

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.31638 of 2016
& W.M.P.No.27453 of 2016

G.R.Prabhakar Raja

.. Petitioner

Vs.

1.The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

2.Chennai Metropolitan Development
Authority, rep. by its
Chief Executive Officer,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records in letter No.FMG/5567/2013 dated 29.07.2016 cancelling the allotment of shop in Type II Food Grain Market whole sale and quash the impugned order by directing the respondent to allot a shop to the petitioner herein in Type II Food Grains whole sale Market Koyambedu.

For Petitioner
For Respondents

.. Mr.G.C.Santhanakrishna
.. Mr.P.Tamilmani, Standing Counsel

ORDER

The petitioner's grandfather one P.M.Venkatarathinam was allotted a shop in Type-II CCT category. An allotment confirmation letter was issued on 12.07.2013 followed by reminder letters dated 11.11.2013 and 05.12.2013 asking the petitioner's grandfather to make the requisite payment. It appears that the petitioner's grandfather, who was the original allottee, died on 11.11.2011 itself. Therefore, admittedly, the confirmation letter followed by reminders and a subsequent

letter to pay the amount in instalments have been sent in the name of the dead person being the grandfather, who incidentally was the original allottee.

2. When the petitioner filed writ petition in W.P.No.28318 of 2015, this Court has passed the following order on 31.03.2016.

"From the counter affidavit filed by the second respondent CMDA, it is seen that the petitioner's father P.M.Venkatarathinam was issued an allotment confirmation letter dated 12.07.2013, and it appears that he was a defaulter and inspite of the reminders the dues were not cleared. It is stated that the arrears payable is Rs.46,55,944/-. Since the arrears were not cleared inspite of several reminders, the allotment was cancelled. It is further stated in the counter affidavit, based on the resolution passed by the Authority, 23 allottees have remitted the shop cost directly to CMDA account and inspite of those who have not paid beyond the due date have been cancelled vide cancellation order dated 30.06.2015, with a direction to collect the payments made by surrendering the original receipts. It is further stated that the petitioner is one among them as he is the son of the allottee Thiru P.M.Venkatarathinam, who expired on 11.11.2011.

In the light of the stand taken by the CMDA it is open to the petitioner to approach the CMDA as directed and work out his remedy."

3. Thereafter, the petitioner's request was considered and rejected on the premise that he was not paid any other amount other than the initial payment of Rs.1,47,000/-, which in fact was paid by his grandfather on 14.07.2003 while he was alive.

4. In such view of the matter, this Court is of the view that it would be appropriate to set aside the order impugned and accordingly, it is set aside since the factum of death of the original allottee has not been taken into account coupled with the subsequent communication sent in the name of the dead person and consequently, the respondents are directed to issue a notice to the petitioner, who is doing business in the shop allotted to his grandfather as of now, indicating the amount payable by him. If the petitioner is not willing to pay the said amount, it is well open to the respondents to proceed

thereafter as per their wish. While doing so, it is for the respondents to consider the amount quantified whether to be paid in instalments or otherwise as it is only a concession apart from a discretion, which solely lies with them.

5. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Member Secretary,
Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai-8.

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

+1 cc to Mr.P.Tamilmani Advocate sr 14915

+3 ccs to Mr.G.C.Santhana Krishna Advocate sr 14577

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W.P.No.31638 of 2016

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