IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.2627 of 2014
and
M.P.No.1 of 2014

U.Manickavel ... Petitioner

Vs.

1.State Represented by
The Secretary,
Home, Prohibition and Excise Department,
Tamil Nadu,
St. George Fort,
Chennai.

2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Additional Deputy Commissioner of Police,
Estate, Welfare and Community Policing,
Vepery,
Chennai.

4.The Director General of Police,
Mylapore,
Chennai 600 004.

[R4 Suo moto impleaded in WP.No.2627 of 2014
by order dated 12.08.2022] ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to Form-C dated 07.01.2014 issued under Rule 8 of The Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Rules, 1978 by the third respondent herein.

For Petitioner : Mr.M.Deivanandam

For Respondents : Mr.P.Kumaresan,
Additional Advocate General
Assisted by Mrs.S.Anitha,
Special Government Pleader

O R D E R

The lis on hand has been instituted questioning the validity of the Form-C dated 07.01.2014 issued under Rule 8 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978.

Facts of the Case

2. The petitioner was allotted A6 Mylapore AC Quarters, Chennai and continued to occupy the same, when he was working as Assistant Commissioner of Police, Guindy Range, Greater Chennai. The petitioner was transferred to Myladuthurai as Deputy Superintendent of Police and joined duty on 29.10.2012. He made a request for transfer to Chennai and it was considered and again he was transferred from Myladuthurai to

District Crime Record Bureau, Kanchipuram District and he joined duty on 15.06.2013.

3. The family of the writ petitioner continued to reside in the official quarters allotted at A6 Mylapore AC Quarters, Chennai and the petitioner states that he had not availed any quarters in Kancheepuram District. The petitioner's children were studying at Pallikaranai and Sriperumpathur and the petitioner states that his wife was also undergoing periodical treatment.

4. The third respondent vide memo dated 22.10.2013 issued a show cause notice in Form-A under Section 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 read with Rule 3 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978. The petitioner submitted a reply by stating that he was posted at Kanchipuram District, which is 70 Kms away from Chennai and the jurisdiction of the Kancheepuram District is bounded on the OMR road upto Thazhampur Police Station, on the NH 45 upto Guduvancherry Police Station and upto Sriperumpathur Police Station limits all of which falls within 60 Kms from Chennai and therefore, he cannot be construed as an unauthorised occupant. The third respondent had not considered the explanations submitted by the writ petitioner and

served Form-B under Rule 4 of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Rules, 1978, calling upon the petitioner to attend the enquiry. The petitioner had not attended the enquiry and sought for adjournment. However, the third respondent served Form-C dated 07.01.2014 on 21.01.2014, under Rule 8 of the Tamil Nadu Public Premises (Eviction of unauthorised Occupants) Rules, 1978, to remove or cause to be removed, the property remaining in the subject premises within 14 days from the date of serving of the notice in default of which action to remove and dispose it of in public action.

5. The petitioner states that even if an order of eviction has been passed under Section 5 (1) of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975, by the third respondent, it is in violation of the Statute, as no opportunity for reasonable hearing was given to the petitioner and no order of eviction was served to the writ petitioner. The mandatory requirement regarding the reasons has not been stated. Thus, the impugned Form-C is liable to be set aside.

6. The learned counsel for the petitioner reiterated that the petitioner was not provided with an opportunity before issuing the impugned order. That apart, the petitioner has now vacated the official quarters at A6

Mylapore AC Quarters, Chennai and therefore, there is no reason to sustain the order impugned.

7. The learned Additional Advocate General appearing on behalf of the respondents, objected the said contentions raised on behalf of the petitioner by stating that procedures as contemplated under the Act and Rules were scrupulously followed. The petitioner has committed an illegality, which is otherwise not permissible under the Rules in force. Admittedly, the petitioner was transferred to Myladuthurai initially and thereafter, transferred to Kancheepuram District. However, retained the official quarters at A6 Mylapore AC Quarters, Chennai and therefore, he has committed an act of illegality by not vacating the official quarters on his transfer to Myladuthurai. Thus, the third respondent initiated actions under the provisions of the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act. An opportunity was provided to the writ petitioner and he has not availed the said opportunity.

8. This Court raised a question when the higher officials of the Police Department is allowed to commit such serious misconduct and illegality in occupying the police quarters for several years, even after they were transferred to various places. What is the action taken immediately to

vacate the premises, so as to allot the same to the serving Officer of the particular station. The police quarters are meant for the service officials, who all are working in that particular station or place. Even after transfer, if the higher police official has not vacated the quarters for several years, then the question at large arises, whether the Police Department has taken swift action in such circumstances.

9. In this Context, it is brought to the notice of this Court that several such misconducts or offences of the higher police officials of the Department are not responded and no actions are taken. In this context, it is placed before this Court that despite the orders of the Honourable Supreme Court of India to remove the Dark/Black Films in all the vehicles are not implemented by the higher police officials in the State of Tamil Nadu. The higher police officials are still practising the orderly system in their residences and extracting household works from the uniformed police personnel, which was already abolished by the Government in the year 1979 itself. It is further contended that number of such higher police officials are in illegal occupation of the official quarters and no prompt actions are initiated by the Department in this regard.

Analysis

10. The structural unconstitutionality, in the Police Department, prompted this Court to invoke the residuary relief clause in the writ prayer, so as to deal with the same. Misconducts including unauthorised occupation of police quarters, orderly systems, maintaining dark / black films in the cars in violation of Hon'ble Supreme Court orders etc., if organised and no possibility of complaints by the aggrieved persons, the Constitutional Courts have duty bound to mould the relief in the interest of justice and to remove the injustice or unconstitutionality. Thus, justifying a judicial intervention in order to combat structural causes of the violations and to put everything back in order with our constitution is duty mandatory.

11. Regarding the moulding of the relief by the Constitutional Courts, the Hon'ble Supreme Court of India in the case of ***M.Sudakar Vs. Manoharan & Others*** reported in ***[MANU/SC/1139/2010],*** held that "The power to mould relief is always available to the Court possessed with the power to issue high prerogative writs. In order to do complete justice it can mould the relief, depending upon the facts and circumstances of the case".

12. In the case of ***Dwaraka Nath Vs. Income Tax Officer*** reported in ***[AIR 1966 SC 81]***, the three Judges Bench of the Hon'ble Supreme Court of India held that ***"Ex facie confers a wide power on the high court to reach injustice wherever it is found"***.

13. The following are the words of Durga Das Basu in the book authored by him, "Shorter Constitution of India".

> "*The High Court in issuing directions, orders and writs under Article.226 can travel beyond the contents of writ which are normally issued as writ of Habeas Corpus, Certiorari, Mandamus, quo-warranto and prohibition. Though it is desirable that the prayers in application under Article.226 should be as specific and definite as they can be, the court is not powerless to afford necessary relief to proper case. Merely because in the cause title Article.226 has not been specifically mentioned and the proper writ or direction has not been prayed for, an application which is in substance one under Article.226 cannot be thrown out. The court should mould the remedy according to the circumstance of the case. The court is not confined to the form of the Prerogative Writs or the order asked for by the petitioner but has the discretion to frame a proper order which would suit the exigencies of the case before the Court. In exercise of writ jurisdiction, the Court may mould the relief having regard to the facts of the case and interest of justice, provided in doing so the High court does not contravene any provision of the Constitution or the law declared by the Supreme Court. It is open to the applicant to ask for specific reliefs and "such other relief as the*

Court may deem fit and proper". Under such residuary prayer, the court may grant an applicant the proper relief which he should get in view of changed circumstances, even though the relief may be altogether different from the specific reliefs asked for. The court may also make directions as may be necessary to do complete justice to the parties and to prevent injustice to third parties."

14. Thus, in the said context, when the writ on hand has been dealt with by this Court with reference to the unauthorised occupation of the police quarters by the higher police officials and other organised misconducts are brought to the notice of this Court and there is no possibility of complaint by any police personnel, whose Fundamental Rights are infringed on the hands of the higher police officials of the Police department, then the High Court, if not interfered, failing in its Constitutional duty to protect the Fundamental Rights of the citizens of our great Nation.

15. Human dignity is ensured under Article 21 of the Constitution of India. Life includes decent life with dignity. The dignity if infringed at the instance of the powerful higher police officials, then the poor subordinate last grade police personnels became voiceless and their life became misery, as they are forced to perform the household works, which

is undoubtedly below the dignity of trained police personnel, who is expected to perform the duty of policing as per law, in the interest of public at large.

16. The right of the people in general is also infringed on account of the large scale abuse and misuse of power by the higher police officials by not utilizing the services of the trained uniformed personnels for performing their public duties. The public servants are forced to perform private duties in the residences. The concept is opposed to public policy and directly in violation of Article 21 of the Constitution of India, as it affects the dignity of the trained uniformed police personnels, whose public duty is to maintain the Law and Order and guard our great Nation.

17. The Arms of the Indian Constitution is far more powerful to hammer the organised misconduct or offences if any committed by the higher police officials, since the Constitution of India is resolved by *"We people of India"*. In the event of continuing such misconduct or offences such officials are liable to be prosecuted under the relevant Law and under the Departmental Disciplinary Rules.

18. Constitutional Courts are expected to realise ill effects of the situation, where an organised misconduct is being committed by the higher police officials and there is no one to complain as they are the powerful officials, maintaining Law and Order in the society and possessing Arms and Ammunition and the Subordinate officials, who became voiceless. Thus, the Constitutional Courts are the only Institution to step in and protect the rights of the last grade police personnels, who all are made to suffer on the hands of the higher officials in the name of orderly system.

19. Organised or structural misconducts or offences leading to unconstitutionality result not only in violation of individual rights but to be construed as structural violations. The unconstitutional affairs at large in the Police Department is the cause allows the Constitutional Courts to acknowledge the failure of the Executive Branches of the Government to enforce public policies against the widespread and systematic violation of fundamental rights of our citizen. Thus, judicial intervention by invoking residuary relief clause in the writ prayer in order to combat the systematic violations are justified.

20. The importance of structural misconducts or offences therefore lies in its focus upon the widespread and systematic violation of fundamental rights. In the matter of abolition of orderly system of extracting household works from the trained uniformed police personnel by large number of higher police officials, not only are the criteria for the application of certain legal principles, but such unconstitutional affairs of the Police Department, at no circumstances be allowed to be continued in a developing Nation, wherein the people are marching towards vibrant democracy. It allows the Courts to take into the "systematic nature" of this practice, both in the recent past, and in its spread across the State of Tamil Nadu.

21. The question arises, once unconstitutional affairs largely in any Uniformed Services and/or Government Departments, have been identified, what is the remedy follows? Certain Courts in foreign countries developed the remedy of structural injunction, or as we know it in India, the continuing Mandamus. The continuing Mandamus allows the Constitutional Courts to take cognizance of the situation, issue interim orders and to monitor for compliance, which crucially will not be limited to single case, but will extend to such unconstitutional affairs in any of the Government Department at large.

22. No doubt, the writ petition on hand relating to an unauthorised occupation of the official police quarters by the higher official for several years and it is brought to the notice of this Court that such illegalities are commonly found in Police Department and more so, such higher officials are maintaining the 'orderly system' of engaging the uniformed service personnel to perform their household works. The illegal occupation is one aspect of the matter. Utilizing the uniformed personnel for household works in the residence of the higher officials is another aspect. Both together the concept of organised misconducts by the police higher officials are to be dealt with, in view of the fact that the last grade uniformed personnels are voiceless and there is no possibility of registering a complaint against the higher police officials by the last grade police personnels. State, though abolished the orderly system in the year 1979, miserably failed to implement the same till today.

23. Though these police personnels are working as menials in the residence of the higher police officials, they are to be construed as oppressed and depressed class amongst the homogeneous class of uniformed personnels and the Constitutional Courts as the protector of the Constitution, is expected to raise voice for such voiceless police

personnels made to perform household works in the residence of the higher officials. Thus, moulding of relief in such circumstances became imminent and the Constitutional Courts are not expected to remain as silent spectators in such circumstances, where the Fundamental Rights of group of persons are infringed at large and there is no possibility of registering complaints or filing a writ by any person least by these police personnel working in the residences of the higher officials.

The Assurances given by the Respondents

24. Soon after, the issues were considered by this Court, the first respondent / State of Tamil Nadu spontaneously responded by stating that the orderly system in Police Department was abolished in G.O.Ms.No.2231 dated 05.09.1979. In this Context, the Additional Chief Secretary to Government, Home (Police-X) Department in Letter No.37131/Police X/2022-2, dated 16.06.2022 issued instructions to the Director General of Police, which reads as follows:

"Home (Police X) Department
Secretariat
Chennai – 600 009.

Letter No.37131/Police X/2002-2, dated 16.06.2022

From
Thiru K.Phanindra Reddy, I.A.S.,
Additional Chief Secretary to Government.

To
The Director General of Police,
Tamil Nadu, Chennai – 4. (w.e.)

Sir,

Sub: Writs – Writ Petition No.2627 of 2014 – Filed by Thiru.U.Manickavel, Deputy Superintendent of Police (under suspension and not allowed to retire), before High Court of Madras, for restraining the authorities from evicting him from the quarters – Certain instruction issued.
Ref: Interim Orders of High Court of Madras dated 14.06.2022 in W.P.No.2627 of 2017.

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I am directed to enclose a copy of the interim order cited and to state that, in the above orders, the Hon'ble Court has mentioned the following allegations against the police officials:

a) Usage of black film in the official vehicles by the higher officials of the police department.

b) Misuse of department's name in the private vehicles.

c) Abuse of police force in the name of orderly in their residences or otherwise.

3. In this connection, I am to request you to issue suitable instructions to all the officers under your control to strictly follow the instructions issued in this regard, under intimation to Government and also to report the progress in implementing the instruction within 4 weeks.

Yours faithfully,

for Additional Chief Secretary to Government."

25. The Director General of Police also issued a circular on 01.07.2022. Further circular was also issued by the Director General of Police on 16.07.2022 and thereafter on 20.07.2022. The Government issued several circulars even from the year 2012 onwards to remove the

Black Films from the official vehicles and to remove the unauthorised usage of Emblem, Department name etc., and the learned Additional Advocate General made a submission that all appropriate actions were initiated based on the judgment of the Apex Court in this regard.

26. The fourth respondent/Director General of Police filed a counter affidavit by stating that the Government abolished the orderly system in the year 1979 and even if some officials follow the same, all suitable actions are initiated to withdraw the orderly system from all quarters.

27. The fourth respondent states in his counter affidavit that there are some allegations of using policemen for household works, the Department is taking all possible steps to curtail this without sacrificing the official work at the camp office. Further, the Department is committed to sincerely comply to the views of this Hon'ble Court in order to eliminate the misuse of the police personnel for household work of the officers. Certain misconducts were also developed in this regard and if at all any such irregularities prevail, steps will be taken to correct the same. The Director General of Police in paragraph 14 of the counter affidavit states as follows:

"14. I further submit that when a Government official is

appointed to discharge public duty, it is not proper to use his services for private work in the residence of senior police officers. Hence, in order to comply with the orders of the Hon'ble High Court the following steps have been taken.

(i) In this regard I have issued a circular in C.No 192/DGP(HoPF)/TN/Camp/2022 dated 01.07.2022 with instructions for restructuring of units as follows:-

"In order to improve the efficiency of delivery of police services, it is necessary that maximum number of police personnel are utilized in the core police work and the number of Police personnel on support functions be kept at a minimum level.

At present, many police personnel are serving in various Units as drivers and support staff on Other Duty basis. While it is essential that adequate drivers are available for driving the vehicles, keeping them on Other Duty basis is not a healthy practice in human resources management.

Therefore, the Unit officers are requested to assess the strength needed for drivers and other support functions and send proposal for increasing the sanctioned strength with proper justification in the format enclosed. The additional strength required can be made available through redeployment of posts from other units.

After the completion of redeployment exercise, requests for posting Police personnel on

Other Duty basis in any unit will not be entertained. Only in exceptional circumstances, such as investigation of sensitive cases etc., additional man power will be made available on temporary basis for a short period after the approval of the Competent Authority.

All unit officers especially the Commissioner of Police, Greater Chennai Police and Additional Director General of Police, Armed Police are requested to adhere to the above instructions without any deviation.

(ii) In compliance of the orders of the Hon'ble High Court of Madras dated 25.07.2022 in W.P.No.2627/2014, all the Superintendents of Police of State Service and all IPS officers have been instructed individually to strictly adhere to the instructions issued in G.O.Ms.No.2231, Home (Police VI) Department, dated 05.09.1979 and the interim orders of the Hon'ble High Court dated 14.06.2022 in W.P.No.2627 of 2014, against the use of Police personnel for household work. The memorandum issued in this regard reads as follows:

"Please find enclosed the Government Order in G.O.Ms.No.2231, Home (Pol -VI) Department, dated: 05.09.1979 and Interim Orders of High Court of Madras, dated 14.06.2022 in W.P.No.2627 of 2014 and a Circular from this office in this regard.

2) You are instructed to follow the instructions mentioned in the Government Order and Interim orders of the High Court against the use of police personnel for household work. Compliance report should be given by 08.08.2022."

(iii) Written undertakings that no Police personnel are being used for household or menial work have been obtained from all the Senior Officers in the following format:

UNDERTAKING

I am aware that the orderly system has been abolished as per G.O.Ms.No.2231, Home (Police-VI) Department, dated.05.09.1979. It is certified that none of the Police Personnel deployed on official duty like Security, Wireless operations etc at my residence are being employed in any other duty other than the official work assigned to them.

Date: *Signature:*

Name :

Designation:

(iv) To implement the orders of the Hon'ble High Court in letter and spirit, a detailed audit of Police personnel attached to the Senior Officers for performing official duties as mentioned above was undertaken to ascertain whether there is any misuse of these Police personnel for household work. Wherever it was seen that excess Police personnel have been attached to Senior Officers who could have been utilized for domestic work,

they have been withdrawn and asked to report to their Parent Unit for Executive work. 430 Police personnel were withdrawn in the above exercise.

(v) Further, black films in 578 nos. of Police vehicles and POLICE' boards / Stickers in 8907 nos. of private vehicles were removed so far. This drive is being continued throughout the State to remove black films in Police vehicles and 'POLICE' boards / Stickers in private vehicles including Two Wheelers."

28. In paragraph 15 of the counter affidavit, the Director General of Police in his command reiterated that ***the Department is fully in agreement with the views of this Hon'ble Court that Police personnels should not be used as household and menial works and has taken vigorous steps to prevent the same. The steps have been taken to fully implement the orders of the Hon'ble High Court in letter and spirit. He further assured this Court that this drive will continue in future also***.

29. In continuation of the counter affidavit filed by the fourth respondent Dr.C.Sylendra Babu, I.P.S., Director General of Police, himself has filed an undertaking that *"**It is Certified that none of the Police Personnel deployed on official duty like Security, Wireless operations etc., at my residence are being employed in any other duty other than***

the official work assigned to them". Such undertakings have been obtained from all the higher officials serving in the Police Department across the State of Tamil Nadu.

30. Consequent to the implementation of the Government Order in G.O.Ms.No.2231, Home (Police-VI) Department, dated 05.09.1979, in its letter and spirit by eradicating the orderly system in the Police Department, the higher police officials require assistants on par with other All India Rank Officials. The Government in G.O.Ms.No.2231 dated 05.09.1979, itself has stated that an alternate arrangement for appointment of Last Grade Government Servant will have to be made in the places of orderlies at the scale admissible under the orders in force. The Government order further states that the Director General of Police has to submit a proposal in this regard to the Government in consultation with the Principal Secretary to Government. Thus, the said exercise is to be done by the respondents 1 and 4 as expeditiously as possible for the benefit of higher police officials and for their effective and efficient functioning and performance of public duties.

Conclusion

31. Accordingly, this Court is inclined to pass the following orders:-

(1) Based on the counter-affidavit filed by the fourth respondent and the respective undertakings furnished by the Police Officials, the respondents 1 to 4 are directed to ensure that the practice of orderly system stands eradicated in entirety in accordance with G.O.Ms.No.2231, Home (Police-VI) Department, dated 05.09.1979. The said exercise shall be done within a period of four months from the date of receipt of a copy of this order.

(2) The respondents 1 and 4 are directed to withdraw the orderlies if deputed to the residence of the retired officials immediately as it amounts to an illegality and in violation of law.

(3) The respondents 1 or 4 as the case may be is directed to conduct an enquiry, in the event of receiving any complaint or information as regard to the misconducts or offences from any person and initiate all appropriate actions under the relevant law and under the Discipline and Appeal Rules, as the case may be.

(4) The respondents 1 to 4 are directed to identify the illegal occupation of official police quarters and initiate all steps for eviction under the provisions of the Statute and the Rules in force.

(5) The writ petitioner in respect of his grievance, if any exists, is at liberty to approach the first respondent in the manner known to law.

32. With the aforesaid directions, the Writ Petition stands disposed of. Consequently, connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

23.08.2022

Jeni

Index : Yes
Internet : Yes
Speaking order : Yes

To

1.The Secretary,
State,
Home, Prohibition and Excise Department,
Tamil Nadu,
St. George Fort,
Chennai.

2.The Commissioner of Police,
Greater Chennai,
Chennai.

3.The Additional Deputy Commissioner of Police,
Estate, Welfare and Community Policing,
Vepery,
Chennai.

4.The Director General of Police,
Mylapore,
Chennai 600 004.

S.M. SUBRAMANIAM, J.

Jeni

W.P.No.2627 of 2014

23.08.2022