IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

WP.No.24204 of 2016

S.Kumarasamy ...Petitioner

Vs.

Chennai Metropolitan Development Authority,
Rep. by its Member Secretary &
Chief Executive Officer (i/c),
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent to hand over Shop No.A-364, Type-I category shop situated in Koyambedu Food Grain Complex in Koyambedu Wholesale Market Complex, Koyambedu to the petitioner as per representation dated 17.06.2016.

For Petitioner : M/s.M.Raja Sekhar
For Respondent : Mr.P.Tamil Mani

ORDER

The prayer in this petition is for issuance of a Writ of Mandamus to direct the respondent to hand over Shop No.A-364, Type-I category shop situated in Koyambedu Food Grain Complex in Koyambedu Wholesale Market Complex, Koyambedu to the petitioner, as per representation dated 17.06.2016.

2. The case of the petitioner is that he applied for allotment of a shop in the Ground plus first floor to an extent of 240 sq.ft.; 40 sq.ft. in the front platform and 120 sq.ft. in open terrace, in totalling to an extent of 400 sq.ft. in the category of Type-I, in Koyambedu Food Grains Complex, vide application dated 22.08.2003.

3. The further case of the petitioner is that he paid a sum of Rs.250/- towards the cost of the application and Rs.1,000/- towards Registration Charges and Rs.65,300/- being 10% of the costs of the shop as initial deposit on 22.08.2003. The petitioner would further claim that on 12.08.2013, he paid a sum of Rs.1,26,399/- and another sum of Rs.12,28,000/- on 28.11.2013.

4. The grievance of the petitioner is that as per the terms and conditions of payment, 10% of the shop cost has to be paid along with application and 40% of the shop cost in eight quarterly instalments. After completion of one year moratorium, the balance 50% of the shop cost will be paid from the date of handing over the shop in 20 quarterly instalments with 15% interest per annum. However, against the terms and conditions, the respondent issued a communication dated 24.12.2013, directing the respondent to pay the balance 50%. Accordingly, the petitioner paid Rs.3,00,000/- on 21.07.2015 and Rs.6,00,000/- on 31.07.2015.

5. The learned counsel for the petitioner submitted that application were called for even before the completion of construction of the shops and as per the terms and conditions, the petitioner has paid 50% of the cost. It is further submitted that out of the total amount of Rs.26,64,053/-, the petitioner has so far paid Rs.23,19,699/-. Though payments were made in the year 2013 and 2014, allotment of shops happened in the draw conducted on 07.08.2015. Admittedly, the respondent has not handed over the possession of the shop of the petitioner and against the terms and conditions, the respondent claims interest on delayed payment. According to the petitioner, the question of delay does not arise and the demand of interest on that score, is unsustainable. It is further submitted that in similar circumstances, the cancellation of the allotment of shop was set aside by this Court in W.P.No.21829 of 2015.

6. In the counter affidavit filed by the respondent, it is stated that based on the application received in the year 2003, allotment orders were issued to 473 applicants, vide letter dated 12.07.2013, in FGM/3314/2013 directing them to pay the balance 50% cost on or before 30.09.2013. The period was later extended up to 24.12.2013 with a condition, that any default of payment, the allotment stands cancelled. On verification, it was found that only 10 allottees committed default in paying the amount including the petitioner.

7. The learned Standing Counsel for the respondent by referring paragraph of the counter affidavit, submitted that the

petitioner has arrears of Rs.2,99,625/- towards the 5th and last installment and he has to pay Rs.2,88,726/- as penal interest and if the total amount of Rs.5,88,351/- is paid as on 31.08.2016, the shop would be handed over to the petitioner.

8. In reply, the learned counsel for the petitioner submitted that as per the original cost, due was only Rs.2,88,000/- and the petitioner is willing to remit the balance cost and prays to set aside the direction to pay the penal interest.

9. In the instant case, the terms and conditions of the allotment is very clear that the allottees have to pay 50% of the amount before handing over the possession and the balance 50% of the shop cost will be collected by the respondent in 20 quarterly installments with 15% interest per annum after handing over the shop.

10. Indisputably, the respondent has not handed over the shop to the petitioner so far, though applications were called for in the year 2003, allottees were selected in the year 2013 and the shops were allotted in a draw conducted in the year 2015. It is not in dispute that before filing this writ petition, the petitioner had paid Rs.23,19,699/-, out of the total cost of Rs.26,64,053/-.

11. In a similar circumstances, this Court by an order dated 13.10.2015 in W.P.No.21829 of 2015, held as follows:

> "4. A perusal of the Terms and Conditions of Allotment of Shops in Food Grains Market at Koyambedu, annexed to the application form, would reveal that as per clause 3(e) of Terms and Conditions for payment, "the balance 50% of the shop cost will be collected from the date of handing over the shop in 20 quarterly instalments with 15% interest per annum". As the petitioner has already paid more than 50% of the total sale consideration, before handing over the shop, namely, Rs.14,64,000/- the balance amount is required to be paid, as per the aforesaid clause, in 20 quarterly instalments with 15% interest per annum from the date of handing over possession. When the terms and conditions clearly stipulate the mode of payment, the reason given in the impugned order for cancelling the allotment made in favour of the petitioner is unsustainable. Hence, the impugned order is set aside and the writ petition is allowed. The respondents are directed to hand over possession of the shop to be allotted to the petitioner and the petitioner shall pay

the balance amount either in lumpsum or in 20 quarterly instalments as per the terms and conditions. No costs. Connected M.Ps. are closed."

12. Perusal of the counter reveals that only in the year 2013, the respondent has taken a decision to collect the entire balance amount in lumpsum, contrary to the original terms and conditions and on that basis a demand is made for payment of penal interest. The unilateral decision of the respondent has no basis. It is also contended that failure of the petitioner in paying balance 50% cost, resulted in cancellation of the allotment.

13. In the light of the decision of this Court referred supra and the facts of this case, the petitioner is entitled to succeed in the writ petition. In such view of the matter, the writ petition is allowed. The respondents are directed to hand over possession of Shop No.A-364 in "A" Block Type-1 category to the petitioner on payment of the original cost forthwith, subject to fulfilling other conditions, if any. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//
Sub Assistant Registrar

pvs

To

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

+1cc to Mr.P.Tamilmani, Advocate, S.R.No.15815

+1cc to Mr.M.Raja Sekhar, Advocate, S.R.No.15461

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gp(CO)
GSP(10/04/2018)