

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.03.2016

Pronounced on : 15.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.8740 of 2016
and
W.M.P.Nos.7729 to 7731 of 2016

Chinnathangam Petitioner

Vs.

1.The District Collector,
Salem District, Salem.

2.The Project Director,
District Rural Development Authority,
Salem District.

3.The Block Development Officer,
Panamarathupatti Block,
Salem District.

4.The President,
Village Panchayat, Kuralnatham,
Kuralnatham Post,
Panamarathupatti (Via),
Salem District-636 204.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in Na.Ka.532/2014/T2, dated 17.04.2014 passed by the 3rd respondent and to quash the same and consequently, to direct the 3rd respondent to release the amount towards 'Green House' based on the petitioner's representation dated 31.08.2016.

For Petitioner	: Mr.I.Paul Noble Devakumar
For respondents	: Mr.P.Sanjay Gandhi, Additional Government Pleader, (For R1 & R2) Mr.P.V.Selvakumar, Additional Government Pleaders (For R3) Mr.S.Thirumavalavan (For R4)

ORDER

This writ petition has been filed by the petitioner, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 3rd respondent vide his proceedings in Na.Ka.532/2014/T2, dated 17.04.2014 and to quash the same and consequently, to direct the 3rd respondent to release the amount towards 'Green House' based on the petitioner's representation dated 31.08.2016.

2. In the affidavit filed in support of the writ petition, it has been averred by the petitioner, as follows:-

The petitioner does not have any house and she has not availed any housing scheme by the State or Central Government on free of cost. The petitioner's husband namely Sathasivam had deserted the petitioner very long back and now, she is living separately. Hence, the petitioner applied for a Green House under Chief Minister's Solar Powered Green House Scheme, to the 3rd respondent through the 4th respondent. The 3rd respondent has allotted a Green House with solar light in the year 2014-2015 by his order in Na.Ka.No.532/2014/T4, dated 14.03.2014 under the Government Scheme, after considering her family economical background and on due verification. After the sanction order, the petitioner has availed loan from outsiders and started house construction work and 75% of the construction work was completed. The petitioner has mobilised loan believing that the amount would be released by the 3rd respondent under the Green House Scheme. Though the petitioner had completed of 75% work, the remaining work could not be completed due to want of further amount. Under the said scheme, the beneficiary has to put up the construction first and the amount would be sanctioned at stage by stage. Hence, the petitioner made a representation on 19.08.2015 to the 1st respondent seeking to release the amount in order to enable the petitioner to complete the construction of the house and to settle the amount to those who gave the amount to the petitioner in advance. The 3rd respondent has sent a letter to the 2nd respondent in Na.Ka.No.532/2014/A6, dated 24.08.2015, stating that the allotment made to the petitioner was cancelled for the reason that her husband is working in postal department. It is the case of the petitioner that the respondents 3 & 4 have joined hands by indulging in a misdeed and thereby cancelled the petitioner's allotment order without serving the copy to her. According to the petitioner, the reason for cancellation of the allotment order is that there was previous enmity between the petitioner's son Boopathi and the 4th respondent herein. Hence, challenging the cancellation of the allotment order, the petitioner has come forward with the present writ petition before this Court.

3. When the matter was taken up consideration, the learned

counsel for the petitioner has made a detailed argument by reiterating the averments made in the affidavit filed in support of the writ petition. It is the main submission of the learned counsel for the petitioner that the petitioner does not own any house and her husband deserted her very long back and she is living separately. In fact, the 3rd respondent had allotted a green house by his order dated 14.03.2014. Based on the allotment order, the petitioner has also started to construct the house by availing loan from the third parties. Now, the 4th respondent, who is having previous enmity with the petitioner's son Boopathy, instigated the 3rd respondent stating as if the petitioner is living with her husband and her husband is working in Postal Department; that the 3rd respondent has also cancelled the allotment order without any valid reason.

4. It is yet another submission of the learned counsel for the petitioner that before passing the impugned order, no notice was issued to the petitioner; hence, the impugned cancellation order passed by the 3rd respondent is not sustainable. Further, having issued the allotment order, before cancelling the same, the petitioner should have been given an opportunity of personal hearing by the respondents. Thus, the learned counsel for the petitioner sought for quashing the impugned order.

5. Per contra, the learned counsel for the 4th respondent, by filing a detailed counter, submitted that the petitioner's husband is gainfully employed in Postal Department and the petitioner suppressed the said fact and obtained allotment order. Further, the petitioner has made a false statement in her affidavit as if her husband deserted her; on the other hand, she is living with her husband Mr. Sadasivam, and son Mr. Boopathy and an unmarried daughter. The learned counsel for the 4th respondent would further submit that the petitioner's husband is owning a house in the same Village bearing Door No. 7/116. Further, the petitioner is also owning an house bearing Door No. 7/35 in Arundadhiyar Colony. In this regard, the learned counsel for the 4th respondent has also invited the attention of this Court to the House Tax Receipts annexed in the typed set of papers, in respect of the above said houses bearing Door Nos. 7/35 & 7/116.

6. The learned counsel appearing for the 4th respondent would further submit that the State of Tamil Nadu introduced a housing scheme in the name and style of "Chief Minister's Solar Powered Green House Scheme, through a Government Order in G.O. Ms. No. 46, Rural Development and Pachayat Raj Department, dated 17.08.2011. The said Scheme was introduced pursuant to policy decision of the State Government, which was announced by His Excellency the Governor, Government of Tamil Nadu, in the Tamil Nadu Legislative Assembly on 03.06.2011.

Initially, the Government decided to fix the cost of the construction for 300 sq.ft house as Rs.1,50,000/- and Rs.30,000/- earmarked for installation of Solar Power. Subsequently, the same was increased to Rs.1,80,000/- and Rs.30,000/-. Totally, the beneficiary would be entitled to get Rs.2,10,000/- for the House Construction and installation of Solar Power. The said Housing Scheme is meant for the families belong to below poverty line. The allotment order itself contains several conditions. As per Clause 6 of the conditions, no member from the beneficiary family can be gainfully employed in Government Service. But, in the instant case, the petitioner's husband is gainfully employed in Postal Department and the same is not disputed by the petitioner. Hence, the petitioner is not entitled to get any benefit under the Chief Minister's Solar Powered Green House Scheme. Moreover, the petitioner and her husband are owning houses. In order to avail the benefit of the above said Housing Scheme, the petitioner has created a story as if her husband deserted her very long back; but, actually the petitioner's husband is living with her and he is employed in Postal Department and her son is also earning sufficiently. It is further submitted by the learned counsel appearing for the 4th respondent that it is incorrect to state that the respondents 3 & 4 played foul play by cancelling the allotment order. It is incorrect to state that there was previous enmity between the petitioner's son and the 4th respondent. In fact, the petitioner's son being a local leader of a political party tried to pressurize the 4th respondent as well as the 3rd respondent by threatening them by way of conducting dharna and agitation in order to achieve his object. Having failed to attain his object, the petitioner's son has instigated the petitioner to file the present writ petition.

7. The learned counsel appearing for the 4th respondent would submit that after noticing the fact that the petitioner's husband has been gainfully employed in Postal Department and the petitioner is living with her husband, the 3rd respondent has rightly cancelled the allotment. Therefore, there is no infirmity in the cancellation order passed by the 3rd respondent.

8. It is the submission of the learned Additional Government Pleaders that since the petitioner is not entitled to the allotment order, there is no need to issue any notice to the petitioner before passing the cancellation order. The allotment order was wrongly issued to the petitioner. Since the petitioner's husband is gainfully employed in Postal Department and the petitioner is living with her husband and they are owning houses, the 3rd respondent has rightly cancelled the allotment order. Thus, the learned counsel for the 4th respondent sought for dismissal of the writ petition.

9.Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

10.It is stated by the petitioner that the petitioner was deserted by her husband. But, no tangible evidence was produced before this Court to support her claim. Moreover, as per Clause 6 of the conditions in the Housing Scheme, no member from the beneficiary family can be gainfully employed in Government Service. In the counter, it has been categorically stated by the respondents that the petitioner's husband is gainfully employed in Postal Department and that the petitioner and her husband are owning houses. But, the petitioner has not come forward to deny the same by way of rejoinder. Therefore, I do not find any infirmity in the impugned order passed by the 3rd respondent, cancelling the allotment order.

11.It is another submission of the learned counsel for the petitioner that before cancelling the allotment order, the petitioner ought to have been given an opportunity of personal hearing. But, in my considered opinion, when the petitioner has not chosen to deny the case of the respondents that her husband is gainfully employed in Postal Department and the petitioner and her husband are living together and they are owning houses separately, the non-issuance of notice before the cancellation of allotment order has no significance in this matter. Under such circumstances, I do not find any valid ground to interfere with the impugned order passed by the 3rd respondent.

In fine, the writ petition fails and the same is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

ssv

To

1.The District Collector,
Salem District, Salem.

2.The Project Director,
District Rural Development Authority,
Salem District.

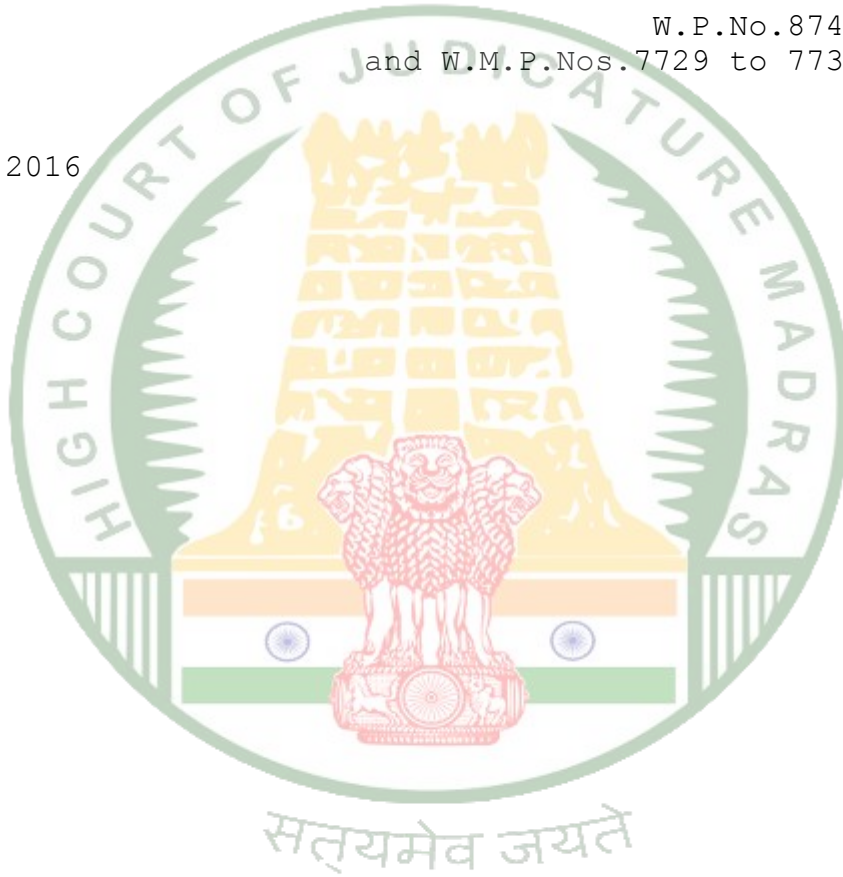
3.The Block Development Officer,
Panamarathupatti Block,
Salem District.

4.The President,
Village Panchayat, Kuralnatham,
Kuralnatham Post,
Panamarathupatti (Via),
Salem District-636 204.

+1 cc to Mr.S.Thirumavalavan, Advocate, sr.24078

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pvs co
kra 02.05.2016



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