

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2018

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.32970 of 2017

S.Thangamariappan

... Petitioner

vs.

The Executive Officer,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road,
Egmore, Chennai.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of mandamus, seeking a direction to the Respondent to hand over the Key of Shop No.GA 11 in Koyambedu Foodgrains Market, Chennai, as per allotment No.FM/3314/2013, dated 12.07.2013.

For Petitioner : Mr.R.Subramanian
For Respondent : Mr.Karthik Rajan
for Mr.M.Karthikeyan

O R D E R

Petitioner has come up with this Writ Petition seeking a direction to the Respondent to hand over the Key of Shop No.GA 11 in Koyambedu Foodgrains Market, Chennai, as per allotment No.FM/3314/2013, dated 12.07.2013.

2. According to the Petitioner, he had to pay certain amount to the Respondent/CMDA and he arranged finance from HDFC Bank and submitted a Demand Draft for a sum of Rs.28,50,409/- to the Respondent/CMDA on 21.09.2017. In spite of receipt of the Demand Draft, as there was no reply from the Respondent/CMDA, the Petitioner caused them a legal notice, requesting to hand over the key of the Shop in question. As there was no response from the Respondent/CMDA, the Petitioner is before this Court by way of the present Writ Petition.

3. Respondent has filed counter affidavit to the following effect:

3.1. The Petitioner had applied for a Type-I Shop under CCT category in Food Grain Market at a cost of Rs.6,446/- per square

feet at a total cost of Rs.23,65,682/- and he was informed to remit the cost vide the Respondent's letter No.FGM/3314/2013, dated 12.07.2013.

3.2. The Petitioner had paid only Rs.1,68,970/- towards the allotment of Type-I Shop in Food Grain Market and he had failed to remit the balance amount to the Respondent Office. The Respondent, by letter dated 11.11.2013 had extended the time limit for remitting the dues, till 30.11.2013. Further extension was also granted by the Respondent vide Letter dated 05.12.2013, till 31.12.2013. As the Petitioner failed to remit the balance amount despite grant of two extensions, the allotment order was cancelled by the Respondent vide Letter No.FGM/3314/2013, dated 30.06.2015.

3.3. Aggrieved by the cancellation order dated 30.06.2015 issued by the Respondent, the Petitioner filed W.P.No.25212 of 2015 and this Court, by an order dated 26.11.2015, allowed the Writ Petition by quashing the cancellation order dated 30.06.2015 issued by the Respondent. While doing so, this Court had also granted three months' time to the Petitioner to pay the balance amount due and payable to the Respondent, as in the Schedule. Accordingly, the Petitioner was informed by the Respondent vide Letter dated 10.03.2016 to remit the balance due. However, the balance amount remained unpaid by the Petitioner within the time frame stipulated by this Court.

3.4. Instead, the petitioner filed Contempt Petition No.806 of 2016 and this Court, while disposing of the said Contempt Petition, by an order dated 27.04.2016, held as under:

"5. Accordingly, the levy of interest for the period from 30.09.2013 till 29.06.2015 at 14.5% is set aside and the Petitioner is directed to pay interest from 30.06.2015 till the date of payment on Rs.21,29,000/- at 14.5%.

6. The Respondent/CMDA shall take note of this order to issue revised demand to the Petitioner and grant the Petitioner 15 days time to remit the same."

3.5. In due compliance of the above order, the Petitioner was informed by the Respondent vide Letter dated 05.07.2016 that the revised demand on shop cost and interest payable for the Food Grain Shop had to be remitted within fifteen days from the date of receipt of that letter. The same was followed by reminders by the Respondent, vide letters dated 23.09.2016, 05.12.2016, 14.02.2017 and 20.06.2017. By the Respondent's letter dated 20.06.2017, the Petitioner was categorically

informed to pay Rs.27,47,256/- towards the dues payable by him on or before 30.06.2017, failing which the allotment shall be cancelled without further notice. Despite receipt of the said letter from the Respondent, the Petitioner did not remit the amount within the stipulated date.

3.6. Much after the expiry of the time limit stipulated, the Petitioner produced Demand Drafts for Rs.28,50,279/- vide his letter dated 22.09.2017. As the Petitioner failed to comply with the order of this Court, by not paying the dues within the time limit stipulated, i.e. 30.06.2017, the Respondent, vide letter dated 11.12.2017, informed the Petitioner that the allotment stood cancelled and returned the Demand Drafts submitted by the Petitioner to the tune of Rs.28,50,279/-. Details of the Demand Drafts returned to the Petitioner are as under:

S.No.	Demand Draft No.& Date	Bank on which drawn	Amount (Rs.)
1	997121, dated 21.09.2017	Indus Ind Bank, Chinmaya Nagar Branch	4,40,000/-
2	018764, dated 22.09.2017	HDFC Bank, Koyambedu Branch	9,20,000/-
3	018761, dated 22.09.2017	HDFC Bank, Koyambedu Branch	5,70,279/-
4	997122, dated 22.09.2017	Indus Ind Bank, Chinmaya Nagar Branch	9,20,000/-

3.7. Extracts from the Despatch Register maintained by the Respondent and duly stamped by the Department of Posts is filed as proof of despatch of the above-referred letters 05.07.2016, 23.09.2016, 06.12.2016, 14.02.2017 and 20.06.2017. According to the Respondent/CMDA, they have not encashed the Demand Drafts furnished by the Petitioner.

4. Heard the learned counsel on either side and perused the material documents available on record.

5. Admittedly, the Petitioner is a successful allottee of the Shop in question. Since he had not paid the dues to the Respondent/CMDA within the stipulated period, the Respondent has cancelled the allotment of Shop vide order dated 11.12.2017, on technical grounds and returned the Demand Drafts submitted by

the Petitioner to the tune of Rs.28,50,279/-. According to the petitioner, he could not mobilize funds to remit the dues to the Respondent/CMDA within the time stipulated by them and hence, there was delay in payment.

6. Taking note of the facts and circumstances of the case, to avoid re-doing the entire exercise of calling for Tenders in respect of the Shop in question, as it may pave way to litigation and the beneficiary may be a vested interest, this Court is of the view that the Petitioner can be given yet another opportunity to remit the amount due to the Respondent/CMDA. Accordingly, the Petitioner is directed to remit a sum of Rs.21,29,000/- together with interest at 14.5% payable from 30.06.2015 till 31.07.2018, to the Respondent/CMDA within one month from the date of receipt of fresh Demand Drafts from Indus Ind Bank, Chinmaya Nagar Branch, Chennai and HDFC Bank, Koyambedu Branch, Chennai.

7. The Petitioner is directed to produce a copy of this order to Indus Ind Bank, Chinmaya Nagar Branch, Chennai and HDFC Bank, Koyambedu Branch, Chennai, in order to obtain fresh Demand Drafts, and the respective Banks, after following necessary procedure, shall issue fresh Demand Drafts to the Petitioner, within 15 days from the date of request by the Petitioner, if the Demand Drafts already issued by the said Banks in favour of the Respondent/CMDA had not been encashed by the Respondent/CMDA. Once, fresh Demand Drafts are received by the Respondent/CMDA from the Petitioner, the same shall be remitted by them within one month.

8. It is made clear that if the Petitioner fails to avail this opportunity, he has no locus to demand allotment of the Shop in question in his favour any further, and in such case, it is open to the Respondent/CMDA to proceed in accordance with law, in respect of the Shop in question and the Petitioner may have to participate in the tender process, in which, he may, or may not be successful.

The Writ Petition is disposed of with the above directions and observations. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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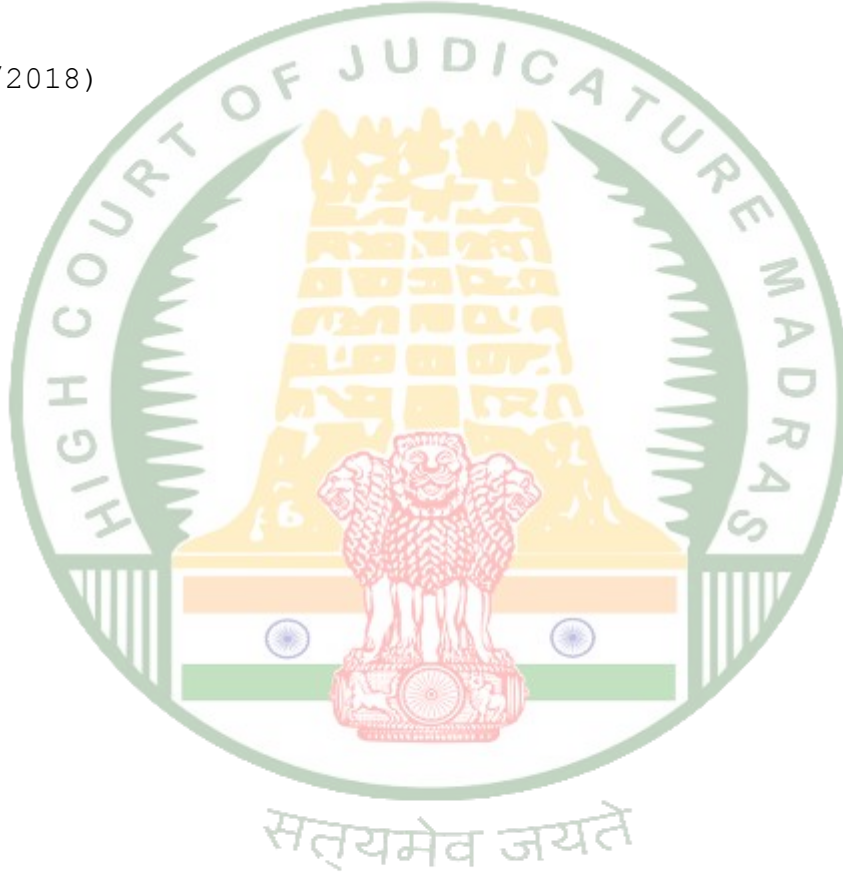
The Executive Officer,
Chennai Metropolitan Development Authority,
Gandhi Irwin Road, Egmore, Chennai.

+2cc to Mr.R.Subramanian, Advocate, S.R.No.48783

+1cc to Mr.Karthik Rajan, Advocate, S.R.No.49155

W.P.No.32970 of 2018

KAN(CO)
GSP(20/08/2018)



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