

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WP.No.41958/2016 & WMP.Nos.35916 & 35917/2016

Mr.R.Sivarajan

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Petitioner

Versus

1.The District Collector
Coimbatore District,
Coimbatore 641018.

2.The Executive Engineer
Tamil Nadu Slum Clearance Board
Coimbatore Division, 13A, West
Arokiasamy Salai, RS Puram,
Coimbatore 641002.

3.The Tahsildar
Taluk Office, Coimbatore [South]
Coimbatore 641018.

4.The District Revenue Officer
O/o.The Collector,
Coimbatore 641018.

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Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus calling for the records of the 2nd respondent's impugned proceedings in Na.Ka.No.1341/A5/2014 dated 28.08.2014 and quash the same and direct the 1st respondent to provide priority to the patadarars of Ex-Servicemen and Widows in grouping houses are ready for allotment in Malumichampatti Village, Coimbatore District.

For Petitioner : Mr.S.Kolandasamy
For RR 1, 3 & 4 : Mr.A.Kumar, Spl.GP
For R2 : Mr.S.Prabhu, Standing Counsel

ORDER

Heard the learned counsel for the petitioner ; Mr.A.Kumar, learned Special Government Pleader, who accepts notice on behalf of the respondents 1, 3 and 4 ; and Mr.S.Prabhu, learned Standing counsel accepting notice on behalf of the 2nd respondent and with the consent on either side, the writ petition is taken up for final disposal.

2 A perusal of the affidavit filed in support of this writ petition and the typed set of documents would disclose that the petitioner is seeking for quashment of the impugned order dated 28.08.2014 passed by the 2nd respondent. It is seen that the said impugned order is neither addressed to the petitioner nor to any of the individual members of the Association ; but it is an internal communication between the 2nd respondent and the 1st respondent and the petitioner has no say or ground to challenge the same. Further, it is also seen that the petitioner, in the capacity of the President of Kovai Ex-Serviceman and Widows Welfare

Society, has filed the present writ petition. A perusal of the typed set of documents annexed to this writ petition would reveal that the earlier application of the petitioner seeking Free House site patta, was rejected mainly on the ground that as per the order of the 2nd respondent dated 28.08.2014, the 2nd respondent has intimated the 1st respondent that the encroachers of the water bodies as well as the Government Poramboke lands are to be identified and if they find place in the list of the beneficiaries under the Ex-Servicemen/Soldiers and Widows, their request for free house site patta will be rejected. In the considered opinion of this Court, the respondents are proceeding only in accordance with law. Further, the so-called impugned order was passed in the year 2014 and having kept silent for more than two years, the petitioner has now come up with an innocuous representation by way of this writ petition.

3 This Court, time and again had held in various decisions, in particular, in the judgment rendered by a Division Bench of this Court, in **M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District** reported in **2010 [2] Law Weekly 785**, that what cannot be considered, cannot be directed to be considered. The Division Bench in the decision cited supra, has 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."

5 In view of the above cited decision, this Court is of the view that the writ petition is not maintainable and is liable to be dismissed. Accordingly, the same is dismissed. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

30.11.2016

AP

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B.RAJENDRAN, J.,
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