

(2014) 12 AP CK 0118

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19124 of 2011

Chandra Venkata Narayana

APPELLANT

Vs

The Executive Engineer (FAC) NSJC O&M and SIFT
Division and Others

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Citation : (2015) 3 ALD 688 : (2015) 5 ALT 40

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : M. Vidyasagar, Advocates for the Appellant

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Mandamus to declare the action of the official respondents, in trying to dispossess the petitioner from the Quarter bearing No. EE/3 in NSC Camp Colony, Vinukonda, Guntur District, without following the due process of law, as illegal and arbitrary.

2. This case is a paradigm of how people having clout are able to corner the public largesses taking advantage of loopholes in the administration.

3. The State has built quarters in Vinukonda Town, Guntur District, for providing accommodation to the employees involved in the construction of Nagarjuna Sagar canal under Nagarjuna Sagar Project. The area, where the quarters were constructed, was named as NSC Camp Colony. After completion of the project, the employees involved in construction of the project were transferred to various places in the State, as a result of which, the quarters, which are about 295 in number, have become vacant.

4. It is the pleaded case of the petitioner that he is a resident of Vinukonda; that respondent No. 1 has allotted quarter No. EE/3 to him vide proceeding No. AB/EC.I/F. No. M/62/983m, dated 24-11-2010, and that since then, he has been in possession of the same. The petitioner further pleaded that the said quarter was earlier allotted to one M. Sambasiva Rao (since impleaded himself as respondent

No. 4 in the Writ Petition vide Order, dated 11-12-2013 in WPMP No. 37807 of 2011) in the year 1992; that he continued in possession thereof till 2010 and that though he was transferred from Vinukonda to different places, he has not vacated the quarter forcing the authorities to take back its possession under Panchanama, dated 09-01-2011. The petitioner accuses respondent No. 4 for trying to cling to the quarter despite the fact of his being transferred to another place and drawing House Rent Allowance (HRA) to the tune of Rs. 8,000/- per month. The petitioner further alleged that notwithstanding proceeding, dated 24-11-2010, allotting the quarter in his favour, respondent Nos. 1 to 3 have been exerting pressure on him to vacate the said quarter without cancelling the allotment proceeding issued in his favour. The petitioner has, therefore, filed the present Writ Petition.

5. One P. Aruna, the incumbent of respondent No. 1, has filed a counter-affidavit wherein she has stated that, as per the records, quarter No. EE/3 was originally allotted to respondent No. 4 vide proceeding No. 291M, dated 04-12-1992; that the said quarter was under the control of respondent No. 4; that on 24-11-2010, the then Executive Engineer by name T. Shanmukha Rao allotted the said quarter to the Distributary Committee Presidents Nos. 26 to 30; and that again under the same proceeding, the quarter was allotted to the petitioner, though an office copy thereof is not found (on record). It is further averred that the allotment was made to the petitioner without cancelling the allotments made earlier either to respondent No. 4 or to the Distributary Committee Presidents. It is alleged that T. Shanmukha Rao, who, simultaneously, held the posts of Deputy Executive Engineer, Camps and Buildings Sub-division, Vinukonda, and the Executive Engineer (FAC) of N.S.J.C.O. and M and S.I.F.T. Division, Vinukonda, was issued a memo by the predecessor of the deponent on 01-08-2011, to which the said Shanmukha Rao had given a reply, dated 24-08-2011, stating that he has allotted the quarter to the petitioner after cancelling the allotment made to the Distributary Committee Presidents; that, however, a request was made to him to cancel the irregular allotment of quarters made erroneously by him; and that the said memo and the reply were submitted to the Superintending Engineer, NSJC O&M Circle, Lingamguntla, for taking disciplinary action for the irregularities committed in the process of allotment of quarters. It is further averred that the Deputy Executive Engineer, NSJC O&M and SIFT Sub-division No. 1, Vinukonda, has reported in his letter, dated 28-02-2011, that as per the Sub-Divisional records, no orders were received from the Divisional Office allotting quarter No. EE/3 to the petitioner; that, at present, the persons by name Visweswara Rao and Savithri are in occupation of the same; and that the petitioner owns house Nos. 23-1242 and 23-1243 in Vishnukundi Nagar, Vinukonda. It is further averred that the allotment of quarter to the petitioner was made without cancelling the allotment earlier made to respondent No. 4 and that the petitioner, in turn, has sublet the same to the above-mentioned two persons viz., Visweswara Rao and Savithri. It is further stated that one PBVS. Prasad, Executive Engineer, Monitoring Division, Lingamguntla, was appointed as the

enquiry officer to enquire into the issue relating to the irregular allotment of quarters; and that the enquiry officer has conducted an enquiry and submitted his report.

6. Respondent No. 4 has filed a counter -affidavit wherein he has inter alia stated that he was appointed as the Civil Assistant Surgeon in Primary Health Center, Kosigi, Kurnool District, on 01-04-1990; that he had worked as such till 13-01-1992; that, thereafter, he was transferred to the Government Hospital, Vinukonda, Guntur District, where he joined on 14-10-1992; that he has made an application for allotment of Government quarter; that the Superintending Engineer, NSJC, Vinukonda, allotted to him quarter No. EE/3 in the year 1992; and that since then, he has been in occupation of the said quarter by paying the prescribed monthly rent. He has further averred that when he was out of station due to his employment, his mother and daughter were residing in the said quarter; that he was transferred to Vijayawada Municipal Corporation in January, 2007, on deputation, as the Assistant Medical Officer; and that, as there was every possibility of his being re-transferred to Vinukonda as Civil Surgeon, he has kept his family at Vinukonda. He has further stated that after his wife joined him in Vijayawada, both of them used to visit Vinukonda to see their mother residing at the quarter in question. He has also averred that suddenly, on 09-01-2011, in his absence, the petitioner accompanied by respondent No. 2 broke open the lock of his quarter, removed all his personal belongings, kept the same in one room under lock and key and took possession of the same without any authority of law. It is further alleged that as per the existing rules, the Government quarters are not given to any private individuals but one T. Shanmukha Rao, the then Executive Engineer (FAC), allotted the Government quarters to as many as 48 private individuals and that even now, more than 50 quarters are under illegal occupation of unauthorized persons. He has alleged that without cancelling the allotment of quarter made in his favour, re-allotment of the very same quarter to the petitioner was illegal.

7. The petitioner filed a reply-affidavit controverting the allegations contained in the counter-affidavits of respondent Nos. 1 and 4.

8. A perusal of the enquiry report, dated 12-09-2011, of the Executive Engineer (I/C) NSJC O&M and SIFT Division, Vinukonda, submitted to the Superintending Engineer would show that she has pointed out the following irregularities in the process of allotment of quarters by T. Shanmukha Rao, the then Deputy Executive Engineer (FAC):

- "1. The Quarters were allotted without obtaining the vacation reports.
2. The Quarters were allotted without cancellation of the earlier allotment orders.
3. The applications for allotment of Quarters were not handed over to the Office Staff. The Executive Engineer himself independently has allotted the Quarters without maintaining the record in the office.

4. 30 Nos. of O.C.s of Quarter allotment orders were kept on the table of the concerned clerk on 10-05-2011 i.e., one day before the date of enquiry.

5. The copies of allotment orders were not communicated to the Deputy Executive Engineer, N.S.J.C. O&M and S.I.F.T. Sub Division No. I, Vinukonda.

6. The allotment orders were not communicated to the Assistant Engineer, C&B Section who is the Incharge of the Buildings."

9. When the Writ Petition came up for hearing on 27-11-2014, this Court has passed the following order:

"It is a matter of grave concern that the petitioner, who is a Politician (ZPTC Member) is stated to have been allotted a quarter by the official respondents.

This Court would like to know whether the allotment of quarters in NSC camp colony is governed by any regulations, statutory or otherwise. The learned Assistant Government Pleader for Irrigation is unable to throw any light on this aspect. He is directed to produce the regulations/guidelines, if any, governing the allotment of quarters on the next date of hearing."

10. Today, the learned Assistant Government Pleader has placed before the Court, the Andhra Pradesh Public Works Department Code and has invited the Court's attention to Paras 243 and 246 thereof, which read as under:

"Para 243:

It is the duty of the Executive Engineer to endeavour to get tenants for public buildings not immediately required for Government use. They should generally be leased from month to month, but a lease may be given with the Chief Engineer's sanction. A clause in the agreement should be added, when necessary, to enable the Executive Engineer to terminate the lease at short notice in case the building is required by Government.

Para 246:

Public buildings let to private individuals should not be altered or enlarged at Government expense to suit the tenant, and persons occupying public buildings on rent are prohibited from making any alterations even at their own expense, except with the express concurrence of the Executive Engineer. The fact of any additions or alterations being made by the tenant confers no right of ownership on him, nor can the fact of the occupant having made additions or alterations at his own expense be considered as giving him any claim to a set-off against, or diminution of rent. These conditions should be entered in the agreement or lease -vide Appendix XIII."

11. The learned Assistant Government Pleader for Irrigating and CAD conceded that neither any rules have been framed nor any executive instructions have been issued laying down the criteria for allotment of government buildings.

12. It is trite that public largesse require to be distributed in a transparent,

rational and equitable manner. The quarters were built by the Government for a specific purpose viz., to provide accommodation to the employees of a project. With the completion of the project, the construction of the quarters has outlived its purpose. It is, therefore, the responsibility of the Government to utilize these quarters in the manner, which serves the utmost public interest. The predominant purpose of letting out the Government quarters is not to earn income but to put the same to proper utility. In that process, the State must ensure that the persons, who are in need of accommodation, are allotted the quarters. This Court is unable to comprehend as to why the State has not laid down the criteria for allotting the quarters. By conferring unfettered power on the executive apparatus, the State has allowed the quarters to be allotted to undeserving persons in the Society.

13. The list of allottees filed by the petitioner along with the reply-affidavit makes a bizarre revelation. The list containing the allottees include former MLAs., Chairman of Vinukonda Municipality and a ZPTC member (petitioner). Indeed, the petitioner has not disputed the facts that he owns two houses and that he is in active politics being a member of ZPTC. One wonders, by applying which criteria, respondent No. 1 has allotted the quarter to the petitioner.

14. When the Government quarters are vacant, the persons, who deserve allotment, are serving Government servants. After such allotment, if the quarters are still available, the retired Government employees, who do not have accommodation of their own, also deserve such allotment. By no stretch of imagination, the Government quarters can be allotted to politicians. If the quarters remain surplus after allotment to the serving and retired Government employees and if the State wants to utilize the same, it can let out the quarters to members of general public only by auctioning the leasehold rights. In my opinion, failure of the State Government to formulate the guidelines laying down the eligibility criteria has led to gross misuse of the Government quarters.

15. From the averments contained in the counter-affidavits, it is evident that the allotment of quarter made to respondent No. 4 was not cancelled before the same was stated to have been re-allotted to the Distributary Committee Members. Without cancelling the allotments made in their favour, respondent No. 1 has again allotted the said quarter to the petitioner. As noted herein before, even in the absence of any prescribed criteria, the petitioner, who owns two houses in Vinukonda town, cannot be allotted a quarter in the same town.

16. As regards respondent No. 4, an allegation is made that though he was transferred out of Vinukonda town in the year 2007, apart from retaining the quarter, he has drawn the HRA. This conduct of respondent No. 4 also deserves to be enquired into.

17. As of now, the allotment of quarter made to the petitioner has not been cancelled. Though this Court has granted liberty to the official respondents to follow the due process of law to take back the vacant possession of the quarter

from the petitioner, no action has been taken for more than 3 1/2 years.

18. In the above facts and circumstances of the case, this Writ Petition is disposed of with the following directions:

"1. Since ex facie the petitioner is not entitled for allotment of quarter, he is directed to hand over vacant possession of the same to respondent No. 2 within two weeks from the date of receipt of this order.

2. The State Government shall make a comprehensive enquiry into the allotment process of the quarters situated in NSC Camp Colony, Vinukonda, by appointing an officer not below the rank of Deputy Secretary;

3. The terms of the enquiry shall inter alia include the recommendations to be made for fixing the criteria for allotment of quarters;

4. The enquiry officer shall also enquire into the process of simultaneous allotment of quarter to respondent No. 4 as well as the petitioner, submit a report and make his recommendations to the Government on the action to be taken in respect thereof;

5. Within one month from the date of receipt of the enquiry report, the State Government shall frame Rules laying down the guidelines and prescribing the criteria for allotment of Government quarters and eviction of the illegal occupants;

6. Immediately after framing of the Rules, the State Government shall initiate steps for eviction of the occupants of the quarters, who do not satisfy the criteria prescribed by it.

7. The entire process mentioned herein above shall be completed within three months from the date of receipt of this order. Till this process is completed, the quarter bearing No. EE/3 shall be taken possession by respondent No. 2 from the petitioner and the same shall be allotted to the deserving persons in the light of the Rules that may be framed by the State."

19. As a sequel to disposal of the Writ Petition, interim order, dated 08-07-2011, is vacated and WVMP No. 4059 of 2013 in/& WPMP No. 23088 of 2011, are disposed of.