

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition Nos.37049 to 37052 of 2016
and
W.M.P.Nos.31846 to 31854 of 2016

B.Selvam .. Petitioner in W.P.No.37049/16
K.Suguna .. Petitioner in W.P.No.37050/16
S.Pushpalingam .. Petitioner in W.P.No.37051/16
S.Devalatha .. Petitioner in W.P.No.37052/16

- Vs -

- 1.The Secretary to Government,
Tamil Nadu Housing and Urban Welfare Department,
Secretariat, Chennai-09.
2. The Managing Director,
Tamil Nadu Slum Clearance Board,
Chennai-05. .. Respondents in all the WPs.

Prayer in all the W.Ps.:- Writ petitions filed under Section 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the order in Na.Ka.No.G1/5225/2016, G1/5266/2016, G1/5224/2016, and G1/5222/2016 dated 09.08.2016 respectively passed by the Second Respondent and quash the same and consequently direct the Second Respondent to allot the alternative house based on the proceedings dated Na.Ka.No.G2/30201/84 dated 17.06.1998, Na.Ka.No.G2/30201/84 dt....06.1998, Na.Ka.No.G2/10389/96 dt.08.04.1998, and Na.Ka.No.G2/10389/96 dt.08.4.1998 respectively at Kasipuram A Block, Kasimedu, Chennai-13 under Remuneration Slum Scheme within a time frame.

For Petitioners : Mr.Mohan
For Respondent 1 : Mr.Digviyapandian
Additional Government Pleader
For Respondent 2 : Mr.S.Prabu
Standing Counsel for TNSCB

C O M M O N O R D E R

Heard the learned counsel for the petitioners ; Mr.Digviyapandian, learned Additional Government Pleader accepting notice on behalf of the 1st respondent and Mr.S.Prabu, learned Standing Counsel accepting notice on behalf of the 2nd respondent in all the writ petitions and with the consent on either side, all the writ petitions are taken up for final disposal.

2. The case of the petitioners is that they belong to Fishermen Community and that they were allotted houses under the "Powerkuppam Scheme" and the 2nd respondent vide proceedings dated 17.06.1998, 17.06.1998, 08.04.1998 and 08.04.1998 allotted respective houses bearing Door Nos.282, 362, 429 and 470 respectively and they were asked to remit an initial amount of Rs.600/- as advance and to pay a sum of Rs.150/- per month as rent for 20 years. Accordingly, the petitioners paid their respective first instalment amount also. It is the case of the petitioners that after completion of the construction, before the possession was handed over to them, some third parties [both allottees and non-allottees] occupied the residential houses including that of the petitioners herein. Despite several representations made to the respondents, the respondents were not able to evict them for the reasons best known to them. During the year 2013, the petitioners were informed that the houses constructed under the "Powerkuppam Scheme Project" are going to be demolished and that new houses will be constructed. At that time, when the petitioners approached the respondents, they were given assurance that the petitioners would be allotted houses. Totally 379 houses were constructed and 277 houses were allotted to the existing allottees and 74 houses were kept vacant and the petitioners were not given any allotments. In this regard, the petitioners sent individual representations dated 07.03.2016 to the respondents herein and the inaction on the part of the respondents made the petitioners to file WP.No.10233/2016, 10229/2016, 10230/2016 and 10232/2016 before this Court and this Court, vide common order dated 18.03.2016 disposed of the said cases by directing the 2nd respondent therein to dispose of the petitioners' representation dated 07.03.2016 after giving an opportunity of hearing to the petitioners. In compliance of the said direction, the 2nd respondent has passed the present impugned order dated 09.08.2016 rejecting the requests of the petitioners, on the ground that as per G.O.Ms.No.97 dated 15.05.2013 and as per G.O.Ms.No.177 dated 05.07.2013, the houses newly constructed will be allotted only to the existing families living in the houses constructed under the Powerkuppam Scheme. Hence, challenging the said impugned order dated 09.08.2016, the present writ petitions are being filed by the petitioners.

3. The learned Standing counsel for the 2nd respondent brought to the notice of this Court that the petitioners subsequent to the payment of first instalment, the petitioners were not residing in the respective houses allotted to them for the past 19-20 years and they have let out the houses for rent and that, they are now seeking for allotment of the houses which have been newly constructed and the 2nd respondent, in compliance of the order of this Court dated 18.03.2016 made in WP.No.10233/2016, 10229/2016, 10230/2016 and 10232/2016, has rightly rejected their requests vide the impugned order on the basis of the G.O.Ms.No.97 dated 15.05.2013 and as per G.O.Ms.No.177 dated 05.07.2013 and hence, submitted that the impugned order does not warrant interference of this Court.

4. This Court considered the rival submissions made on either side and also perused the records.

5. At the outset, this Court is of the considered view that the prayer sought for by the petitioners is an innocuous one for the simple reason that the petitioners are not eligible to occupy the present newly constructed houses. It is seen that they were originally allotted houses way back in the year 1998 and even according to them, the said houses were occupied by some third parties for the past 19 to 20 years. Subsequently, when the houses were demolished and new houses were constructed, they seek for an allotment, to which course of action, they have no locus standi for the reason that having kept quite all along and having not resided in the houses previously allotted to them, they cannot now seek an allotment as a matter of right. This Court is of the firm and considered view that what cannot be considered, cannot be directed to considered, under the guise of considering the representation.

6. In this context, this Court wishes to follow the decision of the Division Bench of this Court reported in (M.Ingaci Vs. The Commissioner, Devakottai Municipality, Sivagangai District) 2010 2 Law Weekly 785, in which I am also a party, wherein the Division Bench held that there are several instances where unscrupulous petitioners have misused the direction issued to "consider". It was further held that there are large-scale misuse of the orders "to consider". The Division Bench also relied on the decision of the Hon'ble Supreme Court reported in the case of A.P.SRTC Vs.G.Srinivas Reddy (2006)3 SCC 674=2006, 3 Law Weekly 170, wherein in Para Nos.18 to 20, it was held as under:-

"18. We may also note that sometimes the High Court dispose of the matter merely with a direction to the authority to 'consider' the matter without examining the issue raised even though the facts necessary to decide the correctness of the order are available. Neither pressure of work nor the complexity of

the issue can be a reason for the court to avoid deciding the issue which requires to be decided, and disposing of the matter with a direction to 'consider' the matter afresh. Be that as it may.

19. There are also several instances where unscrupulous petitioners with the connivance of 'pilable' authorities have misused the direction to 'consider' issued by Court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation within a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to 'consider' and dispose of the representation. When the court disposes of the petition with a direction to 'consider' the authority grants the relief, taking shelter under the order of the court directing him to 'consider' the grant of relief. Instances are also not wanting where authorities unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order 'to consider' as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to 'consider' may be on account of ignorance, or on account of bona fide belief that they should grant relief in view of the court's direction 'to consider' the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily-wagers seeking regularisation/absorption in to regular service is a species of cases, where there has been large-scale misuse of the orders 'to consider'.

20. Therefore, while disposing of the writ petition with a direction 'to consider', there is a need for the High Court to make the direction clear and specific. The order should clearly indicate whether the High Court is recording any finding about the entitlement of the petitioner to the relief or whether the petition is being disposed of without examining the claim on merits. The court should also normally fix a time-frame for consideration and

decision. If no time frame is fixed and if the authority does not decide the matter, the direction of the court becomes virtually infructuous as the aggrieved petitioner will have to come again to court with a fresh writ petition or file an application for fixing time for deciding the matter."

7. First of all petition for allotment itself is not maintainable. In any view of the matter, only because of the decision of this Court they continued their allotment. The respondents therefore rightly has come to the conclusion that the petitioners are not entitled to the relief as they claimed for allotment. It is very clear case that when the original order clearly says that it will be allotted to only persons in occupation, the petitioners, knowing fully well that they were never in occupation after the allotment cannot be considered to be allotted to them. That is why they have come with the idea by contending as if they are entitled to the relief even though under law they are not entitled for the relief. Hence, I do not find any reason to interfere with the reasoned order of the authorities.

8. Accordingly, the writ petitions stand dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kk

To

1.The Secretary to Government,
Tamil Nadu Housing and Urban Welfare Department,
Secretariat, Chennai-09.

2. The Managing Director,
Tamil Nadu Slum Clearance Board,
Chennai-05.

+1cc to M/S S.Prabhu, Advocate Sr.Nos.63498,63500,63499 &
63501

W.P.Nos.37049 to 37052 of 2016 and
W.M.P.Nos.31846 to 31854 of 2016

SSK(CO)
RVR 02/01/2017