



W.P.(MD)Nos.8769 & 18271 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.8769 & 18271 of 2015

and

W.M.P(MD)Nos.1, 1 & 2 of 2015

W.P.(MD)No.8769 of 2015:

S.David

... Petitioner

Vs.

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George,
Chennai.

2.The Chairman and Managing Director,
Tamil Nadu Small Industrial Development
Corporation Limited,
Thiru.Vi.Ka Industrial Estate,
Near Electronic Complex,
Guindy, Chennai.

3.The Branch Manager,
Small Industries Development Corporation Limited,
Industrial Estate,
K.Pudur, Madurai.

4.The Estate Officer / Branch Manager,
Industrial Estate,
Tirunelveli.

... Respondents



W.P.(MD)Nos.8769 & 18271 of 2015

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 to 4 to sell the Labour Tenement No. 39 Industrial Estate, Pettai, Tirunelveli as per the G.O(Ms)No.128 Housing and Urban Development (S.C.3) Department dated 24.03.1997.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R.1

Mr. T.Sakthikumaran
for R.2 to R.4

W.P.(MD)No.18271 of 2015:

Beer Mohamed

... Petitioner

Vs.

1.The Branch Manager,
SIDCO Branch Office,
Industrial Colony,
Ariyamangalam,
Trichy -10.

2.The Managing Director,
Tamil Nadu Small Industries Development
Corporation,
Thiru.Vi.Ka Industrial Estate,
Guindy, Chennai 32.

... Respondents



W.P.(MD)Nos.8769 & 18271 of 2015

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus call for the records relating to the impugned proceedings dated 28.09.2015 in Se.Mu.Aa. No. 1195/D/13 of the 1st respondent and quash the same and direct the respondents to pass necessary orders to enable the petitioner to remit the sale consideration of Rs.9,600/- and execute the sale deed for the old tenement No.B1, SIDCO, Industrial Colony, Thiruvarambur, Trichy-14 in favour of the petitioner as an outright sale and granting.

For Petitioner : No Appearance

For Respondents : Mr. T.Sakthikumaran

COMMON ORDER

Thiru.S.David / the petitioner in W.P(MD)No.8769 of 2015 is represented by his counsel. Thiru.Beer Mohamed / the petitioner in W.P(MD)No.18271 of 2015 is not represented by any counsel.

2. While S.David served as plumber in SIDCO, Beer Mohamed's father Mr.Jeyalani served as watchman. Both David as well as Jeyalani were allotted the respective petition mentioned premises on tenancy basis. Jeyalani is no more. Both David as well as Beer Mohamed have been served with eviction orders. While Beer Mohamed has questioned the eviction order, David has filed the writ petition as Writ of Mandamus.



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It is seen that the eviction order was issued on 27.04.2015. W.P(MD)No. 8769 of 2015 was filed on 30.04.2015. It is possible that after coming to know that the eviction order could be issued, David has come to this Court. In any event, I do not want to non-suit David on a technical ground. I can as well mould the prayer.

3.The learned counsel appearing for the petitioner requested this Court to treat W.P(MD)No.8769 of 2015 as questioning the eviction order. He reiterated all the contentions set out in the affidavit filed in support of the said writ petition and grant relief as prayed for. The averments set out in the affidavit filed in W.P(MD)No.18271 of 2015 are also on the same lines.

4.The pointed contention of the learned Standing Counsel is that respective allottees failed to pay the lump sum amount as stipulated in G.O(Ms)No.128 Housing and Urban Development (S.C.3) Department dated 24.03.1977 in time. They have slept over their rights. Therefore, SIDCO was justified in issuing the impugned eviction orders under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975. The petitioners are very much having the remedy



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of appeal. The question of invoking writ jurisdiction straightaway does not arise at all.

5. The learned Standing Counsel placed considerable reliance on the order dated 27.09.2021 made in W.P.No.31097 of 2019 (Sreedevi & Others Vs Tamil Nadu Small Industries Development Corporation Limited & Others) etc batch. The Hon'ble Judge who disposed the writ petition granted liberty to the writ petitioner therein to approach the SIDCO authority and directed SIDCO authority to conduct enquiry. It was further held that SIDCO shall determine whether the petitioners have acquired the right to occupy the property or are entitled for the benefit of G.O(Ms)No.128 Housing and Urban Development (S.C.3) Department dated 24.03.1977. The learned Standing Counsel would call upon this Court to dispose of the present writ petitions on the same lines.

6. I carefully considered the rival contentions and went through the materials on record.

7. In the order dated 27.09.2021 relied on by the learned Standing Counsel, there is no reference to the said order dated 09.01.2013 made in W.P.Nos.41586 to 41588 of 2002 (M.Abdul Shukeer & Others Vs The



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Chairman and Managing Director & Others) etc batch. The said writ petitions were filed by the allottees under the aforesaid Government Order. The writ petitions were allowed. SIDCO filed W.A.Nos.1693 to 1695 of 2013. The Hon'ble Division Bench dismissed the Writ Appeals on 17.09.2013. The Hon'ble Supreme Court also dismissed the SLP Nos. 2401 to 2403 of 2014 on 17.02.2014. Since there is no reference to these orders, I am not inclined to follow the approach set out in the order dated 27.09.2021 in W.P.No.31097 of 2019 (Sreedevi & Others Vs Tamil Nadu Small Industries Development Corporation Limited & Others) etc batch. On the other hand, I had occasion to deal with the similar issue vide order dated 04.07.2023 in W.P(MD)No.768 of 2014 filed by one Murugesan. The said Murugesan worked as Scavenger in SIDCO. He retired in the year 2004. During his service, he was also allotted a labour tenement. Even after retirement, he continues to be in occupation. Following eviction notice, he filed the said writ petition. The said writ petition was allowed by me. I had relied on the order dated 09.01.2013 in W.P.No.41586 to 41588 of 2002. Paragraphs 10, 11& 12 of the said order read as follows:



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10. It is not in dispute that Mr.M.Abdul Sukheer, the petitioner in W.P.No.41586 of 2002, while serving as Maistry in the Industrial Estate, Tamil Nadu Small Industries Development Corporation Limited from the year 1967, was allotted a residential tenement bearing No.D-16, Labour Colony, Industrial Estate, Guindy, Chennai by order dated 30.3.76 on rental basis. As per the terms and conditions of allotment, he has to pay the rent regularly and the petitioner was also paying the rent and other dues. Subsequently, the Government took a decision to convey and transfer the ownership of the tenement to the respective allottees on payment of a sum of Rs.9,600/- as the sale price for each tenement and G.O.Ms.No.128, Housing and Urban Development Department dated 24.3.97 was also issued in this regard. On the basis of the said Government Order, the respondents passed an order in Na.Ka.No.734/A4/97 dated 14.11.97 and directed the petitioner also to pay a sum of Rs.9,600/- as the sale price for conveying the tenement, which was already in his possession and enjoyment. The petitioner also admittedly paid the sale price of Rs.9,600/- on 17.11.97 and the same was also acknowledged by the second respondent. But subsequently no steps were taken to execute the sale deed in his favour in spite of several representations. One of the memos dated 10.3.98 shows that the SIDCO department has executed the sale deed in respect of 45 allottees of labour tenements after observing the usual formalities if they were eligible as per G.O.Ms.No.128, Housing and Urban Development Department dated 24.3.97 and 24.9.97 issued by the Government of Tamil Nadu. One another communication dated 16.3.98 issued by the Chairman and Managing Director of TANSIDCO Limited also shows that the second respondent has implemented the Government Order by issuing the sale deeds to all the eligible occupants of the labour tenements on collection of the cost of money as determined by the Government together with rental arrears, if any, in accordance with the Government Order mentioned above in respect of 21 employees. Yet another communication issued by the Managing Director of Tamil Nadu Housing Board dated 9.12.99 also shows that out of 2930 houses maintained by the Tamil Nadu Housing Board, sale deeds have been issued for 1121 houses. Paragraph-3 of the communication bearing D.O.Letter No.GR.II.3/32884A/97 dated 9.12.99 clearly shows that as per condition no.10 stipulated in G.O.Ms.No.128 dated 24.3.97, the retired and legal heirs of the deceased labourers were also eligible to receive the sale deeds. Therefore, the objection raised by the respondents taking a stand that if an allottee of a labour tenement retires from service or resigned his job, he should handover the tenement to the department cannot be accepted.

11. Further, when G.O.Ms.No.53, Industries (Spl.) Department dated 22.1.73 also clarifies that the designation of "Maistry" shall be changed as "Work Inspector" and the Work Inspector be called as "Technical Assistant" in the construction branch of the Industries Directorate, it cannot be construed that the petitioners shall not come under the economically weaker section of the society, as the order of allotment clearly shows that they were allotted the tenements only when they were serving as Maistry, Wireman and Welder respectively in the TANSIDCO units. Hence, they cannot be construed as Gazetted Officers so as to disqualify them from the allotment of the labour tenements in question.

12. Be that as it may, when the order dated 9.12.99 issued by the Managing Director of the Tamil Nadu Housing Board clearly shows that even the retired and legal heirs of the deceased labourers are also eligible to receive the sale deeds, this Court is not able to find any reasonable stand taken in the impugned proceedings to refund the cost of the labour tenement of Rs.9,600/- collected from M.Abdul Sukheer in the year 1997 towards the sale price for conveying the tenement in his favour. For all the above reasons, this Court finds that the impugned order is liable to be quashed. Accordingly, the impugned order is set aside and the respondents are directed to execute the sale deed in favour of the petitioner in respect of the labour tenement in question expeditiously. W.P.No.41586 of 2002 stands allowed. For the very same reasons, W.P.Nos.41587 and 41588 of 2002 are also allowed with a direction to the respondents to execute and register the sale deeds in respect of the residential tenements in question in favour of the petitioners expeditiously. In the result, all the writ petitions are allowed. However, there shall be no order as to costs.

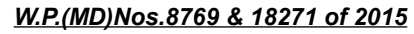


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I had also extracted the writ appeal order. The order passed by the Hon'ble Division Bench on 17.09.2013 in W.A.Nos.1693 to 1695 of 2013 dismissing the writ appeals filed by SIDCO. The relevant portion is as follows:

“7.This Court, on consideration of the submission of the learned counsel for the appellants and on perusal of the materials placed before it, is of the view that the point urged by the learned counsel for the appellants/respondents in the writ petition lacks merit. Even as per the own admission of the appellants, the respondents joined the services of the TANSIDCO as Maistry, Wireman and Welder respectively and it is also not in serious dispute that they are not workmen and therefore, the benevolent provisions of the Industrial Disputes Act are applicable to them. The fact remains that the tenements occupied by the respondents were allotted in their favour and they had also paid the respective sale consideration and sale deeds alone shall be executed in their favour. The appellants, after getting clarification from the Tamil Nadu Housing Board, had passed the impugned order cancelling the sale of tenements in their favour. In the considered opinion of the Court, since the respondents / writ petitioners come within the definition of workmen the Industrial Disputes Act is applicable to them.

8. In the light of the above factual and legal position, this Court is of the view that there is no error or illegality in the impugned order passed by the learned single Judge in allowing the writ petitions and that there is no merit in the writ appeals. Accordingly, the writ appeals are dismissed at the admission stage itself. The appellants are directed to execute sale deeds in favour of the respondents / writ petitioners within a period of eight weeks from the date of receipt of a copy of this order.”



“6. In this view of the matter, the impugned eviction notice is set aside. The respondents are directed to execute the sale deed conveying the petition mentioned property in favour of the petitioner. Of-course, it is open to the respondents to redetermine the sale



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amount payable by the petitioner. This is because, as per G.O, a sum of Rs.9,600/- should have been paid in the year 1997 itself. While redetermining, it would not be open to the respondents to adopt an arbitrary approach in the case of the petitioner alone. Whatever treatment that was extended to similarly placed persons shall be extended to the petitioner also. A formal notice shall be issued by the respondents in this regard within a period of five weeks from the date of receipt of a copy of this order. The entire exercise shall be completed within a period of twelve weeks from the date of receipt of a copy of this order.”

The present writ petitions are allowed on the same lines. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

To

1.The Secretary to Government,
Housing and Urban Development Department,
Fort St. George, Chennai.



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- 6.The Managing Director,
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G.R.SWAMINATHAN,J.

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