

(2009) 08 MAD CK 0236

Madras High Court

Case No: Writ Petition No. 995 of 2009

Dr. D. Samuel Jeyakumar

APPELLANT

Vs

The Secretary to the
Government Health and Family
Welfare Department and Others

RESPONDENT

Date of Decision: Aug. 28, 2009

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: G. Justin, for the Appellant; Dhakshayani Reddy, Government Advocate for R.1 to R.3 and V. Arun, AGP for R.4 and R.5, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

Mrs. Dhakshayani Reddy, learned Government Advocate appears for respondents 1 to 3 and Mr. V. Arun, learned Additional Government Pleader appears for respondents 4 and 5, have made their submission on instructions.

2. The petitioner was working as a Medical Registrar in the grade of Senior Civil Engineer at Chengalpattu Medical College and Hospital under the control of the third respondent and retired from service on 06.07.2006. While the petitioner was in service, by the proceedings of the third respondent dated 13.05.2003, he was allotted a residential quarters compulsorily. On inspection, it was found that the said quarters was not fit for occupation and therefore, the petitioner made a representation to the third respondent on 19.05.2003, pointing out that there was no doors or windows, no supply of electricity, no wiring, no switch board and drinking water etc., and requested the third respondent not to recover or deduct HRA/Rent from his salary. On receipt of the said representation, the third respondent has requested the 4th and 5th respondents, the Officers of the Public

Works Department to inspect the said residential quarters and carry out the repairs. A further representation was made by the petitioner on 28.01.2005 to the third respondent and in spite of the directions given by the third respondent to respondents 2 and 4 to take immediate action, they have not taken any steps. The petitioner has also made representation to the Chief Engineer (Buildings) on 14.06.2005, to stop recovery of HRA/Rent from his salary. Further, the petitioner has sent representation to the third respondent on 18.01.2006, who has received the same, but not passed any orders, however, the HRA/rent has been recovered from the salary of the petitioner.

3. The case of the petitioner is that he has never occupied the portion allotted to him, which was not in occupiable condition and he has been losing a sum of Rs. 2,300/- per month by way of recovery from his salary from 13.05.2003 till his retirement on 06.07.2006, totaling a sum of Rs. 1,50,000/-. The petitioner made a representation to the respondents on 25.04.2008 for refund of the said amount with interest and also filed W.P. No. 17719 of 2008 before this Court. In the said writ petition, this Court, by order dated 05.08.2008, directed the second respondent to pass orders on the representation of the petitioner dated 25.04.2008. However, the third respondent has passed the impugned order dated 16.10.2008, stating that in response to the Court order, the amount of Rs. 1,50,000/- could not be refunded since according to the statutory provisions of the Fundamental Rules, the Government has already recovered the amount.

4. The learned Additional Government Pleader, who has taken instruction from the Assistant Executive Engineer (PWD) Building Construction & Maintenance, Sub-division, Chengalpattu on 21.08.2009, would submit the following particulars as narrated by him.

(i) There are four quarters available for doctors residence;

(ii) The buildings are structurally sound;

(iii) Electrical service connections are not available;

(iv) Wooden joineries are not available;

(v) Water supply and sanitary workers are in damaged condition;

(vi) The building located in the rear side of campus and lot of bushes, those are to be cleared to approach; and

(vii) Two repair estimates were prepared and sent to the Dean, Chengalpattu Medical College at Chengalpattu for repairing the quarters (Rs. 11.40 and Rs. 10.65 lakhs each) during February, 2007.

5. The learned Additional Government Pleader also produced various photographs taken on 21.08.2009. A perusal of which categorically show the pathetic condition with which the Doctors quarters are maintained and on seeing the photographs, it is

clear that no one can reside in such place not only because there are no amenities, including the sanitary works or water supply or electricity, but the entire area is covered by bushes even approach to the portion is not possible. In such view of the matter, on the factual assertion, which is admitted by respondents 4 and 5 and as fairly submitted by the learned Additional Government Pleader, I am of the considered view that the impugned order of the third respondent dated 16.10.2008, is not sustainable in law and the same is liable to be set aside.

6. In this regard, it is made clear and it is to be understood that the rent/HRA which has been recovered from the government servant is in respect of the house which is allotted to him and if the residential portion is not in good condition to be occupied, it is only a mockery for the respondents to say that as per the Fundamental Rules, the amounts have been recovered and therefore, once recovered amount cannot be refunded. The rent amounts are being recovered only for the purpose of services rendered in treating the house which is expected to be in a tenantable condition. On the face of it, there is no difficulty to conclude that the condition of the quarters allotted to the petitioner is not fit for occupation.

7. The learned Government Advocate appearing for respondents 1 to 3 would submit that this Court may waive the interest claimed by the petitioner for the said amount.

8. In such view of the matter, the impugned order of the third respondent dated 16.10.2008, is set aside and the writ petition is allowed with direction to respondents 1 to 3 to refund a sum of Rs. 1,50,000/- to the petitioner within 10 days. No costs.