

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.02.2019

CORAM:
THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.7883 of 2009

Kanthi Narahari,
Member (Judicial),
Chennai.

.. Petitioner

Vs

1.The Assistant Estate Manager,
Office of the Assistant Estate Manager,
Shastri Bhavan, 26 Haddows Road,
Chennai - 6.

2.The Central Public Works Department,
Rep. By its Superintending Engineer,
Shastri Bhavan, 26 Haddows Road,
Chennai - 6.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent comprised in its Bill bearing Reference No.L/Bill/07-09/AEM(M)/2550, dated 16.03.2009 and its consequential letter issued in No.L/Bill/07-09/AEM(M)/192, dated 15.04.2009 and quash the same as being arbitrary, illegal and without application of mind and consequently forbear the respondents from in any manner seeking to levy and demand any charges in respect of the premises insofar as it relates to the demand of market rate of licence fees of Rs.75,973/-.

For petitioner : Ms.Janani Shankar

For Respondents : Mr.S.M.Deenadayalan, CGSC

ORDER

By way of filing this writ petition, the petitioner seeks to quash the impugned recovery notice dated 16.03.2009 issued by the first respondent/the Assistant Estate Manager, Shastri Bhavan, Chennai, directing him to pay a sum of Rs.79,697/- towards the license fee and other charges for the period from 15.11.2008 to 21.02.2009, and also the consequential letter dated 15.04.2009 issued by the said Authority directing the Bench Officer, Company Law Board, Chennai, to recover the said amount from the petitioner.

2. Learned counsel appearing for the petitioner submitted that the petitioner has been working as a Member (Judicial), Company Law Board, Chennai, with effect from 15.11.2007 and consequent upon his appointment, he was allotted Type V quarters, however, since the said quarters was not found fit for occupation, he had applied for change of allotment in a different locality in Chennai on 03.03.2008. Subsequently, he was also allotted with Type V quarters in Block No.73, instead of Type VI quarters for which he is eligible and thereafter, on becoming available, he was allotted Type VI quarters No.71/1 during the month of October, 2008. Before moving to the said quarters, he had inspected the same, whereby he found that the said quarters was not fit for occupation and lot of renovation works have to be done. When he had appraised the same, it was informed by the Central Public Works Department (CPWD) that they would do the renovation works only after the acceptance of quarters. The petitioner also took formal possession of Type VI quarters on 31.10.2008 and thereafter, sent a letter dated 05.11.2008 to the second respondent and also to the Assistant Engineer, CPWD, Thirumangalam, setting out the list of renovation works to be carried out. Thus, in view of such situation, he could not surrender Type V quarters, which was initially allotted to him.

3. While the matter stood as above, after a period of three months, during 3rd week of January, 2009, the petitioner was orally informed by the officials of the second respondent that they have completed the renovation works. Whiles, unfortunately, on 27.01.2009, the petitioner's father suffered jaundice and was admitted in the Frontier Hospital, Chennai, and during the stay in the hospital, health condition of his father got deteriorated and finally, his father died on 05.02.2009. Such an unforeseen circumstance compelled the petitioner to stay further in his native place for a further period of 15 days. Whiles, the office of the petitioner received an oral information about the action being contemplated by the first respondent to levy charges for the period for which Type V quarters was not surrendered. Subsequently, on instruction, setting out the aforesaid unforeseen circumstances, the petitioner's Private Secretary, vide letter dated 10.02.2009, sought for time to surrender Type V quarters till February, 2009. Thereafter, on arrival to Chennai, he surrendered Type V quarters on 21.02.2009 and moved into Type VI quarters on 16.02.2009. Whiles, all of a sudden, without issuing any notice to the petitioner, the first respondent issued the impugned demand notice dated 16.03.2009 demanding levy of damages from 15.11.2008 to 21.02.2009 i.e., the period in which Type V quarters could not be surrendered by the petitioner. Subsequently, although the petitioner made a representation dated 03.04.2009 to the first respondent requesting to withdraw the said demand, the first respondent, vide letter dated

15.04.2009, directed the Bench Officer, Law Board, Chennai, to recover the dues to the tune of Rs.79,697/- from the petitioner's salary.

4. Assailing the said impugned order passed by the first respondent, learned counsel for the petitioner contended that the action of the first respondent in not communicating the notice or not giving of an opportunity of personal hearing to the petitioner is in violation of the principles of natural justice and therefore, the impugned proceedings of the first respondent passed without application of mind are liable to be quashed.

5. It is further contended that the first respondent, without any notice or enquiry, has directed the office of the petitioner to recover the said dues from the petitioner's salary and thereafter, although the petitioner made a representation dated 03.04.2009, the first respondent, vide impugned communication dated 15.04.2009, has vaguely without any basis directed the Bench Officer, Company Law Board, Chennai, to recover a sum of Rs.79,697/- from the petitioner's salary, and therefore, such an impugned action of the first respondent, that too, without issuing any notice or giving an opportunity of personal hearing before levying the said damages, is in violation of principles of natural justice and an act of high-handedness and therefore, the impugned proceedings of the first respondent are liable to be set aside.

6. Per contra, learned standing counsel appearing for the respondents submitted that the petitioner was allotted Type V quarters on 08.04.2008 and he was also issued with Authority Slip No.105522, dated 15.04.2008, for taking possession of the said quarters allotted to him and accordingly, he had taken possession of the same on 16.04.2008. Subsequently, on becoming available, the petitioner was allotted Type VI quarters and thereby, he had also endorsed his acceptance on 29.10.2008 and possession was taken over by him on 31.10.2008 vide CPWD occupation Slip No.1043, dated 31.10.2008. However, the petitioner had vacated the previous accommodation only on 21.02.2009. It is further submitted that under SR 317-B-12(2) of the Allotment Rules, former residence can be retained for a period of 15 days on payment of normal license fee from the date of occupation of new residence. By following the same, since the petitioner has not vacated the Type V quarters even after three months of Type VI quarters allotted to him, the first respondent has rightly issued the impugned bill dated 16.02.2009 claiming monthly license fee and water charges including damages for the delayed vacation beyond the permissible period. It is further submitted that although the petitioner, vide his letter dated 03.04.2009, had intimated that the said quarters allotted to him was not fit for occupation, the same cannot be accepted,

for, the CPWD, who is the competent authority, has not declared the newly allotted quarters to the petitioner as unfit for occupation. It is further submitted that if there is any repair works to be carried out, then such repair works are being carried out on the request of allottee and in the present case, the renovation works pointed out by the petitioner can be attended even during the period of occupancy and therefore, as contended by the petitioner, there is no necessity to declare the said Type VI quarters as unfit for occupation. Although the petitioner was given time to check the completion of minor repair works, he did not check the same with CPWD till 23.01.2009, therefore, the impugned recovery order passed by the first respondent in view of delay in vacating the previous quarters by the petitioner beyond the permissible period is in order, hence, the same need not be interfered, he pleaded.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. It is not in dispute that the petitioner was allotted with Type V quarters on 08.04.2008. It is also not in dispute that the petitioner was allotted with Type VI quarters on 22.10.2008 for which he was eligible on becoming available. However, on inspection, the petitioner found that the said quarters was unfit for occupation and therefore, by taking formal possession of the same on 31.10.2008, sent a letter dated 05.11.2008 to the second respondent and also to the Assistant Engineer, CPWD, Thirumangalam, setting out the renovation works to be carried out in the said quarters allotted to him. While the renovation work was going on, he went to his native place, whereby his father unfortunately died on 05.02.2009 due to renal problem, which ultimately forced him to stay in his native place for a period of another 15 days. During this period, the office of the petitioner received an oral information about the imposition of damages for not surrendering the previous quarters, namely, Type V. It is also further seen that on instruction, the Private Secretary to the petitioner, vide letter dated 10.02.2009, had narrated the sequence of events that transpired between 27.01.2009 and 05.02.2009 and thereby, he had also sought for time till the end of February, 2009, to hand-over the vacant possession of the previous quarters of the petitioner. While the matter stood as above, the petitioner was issued with impugned demand dated 16.03.2009, demanding to pay a sum of Rs.79,697/- towards damages.

9. It is settled law that in the case of imposition of levy of damages, penal action, etc., principles of natural justice requires issuance of show cause notice calling for an explanation in writing and opportunity of being heard to the individual against whom such action is being contemplated. But, in the present case, the first respondent neither issued

any notice to the petitioner nor given him an opportunity of being heard before passing the impugned order demanding levy of charges to the tune of Rs.79,697/-. Therefore, in my considered view, the impugned demand notice as well as the consequential impugned letter directing the Bench Officer, Company Law Board, Chennai, to recover the said sum from his salary, that too, without following legal procedures as stated above, cannot be sustained in the eye of law. Besides, it is seen that the first respondent also, while allotting Type VI quarters, was unaware of the fact that the same was not at all fit for residential purpose and has merely allotted unusable quarters to the petitioner, who is a Judicial Member working in the Company Law Board, that too, without verification of the suitability of the said quarters whether any repair/renovation/maintenance work is required to be done. Therefore, when the first respondent has miserably failed to consider such factum and that the petitioner also had not occupied the said quarters for the period for which the license fee and other charges levied, the impugned orders demanding levy of charges as stated supra, being unreasonable and unacceptable, are liable to be aside and accordingly, they are set aside.

10. In fine, for the reasons stated above, the writ petition is allowed as prayed for. No Costs. Consequently, M.P.No.2 of 2009 is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Assistant Estate Manager,
Office of the Assistant Estate Manager,
Shastri Bhavan, 26 Haddows Road,
Chennai - 6.

2.The Superintending Engineer,
Central Public Works Department,
Shastri Bhavan, 26 Haddows Road,
Chennai - 6.

+1cc to Mr.R.Parthasarathy, Advocate, S.R.No.19458
+1cc to Mr.S.M.Deenadayalan, Advocate, S.R.No.18803

W.P.No.7883 of 2009

VGI (CO)
RRS (29/07/2019)