IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM :

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A.No.907 of 2018
and
C.M.P.No.7967 of 2018

1.The Member Secretary,
Chennai Metropolitan Development Authority,
No.1, Gandhi-Irwin Road,
Egmore, Chennai - 600 008.

2.Chennai Metropolitan Development Authority,
Rep. by its Chief Executive Officer,
No.1, Gandhi-Irwin Road,
Egmore, Chennai - 600 008. .. Appellants

vs.

G.R.Prabhakar Raja .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent Act against the order dated 07.03.2017 passed in W.P.No.31638 of 2016 and W.M.P.No.27453 of 2016.

Prayer WP No.31638/2016 : Writ Petition Praying 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 Appellants : Mr.Thiruvenkadam

For Respondent : Mr.M.Rajasekar

JUDGMENT
(Judgment of this Court made by T.S.Sivagnanam,J.)

This writ appeal has been filed by the Chennai Metropolitan Development Authority (CMDA) challenging the correctness of the order passed in W.P.No.31638 of 2016 dated 07.03.2017 filed by the respondent herein. The respondent filed the said writ petition challenging a communication dated 29.07.2016 cancelling the allotment of a shop in Type II Food Grain Market which was allotted to the respondent's grandfather one Thiru.P.M.Venkatarathinam. The respondent approached the Writ Court contending that the respondent's grandfather died on 11.11.2011 and the confirmation letter followed by reminders and other subsequent communication were addressed to the respondent's grandfather, a dead person. The respondent's case is that he was unaware about the communication sent in the name of his grandfather since he had passed away on 11.11.2011 itself. In the given facts and circumstances, the respondent approached this Court and filed W.P.No.28318 of 2015 praying for issuance of Writ of Mandamus upon the appellants to allot one shop in type II of food grain market (wholesale market). The said writ petition was dismissed with certain observations by order dated 31.03.2016. The respondent was granted liberty to approach the appellants and work out his remedy. Accordingly, the respondent approached the authorities and by communication dated 29.07.2016, the Chief Executive Officer of CMDA informed the respondent that his request for allotment of shop cannot be considered since he has not remitted any amount except a sum of Rs.1,47,000/- towards initial deposit and Rs.1,000/- towards registration charges and the amount remitted will be refunded after deduction of 10% towards administrative charges on surrendering the original receipt remitted way back in the year 2003. This communication was challenged by the respondent in W.P.No.31638 of 2016. The said writ petition was allowed by order dated 07.03.2017 which is impugned in this writ appeal.

2.We have heard Mr.K.Thiruvenkadam, learned counsel for the appellants and Mr.M.Rajasekar, learned counsel for the respondent/writ petitioner.

3.The learned Writ Court while allowing the writ petition pointed out that 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 therefore, the appellants were directed to issue notice to the respondent who is doing business in the shop allotted to his grandfather as of now, indicating the amount payable by him. Further, it was observed that if the respondent is not willing to pay the said amount it will be open to the appellants to proceed as per their wish and while doing so, it is for the appellants to consider the amount quantified whether to be paid in installments or otherwise as it only a concession apart from the discretion which solely lies with the appellants.

4.The learned counsel for the respondent would fairly state that the observation made by the Writ Court in paragraph 4 stating that the respondent is doing business in the shop allotted to his grandfather is factually incorrect.

5.Be that as it may, we have to test the correctness of the order passed in the writ petition directing the respondent to pay the amount quantified by the appellants for being entitled to an allotment order for a shop which were initially allotted to his grandfather. The appeal was heard by the Division Bench earlier and there was a direction to file a report as to what would be the amount payable by the respondent as on date along with interest as per the terms and conditions of allotment. Accordingly, the Senior Estate Officer, CMDA has filed a status report. A perusal of the status report reveals that the respondent's grandfather was allotted a shop in Type II CCT category having an area of 749 sq.ft. at the rate of Rs.6,446/- per sq.ft. at a total cost of Rs.48,21,608/-. The report further states that the respondent's grandfather has remitted Rs.1,000/- towards registration charges and Rs.1,47,000/- towards 10% initial deposit on 14.07.2003. It has been further stated that the appellants had issued the allotment confirmation vide letter dated 12.07.2013 and thereafter reminders dated 11.11.2013 and 05.12.2013 were sent to the respondent's grandfather to pay the installments as per the allotment. It is further stated that the communications were sent to the address given to the appellants. Since there was no response to the reminders and the communications sent to the respondent's grandfather, the appellants cancelled the allotment vide proceedings dated 20.07.2015. The appellants would stated that the total amount payable by the respondent would be Rs.74,88,553/- which would include interest.

6.It is the further case of the appellants that this amount would be remitted in one installment and only thereafter, the order of allotment would be given. We have to test the correctness of the said contention raised by the appellants. Admittedly, the amounts paid by the respondent's grandfather, namely, Rs.1,47,000/- and Rs.1,000/- still continue to remain with the appellants. It may be true that the communications were sent to the respondent's grandfather, the same was returned and no further steps were taken by the appellants by way of paper publication or otherwise so that they can state that they have followed the principles of natural justice. That apart, the terms and conditions of allotment prescribed a mode by which the amount has to be remitted. In terms of Clause (a) in terms and conditions for payment, 10% of the shop cost is the down payment as initial deposit along with the application. This condition has been complied with by the respondent's grandfather and the amount is lying with the appellant. The second condition is one year moratorium and on completion of the one year moratorium, 40% of the shop cost will be collected in eight quarterly installments without interest. However, this condition has not been complied with. The next condition is that the charging of interest. So far as the one year moratorium is concerned, the same cannot be extended to the respondent. With regard to the 40% of the shop cost to be paid in eight quarterly installments without interest also cannot be granted to the respondent considering the facts and circumstances of the case. However, we are inclined to extend the benefit of condition (e) in terms and conditions which provides for payment of balance 50% of the shop cost in twenty quarterly installments with 15% interest per annum. Therefore, we dispose of this appeal with slight modification to the order passed in the writ petition in the following terms.

7.It is admitted that a sum of Rs.1,47,000/- has already been paid and it is with the appellants. Therefore, the said amount should be given credit to and the balance 40% of the shop cost is worked out to Rs.23,37,304/- and this amount cannot be paid in installments but should be paid by the respondent in one single shot and this amount should be paid along with interest at the rate of 17.5% by applying clause (d) of the terms and conditions. If the respondent complies with the condition, then the appellants should issue the order of allotment and the respondent shall pay the balance 50% of the shop cost in twenty quarterly installments with interest at the rate of 15% per annum. The appellants are directed to issue a demand to the respondent by calculating the interest on Rs.23,37,304/- at 17.5% and on receipt of the demand, the respondent is granted four weeks time to pay the same. If the respondent remits the amount within the time permitted, then the allotment order will be issued and the respondent would be entitled to remit the balance 50% of the shop cost in twenty quarterly installments with 15% interest per annum. In the event of default committed by the respondent in any one of the condition as mentioned above, the benefit of this order will not enure to the respondent and it would be open to the appellants to proceed in accordance with law.

8.In the result, the writ appeal is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

cse

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,
No.1, Gandhi-Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Mr.M.Rajasekhar, Advocate SR.No.9979

+1cc to Mr.S.Thiruvengadam, Advocate SR.No.9984

W.A.No.907 of 2018
and
C.M.P.No.7967 of 2018

MG(CO)
GMY(05/03/2019)