



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P. (MD)No.6875 of 2020

and

W.M.P (MD)Nos.6283 & 6284 of 2020

WEB COPY

T.Balamurugan

... Petitioner

Vs.

The Executive Engineer and Administrative Officer,
Tamil Nadu State Housing Board,
Madurai Division,
Ellis Nagar,
Madurai District-16.

... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the Impugned Order in Letter No.B2/1540/12 dated 20.05.2020 on the file of the Respondent and quash the same as illegal.

For Petitioner

: Mr.I.Pinaygash

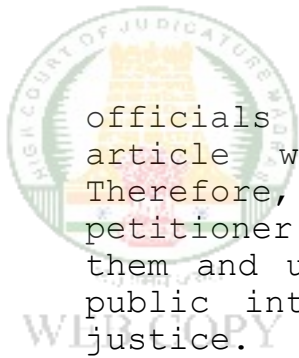
For Respondent

: Mr.Mohammed Athiff

ORDER

The petitioner serving as a Journalist in the Tamil Magazine for the past 20 years. Presently, he is working as Madurai Division Reporter in Asianet Digital media. On 19.03.2012 the respondent has allotted the house to him in the Journalist Quota as rental purpose under the Tamil Nadu Housing Board Department. From 2012 onwards, he has duly maintained the said Housing Board House and properly following the procedure adopted under Tamil Nadu State Housing Board Act, 1961 till today.

2. He further stated that from the day one of purchase the house under the Tamil Nadu State Housing Board, his house getting damaged and repair occurred in huge level. Moreover, several Housing Board house are under lack of maintenance and dilapidated conditions and has to be renovated in a proper manner. The respondent ought to have been providing water facility and proper maintenance of the house. But, they did not consider the grievances. Therefore, he sent a detailed representation on 14.02.2019, 07.02.2019, 09.10.2019 and 04.03.2020 under the RTI Act 2005 and seeking information about the Quality Control Test, Building Approval, Scheme Approval of the house from the local body authority which was allotted by the respondent under the Tamil Nadu State Housing Board. Eventually, as a Journalist, he wrote an article about the illegal acts and corruption and negligence of the



officials attached with the Tamil Nadu State Housing Board and the article was widely published in the Asianet Digital Media. Therefore, the respondent's office personnel had approached the petitioner and requested to withdraw the complaint lodged against them and urged him to leave it from this issue. However, due to public interest, he did not consider their plea and combat for justice. Therefore, the respondent having wreak vengeance and evil motive, on 20.05.2020 passed the impugned order and directed him to vacate from the house immediately which was allotted by the Tamil Nadu State Housing Board situated in B45/3, DRO Colony, K.Pudur, Madurai City without issue any notice. However, they sent the impugned order only on 08.06.2020 to him and he has received the same on 09.06.2020.

3. The learned counsel appearing for the petitioner would submit that it is well settled law that the Government of Tamil Nadu as well as the Division Bench of this Hon'ble Court clearly stated that during the COVID 19 pandemic period no person shall be vacated from the rental home from their respective house or shelter. But the impugned order completely violated the procedure adopted by the State Government and this Hon'ble Court. He further submitted that as per Section 85(3) of the Tamil Nadu Housing Board Act, 1961 no order shall be made under Sub Section (2) until after the issue of a notice in writing to the person calling on him to show cause within such period as may be specified such notice why such order should not be made and until his objections, if any evidence he may produce in support of the same have been considered by the competent authority. However in the instant case no opportunity and Prior Notice was given by the respondent and asked the petitioner to vacate the house straight away. Hence, the petitioner has filed the present writ petition seeking to set aside the impugned order passed by the respondent.

4.The learned counsel appearing for the respondent would submit that the petitioner has not produced any material to show that he is serving as a Journalist and also he himself has admitted that the home needs repair.

5. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6. In similar matter, the Division Bench of this Court compiling of TSSJ & VBSJ in a batch of Writ Appeals reported in ***T.Sornapandian and others Vs. Principal Secretary to Government, Housing and Urban Development and others*** has already decided the issue and held that the allotments under "Public quota" are made for the reasons best known to the authority allotting the same. The corollary would be arbitrariness in exercise of power, decisions taken as per the will and pleasure of the persons exercising the

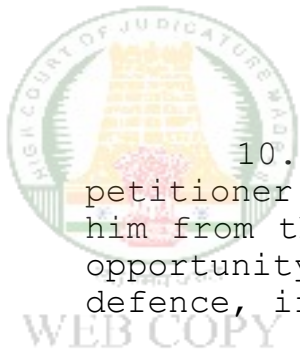


power, ultimately, leading to accord preferential treatment to those people close to power. Therefore, Courts have held that allotment under 'Public quota' otherwise known as 'Discretionary quota' is arbitrary and illegal. Probably, the Government has now learnt a lesson from various Judgments and seeks to mend its ways and put an end to the arbitrariness and nepotism with which they were functioning in the matter of allotment of those houses. How does a person stand to benefit by securing such an allotment. The benefits may be many, but what is manifest is the location of the accommodation, the low Rent payable, no cost incurred for maintenance, no supervision done by the Government or the Housing Board and at times, changes of users and sub-tenancy is also not interfered. The Appellants, who have come under this quota, are now before this Court claiming as if they have a vested right over the property. Unfortunately, those Appellants who secured allotment under the "Public quota" had got the benefit on account of an arbitrary exercise of power. There may be very rare cases where the Government would have examined all facts and found the person to be of eminence to be given preferential treatment. To our mind, nothing is there to indicate any such sterling qualities in that of the Appellants to be shown the privilege of such allotment by exercising discretion. There is no vested right with the allottees who were granted allotment under the "Public quota".

7. The Government in its wisdom and to provide accommodation at reasonable rates had constructed houses. In terms of the Planning laws which are in vogue at present and the technological advancement, with the same extent of land additional houses could be constructed. Therefore, the Policy decision taken in G.O. Ms. No. 21 is for the welfare of the Government servants to whom Rental accommodation will be allotted.

8. As pointed out by this Court earlier, 20% reservation as "Public quota" in the TNGRHS itself leads to misuse of power, perpetuates illegality, extends benefit to a chosen few and resultantly violates Article 14, of the Constitution of India. The Appellants have laid a claim that it does not matter whether it is a building under the control of the Housing Board or the Public Works Department, accommodation should be given because these are all done under the Business Rules of the Government for Administrative purposes.

9. A perusal of the condition show that it is stringent and it is in fact a declaration filed by the allottee that he shall abide by whatever conditions imposed on him by the Government. A persons, who was allotted a quarters under TNGRHS has absolutely no right to reside in the same upon transfer or retirement. This would clearly indicate that there cannot be any right of claiming permanent allotment to be held by an allottee in the Tamil Nadu



10. In this case, no eviction notice was issued to the petitioner as per the procedure established under law for evicting him from the housing board quarters. That apart, without giving any opportunity to the petitioner for clarifying or to put forth his defence, if any, the respondent has issued the impugned order.

11. In view of the above facts, this Court is inclined to set aside the impugned order as no reasons stated for issuing such notice and further directs the respondent to issue proper notice to the petitioner as per law the procedure established under the Tamil Nadu Housing Board Rules, within a period of four weeks from the date of receipt of a copy of this order and thereafter pass appropriate orders after giving sufficient opportunity to the petitioner.

12. With the above direction, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The Executive Engineer and Administrative Officer,
Tamil Nadu State Housing Board,
Madurai Division,
Ellis Nagar,
Madurai District-16.

Order made in
W.P. (MD) No.6875 of 2020

Dated:
19.06.2020

SPU (24.06.2020) 4P-2C