execution of sale deed in favour of the petitioner would follow.

9. The writ petition ordered accordingly. No costs. Consequently, M.P.Nos. 1 and 2 of 2015 are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gr

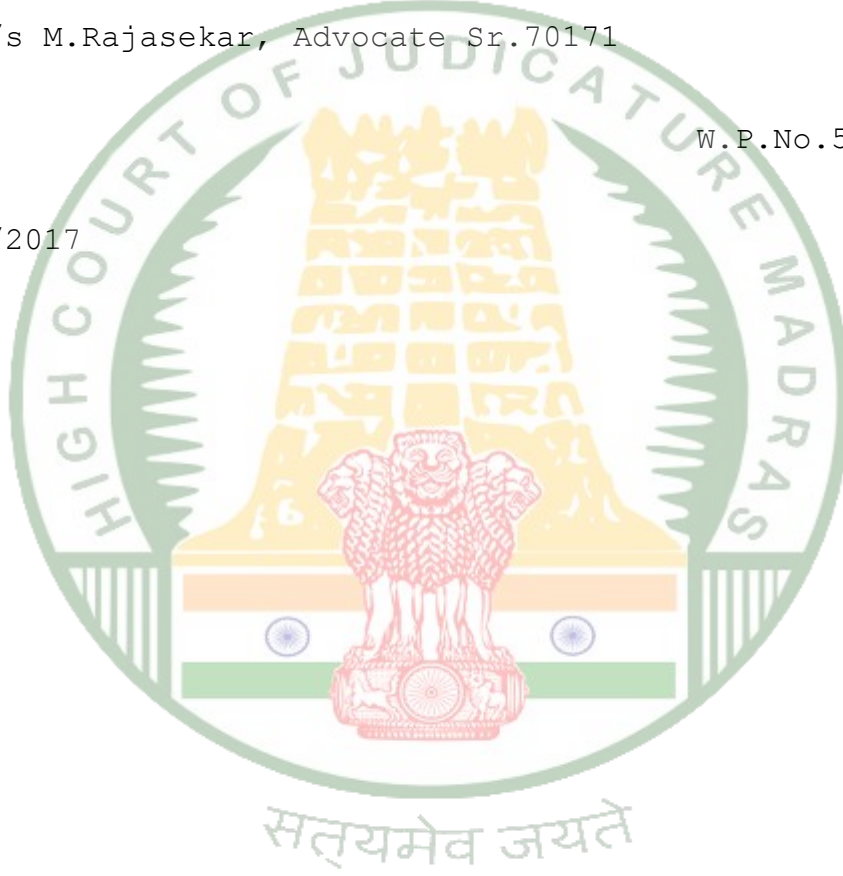
TO

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, Food Grains Market,
Chennai, No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

+1cc to M/s M.Rajasekar, Advocate Sr.70171

W.P.No.5052 of 2015

AK(CO)
RVR 10/01/2017



WEB COPY