

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.23597 of 2009 and M.P. Nos.1 of 2009 and 1 of 2011

G.Napolean

.. Petitioner

-vs-

1.The Commissioner of Animal Husbandry,
Chennai-6.

2.The Deputy Director of Animal Husbandry,
District Livestock Farm,
Pudukkottai. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned order passed by the first respondent in Proceeding Na.Ka.No.22846/EE1/2009 dated 15.09.09 and quash the same and consequently direct the respondents not to recover the house rent allowance from the salary of the petitioner till the government quarters is made fit for dwelling and further direct the respondent to re-pay the house rent allowance already recovered from the petitioner with interest.

For Petitioner : Ms.Swadhi Subramaniam

For Respondents : Mr.A.Zakir Hussain
Government Advocate

ORDER

The writ petition has been filed challenging the impugned order bearing Na.Ka.No.22846/EE1/2009 dated 15.09.2009 passed by the Commissioner of Animal Husbandry, Chennai, the first respondent herein and seeking a direction to the respondents not to recover the house rent allowance from the salary of the petitioner till the government quarters is made fit for dwelling and to re-pay the house rent allowance already recovered from the petitioner with interest.

2.Learned counsel appearing for the petitioner would submit that the petitioner was working as an Agricultural Officer in District Animal Husbandry Farm at Pudukkottai. However, the petitioner was allotted with the Government Quarters by order dated 31.08.2007, but the same are totally unfit for living. As the quarters were constructed in extension areas, due to non maintenance of the residential houses, the same has become unfit for dwelling. Since the quarters are not having doors and windows and there is no electricity and water connection in the same, the petitioner has been living in his own accommodation without occupying the Government Quarters.

3.According to the learned counsel appearing for the petitioner, since the petitioner was not in actual occupation of the Government Quarters, which is unfit for dwelling purpose, the respondents ought to have granted the house rent allowance to the petitioner. But contrary to the rule, the respondents have not taken steps either to reconstruct the Government Quarters or to grant house rent allowances. However, the Deputy Director of Animal Husbandry, District Livestock Farm, Pudukkottai, the second respondent herein, by proceedings dated 12.01.2009, categorically recommended the case of the petitioner to the first respondent herein stating that the quarters were constructed 50 years back and for the past 25 years, it was not maintained properly and the same are unfit for dwelling purpose. In spite of the recommendations, the petitioner's house rent allowance has been recovered without any valid reason. Therefore, the petitioner filed W.P. No.5022 of 2009 before this Court. By order dated 19.06.2009, this Court, while disposing of the writ petition, directed the first respondent to consider the representation of the petitioner dated 29.10.2008 based on the recommendation of the second respondent dated 12.01.2009 within a period of six weeks. Without considering the same, the first respondent has issued the impugned order dated 15.09.2009.

4.Concluding her argument, learned counsel appearing for the petitioner would submit that when it is an admitted case that the Government Quarters are completely unfit for human habitation and for dwelling purpose and the same has also been accepted by the second respondent in his Proceedings dated 12.01.2009 stating that the quarters were constructed 50 years back and for the past 25 years, it was not maintained properly and the same are unfit for dwelling purpose, the impugned order seeking recovery is liable to go.

5.Learned Government Advocate appearing for the respondents would submit that the post of Farm Manager (Agricultural Officer) of the District Livestock Farm is a field related post and the residential quarters have been constructed near by the Farm, so as to accommodate the Agricultural Officer near by the

work place. Accordingly, the Agricultural Officer of the District Livestock Farm, who is in occupation of the Government Quarters is not entitled for the house rent allowance and the house rent recovery as prescribed by the Government was deducted in the salary of the petitioner and therefore, the submission made by the petitioner that the residential houses are not maintained properly, the same have become unfit for dwelling and that there is no electricity and water connection in the quarters are not true.

6. But this Court is unable to find any justification on the part of the respondents in forcibly collecting the house rent allowance. It is seen that the petitioner has not accepted the government quarters citing the reasons that the same are completely unfit for human habitation and for dwelling purpose and the same has also been accepted by the second respondent in his Proceedings dated 12.01.2009 stating that the quarters were constructed 50 years back and for the past 25 years, it was not maintained properly and the same are unfit for dwelling purpose. The factual position has been admitted by the respondents in their counter affidavit. It could be seen from the counter in paragraphs 5 and 10 which are given as under:

'5. It is submitted that the petitioner was allotted quarters on joining as Farm Manager on 31.08.2007 afternoon and the rent recovery was made from the occupation and the petitioner has not made any objection and he has not complained as the quarters is totally unfit for living. The petitioner stated in the affidavit as the house does not have doors and windows and there are no electricity and water connection is not true and all the facilities are available in the quarters. As the petitioner lives in his own accommodation without occupying the Government Quarters in his own will and pleasure and his convenience.

10. I submit that on considering the factual grounds the rent recovery has been affected from September 2007 to March 2009. The Government Quarters which are allotted to other field officers attached to the post have occupied the quarters and the rent recovery are much continuously. The Farm Manager above due to his personal advantage has made personal accommodation in the outside Farm and refused to pay the house rent and requested for house rent allowances. If the house rent recovery has not been effected it is loss to the Government.'

7. When it is an admitted case that the second respondent in his proceedings dated 12.01.2009 categorically stated that the quarters were constructed 50 years back and for the past 25

years, it was not maintained properly and the same are unfit for dwelling purpose and secondly, the petitioner without occupying the official quarters and living in his own accommodation, the respondents cannot pass the impugned order. Therefore, this Court has no impediment to allow the writ petition. Accordingly, the impugned order is quashed and the writ petition is allowed. The respondents are directed to re-fund the house rent allowance to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vga

To

1.The Commissioner of Animal Husbandry,
Chennai-6.

2.The Deputy Director of Animal Husbandry,
District Livestock Farm, Pudukkottai.

+1 cc to The Government Pleader, Sr.No. 42532

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CSL/24.06.2019

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