

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.2790 of 2019
and
W.M.P.No.3062 of 2019

M/s. Tapovan Residents Welfare Association,
represented by its President
N.Padmanaban Iyer @ N.P.Iyer
No.18, Tapovan Complex,
Karadimadai Road,
Kuppanur P.O.,
Coimbatore.

... Petitioner

Vs

1. The Secretary to Government,
Social Welfare and Nutritious Meal Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Coimbatore District,
Coimbatore.
3. The District Social welfare Officer,
Gopalapuram,
Coimbatore.
4. Tapovan senior Citizens Foundation,
represented by its president
S.Chellappa
Tapovan Complex, No.2A, Karadimadai Road,
Kuppanur Post,
Coimbatore - 641 010
5. M.N.Varadarajan.
Promotor,
Tapovan Senior Citizens Foundation,
Tapovan Complex,
No.2A, Karadimadai Road,
Kuppanur Post,
Coimbatore - 641 010.

6. S.Chellappa
President,
Tapovan Senior Citizens Foundation,
Topavan Complex,
No.2A, Karadimadai Road,
Kuppanur Post,
Coimbatore - 641 010.

7. R.Subramaniam,
Secretary,
Tapovan Senior Citizens Foundation,
Topavan Complex,
No.2A, Karadimadai Road,
Kuppanur Post,
Coimbatore - 641 010.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents 1 to 3 to initiate action against the respondents 4 to 7 in accordance with law in the light of G.O.(Ms)No.83, Social welfare and Nutritious Meal Programme (SW6(1)) Department dated 23.11.2016.

For Petitioner : Mr.Bijay Sundar
for Mr.K.S.Karthik Raja

For Respondents: Mr.S.N.Parthasarathy,
Government Advocate for R1 to R3
Mr.C.G.Kumar
for M/s.N.Suriyasenthil for R4 to R7

O R D E R

This Writ Petition is filed for a Mandamus directing the respondents 1 to 3 to initiate action against the respondents 4 to 7 in the light of G.O.Ms.No.83 Social Welfare and Nutritious Meal Programme Department, dated 23.01.2016.

2. The case of the petitioner in short is as follows:

The petitioner is a Society registered under the Societies Registration Act. It was established for the welfare of the Senior Citizens in Tapovan Senior Citizens Foundation. The 5th respondent promoted a Gated community for Senior citizens called "Tapovan Senior Citizens Foundation". The 5th respondent purchased 6.61 acres of land and sold various plots and constructed houses and he controls the Gated Community. The 4th respondent is an Association promoted by the 5th respondent. The

5th respondent has nominated, the 6th respondent as President and 7th respondent as Secretary of the 4th respondent. The respondents 4 to 7 are not in the habit of rendering accounts. They increase the service charges and charges for food items according to their own whims. The 5th respondent started targeting the members of the petitioner and started acting high handedly. The petitioner association had given a representation to the first respondent to initiate enquiry into the affairs of the 4th respondent. One of the members of the 4th respondent has already filed a Public Interest Litigation in W.P.No.16984/2017, in which this Court, by order dated 18.01.2019 has come down heavily on the respondents 1 to 3 to report on the action taken pursuant to the passing of the G.O.Ms.No.83 dated 23.11.2016. There is financial misappropriation and siphoning funds by the 5th respondent and a private complaint was given by the petitioner before the police and F.I.R. was registered in Crime No.96/2018 which is pending. The 4th respondent hiked maintenance charges from Rs.3 per sq.ft to Rs.4 per sq.ft. for each house. The petitioner protested about hike in prices without any consultation process. The members of the petitioner issued cheques and settled the maintenance charges at the enhanced rate of Rs.4 per sq.ft. from September, 2018 onwards without prejudice to their rights. However, no receipts were issued by the 4th respondent. The members of the petitioner association, who are senior citizens, cannot be deprived of the basic amenity of water and essential services and the 4th respondent is likely to cut off further amenities thereby making life miserable. Hence, the present writ petition is filed for the relief as stated supra.

3.The 4th respondent filed a counter affidavit wherein it is stated as follows:

The 4th respondent was formed in the year 2008 which is taking care of the welfare of the residents of Tapovan Campus. It has 81 members and the petitioner Association does not enjoy the support of the majority and it is on account of the activities of the petitioner association members, the members of the 4th respondent are being put to untold hardship and misery. The accounts of the 4th respondent are duly audited by a Chartered Accountant and passed after due deliberations by its members. The facilities that were promised by the 5th respondent have all been provided. The charges for food and maintenance are also fixed after due consultation with its members and upon the view of the majority being obtained. The charges are fixed by the members of the 4th respondent collectively and not by any particular individual. The 4th respondent followed all procedures stipulated in the Tamil Nadu Societies Act and gets its account duly audited and circulated. The petitioner association and its members, by virtue of not paying their dues and by indulging in abusing the members of the 4th respondent, are jeopardized the welfare of the majority of the residents of

Tapovan campus. The petitioner has given representation to several Government authorities and all them have been suitably replied by the 4th respondent. Finding that there is no merit in the petitioner association's allegations, these Government authorities did not take any action against the 4th respondent. In view of the direction issued by this Court in W.P.No.16984/2017, the 3rd respondent and also the Principal District Judge of Coimbatore, inspected the facilities provided by the 4th respondent and filed a report before this Court. The complaint filed by the petitioner in Crime No.96/2018 is nothing but a coercive step to exert pressure on the 4th respondent and its members. It is not true to state that the 4th respondent cut off water supply to the petitioner members' residence. The 4th respondent has also not obstructed any service being provided to the petitioner association's members. The service contractor to whom the 4th respondent have kept arrears is not in a position to depute personnel to the petitioner association members' houses in view of the arrears kept by them. The 4th respondent informed the contractor to go to the said houses and carry out cleaning work, but the members of the petitioner association have refused him permission. The petitioners are shirking in their duties of paying their dues as required under the very same G.O.

4. When this writ petition was initially taken up for admission, this Court, by order dated 31.01.2019, directed the District Social Welfare Officer to inspect the Old Age Home and file a report before this Court on 01.02.2019. When the matter was listed on 08.03.2019, on which day, the following order was passed.

"Learned counsel for the respondents 4 to 7 seeks further time to file details of arrears of maintenance charges payable by the members of the petitioner-Association. However, the learned counsel for the petitioner submitted that they are not getting the entire amenities as directed by this court earlier.

Learned counsel for the respondents 4 to 7 undertakes to provide all the amenities without giving room for any complaint and without prejudice to collect the maintenance charges.

The said undertaking is recorded. Post the matter on 15.03.2019 for producing the details of arrears."

5. Subsequently, the matter was listed before this Court on 15.03.2019, on which day, after hearing both parties, this Court passed the following directions.

5. Needless to say that collection of maintenance charges will have to be considered and decided after hearing both parties. But, before deciding such issue, the basic amenities to these petitioners cannot be stopped for any reason owing to the fact that the members of the petitioner Association are all senior citizens and therefore the provisions of the amenities are very much essential to lead their day to day life. Since it is stated by petitioners, as if the service is not provided whereas it is stated by the respondents 4 to 7 that the petitioners have not utilized the service, this Court directs the 3rd respondent viz., the District Social Welfare Officer, Coimbatore to personally visit the petitioner's Association premises and interact with the concerned Contractor to see that the servant maids are sent to the respective premises of the petitioner to do their services and provide amenities until further orders from this Court. The 3rd respondent shall undertake such exercise immediately by 16.03.2019. Post the matter for reporting compliance on 22.03.2019.

6. Again the matter was listed on 22.03.2019, on which day, after hearing both parties, the following interim order was passed.

3. Learned counsel appearing for the fourth respondent submitted that they have filed typed set of papers containing the arrears details payable by the petitioners. Learned counsel for the petitioners submitted that he would get instructions from the petitioners and if there are any arrears that would be paid and the compliance will be reported before this Court in the next hearing date. In view of the above, the services provided to the petitioners as on today shall continue until further orders.

7. Again the matter was listed on 01.04.2019, on which day, the 3rd respondent filed a status report as follows:

"5. The services have been continually provided to the petitioner members from 16.03.2019 till today 21.03.2019. I submit the date wise report as follows:
16.03.2019

I have visited Tapovan Complex and met all the residents of Tapovan Association members. Based on the Hon'ble Court Order, a prescribed format about the services provided were issued to the Members of Tapovan Welfare Association. Instructions were given to the management to provide uninterrupted services to the residents without fail.

17.03.2019 and 18.03.2019

Status was confirmed by phone message from the members of Tapovan Welfare Association.

19.03.2019

Tmt.Baggiyalakshmi, Rural Extension Officer, Office of the District Social Welfare, Coimbatore visited and met the Tapovan Resident Welfare Association and ensured that all the services are provided by the management.

20.03.2019

Confirmed by phone message from the members of Tapovan Welfare Association.

21.03.2019

Myself visited the Tapovan Complex and met all the Association members and confirmed the services provided by the management. It is confirmed from their statement that for the past days i.e from 16.03.2019 to 21.03.2019 uninterrupted services were provided by the management. The filled in format by the members of the Association about the service provided have been collected. Further, advised the management to provide uninterrupted service shall have to be continued until further orders of the Court. The Members of the Association insisted for an uninterrupted good service.

On the same day interacted with the Contractor Thiru. Ayyanar. Further asked the Contractor to give the Contract Copy of Tapovan Complex, he did not provided the same. The Contractor was advised to provide uninterrupted service as per the Hon'ble Court Order. He assured to abide the Court Order.

It is learnt that the Contractor has not billed or received any payment directly from the petitioners.

6. Hence, it is prayed that this Hon'ble Court may be pleased to take this Status Report on record and pass such further or

other orders as may deem fit and render justice."

Hence, by taking the said report on file, this Court directed the 4th respondent to furnish the individual break up details of arrears to each petitioner by 05.04.2019. Accordingly, the matter is listed today for further hearing.

8. Learned counsel appearing for the 4th respondent filed an additional typed set of papers dated 10.04.2019 giving individual statement of dues payable by the members of the petitioner Association. However, the learned counsel for the petitioner submitted that there are no arrears payable by the petitioner and therefore, the break up details given by the 4th respondent cannot be taken into account for making the petitioners liable to pay such amount. Therefore, the learned counsel for the petitioner submitted that the accounts of the 4th respondent may be directed to be audited by the individual auditor so as to find out as to what is the actual amount payable by the petitioner.

9. This writ petition is filed by the Association where the members are senior citizens. Equally, the members of the 4th respondent association are also senior citizens. Since it appeared to this Court that immediate requirement of these senior citizens, who are members of the petitioner association, have to be protected first before going into the question of deciding the dispute with regard to the claim over the arrears towards the maintenance of the charges, this Court directed the 4th respondent to restore all the amenities to the petitioners so that the issue with regard to the payment of arrears can be taken up later and decided. Accordingly, the 4th respondent restored the amenities and a report to that effect is also filed by the 3rd respondent viz., the District Social Welfare Officer, Coimbatore, dated 01.04.2019 as extracted supra. Therefore, it is evident that the members of the petitioner association are now getting all the amenities which were complained as not provided, for a short period. However, after getting those amenities restored and while considering the question regarding the payment of arrears, the 4th respondent claims that these petitioners are in arrears and in support of such claim, they have given break up details as directed by this Court. However, the petitioners are disputing such claim. According to them, they are not liable to pay the amount so quoted in the break up details given by the 4th respondent. Therefore, it is evident that there is a disputed question of fact with regard to the payment of arrears. Both parties are sticking on to their respective stand. Even though, this Court has given sufficient opportunity for the parties to settle the issue, by adjourning the matter again and again and by advising them to come out with the actual amount payable, the petitioner has not come forward

to place any materials before this Court even as to what would be the actual or admitted amount payable by them even as on today. When this Court asked the learned counsel for the petitioner atleast to say what is the admitted arrears or place the materials as proof of any payment made, the learned counsel, instead of even making an attempt to provide such details, persistently insisted that the accounts of the 4th respondent has to be audited first by appointing an independent auditor. This attitude of the petitioner leads us nowhere to solve the issue except to state that it is unfortunate that these senior citizens are fighting before this Court without having an intention to work out for an amicable solution. It appears to this Court that there is an ego fight between the parties. In any event, as the petitioner has chosen to dispute the claim made by the 4th respondent with regard to the arrears of maintenance charges, unless and until such claim is resolved, in a manner known to law, before an appropriate Civil Forum, certainly, this Writ Court cannot go into such disputed question of fact and consider the present relief sought for in this writ petition.

10. Therefore, I find that the present Writ Petition, based on the above stated facts and circumstances, cannot be entertained any further. Accordingly, the Writ Petition fails and the same is dismissed, however, by leaving the parties to work out their remedy before the appropriate forum in a manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi

To

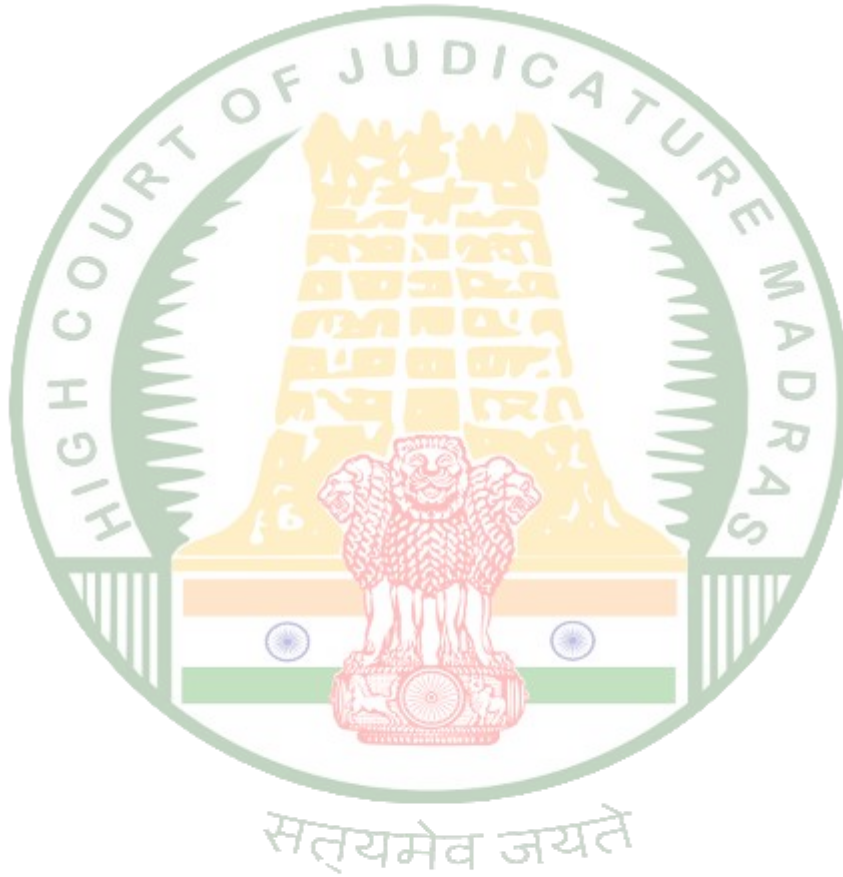
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+1cc to Mr.S.Karthik Raja, Advocate, S.R.No.35550
+1cc to Mr.N.Surya Senthil, Advocate, S.R.No.35363
+1cc to the Government Pleader, S.R.No.36268

W.P.No.2790 of 2019

KK (CO)

RRS (20/06/2019)



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