

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
30.09.2020	11.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.26650 of 2011 and
M.P.Nos.1 to 3 of 2011

A.Arthanareeswaran

... Petitioner

-vs-

1.The Executive & Administrator,
Salem Housing Union,
Iyan Thirumalai Road,
Salem.

2.The Revenue Officer,
Tamil Nadu Housing Board,
Chennai-600 035.

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the Letters of the 1st respondent in No.G-3/1210/2011 dated 31.03.2011, No.G-3/1210/2011 dated 14.09.2011 and No.G-3/1210/2011 dated 07.10.2011 and quash the same.

For Petitioner : Mr.C.K.M.Appaji

For Respondents: Mr.R.Bharath Kumar

O R D E R

The Writ Petition has been filed, challenging the Letters of the 1st respondent in No.G-3/1210/2011 dated 31.03.2011, No.G-3/1210/2011 dated 14.09.2011 and No.G-3/1210/2011 dated 07.10.2011. By letter dated 31.03.2011, a sum of Rs.54,744/- was ordered to be paid by the the petitioner for the period from June, 2009 to March, 2011 and the subsequent letter dated 14.09.2011 was issued for remittance of Rs.95,964/- towards arrears of rent and penalty for the period from June, 2009 to September, 2011 and vide final letter dated 07.10.2011, while declining the request of the petitioner for waiver off the penalty amount, a sum of Rs.1,02,834/- for the period between June, 2009 and October, 2011 was directed to be paid by the petitioner in a single lot.

2. It was the case of the petitioner that he has been working as Draughtsman Grade-III in Tiruppur Local Planning Authority, Tiruppur and while working in Salem, he was allotted a residential flat bearing No.A-3, B-Type, Judges Bungalow Colony, Salem - 8 at the monthly rent of Rs.730/- including the amenity charge of Rs.65/-. It was further case of the petitioner that on 14.02.2010, he was temporarily transferred to Tiruppur and thereafter, a regular transfer order was issued to him on 13.05.2010, transferring him from Salem to Tiruppur. Since his children were studying in school, he was unable to vacate the quarters immediately and he had duly intimated about his vacation of quarters on 11.01.2011. It was also the case of the petitioner that pursuant to the request made by the 1st respondent, he had obtained the particulars regarding the recovery of rent from his department and submitted the same to the 1st respondent and on receipt of the same, the 1st impugned letter dated 31.03.2011 came to be issued to him calling upon him to remit a sum of Rs.54,744/- towards rent. It was stated that though he made several representations to the 1st respondent and the State Level Authorities to waive the penal rent, his request was not considered and by subsequent letters dated 14.09.2011 and 07.10.2011, except enhancement of penal rent, no waiver of penal rent had taken place. Aggrieved by the action of the 1st respondent, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that though the particulars sought for by the 1st respondent were furnished by the petitioner, it was the 1st respondent, who unauthorizedly forced the petitioner to retain the allotment intact for the purpose of extraction of money from the petitioner. He further submitted that inspite of the fact that there was a provision to waive the penal rent under Salem Kamaraj Scheme, the 1st respondent prevented the petitioner from getting the benefit of such statutory scheme. Learned counsel for the petitioner relied upon the judgment of this Court in the case of the Madras High Court Staff Association, Rep. by its Secretary, T.J.Lakshmipathi, Chennai-104 vs. Secretary to Government, Housing and Urban Development Department, Secretariat, Chennai-600 009 and others [W.P.No.36302 of 2008] decided on 19.01.2018 to strenuously argue that this Court, in a similar issue, permitted the allottee / employee therein, seeking permission for retention of accommodation, with a direction to the concerned Authorities to consider the request on merits and as per the Regulations and to issue suitable orders recording the reasons for retention or extension. Hence, it was argued that the case of the petitioner may be considered sympathetically and the penal rent may be waived off.

4. Learned Standing Counsel for the Respondents also relied upon the judgment of this Court dated 19.01.2018 (cited supra) in support of his defence to the effect that this Court had only directed consideration of the request of the concerned allottee / employee for retention of the accommodation on merits and as per law and at no stretch of imagination, it can be said that there was a direction to the Government to straightaway give up the penal rent. Therefore, it was vehemently contended that the Writ Petition has no substance and the same is liable to be dismissed.

5. When the matter was taken up for hearing 28.09.2020, this Court suggested both the parties to amicably resolve the issue, by arriving at a workable settlement and pursuant to the same, learned Standing Counsel for the Respondents produced a calculation sheet and stated that the issue would be closed once for all, if the petitioner agrees to pay a sum of Rs.54,744/- together with Water Charge of Rs.1,100/- upto the month of March, 2011. After hearing the learned counsel for the petitioner, who stated that the petitioner is willing to pay the said amount, fixed by the respondents, this Court reserved its judgment to go through the various documents, including the judgment of this Court, referred to supra.

6. A circumspection of the fact reveals that the 1st respondent considerably fixed the amount and agreed to receive a sum of Rs.54,744/- with Water Charge of Rs.1,100/- against the original amount demanded by impugned letter dated 07.10.2011, viz., Rs.1,02,834/-. This Court do not want to decide the issue on merits and come to a conclusion whether fixation of such amount is right or not, which, instead of bringing the issue to a logical end, will prolong the issue for decade. The Writ Petition is of the year 2011 and at the time of filing the Writ Petition, the petitioner was aged 42 years and therefore, it can be assumed that he may be in service as of now, as he would not have reached the age of retirement. Hence, the following directions are issued, so as to give quietus to the issue:

i) The petitioner is directed to pay Rs.54,744/- along with the Water Charge of Rs.1,100/- (totalling Rs.55,844/-) to the 1st respondent either in lumpsum within a period of three months from the date of receipt of a copy of this order [or] to pay the aforesaid amount in monthly instalment of Rs.5,000/- deductible from his salary, in case he is in service;

ii) The petitioner is directed to communicate the 1st respondent about the adoption of mode in remittance of the amount, within a period of one month from the date of receipt of a copy of this order;

iii) The 1st respondent (after compliance of the conditions mentioned in Clause Nos.(i) & (ii) (supra) of the order, by the petitioner) shall pass the Vacation Order forthwith and in case of non compliance of the conditions within the time stipulated above, it is needless to state that the original impugned letters will come into force and it is open to the 1st respondent to take further course of action.

7. From the judgment relied upon by the respective parties, it could be seen that though the Writ Petition was filed, questioning the demand of penal rent from the Staff of High Court for the period they are transferred to the Madurai Bench of Madras High Court on administrative reasons, certain directions were issued with regard to maintenance of seniority amongst the staff of Judiciary in order to avoid discrimination and I have no quarrel with the directions issued by this Court, excepting that there was no whisper in the judgment about the percentage of discretion, which can be exercised by the Chairman in case of allotment of quarters on emergency ground. In olden days, the staff of Judiciary was made to solely depend on the Government for allotment of quarters, especially in Chennai City and the privilege of 15% share in all Government quarters throughout the State was achieved by them, on account of filing of the Writ Petition in W.P.No.24603 of 2010 before the First Bench of this Court, in which, on 09.12.2016, it was informed by the Government that 15% of the accommodation would be reserved for the staff of judiciary. In pursuance of the same, it is learnt that a Committee, consisting of Sitting Judges, headed by a Chairman has been constituted to look into the matter of allotment.

8. In the High Court, all the Committees are being constituted by the Judicial Head of the State, namely, the Hon'ble Chief Justice, by appointing a Senior Judge as the Chairman of every Committee. In the Manual of the Tamil Nadu Housing Board, it was stated as follows:

"In certain deserving cases, out-of-turn-allotment orders will be issued by the Government in Housing and Urban Development Department.

The quota of out of turn allotment:-

1. For the Discretionary allotment of Hon'ble Minister - 4
 2. For Local Employees - 3
 3. For Better accommodation-1
 4. For Transferee - 1
 5. For Newly Married- 1
- Total-10

Out of the above, in the third and sixth rotation, the 9th vacancy should be allotted to the handicapped and widows."

9. When the Minister for Housing and Urban Development Department is permitted to exercise his / her discretion for allotment of quarters for certain categories, in the considered opinion of this Court, the Chairman of the Committee, who is duly appointed by the Hon'ble Chief Justice, must be given some priority in respect of allotment of quarters in case of medical emergency of the staff concerned alone (excluding other grounds), by fixing certain percentage of quota in the larger interest of staff concerned, subject to the approval of the Hon'ble Chief Justice. In the judgment, there was also no indication in considering the request for better accommodation, which, of course, cannot be granted, as the staff having no quarters should be given top priority. In this regard, the Registrar General and the Registrar (Admn.) of this Court are directed to place this order before the Hon'ble Chief Justice forthwith for a suitable decision in respect of clarification sought hereinabove.

10. In the result, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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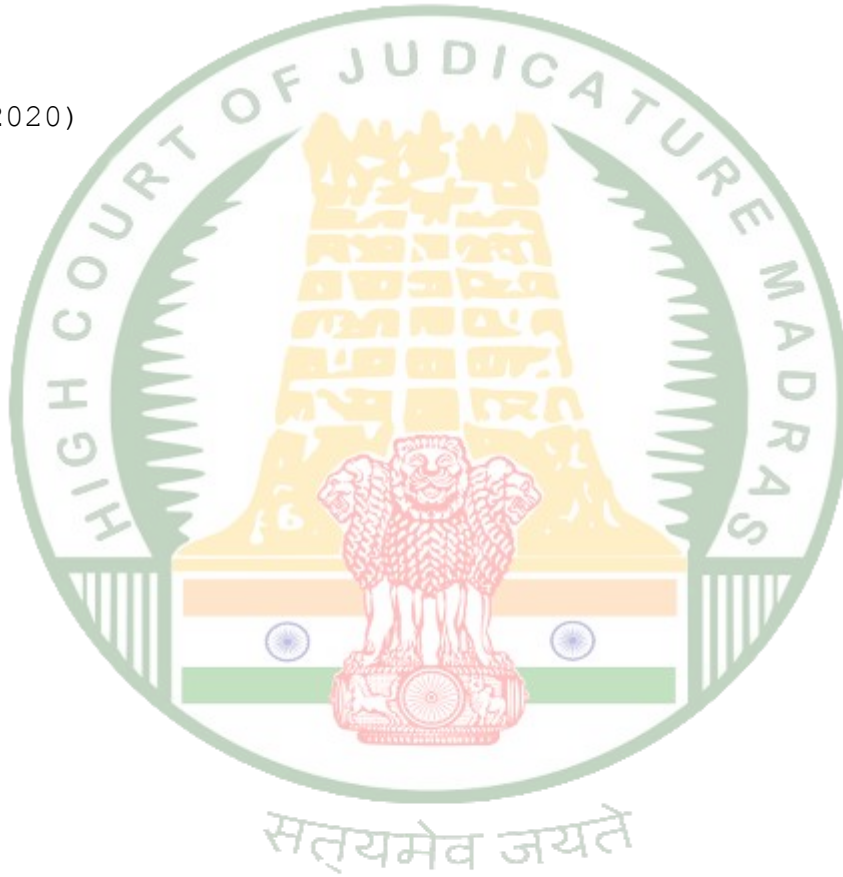
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- 3.The Registrar General,
High Court, Madras.
- 4.The Registrar (Admn.)
High Court, Madras.

5.The Section Officer (D4)
High Court, Madras.

+1 CC to Mr.C.K.M.Appaji, Advocate sr 36771.
+1 CC to Mr.R.Bharath Kumar, Advocate sr 36793.

W.P.No.26650 of 2011

SPD(CO)
SP(20/11/2020)



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