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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.1477 of 2014

&

MP.No.1 of 2014

G.Natesan

... Petitioner

Vs

1.The Accounts Officer,
O/o.Accountant General
(Accounts and Entitlements)
Teynampet, Chennai -18.

2.The Tahsildar,
Needamangalam Taluk,
Needamangalam, Tiruvarur District.

3.The Treasury officer,
Tanjore, Tanjore District.

4.The Executive Engineer cum
Administrative officer,
Tamil Nadu Housing Board,
New Housing Unit Colony,
Tanjore.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus forbearing the respondents from recovering the alleged dues to the tune of Rs.2,66,895/- from the petitioner's pension.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.V.Murali (R1)
Mr.J.Ramesh, AGP (R2)

No appearance (R3)

Mr.R.Bharathkumar (R4)



O R D E R

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents 1, 2 and 4 and also perused the materials placed before this Court. There is no representation for the third respondent.

2.The case projected in the writ petition is as follows:

2.1 During the year 1972, the petitioner, while working as a typist in the office of the District Collector, Tanjore District, applied for an allotment of a house at Tanjore Old Housing Unit. Accordingly, he was allotted a 'D' type house bearing Door No.30/4 at Old Housing Unit.

2.2 Subsequently, in the year 1986, in view of the increase in salary, he was allotted a 'B' type house bearing Door No.56/4 at Old Housing Unit, Tanjore and the monthly rent was regularly deducted from his salary and the same was sent to the fourth respondent.

2.3 While so, in 1991, Tanjore District was bifurcated and Nagapattinam District was formed. Due to the same, the petitioner was allotted to Nagapattinam District and on 18.10.1991 onwards, he was working as a typist at Collectorate, Nagapattinam. The said fact was duly intimated to the fourth respondent. Consequently, the petitioner vacated the house and handed over the possession to the fourth respondent on 18.03.1998. On reaching the age of superannuation, he retired from service on 30.06.1999.

2.4 On 29.11.2005, the first respondent sent a communication to the third respondent to recover the arrears of rent to the tune of Rs.2,66,895/- from the petitioner's dearness allowance.

2.5 Challenging the aforesaid communication, the petitioner filed WP.(MD)No.916 of 2006, which was dismissed on 21.07.2011 giving liberty to the petitioner to challenge the order of the third respondent dated 19.07.2005.

2.6 Since the aforesaid order of the third respondent was not available, the petitioner has filed this writ petition seeking a mandamus, forbearing the respondents from recovering the alleged dues to the tune of Rs.2,66,895/- from the petitioner's pension.

3.Upon notice, the first respondent filed a detailed counter affidavit, wherein, it is inter alia stated that this respondent is the nominated Accounts Officer of the Government and issues orders relating to pensionary benefits of retired/deceased



Government servants, based on the proposals and service particulars and with reference to the Tamil Nadu Pension Rules, 1978. It is further stated therein that on 29.11.2005, the second respondent, who is the competent authority to determine and recommend the retiral benefits, sought executive order for recovering a sum of Rs.2,66,895/- towards outstanding rental amount due from the Dearness allowance of the petitioner in installments and accordingly, this respondent issued recovery order.

4.Further, the second respondent in her counter affidavit, categorically stated that consequent to his transfer to Nagapattinam District, the petitioner ought to have vacated the housing quarters no.56/4, old Housing Unit, Thanjavur, but he unauthorisedly occupied the same for the period from 01.01.1990 to 12.04.1998 and hence, the fourth respondent sent a letter to the second respondent effecting recovery of penal rent at Rs.2,685/- per month for the said period, which works out to Rs.2,66,895/-. It is further stated that based on the demand letter received from the fourth respondent, the second respondent issued memo to the petitioner directing him to get clearance from the fourth respondent vide Lr.No.9104/2004 dated 30.12.2004, RcNo.4211/99 dated 24.06.2005; since the petitioner did not comply with the said directions, the second respondent sent a communication in Lr.no.9104/2004 dated 19.07.2005 to the first respondent for appropriate recovery order. It is also stated therein that as per the settled principles of law, the Government dues cannot be attached from pension, but can be adjusted from the dearness allowance sanctioned from time to time and hence, the action taken by this respondent is perfectly valid in law.

5.Though the learned counsel for the petitioner strenuously contended that the alleged recovery of penal rent to the tune of Rs.2,66,895/- from retiral benefits is bad in law, the same cannot be countenanced by this Court, in view of the fact that the petitioner was in occupation of the housing quarters, Thanjavur during the period from 19.10.1991 to 12.04.1998, while he was working at Collectorate, Nagapattinam and hence, he is liable to pay the penal rent as ordered by the respondent authorities.

6.At this juncture, it is noteworthy to refer the decision of the Supreme Court in Wazir Chand v. Union Of India and others [(2001) 6 SCC 596], wherein, it was held that "the appellant having unauthorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with Rules, and therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant".



7. Applying the aforesaid legal principle to the facts of the present case, this Court is of the opinion that no mandamus can be issued to the respondents in favour of the petitioner. Hence, this writ petition is liable to be dismissed and is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Accounts Officer,
O/o. Accountant General
(Accounts and Entitlements)
Teynampet, Chennai -18.
2. The Tahsildar,
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3. The Treasury officer,
Tanjore, Tanjore District.
4. The Executive Engineer cum
Administrative officer,
Tamil Nadu Housing Board,
New Housing Unit Colony,
Tanjore.

+1cc to Mr. R. Bharath Kumar, Advocate, S.R.No.1008
+1cc to the Government Pleader, S.R.No.760

W.P.No.1477 of 2014

KV(CO)
CB(16/07/2021)