



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2024

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.28925 of 2024

and

W.M.P.Nos.31567 & 31568 of 2024

A.N.Karthik

.. Petitioner

Vs.

1.The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore,
Chennai – 600 008.

2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore,
Chennai – 600 008.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondents in Letter No.K5/1407/2020 dated 22.08.2024 and quash the same and consequently forbearing the



respondents from interfering or disturbing the possession of the petitioner of the godown VN 124 in Vegetable Market Complex at Koyembedu Wholesale Market Complex until the refund of the sale consideration by the respondents.

For Petitioner	.. Mr.R.Sureshkumar For M/s.K.M.Vijayan Associates
For Respondents	.. Mr.P.Kumaresan, Additional Advocate General, Assisted by Mrs.Veena Suresh, Standing Counsel

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to the proceedings of the 2nd respondent, Chief Executive Officer, Chennai Metropolitan Development Authority, Chennai dated 22.08.2024 and to quash the same. The petitioner further seeks a restraint against the respondents from interfering or disturbing the possession of the petitioner godown VN 124 in Vegetable Market Complex at Koyembedu Wholesale Market Complex till refund of the sale consideration is done by the respondents.



WEB COPY

2. In the affidavit filed in support of the writ petition, it had been stated that a tender notification was issued on 28.11.2019 at Koyambedu Vegetable Market and the petitioner had applied for allotment of shop / gowdown termed as VN 124. The upset price was fixed at Rs.5,10,00,000/-. The petitioner claims that he had been the successful bidder and allotment letter dated 06.08.2020 had also been issued to him. The petitioner had also deposited 20% of the value of the auction amount towards the auction amount of Rs.5,30,00,000/-. He was directed to pay the balance sale consideration also.

3. In the meanwhile, W.P.No.11576 of 2020 had been filed challenging the allotment made in favour of the petitioner herein. That writ petition was dismissed by the Division Bench by an order dated 06.11.2020. Yet another writ petition was filed in W.P.No.12286 of 2020 and the same was also dismissed by a learned Single Judge of this Court by an order dated 05.03.2021, placing reliance on the order dismissing W.P.No.11576 of 2020. The petitioner deposited the balance sale consideration of Rs.4,28,00,000/- on 10.03.2021.



WEB COPY

4.It is however contended that W.A.No.1106 of 2021 was filed challenging the dismissal of W.P.No.12286 of 2020. That writ appeal was allowed by judgment dated 25.07.2024. A direction was issued to the respondents to call for fresh tender. The petitioner had filed S.L.P.No.16876 of 2024 and that suffered an order of dismissal by an order dated 25.07.2024 passed by the Hon'ble Supreme Court. Naturally, the respondents were bound to abide by the orders of the Hon'ble Supreme Court and cancelled the allotment made in favour of the petitioner. Necessary orders in that regard were also passed.

5.The petitioner, however, continued to be in occupation, claiming that he should be repaid the entire sale consideration. In the impugned order, the respondents had directed the petitioner to vacate and handover the shop namely, VN 124. Questioning that particular direction the present writ petition has been filed.

6.Pending the writ petition, the respondents were queried about the amount, which would be refunded to the petitioner herein. They had given a calculation of the amount which would be refunded and the same is as follows:



WEB COPY

	Total cost paid by you including the ID	5,30,00,000/-
1	Less: Rent 1% on the cost per month from 15.03.2021 to 30.09.2024 (i.e) from D.O.H to D.O.T = 42 months and 16 days	2,25,42,667/-
		3,04,57,333/-
2	Less: 10% of Administrative charges	53,00,000/-
		2,51,57,333
3	Less: other charges towards insurance premium	8,715/-
		2,51,48,618/-
4	Add: Electricity Bill and Telephone charges (4300 + 250)	4,550/-
		2,51,53,168/-

7. Thereafter, the learned Additional Advocate General had a further discussion with the respondents along with the panel counsel. A revised statement had been presented in the Court today, which is as follows:

<u>Rent</u> for allotment order dated 06.08.2020 to execution of sale deed on 22.03.2021	
Total cost paid by the allottee	Rs.5,30,00,000/-
<u>Less</u> rent 1% on the cost per month From 06.08.2020 to 22.03.2021 (7 months and 15 days)	Rs.3,31,250/-
	Rs.5,26,68,750/-
<u>Less</u> 10% of the Administrative charges from the total remittance	Rs.53,00,000/-
	Rs.4,73,68,750/-
<u>Less</u> Insurance premium charges	Rs.8,715/-
	Rs.4,73,60,035/-
<u>Add</u> EB and Telephone charges 4300 + 250	Rs.4,550/-
Balance C/D	Rs.4,73,64,585/-



WEB COPY

Rent from the date of cancellation order to till date from 21.08.2024 to 29.11.2024	
Balance B/D	Rs.4,73,64,585/-
Less rent 1% on the cost per month From 21.08.2024 to 29.11.2024 (3 months and 8 days)	Rs.1,43,542/-
Amount to be refunded to the ex-allottee	Rs.4,72,21,043/-

8.The learned counsel for the petitioner, however, is still not satisfied with the fact that the respondents had come forward to refund a further amount of Rs.2.51/- Crores over and above the amount, which had been projected earlier. According to him, the respondents have no right or authority to deduct 10% of the administrative charges from the total remittance. The total remittance was Rs.5,30,00,000/- and 10% of the same came to Rs.53,00,000/-. This is the only objection raised on behalf of the petitioner with respect to the calculation, which has now been forwarded to the Court.

9.In this connection, it is only appropriate that the Allotment order dated 06.08.2020 and the Model Lease -cum- Sale Agreement are both examined. In the allotment order, Clause 9 relates to cancellation. This is an



event which occurs when the respondents had come to a conclusion that they should cancel the allotment for violation of any of the terms of the condition.

10. In the instant case, the cancellation was by an order of the Court. The Court had found that the tender has not been conducted properly and that the allotment in favour of the petitioner should be interfered with and should be set aside and should be cancelled and that a fresh allotment letter should be called for.

11. In Clause 9, there are three conditions given under which a cancellation could be effected.

“9. Cancellation:

i). Any default in payment of maintenance charges for consecutive three months will lead to cancellation of license without notice.

ii). The Authority is liable to cancel the allotment without notice for violation of any of the terms and conditions of application.

iii). In the event of the allottee / applicant contravening any of the conditions of the allotment, the CMDA shall be entitled to



cancel the allotment and recover from the allottee / purchaser any loss which might be sustained by CMDA consequent on such breach of any of the conditions.”

12.The learned counsel for the petitioner placed reliance on Clause 11, which is as follows:

“11.If, for any reasons beyond the control of the CMDA, the possession of the shop could or should not be handed over to the successful applicant, the applicant is entitled to the refund of the amount paid by him/her without interest. No interest on the deposit will be paid.”

13.Clause 19 is as follows:

“19.If any doubt or dispute shall arise between the parties to this sale, the decision of the CMDA shall be final and shall be accepted and acted upon by the allottee.”

14.Owing to the acceptance of allotment the petitioner had entered into possession of the shop. He has continued to occupy the shop. He is still in possession of the shop. He has placed a demand that unless the amount he had paid is refunded, he should not be vacated from the shop.



WEB COPY

15.The order directing him to vacate is an order flowing from the order of the Court and not an order emanating by the respondents themselves. The petitioner therefore cannot place any direction on the respondents or a condition on the respondents that unless he is repaid the sale consideration which he had paid, he is not liable to be vacated or evicted. He should have vacated on the date when the Hon'ble Supreme Court had dismissed the appeal. On and from that particular date he had lost all right or authority to continue to occupy the shop. From that date onwards, he had been in illegal and unlawful occupation. The Rule of Law must be enforced against all parties concerned.

16.The petitioner had approached the Hon'ble Supreme Court and the Hon'ble Supreme Court had rejected and dismissed his appeal. As and from that date, the petitioner has no right or authority to impose any condition on the respondents. He should first vacate and thereafter, he could demand repayment of the sale consideration, which he had paid. He had been in continuous occupation from the date of dismissal of the appeal by the



Hon'ble Supreme Court from 25.07.2024 for the past nearly five months.

WEB COPY

17.The learned Additional Advocate General appearing for the respondents placed reliance on the Model Lease -cum- Sale Agreement dated 06.08.2020. This had been addressed to the petitioner. This document had been filed by the petitioner as a document before this Court. The petitioner cannot claim ignorance of the said document or plead innocence of any of the terms of that document. Clause 3 of the said document is as follows:

“3.The purchaser should remit the balance amount after adjusting the 20% of the Initial Deposit for sale consideration. The balance amount has to be paid within 21 days from the date of receipt of the allotment order. After receiving the allotment order, if the allottee wants to withdraw the allotment at any stage, the 10% of the amount paid by the allottee will be deducted from 20% of the Initial Deposit towards Administrative Charges.”

18.Clause 10 is as follows:

“10.In case, it is subsequently brought to the notice of



WEB COPY



the CMDA, that you have furnished incorrect, false information, the allotment will be summarily rejected.”

19.Clause 14 is as follows:

“Non compliance with the any of the above conditions would result in cancellation of allotment and forfeiture of 10% of the total amount paid by you, till such period along with rental value applicable to that period and actual damages caused to the Godown allotted.”

20.A conjoint reading of both the Allotment order and the Model Lease -cum- Sale Agreement would lead to the conclusion, that if there is any dispute between the parties, the decision of the Chennai Metropolitan Development Authority shall be final and shall be accepted and acted by the allottee.

21.In the instant case, the only point in dispute is about the deduction of 10% of the sale consideration by the respondent herein. In the Model Lease -cum- Sale Agreement, it had been very clearly stated that if it had



been brought to the notice of the respondents that the petitioner had furnished incorrect or false information, the allotment will be summarily rejected.

22. In the instant case, the Court had stepped in and had cancelled the allotment made to the petitioner herein. If there is a cancellation by order of the Court, then there will be a forfeiture of 10% of the sale consideration. The respondents have given their calculation. Their decision is final and has to be abided by the petitioner. The force of law has gone against the petitioner and had directed cancellation of his allotment and even the tender by which the entire process was conducted.

23. A fresh tender has now been called for by the respondents. The petitioner has a choice. He may accept the amount of Rs.4,72,21,043/- or he may reject the same. I am not prepared to enter into a discussion about the deduction of 10% from the sale consideration paid by the petitioner. It is provided in the terms under which he has continued to be in occupation. He is well aware of the same.



24. Therefore, the Writ Petition stands disposed of with a direction to the respondents to inform the petitioner that they are ready to handover the amount of Rs.4,72,21,043/-. It is for the petitioner to vacate and handover the key of the shop and to receive the said amount. If the petitioner takes a decision not to receive the amount, the respondents are at liberty to take possession of the shop in manner known to law. No costs. Consequently, connected Miscellaneous Petitions are closed.

12.12.2024

Index: Yes/No
Neutral Citation: Yes/No
Speaking order: Yes/No
smv

To

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,
Egmore,
Chennai – 600 008.

2. The Chief Executive Officer,
Chennai Metropolitan Development Authority,
Thalamuthu Natarajan Maligai,
No.1, Gandhi Irwin Road,



WEB COPY

Egmore,
Chennai – 600 008.

14



C.V.KARTHIKEYAN,J.

smv

W.P.No.28925 of 2024