

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

Writ Petition No.1781 of 2017

M.Anandan

... Petitioner

vs.

The Chairman & Managing Director,
Tamil Nadu Slum Clearance Board,
Chepauk,
Chennai 600 005.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondent herein to consider the representation of the petitioner dated 10.06.2016 and allot one of the newly constructed vacant tenement houses in Power Kuppam Tamil Nadu Slum Clearance Board Scheme-II, Kasimedu, Royapuram, Chennai 600 013 within a prescribed time.

For Petitioner : Mr.K.Sridhar

For Respondent : Mr.S.Prabhu

O R D E R

The petitioner has come up with this Writ Petition seeking a direction to the respondent herein to consider his representation dated 10.06.2016 and allot one of the newly constructed vacant tenement houses in Power Kuppam Tamil Nadu Slum Clearance Board Scheme-II, Kasimedu, Royapuram, Chennai 600 013.

2. According to the petitioner, the respondent Tamil Nadu Housing Board allotted a house tenement bearing No.480 in Power Kuppam Tamil Nadu Slum Clearance Board Scheme - II by proceedings G2/10389/96, dated 08.04.1998 and he has also paid the necessary amount as prescribed in the allotment order dated 08.04.1998. Thereafter, when the petitioner went to take possession of the house along with the respondent's Overseer, he found that some other person with political support had trespassed and illegally occupied House No.480 which was allotted to him. Though the petitioner was assured by the respondent that the trespasser would be evicted and possession

would be given to him, there was no proper response. Hence, he sent a representation dated 10.06.2016 requesting the respondent to give him a house tenement in the Power Kuppam Tamil Nadu Slum Clearance Board Scheme - II in lieu of House No.480 allotted to him. Pending consideration of the same, the petitioner is before this Court.

3. Heard the learned counsel on either side and perused the material documents available on record.

4. In similar circumstances, this Court by an order dated 04.11.2016 in W.P.Nos.37049 to 37052 of 2016, dismissed the said Writ Petitions, holding as under:

"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 quiet 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 be considered, under the guise of considering the representation.

6. In this context, this Court wishes to follow the decision of a Division Bench of this Court in the case of M.Ingaci Vs. The Commissioner. Devakottai Municipality, Sivagangai District, reported in 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 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."

5. Following the said order of this Court, this Court holds that what cannot be considered cannot be directed to be considered. Accordingly, this Writ Petition fails and stands dismissed. No costs. Consequently, connected W.M.P.No.1766 of 2017 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

aeb

To:

The Chairman & Managing Director,
Tamil Nadu Slum Clearance Board,
Chepauk,
Chennai 600 005.

+1cc to Mr.Prabhu, Advocate, S.R.No.7985

KS(CO)
RS(08/03/2017)

Order in
W.P.No.1781 of 2017