

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 27326 of 2016
&
W.M.P. No. 23524 of 2016

Mrs. L. Amirthavalli

..Petitioner

Vs.

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

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorarified Mandamus to call for records relating to letter FGM/4031/2015 dated 11.05.2016 on the file of the respondent, quash the same and consequently direct the respondent to deliver the shop expeditiously without requiring the petitioner to pay any amount.

For Petitioner :: Mr.Govinda Reddy

For Respondent :: Mr.P. Tamilmani

O R D E R

The writ petition is filed challenging the proceedings of the respondent in FGM/4031/2015 dated 11.05.2016 and for a consequential direction to the respondent to deliver the shop expeditiously to the petitioner without requiring the petitioner to pay any amount.

2. The petitioner submitted an application to the respondent on 07.07.2003 for allotment of a shop, type No.I, to an extent of 240 sq.ft., in Koyambedu Food Grains Wholesale Market Complex, along with the requisite charges. Though on 12.07.2013, the allotment of shop was made in favour of the petitioner, the order of allotment was not served upon the petitioner. On 25.03.2014, the petitioner again submitted an application seeking allotment of shop and requested the respondent to intimate the order of allotment and furnish a copy of the allotment order and details and mode of payment to be

made. On 28.05.2014, the petitioner was furnished with a copy of the allotment order and on 03.06.2014, the petitioner remitted a sum of Rs. 5 lakhs, as required by the respondent. According to the petitioner, only on receipt of allotment intimation dated 28.05.2014, she came to understand that the said allotment had been made as early as on 12.07.2013 itself. Since the construction of shops was underway in the said Complex, which was expected to be completed in June, 2014, the petitioner was under the impression that the shop would be delivered to her after the completion of construction. However, on 30.06.2015, a cancellation order was served upon the petitioner stating that since the petitioner failed to pay the instalments in time, as per the resolution passed by the respondent in Resolution No. 113/2013 dated 12.10.2013, the order of allotment made to the petitioner was cancelled. Challenging the said order, the petitioner filed W.P. No. 24952 of 2015 and this Court, by order dated 26.11.2015, allowed the writ petition, setting aside the order of cancellation passed by the respondent dated 30.06.2015 and directed the petitioner to approach the respondent within two weeks from the date of receipt of a copy of this order, thereafter which, the respondent was directed to assist the petitioner in approaching the Canara Bank to enable her to secure financial assistance and in the event of the Bank not sanctioning financial assistance, the petitioner was directed to remit the amount, by arranging finances from other sources, for which eight weeks' time was granted to the petitioner from the date on which the Canara Bank, Park Town Branch, takes a decision on the petitioner's loan application. Pursuant to the said order, since Canara Bank did not sanction any loan, the petitioner arranged for funds to the tune of Rs. 20,24,666/-, being the entire balance amount, as per the counter affidavit filed in support of W.P. No. 24952 of 2015 and remitted the same, to the respondent, by way of three Demand Drafts. On receipt of the balance amount, instead of handing over the shop to the petitioner, by letter dated 14.03.2016, the respondent claimed a sum of Rs.6,92,877/- as outstanding towards balance shop cost and interest due as on 31.03.2016 and asked the petitioner to remit the same on or before 31.03.2016. In response to the said letter, the petitioner sent a representation dated 13.04.2016 giving all the details and modes of payment made by her and requested the respondent to hand over the shop so as to enable her to carry on the business. Subsequently, by letter dated 11.05.2016, the Chief Executive Officer, Chennai Metropolitan Development Authority, called upon the petitioner to pay a sum of Rs. 7,09,398/- towards the pending instalments and penal interest @ 14.5% from 31.08.2013 to 31.05.2016, on or before 31.05.2016, thereafter which, it was stated that handing over of shop, to the petitioner, would be considered. Challenging the said order, the petitioner has come forward with the present writ petition.

3. Heard Mr. Govinda Reddy, learned counsel for the petitioner and Mr.P.Tamilmani, learned counsel for the respondent.

4. It is stated by Mr.P. Tamilmani, learned counsel for the respondent that the petitioner should have made the payment in time. However, she deliberately failed to make the payment and the non-payment is for the period from 31.08.2013 to 31.05.2016. As per clause 3(d) of Terms and Conditions of Allotment of Shops in Foodgrains Market at Koyambedu, "Any delay in payment of quarterly instalment will attract 17.5% (15+2.5) interest per annum" and based on the said clause alone, the penal interest has been imposed and therefore, the impugned order is valid.

5. There is no dispute with regard to the application submitted by the petitioner for allotment of shop, as early as on 07.07.2003. Only thereafter, the dispute had arisen. Though the respondent contends that the allotment of shop was made in favour of the petitioner, as early as on 12.07.2013 and it was cancelled by order dated 30.06.2015, for non-payment of the required amount, this Court, rejected the said contention of the respondent, while allowing the writ petition filed by the petitioner, challenging the cancellation of order of allotment, namely, W.P. No. 24952 of 2015, by order dated 26.11.2015 and restored the allotment made in favour of the petitioner. The relevant paragraphs of the said order dated 26.11.2015, are usefully extracted hereunder:

"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 numbr 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."

From the above extract, it is clear that this Court had already found that there was no proof filed by the respondent for having served the order of allotment on the petitioner and therefore, cancellation of allotment, for non-payment of required amount, was not sustainable. In view of the above finding of this Court, the claim for penal interest @ 14.5% for the period from 31.08.2013 to 31.05.2016 does not arise, as the allotment order dated 12.07.2013, did not take effect, as it was not served on the petitioner and the delay, in payment of instalments, cannot be attributed to the petitioner. Besides, the question of payment of instalment would arise, if the allotment order had been served on the petitioner and in the event of service of the allotment order, if any default had been committed in payment, only then the question of levy of penal interest would arise. In the absence of the same, the petitioner cannot be mulcted with liability of penal interest. If at all, loss is caused to the respondent, it is only at the invitation of the respondent.

6. Hence, for the reasons stated above, the amount demanded in the impugned order, to the tune of Rs. 7,09,398/-, towards pending instalments and penal interest, is held to be illegal and the impugned order is hereby set aside. The writ petition is allowed. The respondent is directed to hand over vacant possession of shop No. A/667, as per the petitioner's application No. 720, on or before 15.11.2016, failing which the respondent shall appear before this Court on 17.11.2016. No costs. Connected W.M.P. is closed.

7. For reporting compliance regarding handing over possession of shop to the petitioner, call the matter on 17.11.2016.

04.11.2016

This Writ Petition having been listed "For Reporting Compliance" on Tuesday, the 22nd day of November 2016/ and made herein in the presence of M.P.Govinda Reddy, Advocate for the petitioner and Mr.P.Tamilmani, advocate for the respondent, the court made the following order:

When the matter is listed today "For Reporting Compliance", Mr.P. Tamilmani, learned counsel for the respondent would submit that as per the order of this Court dated 04.11.2016, Shop No. A/667, in Koyambedu Food Grains Wholesale Market Complex was handed over to the petitioner on 15.11.2016. In this regard, an affidavit has been filed by the Member Secretary, Chennai Metropolitan Development Authority, along with a copy of the clearance certificate for handing over the shop to the petitioner. The said affidavit is taken on file.

2. Though there is no representation on behalf of the petitioner, since the order of this Court has been complied with by handing over the shop to the petitioner and proof, in regard thereto, has also been produced, no further orders are necessary.

Sd/-
Asst.Registrar (CS-II)
Dt.11.11.16

/true copy/

Sub Asst. Registrar

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

+1 cc to Mr.D.GovindaReddy, Advocate,sr.63096

+1 cc to Mr.P.Tamilmani,advocate,sr.68181

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