

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2018

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.29848 of 2015
and
W.M.P.Nos.1 & 2 of 2015

M.Rakesh, Assistant,
Govenrment Unani Medical College
Chennai -600 106., residing at
No.4, ESI quarters
Sunguvar Streetm
Triplicane-Chennai 600 005.Petitioner

vs

1. The Director of Medical and Rural Health Services (ESI)
Chennai-600 006.
2. Regional Administrative Medical Officer (ESI),
22, Perambur Highways, Chennai 600 012.
3. The Chief Medical Officer, ESI Dispensary,
Triplicane, Chennai- 600 005.Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in the impugned order of the 2nd respondent in Na.Ka.No.4390/B3/2014 dated 14.09.2015 and follow up order of the 3rd respondent in Na.Ka.No.66/A1/2015 dated 17.09.2018 and quash the same and consequentially direct the respondents to permit the petitioner to continue to occupy the quarters allotted to the petitioner and grant such further or other reliefs.

For Petitioner : Mr.N.S.Nandakumar

For Respondents : Ms.A.Srijayanthi,
Special Government Pleader

O R D E R

The impugned order passed by the second respondent in proceedings dated 14.09.2015 and the consequential order passed by the third respondent in proceedings dated 17.09.2015, are under challenge in this writ petition.

2. The second respondent passed the impugned order stating that the allotment of the Medical Officers quarters in favour of the writ petitioner, who is the Ministerial staff, was granted in proceedings dated 30.06.2012, with a condition that he should vacate the premises in the event of any request from the Medical Officers or staffs working in the ESI Hospital. In spite of the notice given by the respondents to vacate the said Government quarters within a period of one month, the writ petitioner had failed to vacate the same. Thus, the respondent passed an order for the eviction of the writ petitioner and the consequential order passed by the third respondent also states that the writ petitioner should vacate the Medical Officers quarters as per the orders passed by the 2nd respondent.

3. The writ petitioner was transferred in proceeding dated 13.06.2014 from the office of the Directorate of Medical and Rural Health Services (ESI) Hospital, Chennai, to the office of the Commissionerate of Indian Medicine and Homeopathy, Chennai -106. This apart, the writ petitioner is not at all eligible for allotment in respect of the Medical Officers quarters, which are attached with the ESI Hospital, and the very allotment itself was made on condition that, in the event of any request from the Medical Officers working in the ESI Hospital, the writ petitioner should vacate the Government quarters within a period of one month.

4. Accepting the conditional allotment, the writ petitioner had occupied the Medical Officers quarters. However, even after the transfer, the petitioner has not vacated the Government quarters and has filed this writ petition and by virtue of an interim Order, he continued for many years in the Government quarters without allowing the Government authorities to allot the attached quarters to the Medical Officers, who are serving in the medical hospital. The very attitude of a public servant/the writ petitioner, in retaining the Medical Officers quarters for an unspecified period, is to be deprecated. The writ petitioner being in public service, and any public servant, who is in occupation of the quarters on condition, is bound to abide by the condition and in the event of transfer to some other place is liable to vacate the Government quarters.

In the present case it is an attached quarters with the hospital. The quarter is to be allotted only in favour of the Medical Officers and staffs working in the very same hospital at the first instance. Contrary to the scheme, the quarter was allotted in favour of the writ petitioner. The initial mistake was committed by the respondent by granting allotment in favour of the writ petitioner. However, the allotment was granted on condition that in the event of any request from the Medical Officers, the quarters should be vacated within a period of one month.

5.The learned Special Government Pleader contented that the writ petitioner is continuing illegally in the Medical Officers quarters, inspite of the fact that he had already been transferred and the writ petitioner is continuing only by virtue of the interim order granted by this court.

6.In this view of the matter, the Chief Medical Officer, who has filed the counter statement, has stated that the quarters attached to the Dispensaries is mainly meant for the staffs attached to that particular ESI Dispensary and staff of the ESI Scheme. If any surplus quarters is remaining vacant, the same will be allotted to the Medical Department staff other than ESI Staff at the rate of 1 ½ times of the normal rate of rent vide Government Letter No.24807/K2/2004-6, Labour and Employment (K2) Department, dated 29.04.2005, in which amendment of under Rule 2 under Appendix I, II and II respectively to the G.O.Ms.No.1069, Labour and Employment, dated 27.12.1969 states that:

"ESI quarters are allotted to the staff working in ESI Hospitals and Dispensaries at the normal rate of rent when they are working in the same institutions. If any surplus quarters remaining vacant, they will be allotted to the Medical Department Staff, at the rate of 1 ½ times of the normal rate of rent".

7.This being the factum of the case, the writ petitioner is not entitled to continue in the Medical Officers quarters and the petitioner is directed to vacate the quarters as per the original condition within a period of one month from the date of receipt copy of the Order.

8.In the event of not vacating the premises within a period of one month, the respondents are permitted to seek the Police Assistance and evict the writ petitioner. In the event of allowing the department to evict the petitioner with the help of police, then, it is to be construed that the petitioner has committed an act of misconduct and suitable disciplinary action to be initiated against the writ petitioner under the Discipline and Appeal Rules.

9.Accordingly, the writ petition stands dismissed. Consequently connected miscellaneous petitions stand closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

stm/nmm

To

1. The Director of Medical and Rural Health Services (ESI) Chennai-600 006.
2. The Regional Administrative Medical Officer (ESI), 22, Perambur Highways, Chennai 600 012.
3. The Chief Medical Officer, ESI Dispensary, Triplicane, Chennai- 600 005.

+1cc to Mr.N.S.Nandakumar, Advocate, S.R.No.44160

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