

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.04.2023

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.(MD)No.20054 of 2016
and
W.M.P (MD) Nos.14409 and 14410 of 2016

Noorjahan

... Petitioner

Vs.

1. The Commissioner,
Department of Agricultural Marketing
and Agri Business, Cipet Road,
Thiru.Vi.Ka. Industrial Estate, Guindy, Chennai.

2. The Madurai Marketing Committee,
Rep. Through its Secretary,
Department of Agricultural Marketing
and Agri. Business,
145(A) Anna Nagar, Madurai.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings issued by the 2nd respondent in Na.Ka.A2/2930/2015 dated 23.12.2015 and quash the same and consequently direct the respondents to permit the petitioner to start her business in the shop No.F199 situated at Agricultural Marketing complex,

Mattuthavani, Madurai.

For Petitioner : Mr.A.R.Kannappan

For Respondents : Mrs.D.Farjana Ghaushia,
Special Government Pleader for R1
No appearance for R2

ORDER

The petitioner assails the communication dated 23.12.2015 by which the petitioner was informed that her request for allotment of the shop cannot be considered on account of the efflux of about ten years.

2. The petitioner's husband, M.Rajkapoor, had applied for allotment of a shop at a shopping complex constructed by the second respondent. Initially, the petitioner's husband had deposited a sum of Rs.20,000/- (Rupees Twenty Thousand only) as earnest money deposit. Thereafter, on 28.07.2002, the petitioner's husband died. Since further amounts were due and payable in relation to the allotment of the shop, the petitioner remitted a sum of Rs.65,000/- (Rupees Sixty Five Thousand only) on 15.07.2005 by way of a demand draft. It appears that the shop was allotted to the petitioner's husband on 31.01.2006. According to the

petitioner, she had shifted to Trichy and therefore did not receive the communication regarding the allotment. The petitioner further states that she became aware of such allotment only in September 2015 when she visited the office of the District Agriculture Warehousing Association. Immediately, a representation dated 16.12.2015 was issued and the said representation was rejected by the impugned communication. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner was unable to follow-up on the allotment on account of having shifted to Trichy in connection with her children's education. He further submits that the shop remains vacant and that the petitioner is ready and willing to pay all prescribed charges if the shop is allotted to the petitioner.

4. Learned Additional Government Pleader submits that the petitioner failed to inform the second respondent about the death of her husband on 28.07.2002. He points out that the petitioner was aware about the application for allotment and the requirement to pay a further sum of

Rs.65,000/- on or before 15.07.2005. In spite of being aware and making payment of Rs.65,000/-, learned Additional Government Pleader submits that the petitioner did not inform the second respondent about the death of her husband and seek a transfer of the application and allotment to the petitioner or her children. Learned Additional Government Pleader further submits that the allotment was made on 31.01.2006 in the name of the petitioner's husband because the second respondent was unaware that he died on 28.07.2002. After the allotment order was communicated to the petitioner's husband, he submits that the petitioner and the other legal heirs did not come forward to accept the allotment and run the shop. Instead, after the lapse of almost ten years in December 2015, a representation was issued. In these facts and circumstances, he submits that the rejection of the representation does not suffer from any infirmity.

5. In the affidavit in support of the writ petition, the petitioner has stated categorically that she paid a sum of Rs.65,000/- to the second respondent on 15.07.2005. Such payment has been made about three years after the death of the petitioner's husband without informing the second

respondent that the petitioner's husband had died. These facts indicate that the petitioner was fully aware that her husband had applied for allotment of a shop and was required to make payments in connection therewith. The allotment order is on record and the said allotment order indicates that the allottee was required to pay a sum of Rs.180/- per month as maintenance charges for the 600 sq.ft. shop. The allottee was also required to pay a sum of Rs.540/- towards three months maintenance charges in advance. Since the petitioner did not take any steps in relation to the allotment, all these payments were not made from the date of allotment.

6. Having known about the application for allotment, it was incumbent upon the petitioner to inform the second respondent that her husband had died and to seek a transfer of the allotment to her name or to the name of her children. The petitioner is entirely responsible for the failure to follow-up on the application for allotment even assuming that the petitioner's statement that she shifted to Trichy is correct. After failing to take any steps for about ten years, the petitioner sent a representation on 16.12.2015. In these facts and circumstances, the second respondent cannot

be faulted for rejecting the said representation by the impugned communication.

7. Learned counsel for the petitioner maintains that the relevant shop remains vacant and is still available. Learned Additional Government Pleader is unable to either confirm or refute the said statement. Assuming that the shop is still vacant and available, it is open to the petitioner to reapply for allotment. If an application for re-allotment is made, such application may be considered in accordance with the rules and terms and conditions presently prevailing.

8. W.P.(MD).No.20054 of 2016 is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

06.04.2023

NCC :No
Internet :Yes
Index :No
PKN

To

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SENTHILKUMAR RAMAMOORTHY, J.

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