



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.12.2017

CORAM:

WEB COPY THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.5747 of 2011

and

M.P(MD)No.1 of 2011

R.Guruchandran

... Petitioner

Vs.

The Chief Work Shop Manager/GOC,
Ponmalai, Trichy.

... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order dated 18.05.2011 made in No.CC/1/46/complaints by the respondent and quash the same.

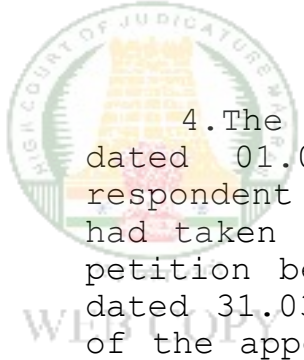
For Petitioner : Mr.S.Sethuraman
For Respondent : Mr.A.Haja Mohideen

O R D E R

This writ petition has been filed seeking issuance of a Writ of Certiorari, to quash the impugned order dated 18.05.2011 made in No.CC/1/46/complaints by the respondent.

2.The petitioner was working as a Head Constable at Golden Rock, Trichy and he was allotted quarters for residence bearing No.A/07/03/GOC on 08.06.2009 and he was occupying the said quarters and paying rents regularly without any default.

3.According to the petitioner, other Union members with the help of some people had set up a committee and made arrangements as if inspection has been conducted and as if the committee has found that the petitioner has been in unauthorized occupation of the neighbouring quarters, namely, quarters bearing No.A/07/04/GOC and sent a communication to him on 01.03.2011 directing him to pay the arrears of rent in respect of the quarters at No.A/07/04/GOC from 08.06.2009, which, according to the petitioner was not at all in his occupation and which is incapable for occupation. Further, by the Memorandum dated 01.03.2011 the allotment of quarters at No.A/07/03/GOC was cancelled with immediate effect. Further, for the cancellation of allotment in respect of the quarters bearing No.A/07/03/GOC, which is already in occupation by the petitioner's family, no notice of inspection and no opportunity has been given to the petitioner to put forward his claim. The said memorandum dated 01.03.2011 has been prepared in order to please somebody.



4. The petitioner further submits that as against the memorandum dated 01.03.2011, the petitioner filed an appeal before the respondent dated 07.03.2011. Pending appeal, since the respondent had taken steps to evict the petitioner, the petitioner filed writ petition before this Court in W.P(MD)No.3842 of 2011. By an order dated 31.03.2011 this Court has directed the respondent to dispose of the appeal, and till the disposal of the appeal this petitioner was permitted to continue to occupy the quarters No.A/07/03/GOC. The respondent by an order dated 18.05.2011 has disposed of the appeal and confirmed the levy of penal rent and revoked the permission to continue in Quarters at No.A.07/03/GOC. Against the said order, the petitioner is before this Court.

5. Mr. A. Haja Mohideen, learned Railway Advocate filed a counter affidavit stating that R. Guruchandran, PF.No.02584141, Head Constable 229/IPF/W/GOC Central Workshops, Southern Railway, Golden Rock, Trichy - 4 was allotted Railway Quarters at No.A.07/03/GOC at his request with effect from 25.02.2009 for his bona fide use.

6. It is further stated in the counter affidavit that the residents living nearby Railway Quarters at No.A/07/03/GOC brought the issue through a recognized union that the adjacent vacant Railway Quarters at No.A/07/04/GOC is unauthorisedly occupied by the petitioner herein and to verify the subject issue raised by the recognized union in the Periodical Negotiating Machinery held on 16.09.2010, a team of officials consisting of Sub-Inspector, Railway Protection Force (SIRPF), Golden Rock, Staff and Welfare Inspector, Golden Rock were directed to inspect Railway Quarters at No.A 07/04/GOC on 24.09.2010. They submitted their joint report confirming unauthorized occupation of Railway Quarters at No.A 07/04/GOC by the family of the petitioner. The said quarters No.A 07/04/GOC remaining vacant from 08.06.2009 as per the official records and it was allotted to none and at the time of inspection, one Tamilselvi, wife of S. Guruchandran was present in the said premises of Quarters at No.A 07/04/GOC and agreed that the vacant quarters at No.A 07/04/GOC is being used by them. A communication dated 01.03.2011 was sent to the department advising cancellation of allotment of quarters at No.A.07/04/GOC. The petitioner filed a petition in W.P(MD)No.3842 of 2011 and this Court by order dated 31.03.2011, directed the first respondent to dispose of the appeal filed by the petitioner. Pursuant to the direction of this Court dated 31.03.2011 made in W.P(MD)No.3842 of 2011, the first respondent immediately taken up the appeal and the same was disposed off.

7. Heard the learned counsel for the petitioner and also perused the materials available on record.

8. It is seen from the said appeal that no opportunity was given to the petitioner. It only says that in W.P(MD)No.3842 of 2011, this Court has directed the respondent (viz) The Chief Workshop Manager/Ponmalai/Trichy to dispose of the appeal dated 07.03.2011



submitted by the employee. In compliance of the Judgment, the appeal has been considered in detail and disposed of with the following observations:

"(a) Quarters.No.A 07/03/GOC was allotted to you vide Allotment Order No.78/2008 dated 19.08.2008. Based on the information of unauthorized occupation of the adjacent Quarters.No.A. 07/04/GOC by you, a Committee of officials comprising of SIRPF/Colony/GOC, Senior Section Engineers/Works/A/GOC, Staff and Welfare Inspector/GOC have jointly inspected the Quarters.No.A. 07/04/GOC and reported that "Shri S.Guruchandran, Hd.Constable/WS/GOC and his family have unauthorisedly occupied the quarters No.A7/4. The A7/4 is vacant from 08.06.2009 as per colony office record. During the enquiry Smt.Tamilselvi, W/o.Shri S.Guruchandran was available and she orally agreed that the vacant quarters No.A7/4 is being used.

(b) On account of confirmation of unauthorized occupation of adjacent Quarters.No.A. 07/04/GOC, the allotment of Quarters.No.A. 07/03/GOC has been cancelled besides levying of Penal Rent for the unauthorized occupation of Quarters.No.A. 07/04/GOC.

(c) Your contention that Quarters allotted viz.A 07/03/GOC is sufficient for your bonafide use and there is no necessity for occupying the adjacent Quarters viz.No. A 07/04/GOC, since Quarters.No.A.07/04/GOC is in totally dilapidated condition and is unfit for occupation etc., are not borne by facts since the unauthorized occupation has been physically witnessed by the committee, which is inclusive of one SIPF also.

In the circumstances, representation dated 07.03.2011 for dropping the proposal of levy of penal rent and permission to continue in Quarters No.A.07/03/GOC is not agreed to since the unauthorized occupation has been decisively proved. The appeal is disposed of accordingly."

9. From the above order, it is clear that no opportunity was given to the said petitioner to put forth his claim to prove that his family is not in occupation of the other quarters. The appeal order has been passed based on the alleged admission of Tmt.Tamilselvi, wife of the petitioner. In the appeal order itself it is stated that Tmt.Tamilselvi orally agreed that the vacant quarters is being used by them. The authorities have not obtained any signature and produced such documents showing the admission of Tmt.Tamilselvi that they are unauthorisedly using the other quarters. Thus there is no definite evidence showing that the petitioner is unauthorisedly using the other quarters.



10. In such view of the matter, this Court is inclined to interfere with the impugned order. Accordingly, the impugned order is set aside. The respondent is directed to conduct fresh enquiry in this regard. The respondent shall give the petitioner an opportunity to put forth his claim and then pass an order. If it is found that the petitioner is not in unauthorised occupation of the other quarters and if the findings are in favour of the petitioner, the respondent is directed to refund the amount, if any collected/recovered from the petitioner in lieu of penal rent. The said exercise shall be completed by the respondent within a period of six months from the date of receipt of a copy of this order.

11. With the above observation, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

The Chief Work Shop Manager/GOC,
Ponmalai, Trichy.

+1cc to Mr.S.Sethuraman, Advocate, SR.No.91382.

+1cc to Mr.A.Haja Mohideen, Advocate, SR.No.91264.

W.P (MD) No.5747 of 2011
05.12.2017

PSD

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