

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.7479 of 2011
and
M.P.No.1 of 2011

M.Pandian

... Petitioner

vs.

1.The Chief Engineer,
Public Works Department (Buildings),
Chepauk, Chennai - 600 005.

2.The Principal,
Institute of Textile Technology,
Tharamani (P.O), CIT Campus,
Central Polytechnic,
Tharamani, Chennai - 600 113.

3.Government of Tamilnadu, rep.by
Secretary, Public Works Department,
Fort St.George, Chennai - 600 009.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records in Letter No.9815/H2/10-3 dated 25.2.2011 on the file of the third respondent herein and quash the same.

For petitioner : Mr.S.Sadasharam

For respondents : Mr.S.Navaneetham,
Additional Government Pleader

ORDER

This Writ Petition has been filed by the petitioner challenging the impugned Letter No.9815/H2/10-3 dated 25.2.2011 on the file of the third respondent, whereby the third respondent directed the petitioner to furnish Pension drawing

Account Number, name of the Bank and its Branch name, in order to enable them to recover a sum of Rs.67,815/- in equal monthly instalments due to alleged unauthorised occupation of the PWD Quarters.

2. It is submitted by the learned counsel for the petitioner that the petitioner was employed in the Institute of Textile Technology, CPT Campus, Taramani, Chennai, and was allotted a residential quarters No.E-13, at Tod Hunter Nagar, Saidapet. He was in occupation of the quarters allotted by the third respondent since 1981. He vacated the quarters on 01.06.1998. The first respondent herein by his letter of 1997 called upon the petitioner to vacate the residential quarters stating that petitioner's basic pay exceeded Rs.4,000/- with reference to G.O.Ms.No.995 dated 9.5.1990. The petitioner was eligible to get allotment of alternative residential quarters accommodation commensurate to his eligibility. Therefore, the petitioner preferred a case before the Tamil Nadu State Administrative Tribunal in O.A.No.6983/97 challenging the validity of G.O.Ms.No.995/PWD, dated 9.5.1990. Pending the Original Application, the third respondent issued another order in G.O.Ms.No.429 dated 18.8.1999 referring to G.O.Ms.No.995 dated 9.5.1990 and fixed the ceiling limit for the residential quarters at Tod Hunter Nagar, Saidapet, Chennai, at Rs.14,050/-, pursuant to the Sixth Pay Commission recommendations. In view of enhancement of ceiling limit, there can be no demand for penal rent. While the Original Application was pending before the State Administrative Tribunal, without due regard to G.O.Ms.No.429 dated 18.8.1999, the first respondent called upon the petitioner to pay the penal rent by issuing a notice in the year 2003 after his retirement from service. Subsequently, O.A.No.6986 of 1997 which was pending on the file of the Tamil Nadu State Administrative Tribunal was transferred to the file of this Court and re-numbered as W.P.No.31210 of 2006 and the said Writ Petition was dismissed referring to dismissal of various other Writ Petitions prior to G.O.Ms.No.429 dated 18.8.1999. Thereafter, the first respondent issued many letters claiming penal rent of Rs.67,815/- and the petitioner also made several representations citing G.O.Ms.No.429 dated 18.8.1999 seeking to refrain from taking steps to recover the penal rent as it was not applicable to him and the allotment order did not state anything about the levy of penal rent. As the respondents are demanding penal rent from the petitioner, he has filed the present Writ Petition. In support of his contention, the learned counsel for the petitioner relied on the judgment of this Court in W.P.No.18870 of 2009 dated 24.3.2014 (K.Shanmugam vs. The Chief Engineer, PWD (Buildings, Chepauk, Chennai and two others).

3. Counter Affidavit dated 08.09.2011 has been filed on behalf of the respondents. In the counter affidavit, it is stated as follows:-

" (vii) The first respondent has failed to find that on the basis of G.O.Ms.No.429 dated 18.8.1999 passed by the third respondent the respondents 1 and 2 have got no locus standi or any authority to levy penal rent and to declare the occupation of the residential quarters following the allotment made earlier as unauthorised.

(viii) The respondents/authorities have failed to find that by virtue of G.O.Ms.No.429 dated 18.8.1999 issued consequent to the recommendations of the Sixth Pay Commission for revision of pay to the Government servants, the earlier G.O.Ms.No.995 dated 9.5.1990 has been superseded and consequently, no demand can be made against the petitioner for penal rent for occupation of the Government Quarters as allotted by the third respondent."

A perusal of the above extracts show that there can be no demand for penal rent pursuant to G.O.Ms.No.429 dated 18.8.1999.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

5. It is not disputed by the respondents that pursuant to issuance of G.O.Ms.No.429 dated 18.8.1999 enhancing the maximum ceiling limit for occupation of the residential quarters at Tod Hunter Nagar fixing as Rs.14,050, the petitioner was eligible to have Government Quarters accommodation till his retirement from the service. Therefore, no penal rent can be claimed from the petitioner.

6. Apart from that, the judgment relied on by the petitioner in W.P.No.18870 of 2009 (supra) wherein an identically placed person filed the Writ Petition, was allowed by this Court quashing the demand of penal rent. In Paragraphs 12 and 13, it has been held as follows:-

"12. Having rendered such a finding, if the facts on hand are looked into, then the petitioner cannot be stated to have crossed the ceiling limit, since the ceiling has been increased to Rs.14,050/- and the petitioner would be well within such ceiling limit and there was no cause available for the first

respondent to direct the petitioner to vacate the premises. Even assuming that the petitioner was hit by rigour/ceiling limit, penal rent cannot be recovered from the petitioner. Penal rent is recoverable, only when the Government servant continues in occupation of the Government quarter beyond the permissible limit. It may arise in cases, where the Government servant has been either dismissed or removed from service, yet continues to squat in the Government Quarters or when a Government servant is transferred to another station and refuses to vacate the quarter allotted in the first place of posting. Even in such of those cases, a minimum time period of about three months is granted to enable the occupant to find alternate accommodation or to seek for accommodation in the transferred place. Therefore, if the petitioner is to be called upon to vacate the premises, since his basic pay was increased, then the respondent ought to have offered alternate accommodation to the petitioner and granted reasonable time, so as to enable the petitioner to seek for alternate Government accommodation commensurate with his scale of pay. However, this was also not done.

13. In any event, the petitioner cannot be treated as an unauthorised occupant of a Government quarter, since in the order of allotment vide G.O.Ms.No.1128, dated 3.6.1987, does not prescribe any such condition. In such circumstances, this Court has no hesitation to hold that the impugned demand is wholly illegal.

7. In the light of the above judgment and the aforesaid G.O., viz., G.O.Ms.No.429 dated 18.8.1999, the impugned order passed by the third respondent is quashed and accordingly, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asvm

To

1.The Chief Engineer,
Public Works Department (Buildings),
Chepauk, Chennai - 600 005.

2.The Principal,
Institute of Textile Technology,
Tharamani (P.O), CIT Campus,
Central Polytechnic,
Tharamani, Chennai - 600 113.

3.The Secretary,
Public Works Department,
Government of Tamilnadu, rep.by
Fort St.George, Chennai - 600 009.

+lcc to Mr.S.Sadasharam, Advocate Sr.490
+lcc to the Government pleader Sr.749

W.P.No.7479 of 2011
and
M.P.No.1 of 2011

rj[col
srg 22/2/2017



WEB COPY