

(2022) 07 MAN CK 0003

In the Manipur High Court

Case No : Writ Petition (C) No. 352 Of 2021, 102, 203 Of 2022

Themerimung Zimik

APPELLANT

Vs

State Of Manipur & Ors

RESPONDENT

Date of Decision : 05-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 21

Citation : (2022) 07 MAN CK 0003

Hon'ble Judges : Ahanthem Bimol Singh, J

Bench : Single Bench

Advocate : Ng. Kumar, BR. Sharma, Shyam Sharma

Final Decision : Disposed Of

Judgement

Ahanthem Bimol Singh, J

[1] Heard Mr. Ng. Kumar, learned counsel appearing for the petitioner in W.P.(C) No. 203 of 2022 and for respondents No. 4 & 5 in W.P.(C) No. 352 of 2021 and W.P.(C) No. 102 of 2022 respectively. Heard also Mr. BR. Sharma, learned counsel appearing for the petitioner in W.P.(C) No. 352 of 2021 and W.P.(C) No. 102 of 2022 and respondent No. 4 in W.P.(C) No. 203 of 2022. Heard also Mr. Shyam Sharma, learned Government Advocate appearing for the State respondents in all the three writ petitions.

As the facts and issue involved in all the three writ petitions are the same, the said three writ petitions were heard jointly and being disposed of by this common judgment and order.

[2] The only issue involved in these three writ petitions is with regard to who between the two writ petitioners is legally entitled to the allotment of Government Quarter Type-III/B-7 at Lamphelpat.

For the sake of convenience, the petitioner in W.P.(C) No. 203 of 2022 is referred to as petitioner No. 1 and the petitioner in W.P.(C) No. 352 of 2021 and W.P.(C)

No. 102 of 2022 is referred to as the petitioner No. 2.

[3] The brief fact of the present writ petitions is that both the petitioners are employees of the Government of Manipur. Petitioner No. 1 is serving as L.D.A. in the Court of District and Sessions Judge, Imphal East and petitioner No. 2 is serving as Rifleman in the 4th IRB, Thenguchingjin, Imphal East.

By an order dated 02.01.2020 issued by the Additional Chief Secretary (Works)-cum-Estates Officer, Government of Manipur, Government Quarter Type-III/B-7 at Lamphelpat, which was earlier allotted to one MS. Thangchinla, Senior Account Assistant, Imphal East Treasury, Porompat, was cancelled and the said quarter was temporarily allotted to petitioner No. 1 with the conditions, inter-alia, that the new allottee is required to furnish a certificate from the concerned D.D.O. certifying that necessary house rent/furniture rent shall be deducted from his salary and that the D.D.O. should also certify his present place of posting, pay-scale and take responsibility for information to the State Officer, Government of Manipur, as and when the allottee is transferred out. In terms of the conditions stipulated in the aforesaid allotment order, the D.D.O. of the petitioner No. 1 furnished the required certificates/documents and thereafter the Under Secretary (Works), Government of Manipur, wrote a letter dated 16.01.2022 requesting the Executive Engineer, Building Division No. II, PWD, Manipur, to handover the said allotted quarter to the petitioner No. 1.

[4] When the said Government quarter allotted to the petitioner No. 1 was found to be occupied by unknown persons illegally without valid documents, the Executive Engineer, Building Division No. II, PWD Manipur wrote a letter dated 21.01.2020 to the Deputy Commissioner, Imphal West, stating, inter-alia, that the previous allottee of the said quarter was not found during inspection and had sublet the said quarter to the unknown person and accordingly, a request was made to take an eviction proceedings of the unknown persons of the said Government Quarter at the earliest so that the new allottee can occupy the said quarter.

[5] Instead of evicting the unauthorised occupants of the said Government Quarter and handing it over to the petitioner No. 1, the Additional Chief Secretary (Works)-cum-Estates Officer, Government of Manipur, issued an order dated 04.12.2020 to the effect that the said quarter has been retained in favour of the earlier allottee, i.e., MS. Thangchinla upto 31.12.2020 and after which the said quarter was temporarily allotted to the petitioner No. 1 with effect from 01.01.2021 subject to strict compliance of the conditions mentioned in the said order.

[6] Quite surprisingly and without application of mind, the Additional Chief Secretary (Works)-cum-Estates Officer, Government of Manipur, issued another order dated 18.01.2021 allotting the said Government Quarter in favour of the petitioner No. 2. The said order was not issued in supersession of the earlier allotment order and nothing was also mentioned about cancellation of the earlier

allotment order issued in favour of the petitioner No. 1. Subsequently on realising the mistake committed by himself, the Additional Chief Secretary (Works)-cum-Estates Officer, Government of Manipur, issued another order dated 06.03.2021 thereby cancelling the allotment order issued in favour of the petitioner No. 2 and thereafter re-allotting the said Government Quarter in favour of the petitioner No. 1.

[7] Feeling aggrieved by issuance of the subsequent order dated 06.03.2021, the petitioner No. 2 challenged the said order by filing W.P.(C) No. 352 of 2021 before this Court on the ground, inter-alia, that no notice or opportunity of being heard was given to him prior to issuance of the impugned order and that the State respondents have issued the said impugned order without application of mind and without any reason solely with mala-fide intention to allot the said quarter in favour of the petitioner No. 1. In the said writ petition, this Court passed an ex-parte interim order on 17.04.2021 thereby staying the operation of the impugned order dated 16.03.2021.

During the pendency of the aforesaid writ petition, the Commissioner (Works)-cum-Estates Officer, Government of Manipur, issued another order dated 29.11.2021 allotting another similar Government Quarter Type-III/G-82, LHC in favour of the petitioner No. 2. In view of the allotment of another Government Quarter in favour of the petitioner No. 2, this Court passed an order on 21.12.2021 in W.P.(C) No. 352 of 2021 vacating the earlier interim order dated 17.04.2021. Having been not satisfied with the allotment of another Government Quarter in his favour under the Government order dated 29.11.2021, the petitioner No. 2 again filed another writ petition being W.P.(C) No. 102 of 2022 with a prayer for quashing and setting aside the subsequent allotment order dated 29.11.2021 issued in his favour, however, no interim order was passed in the said writ petition.

[8] Even after vacation of the interim stay order dated 17.04.2021 passed by this Court in W.P.(C) No. 352 of 2021, the petitioner No. 2 refused to vacate from the said Government Quarter Type-III/B-7 allotted to the petitioner No. 1 and forcibly continued to occupy the said Quarter illegally and without any authority. In view of the above, the petitioner No. 1, through his counsel, approached the concerned authorities of the State Government by filing an application dated 15.01.2022 requesting for handing over the said quarter to the petitioner No. 1 at the earliest. When no tangible action was taken up by the authorities and when the State Government failed to handover the said Government Quarter to the petitioner No. 1, he approached this Court by filing W.P.(C) No. 203 of 2022 with a prayer for directing the State respondents to handover the said Government Quarter Type-III/B-7 at Lamphelpat to the petitioner No. 1.

[9] Mr. Ng. Kumar, learned counsel for the petitioner No. 1 vehemently submitted that even though the Government Quarter Type-III/B-7 at Lamphelpat was allotted by the Government to the petitioner No. 1 on three occasions under valid Government orders dated 02.01.2020, 04.12.2020 and 06.03.2021 and even

after the interim stay order passed by this Court have been vacated on 21.12.2021, the concerned authorities of the State Government have failed to vacate the petitioner No. 2, who is an illegal encroacher, from the said Government Quarter and failed to deliver vacant possession of the said Government Quarter to the petitioner No. 1 despite the petitioner fulfilling all the terms and conditions stipulated in the Government allotment orders and despite there being no legal impediments. It has also been submitted that the inaction or lack of empathy on the part of the State respondents have caused tremendous mental and emotional hardship to the petitioner No. 1 and his family members, including small children, for a fairly long time, inasmuch as, they have been deprived of their right of living in a quarter allotted by the Government legally and that they have been subjected to unjust/arbitrary treatment by the State respondents in collusion with the petitioner No. 2 thereby violating their fundamental rights guaranteed by Article 14 and 21 of the Constitution of India. The learned counsel accordingly submitted that the State respondents may be directed to evict the petitioner No. 2 from his illegal occupation of the said Government Quarter allotted to the petitioner No. 1 and to deliver vacant possession of the said quarter to the petitioner No. 1 within a stipulated period.

[10] Mr. BR. Sharma, learned counsel appearing for the petitioner No. 2 submitted that the said Government Quarter Type-III/B-7 at Lamphelpat was legally allotted to the petitioner No. 2 under the Government order dated 18.01.2021 and the petitioner No. 2 is still occupying the said Government quarter and also paying house rent till today. It has also been submitted that the allotment order issued in favour of the petitioner No. 2 had been cancelled by the State respondents by issuing an order dated 06.03.2021 within a short span of 45 days and allotted the said quarter to the petitioner No. 1 without assigning any reason and without application of mind and despite the authorities having knowledge that the petitioner No. 2 is still occupying the said quarter. The learned counsel further submitted that the impugned cancellation order dated 06.03.2021 had been issued in gross violation of the well settled principles of natural justice without giving any notice and opportunity of being heard with the mala-fide intention of allotting the said quarter in favour of the petitioner No. 1 by flouting all the rules and procedures of allotment of Government quarters in a very arbitrary manner and in colourable exercise of power. The learned counsel accordingly submitted that the impugned cancellation order dated 06.03.2021 is not sustainable in the eyes of law and the same is liable to be quashed and set aside.

[11] After careful consideration of the rival submissions of the learned counsel appearing for the parties and after careful perusal of the records of the present writ petitions, this Court is of the considered view that the said Government Quarter Type-III/B-7 at Lamphelpat was already allotted to the petitioner No. 1 under two Government orders dated 02.01.2020 and 04.12.2020. During the subsistence of the Government allotment order dated 04.12.2020, the Additional Chief Secretary (Works)-cum-Estates Officer issued the order dated 18.01.2021

allotting again the said Government quarter to the petitioner No. 2 without application of mind. On careful examination of the said order dated 18.01.2021, it is found that the said order was not issued in supersession of the earlier order dated 04.12.2020 and nothing is mentioned in the said order about cancellation of the earlier order dated 04.12.2020. Subsequently, on realising the mistake in issuing the order dated 18.01.2021, the Additional Chief Secretary (Works)-cum-Estates Officer issued another order dated 06.03.2021 thereby cancelling the order dated 18.01.2021 issued in favour of the petitioner No. 2 and re-allotting the said Government quarter to the petitioner No. 1. In the considered opinion of this Court, the authorities have rightly taken the steps in correcting their mistakes by issuing the order dated 06.03.2021 and thereby reaffirming the allotment of the said quarter in favour of the petitioner No. 1 and this Court did not find any infirmity, irrationality or illegality in issuing the said order dated 06.03.2021. In fact, the petitioner No. 2 was not entitled to the allotment of the said Government Quarter by virtue of the order dated 18.01.2021, inasmuch as, the said Government quarter had already been allotted to the petitioner No. 1 under the Government order dated 04.12.2020 and the subsequent order dated 18.01.2021 had been issued without application of mind.

[12] As the Government have already allotted another similar Government quarter to the petitioner No. 2 under the order dated 29.11.2021, the petitioner No. 2 cannot have any grievances of not availing any Government Quarter for his accommodation. The petitioner No. 2 has also failed to satisfy this Court that he is entitled to occupy the Government quarter of his choice and not the Government quarter allotted to him under the aforesaid order dated 29.11.2021. In the result, the petitioner No. 2 has failed to make out a case and accordingly W.P.(C) No. 352 of 2021 and W.P.(C) No. 102 of 2022 filed by the petitioner No. 2 is hereby dismissed as being devoid of merit and W.P.(C) No. 203 of 2022 filed by the petitioner No. 1 is allowed by directing the State respondents to evict the petitioner No. 2 from the Government Quarter Type-III/B-7 at Lamphelpat and to deliver vacant possession of the said Government Quarter to the petitioner No. 1 within a period of two weeks from the date of receipt of a copy of this judgment and order.

With the aforesaid directions, all the three writ petitions are disposed of. Parties are to bear their own costs. Registry is directed to return the Government file to the concerned Government Advocate.