



W.P.No.11859 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

WP.No.11859 of 2017

K.Subramani

... Petitioner

Vs

1.The District Collector,
Perambalur.

2.The Block Development Officer [Va.Uoo]
Veppanthattai Panchayat Union
Perambalur District.

3.L.Jeyaraj

... Respondents

(R3 impleaded vide order dated 27.02.2023 made in
WMP.34055 of 2022 in WP.11859 of 2017 by this Court)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorarified mandamus, calling for the records relevant to the order passed by the 1st respondents in S.M. No.1685/2015/A6 dated 20.2.2016 and quash the same and further direct the respondents to allot the keys of the house to the petitioner under Samathuvapuram Scheme at Ayanperaiyur Village.



W.P.No.11859 of 2017

For Petitioner : Mr.A.Arunbabu

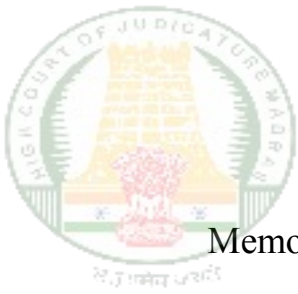
For Respondents : Mr.B.Vijay (for R1)
Additional Government Pleader
Mr.S.Ravikmar (for R2)
Mr.Manoharan Sundaram (for R3)

ORDER

The petitioner claims disability of hearing impairment at 80%. He claims that house at Door No.25 in Samathuvapuram Complex in Ayanperaiyur Village Panchayat, Veppanthanttai Panchayat Union was allotted to him under proceedings dated 08.05.2013. However, and this is a fact, he has not been handed over possession of the house till date.

2.Thus, the petitioner filed WP.No.22029 of 2014 seeking a direction to the first respondent the District Collector, Perambalur to take appropriate action on his representation dated 15.07.2013 for handing over of the house allotted. The writ petition came to be disposed on 18.03.2015 directing the respondents to dispose the representation on merits within a period of eight weeks from date of receipt of the order.

3.A contempt notice was issued in response to which, a communication was received from the second respondent, being the Block Development Officer of the Panchayat Union that since the petitioner's parents had been granted the benefit of the house under the Indira Gandhi



W.P.No.11859 of 2017

Memorial Housing Scheme in his village, he is debarred from any other benefits.

4.A contempt petition had been filed by the petitioner in C.P.No.248 of 2016, which came to be closed recording the order of the first respondent dated 20.02.2016 to the effect that the petitioner, who is dependent on his father and mother, who had been allotted a house under the Indira Gandhi Memorial Housing Scheme and thus, as a dependent, he is not entitled for separate allotment of house.

5.The petitioner disputes that his father is the beneficiary of the scheme and this appears to be correct insofar as the allotment under the Indira Awas Yojana Scheme dated 22.09.2004 is in the name of his mother Thangappa, wife of Kannan.

6.Since learned counsel for the petitioner had on one of the occasions questioned the relationship of the said Thangappa to the petitioner, the matter was adjourned specifically to enable learned counsel to take instructions.

7.Today he confirms that Thangappa, wife of Kannan is, indeed, his mother and the allotment has been made in her favour. However, he would state that the family has had no benefit from the allotment. This Court is, in



W.P.No.11859 of 2017

writ petition unable to look further into the 2004 allotment and it would suffice that the respondents has established the factum of allotment.

8.This Court thus proceeds on the basis that allotment has, indeed, been made in the name of the mother of the petitioner on 22.09.2004 under the Indira Awas Yojana allotment scheme.

9.G.O.No.59 dated 16.04.2008 specifically sets out a bar of allotment to a beneficiary under any other housing scheme and this would apply on all fours to the case of the petitioner.

10.A twist in the tale is that house No.25 to which the petitioner lays claim, is being occupied by the 3rd respondent, who has been impleaded by order dated 27.02.2023. The genesis of the impleadment itself is interesting, insofar as it arose in the background of hearing on 06.12.2022 leading to passing of the following orders:

'The report of the learned Advocate Commissioner dated 01.12.2022 raises some suspicion about the manner in which the present occupants in Door No.25, Samathuvapuram Complex, Ayyanperaiyur Panchayat, Veppanthattai Panchayat Union, Perambalur District (property/property in question) reside therein.

2. The relevant portion of the report reads as follows:

'I went inside the house to inspect who is in possession of the subject matter of the house at Door No.25, Samathuvapuram Complex, Ayyanperaiyur Panchayat, Veppanthattai Panchayat Union, Perambalur District, I found one elderly couple



WEB COPY



W.P.No.11859 of 2017

Mr.Jayaraj and his wife Mrs.Nimala Jayaraj were there, on enquiry with the said couple I was given to understand that they are the parents of ShanmugaSundaram, (thalayari) who is the village head man. On my further enquiry with the said couple the possession of the house with them and they are legal heirs of one Mr.ThulasiRaman alias Raja, according to them said house was allotted to said Thulasi Raman alias Raja and since said the Thulasi Raman alias Raja is no more they are residing at the house in the capacity of legal heirs of this said Thulasi Raman alias Raja. Further according to them the "thalayari", namely ShanmugamSundaram, is their son and used to visit them on Saturday and Sunday'.

3. All is, evidently, not well. Learned Special Government Pleader will file a detailed report in regard to:

(i) Who the original allottee of the property in question is, whether he is, in fact, deceased and who his legal heirs are, if any. A copy of the original terms of allotment be produced as well.

(ii) Whether the present occupants of the property in question are the legal heirs of the original allottee and

(iii) Whether the Thalaaiyari is resident in the property in question.

4. As regards the main ground for rejection of the petitioner's entitlement, that his father was granted the benefit under Indira Gandhi Housing Scheme, as the petitioner would strenuously deny the same, let proof thereof be produced by R1.

5. Report of the learned Special Government Pleader be filed on or before 12.12.2022 with an advance copy served upon the learned counsel for the petitioner.

6. List on 13.12.2022.'

11.On the subsequent hearings, the respondents have also produced



W.P.No.11859 of 2017

photographs of the petitioner standing beside a pucca house that he was stated to have constructed and residing in.

12.Learned counsel for the petitioner had disputed ownership of the house and has, in fact, in the objection dated 07.02.2023 to status report dated 09.12.2022, averred that the house bearing Door No.2/79 in Ayanperaiyur Village, belongs to one Chinnappa, who is the petitioner's elder father (Periyappa).

13.Today learned Government Advocate would circulate a copy of patta wherein patta No.64 on which the pucca house stands in the name of the petitioner, K.Subramani S/o Kannan. Thus, there is no dispute in the position that the petitioner is not bereft of lodging, and has, in fact the resources to construct a pucca house wherein he resides.

14.The contention of R3 is that he has been living undisturbed in the house in question for the last several years. It is seen that the allotment had been made in favour of one Thulasiraman son of Jeyaraj, who is stated to have been mentally disturbed. G.O.No.59 makes a reservation of 3% of allotment to physically disabled and of the 3%, 70% is further reserved for those who are mentally disabled with the specific stipulation that the allotment in such cases may be made in the name of unauthorised



W.P.No.11859 of 2017

representative or father of the mentally disabled person. It is in these circumstances, that house No.25 was allotted to Jeyaraj.

15.I see nothing untoward in the allotment made which is in line with the stipulations of G.O.No.59. As to the order of allotment issued in the name of the petitioner, the veracity of such allotment and the right of the petitioner have to be tested on the factum of extinguishment of the right of the erstwhile occupant. Door No.25 had been allotted to Jeyaraj as early as on 24.05.2011. He has been in continuous occupation from that time. There appears to have been a brief period on the interim, when the house was not occupied, which is the reason why the said allotment had been made alternatively to the present petitioner.

16.However, the allotment in the name of R3 was never cancelled and though the State had originally taken the stand that it had been cancelled, when asked for proof of service of such cancellation order on R3, they produce the records and fairly concede to the position that the cancellation order, though passed, appears to have been merely dispatched on 02.05.2013, though not conclusively delivered as there is no proof of receipt. With this, the order of cancellation has clearly no force in the eyes of law and is nonest.



W.P.No.11859 of 2017

17.In light of the discussion as aforesaid, I see no infirmity in the impugned order and the same stands confirmed. This writ petition is dismissed. No costs.

03.03.2023

vs

Index : Yes/No

Speaking Order

Neutral citation:Yes

To

1.The District Collector,
Perambalur.

2.The Block Development Officer [Va.Uoo]
Veppanthattai Panchayat Union
Perambalur District.



WEB COPY



W.P.No.11859 of 2017

DR.ANITA SUMANTH, J.

VS

WP.No.11859 of 2017

03.03.2023