

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.08.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.17400 of 2019
and
W.M.P.No.16888 of 2019

M/s DSR Sons India Engineers (P) Ltd.,
No.49, HIG Vallal MGR Street,
NH-1, Maraimalai Nagar,
Kancheepuram District 603 209,
through its Managing Director
Mr.D.S.Raveekumar .. Petitioner

/versus/

1.The Principal Secretary,
Housing and Urban Development Department,
Fort St.George, Secretariat, Chennai 600 009.

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

3.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

4.The Senior Estate Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records in connection with the impugned communication Lr.No.AL10/3603/2016 dated 25.07.2018 from the 3rd respondent and quash the same and consequently, direct the respondents to execute the sale deed in terms of LCSA dated 14.03.2017.

For Petitioner :Mr.V.Srikanth

For Respondents:Mr.N.Inbanathan, AGP for R1

Mr.S.Thiruvengadam,
AGP for R2 to R4

O R D E R

The prayer in the writ petition is to issue a Writ of Certiorarified Mandamus to call for the entire records in connection with the impugned communication Lr.No.AL10/3603/2016, dated 25.07.2018 from the 3rd respondent and quash the same and consequently, direct the respondents to execute the sale deed in terms of LCSA dated 14.03.2017.

2. The case of the petitioner is that they applied for purchase of Industrial Plot in Chithamannur Industrial Layout pursuant to the advertisement placed by the Chennai Metropolitan Development Authority(in short "the CMDA") on 14.07.2015. Through the letter dated 16.11.2016, the petitioner was allotted the plot No.28 at Chithamannur Industrial Layout-III at Maraimalai Nagar for sale consideration of Rs.4,26,76,707/-. The petitioner paid 25% of the plot cost on 03.12.2016. The petitioner was informed to pay the balance cost through the communication dated 16.02.2017, which is also the allotment order. The petitioner and the third respondent entered into Lease-cum-Sale Agreement dated 24.04.2017. Meanwhile, the petitioner sought for No Objection Certificate for getting financial assistance from the Bank. The said request for No Objection Certificate was considered by the respondents after the authorities discussed the request of the petitioner in detail on 16.11.2017 and the Authority resolved that No Objection Certificate may be issued by the CMDA only after obtaining a letter from the concerned Bank stating that they are willing to sanction loan on receipt of No Objection Certificate from CMDA and an undertaking may also be obtained from the Bank that the Bank would remit the balance cost of the plot directly to the CMDA from the loan sanctioned to the applicant. Accordingly, the letter was sent to the Bank on 19.01.2018. In response to the letter, the Bank confirmed the willingness to sanction the loan to the allottee on 13.06.2018.

3. According to the petitioner, the delay in issuing No Objection Certificate by the respondents is caused delay in paying the balance cost of the plot allotted. The respondents ought not to have delayed the issuance of No Objection Certificate. While so, the 3rd respondent has issued communication dated 25.07.2018 wherein the tentative cost plus interest (as on 31.08.2018) of Rs.50,43,790/- has been demanded to be paid on or before 31.08.2018.

4. According to the petitioner, the cost of the plot as per the allotment order has been paid in full as stated under:

Sl. No.	Date of Payments	Amount
1.	03.12.2016 (Initial 25%)	Rs.1,06,67,572/-
2.	29.06.2017	Rs.1,00,00,000/-
3.	12.07.2017	Rs. 9,135/-
4.	09.07.2018	Rs.2,20,00,000/-
	Total	Rs.4,26,76,707/-

5. The delay in payment whatsoever was due to the delay in issuing No Objection Certificate by the respondents. Hence, he is not liable to pay any interest for the delayed payment and further, when the petitioner sought for building plan approval from the Local Authority, they informed that the petitioner has not obtained layout approval from the CMDA and this has also caused serious inconvenience to the petitioner, who is not able to put up construction in the allotted plot.

6. In the counter, the respondents 2 to 4 have stated that as per the allotment order dated 16.02.2017, the petitioner ought to have paid the balance amount within 60 days, failing which, the allotment will automatically result in cancellation. Whereas the petitioner has paid the balance amount only on 09.07.2018 instead of 18.04.2017. For the delayed payment of 14 months and 22 days, the petitioner is asked to pay the interest at the rate of 14.5% as per the Lease cum Sale Agreement. Further, it is also contended that the petitioner's request for No

Objection Certificate for raising mortgage loan from the Bank was duly considered by the respondents and resolved to get consent from the Bank from which the petitioner has sought for loan. Hence, on 19.01.2018, the respondents have sought concurrence of the Bank for which the petitioner's banker has responded only on 13.06.2018. Meanwhile, the petitioner made the balance payment of Rs.2,20,00,000/-. The petitioner is liable to pay the interest for the delayed payment if he is interested in getting the sale deed. Infact, the respondents have sympathetically considered the case of the petitioner instead of cancelling the allotment for non-payment, sufficient time was given to the petitioner to pay the balance 60%..

7. The learned counsel appearing for the petitioner would submit that the contention of the respondents 2 to 4 in the counter that the allottee cannot blame the respondents for non-issuance of No Objection Certificate and the Lease cum Sale Agreement does not say anything about No Objection Certificate, is not correct. As per Clause 36 of the Lease cum Sale Agreement, the allottee has a right to ask for No Objection Certificate to enable him to mortgage the allotted plot and raise loan.

8. Clause 36 of the Lease cum Sale Agreements reads as under:

"36. It shall be open to the allottee to ask for in writing and the authority to grant a "No Objection" certificate with or without conditions to enable the allottee to mortgage his interest in the said allotted plot, at any time after taking possession for obtaining financial assistance from financial institutions and banks only for creation of fixed assets. In such cases, a notice giving 90 days time to remedy the breach of the conditions or default under this agreement will be given by the Authority and the allottee shall take steps to remedy them earnestly within that time."

9. In this case, the petitioner has sought for No Objection Certificate on the very next day on receipt of

the allotment order and the demand of payment of the balance sale amount. Therefore, this Court finds that the contentions of the respondents demanding interest and refusal to execute the sale deed, after collecting the sale consideration is not inconsonance with the Lease cum Sale Agreement.

10. Apparently the respondents have taken long time to issue No Objection Certificate. Since the respondents have delayed to issue No Objection Certificate, which is contra to the Clause 34 of the Lease cum Sale Agreement, the petitioner has made his own arrangement to pay the balance sale consideration. In such circumstances, the respondents cannot demand any interest for the delayed payment.

11. Accordingly, this Writ Petition is allowed. The communication of the third respondent dated 25.07.2018 is hereby quashed. The third respondent is directed to execute the sale deed in terms of the Lease-cum-Sale Agreement dated 14.03.2017 if the petitioner has fulfilled all other conditions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To:

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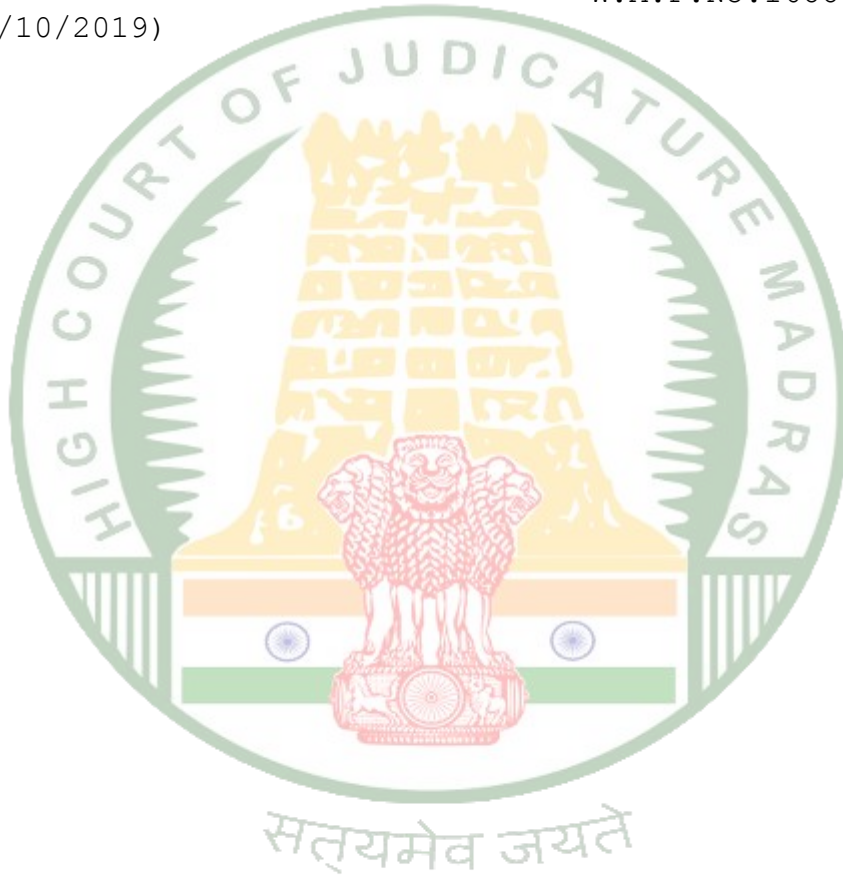
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+1cc to Mr.S.Thiruvengadam , Advocate SR.No. 76310
+1 cc to Government Pleader Sr.No. 76852

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A.SK(01/10/2019)



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