



WEB COPY



W.P.Nos.1000 of 2016 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.Nos.1000, 1067, 1068, 1069, 1070, 1071 & 1302 of 2016
and W.M.P.Nos.1142, 757, 758, 819 to 828 of 2016

W.P.No.1000 of 2016

P.Kumar

.. Petitioner

Vs.

1. Union Territory of Pondicherry Rep. by
The Secretary to Government (Revenue cum
Relief & Rehabilitation),
Government of Puducherry,
Secretariat, Beach Road,
Puducherry - 605 001.
2. The District Collector of Pondicherry,
Government of Puducherry,
Collectorate, Revenue Complex,
Saram, Pondicherry - 605 013.
3. The Deputy Collector Revenue (North),
Revenue Complex, Saram,
Pondicherry - 605 013.
4. The Revenue Officer,
Government of Puducherry,
Office of the Deputy Revenue Complex (North),
Saram, Pondicherry - 605 013.
5. The Tahsildar,



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Taluk Office,
100 Feet Road,
Mudaliarpet,
Pondicherry.

.. Respondents

Prayer in W.P.No.1000 of 2016: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for records relating to impugned notice vide No.5393/TOP/G/Tsunami/2015, dated 07.08.2015 passed/issued by the 5th respondent and also consequential impugned order vide No.5147/DC(R)N/tsu-A42015/3783 dated 30-11-2015 passed/issued by the 3rd respondent and quash the same as highly illegal, unlawful, arbitrary, malafide and also on the grounds that it was passed mechanically without application of mind and consequentially direct the respondents to allot Tsunami Quarters/House" to the petitioner at Nallavadu Village, Ariyankuppam Commune, Puducherry.

For Petitioner : Mr.Prakash Adiadam
in all the WPs

For Respondents : Mrs.V.Usha
in all the WPs AGP (Pondy)

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COMMON ORDER

This writ petition has been filed challenging the order dated 07.08.2015, passed by the 5th respondent and also the consequential order dated 30.11.2015, passed by the 3rd respondent and also seeks a direction to the respondents to allot Tsunami Quarters/House to the petitioners at Nallavadu Village, Ariyankuppam Commune, Puducherry.



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WEB COPY 2. The brief facts leading to the filing of these writ petitions are as follows:

(i) The petitioners belong to Fishermen Community and they were dwelling in Thatched Huts situated at Nallavadu Fishermen Village, Ariyankuppam Commune, which comes well within the Union Territory of Puducherry. The thatched houses were situated within 50 meters from the seashore.

(ii) On 26.12.2004 Tsunami washed away the entire coastal area and the houses were also totally damaged. Therefore, the Government of Puducherry had decided to construct Tsunami Quarters in Nallavadu village between 300-500 meters away from seashore and decided to allot the same to Fishermen who resided in thatched houses within 50-150 meters from the seashore.

(iii) In this connection, a field survey has been conducted and the petitioners names were recommended for allotment of 'Tsunami Quarters'. The Government has constructed 229 Tsunami Quarters in Nallavadu Village.



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After completion of construction work of "Tsunami Quarters" on 07.08.2015, the 5th respondent had affixed Notices dated 07.08.2015, on the Notice Board in the Taluk Office, which contains name list of 299 beneficiaries for allotment of the Quarters. Objections were invited from the public and those who are all aggrieved by such notice within 15 days.

(iv) The petitioners submitted objections / request letters to the respondents, requesting them to include their names also in the list. However, without considering the objections / request letters of the petitioners, the respondents were about to draw the final list and as they were about to issue possession Certificate to those whose names were not in the earlier list, the petitioners filed writ petitions before this Court and this Court disposed of all the writ petitions vide common order dated 21.09.2015 directing the respondents to consider the objections of the petitioners before publishing the final list.

(v) Pursuant to the said order of this Court, the respondents after considered the objections/request of the petitioners passed the impugned order dated 30.11.2015 rejecting the claim of the petitioners. Aggrieved over the same, the present writ petitions have been filed seeking allotment of Tsunami



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Quarters/house to the petitioners.

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3. Counter affidavit has been filed by the fifth respondent inter alia contending as follows:

(i) The Tsunami that occurred on 26.12.2004, had affected the Puducherry and Karaikal areas, causing devastation of life and property. A team of Officials of Revenue Department has enumerated the list of Tsunami affected people of Nallavadu Hamlet, Pooranankuppam Revenue Village, Puducherry Taluk, which were predominantly inhabited by fishermen and has enlisted 597 structures (houses) with spatial map indicating their distance from the sea shore and the type of house. As per the list there are 741 number of families, who are the basis for drawing up the draft list of beneficiaries for allotment of houses in Nallavadu Hamlet of Ariankuppam Commune, Puducherry.

(ii) The Tsunami Quarters constructed are only 300, they had to select only 300 beneficiaries by excluding the ineligible persons/least vulnerable persons from the list. Hence, the beneficiaries for the allotment have been short listed by finding out the most affected to least affected i.e.,



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residing closer to the sea shore to the farther. Local enquiry was conducted and certain people were excluded as they weren't residents of Nallavadu neither during the Tsunami nor when the enumeration took place.

(iii) The G.O.Ms.No.89, dated 25.07.2005, issued by the Department of Revenue and Disaster Management, Puducherry, stipulated to constitute a Village Committee and whose decision shall be final in selecting the beneficiaries.

(iv) For drawing up the final list at Kurusukuppam, Puducherry based on the above said G.O. was adopted in respect of allotment of Tsunami houses. Hence, vide letter No.4111/SS/RO/D5/2013 dated 12.12.2013, it was communicated that approval has been accorded by His Excellency the Lieutenant Governor for identifying the beneficiaries by inviting claims and objections from the affected people and finalising the list thereafter by the Deputy Collector concerned. It was also requested to widely publish the list at conspicuous places inviting claims and objections from the people within 15 days from the date of publication and thereafter disposing the claims/objections if any.



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WEB COPY(v) Subsequently, on 07.08.2015, the draft list was published by the Tahsildar, Puducherry Taluk for Social Auditing, for a period of 15 days at prominent places. The respondent submitted that 114 claims for inclusion of their names in the list were received from the villagers. Like any other applicant, the petitioners were also heard by the Deputy Collector (Revenue) North Puducherry. After careful consideration of the facts, the Deputy Collector (Revenue) North, Puducherry concluded vide proceedings No.5147/DC(R)N/Tsu-A4/2015/3783, dated 30.11.2015, that the respective petitioners are not eligible for allotment of Tsunami house, which was also communicated to the petitioners.

(vi) There are about 441 families, who are natives of Puducherry Nallavadu village and affected by Tsunami are yet to be assigned with houses. At this juncture, it is not justifiable to assign houses to the non-resident of Puducherry Nallavadu. Allotment of Tsunami houses to non-residents of Puducherry Nallavadu may lead to group clashes and law and order problems in the hamlet. Hence the petitioners could not be considered for grant of Tsunami houses.



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WEB COPY 4. The learned counsel appearing for the petitioners would submit that the petitioners have been discriminated in the allotment of Tsunami shelters despite the fact that the petitioners are all along residing in the same village where Tsunami struck and they all in fact identified as Tsunami affected persons by the Tahsildar. It is further submitted by the learned counsel that it has been clearly indicated that petitioners have been shown as affected persons and the petitioner have certificates such as marriage certificate, family ration cards, Voter IDs, AADHAR cards, passports, birth certificate, EB bills and property tax receipts are all available within the Union Territory of Puducherry.

5. According to the learned counsel appearing for the petitioners, now a stand has been taken by the respondents as if the petitioners are residents of Tamil Nadu which is nothing but an invented story only to discriminate the petitioners due to political motive. The allotments have been made pursuant to the recommendations made by the politicians. The Committee has only recommended persons belonging to the ruling party.



6. Further according to the learned counsel appearing for the petitioners, the contention that since other members of the family have already availed the benefits, therefore the members in the same family could not be given benefits has no legs to stand. According to him, several members in the same family were given allotment who were living in concrete buildings some 100-200 meters away from the sea shore.

7. The learned counsel appearing for the petitioner further contended that Tsunami relief was also paid by the Government of Puducherry to some of the petitioners by way of cheque. Therefore, the contention of the respondents that the petitioners are not residents of Puducherry at the time when Tsunami struck in the year 2004 is baseless and only in order to reject the genuine claim of the petitioners such stand has been taken by the respondents.

8. The learned counsel also referred to various documents filed in the typed set of papers to prove that the petitioners were residing at Puducherry prior to and after Tsunami and one of the writ petitioner has contested in the local body election and got elected as president prior to Tsunami. Therefore



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the contention of the respondents that the petitioners are having either houses in other places or residing outside Puducherry is invented only for the purpose of denying the allotment to the petitioners.

9. Whereas, the learned Additional Government Pleader (Pondy) appearing for the respondents would contend that enquiry was conducted and enumeration has been done and only after proper enquiry, persons who are not living at Nallavadu were excluded from allotment. It is further submitted that field enquiry was conducted by the Revenue officials and two persons have been found ineligible for allotment of house and hence Sl.No.31 and 188 have been dropped from the draft list and two other deserving beneficiaries have been included in the final list. According to the learned Additional Government Pleader, the petitioners who were in Sl.No.265, 188, 267, 173, 107 and 31 in the draft list were residents of Tamil Nadu and migrated to Puducherry after Tsunami.

10. It is the contention of the learned Additional Government Pleader that during enumeration process, whoever is married and living as a separate family has been considered as a separate family and enumerated, as it is a



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custom among the fishermen to treat a married son as a separate family. Since the constructed house are limited, local enquiry has been conducted to find out whoever is enumerated are married before the date of Tsunami.

11. Further according to her those names which were enumerated in the list, but who got married after Tsunami have been excluded from the list of beneficiaries for houses so as to cover more families, instead of giving more than one house to a single family.

12. Further according to her the final list of 299 beneficiaries have been shortlisted and an Internal Committee was constituted comprising of four officials at the Collectorate to scrutinize the proposal submitted by the Deputy Collector. The Committee has scrutinized the proposal and the final list of beneficiaries have been approved by the Commissioner-cum-Secretary Revenue, Puducherry. The final list has been published on 12.02.2016 and the allotment of houses among the beneficiaries were assigned through drawal of lots held on 14.02.2016. Hence, according to her, the petitioners are not entitled to allotment and they are also having alternative houses in some other places.



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WEB COPY **13.** I have heard the learned counsel appearing on either side and also perused the entire materials available on record carefully.

14. As far as W.P.No.1302 of 2016 is concerned, the petitioner's claim has been rejected on the ground that he owns RCC building in Thavalakuppam. Further stand has been taken by the respondents that at the time of Tsunami, he was having only a hut at Nallavadu for safe keeping of fishing net.

15. As far as W.P.No.1067 of 2016 is concerned, the claim has been rejected on the ground that he was residing in Pudukuppam, Ariyankuppam Commune Panchayat and he studied in Government Primary School, Pudukuppam in the year 1999 and at the time when Tsunami struck he was residing in Puducherry and he shifted his residence to Nallavadu after the year 2012.

16. As far as W.P.No.1068 of 2016 is concerned, the claim has been rejected on the ground that the petitioner was originally a native of Tamil



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Nadu Nallavadu in Cuddalore District, where he owns a house which lies at the border of Puducherry Nallavadu and Tamil Nadu Nallavadu. During enquiry, it was revealed that during Tsunami he resided at Tamil Nadu Nallavadu and availed financial assistance from the Government of Tamil Nadu for construction of his house. Later, he sold the property lying at R.S.No.59/9 of Singirigudi Revenue Village, Cuddalore District to one Mrs.Pushpavathy in the year 2007 before the Joint Sub Registrar - I, Cuddalore. Similarly his voter list has also been published in Cuddalore District.

17. As far as W.P.No.1069 of 2016 is concerned, local enquiry through the revenue officials revealed that his claim has been denied on the ground that he resides at Nallavadu as a single family along with his mother Mrs.Ezhayee, prior to Tsunami and after Tsunami. Therefore his mother has been allotted a house. His brother who resided as a separate family has also been allotted a house. Therefore, the petitioner's claim has been rejected.

18. As far as W.P.No.1070 of 2016 is concerned, the petitioner has been residing in his father-in-law house at Anichankuppam hamlet of Tamil Nadu prior to Tsunami and during Tsunami also and then shifted to



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Puducherry Nallavadu after Tsunami. His brother was continuously residing in Puducherry Nallavadu during Tsunami has been allotted a house and hence the petitioner's claim could not be considered.

19. As far as W.P.No.1071 of 2016 is concerned, local enquiry through the Revenue Officials revealed that the petitioner resided at Tamil Nadu Nallavadu, prior to Tsunami and during Tsunami also and then shifted to Puducherry Nallavadu after Tsunami. Further his name and his wife name are figuring in the voters list of Singirigudi Panchayat, Cuddalore District and hence he could not be considered.

20. As far as W.P.No.1000 of 2016 is concerned, the claim has been rejected on the ground that the petitioner owns double storeyed RCC house at Tamil Nadu Nallavadu. His name also figures in the voters list of Cuddalore Assembly Constituency in Tamil Nadu. Besides he also owns three RCC buildings (multi storeyed) in Thavalakuppam area. He owns a house in Tamil Nadu Nallavadu and he is permanently residing with his family there and he has three commercial outlets at Thavalakuppam. He is not actually residing at Puducherry Nallavadu. The commercial complex has been let out to fancy



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store. Only during inspection, it is found that only a hut has been used for safe

keeping of fishing net at Puducherry Nallavadu located in the sea shore.

Hence the petitioner could not be considered for grant of Tsunami house at Nallavadu.

21. Perusal of some of the documents filed in the typed set of papers by the petitioners indicate that the writ petitioners are residents of Puducherry and Tsunami benefits have been issued to some of them by way of cheques and Passports have also been issued in Puducherry to some of the family members of the petitioners.

22. The issue pertains to allotment of Tsunami shelters constructed in Nallavadu village. According to the respondents, after Tsunami struck in the year 2004, there was complete chaos in granting relief to various persons and therefore merely because some relief has been received by the petitioners at the relevant point of time, it cannot be said that they are all along residing in Nallavadu village. It is the definite stand of the respondents that the petitioner in the writ petition No.1000 of 2016 is having multistory building in Thavalakuppam and residing in a pucca building in the village which falls



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within Tamil Nadu and it is also known as Nallavadu. He was using only a hut at Puducherry Nallavadu village located in the seashore for safe keeping of fishing nets.

23. According to the respondents, the object of construction of Tsunami shelters is to give a permanent relief to the persons who were residing in a particular village viz., Nallavadu, whose houses have been totally vanished when Tsunami struck. Only to rehabilitate the Tsunami victims, houses have been constructed in various hamlets of Puducherry and Karaikal region.

24. Typed set of papers have been filed to show that the petitioners were residing at Puducherry from the inception and they have not been considered for allotment. It is the categorical stand of the respondents that some of the family members of the petitioners have been allotted houses, hence they could not be considered. Similarly, some of the petitioners are having houses outside Puducherry and hence they were not considered.

25. However, considering the fact that similarly situated persons like that of the petitioners have been allotted houses in the same area including



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some of their family members, this Court is of the view that there should not be any discrimination against these petitioners. Accordingly, this Court is of the view that if any house is available, except the petitioner in W.P.No.1000 of 2016, all other writ petitioners are entitled for allotment.

26. At this juncture, the learned Additional Government Pleader (Pondy) appearing for the respondents, on instructions, would submit that around 300 houses were constructed and all the houses have been allotted and put to maximum utilisation and the allotted persons have also occupied their respective houses and now there is no scope for further construction in Nallavadu village and a report has also been filed to that effect.

27. Whereas the learned counsel appearing for the petitioners would submit that there are vacant plots in the existing place itself and the same can be utilised by putting up additional constructions. In this regard, it is his contention that a Member of the Legislative Assembly has also made a proposal for construction of new flats in the said place.

28. Whereas the learned Additional Government Pleader (Pondy) would



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submit that no such proposal is available with the Government and the vacant land in front of the existing flats are reserved for greenery and the same cannot be utilised for any other purpose.

29. Considering the fact that petitioners claim have been rejected by not conducting a proper enquiry and appreciation of evidence, however the fact remains that all the flats have already been allotted to various persons and they all have also taken possession, therefore at this stage the same cannot be disturbed.

30. Such view of the matter, in the event any proposal is brought by the Government for construction of additional flats in the said vacant land, except the petitioner in W.P.No.1000 of 2016, the other petitioners claim may be considered by the Government giving top priority. As the petitioner in W.P.No.1000 of 2016 is having commercial complex at Thavalakuppam, his claim has been rightly rejected by the respondents.

31. Such view of the matter, except the petitioner in W.P.No.1000 of 2016, all the other writ petitioners in W.P.Nos.1067, 1068, 1069, 1070, 1071



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and 1302 of 2016 are entitled for allotment in the event any new construction

has been put up by the Government of Puducherry for the Tsunami affected

persons in Nallavadu village. With the above directions the writ petitions are

disposed of. Consequently, the connected miscellaneous petitions are closed.

No costs.

30.11.2022

Index : Yes / No

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To

1. The Secretary to Government (Revenue cum Relief & Rehabilitation),
Government of Puducherry,
Secretariat, Beach Road,
Puducherry - 605 001.
2. The District Collector of Pondicherry,
Government of Puducherry,
Collectorate, Revenue Complex,
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N.SATHISH KUMAR, J.

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**W.P.Nos.1000, 1067, 1068, 1069,
1070, 1071 & 1302 of 2016 and W.M.P.
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30.11.2022