

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

WPA/55/2025

Shri G. Ganesh

Vs.

The Chief Secretary and Another

Mr. K. M. B. Jayapal

... for the petitioner

January 31, 2025
[AKB]
Item no. 1
(Supple. List)

1. The present writ petition has been filed on an urgent basis to challenge the order dated 29.01.2025 issued by the Secretary of Sri Vijaya Puram Municipal Council (hereinafter, referred to as the Council), directing the petitioner to remove his 'shop setup' from the premises owned by the Municipal Council within a period of two days failing which EE-I(Works) was directed to execute that order at the cost of the petitioner. The two-days' deadline is set to expire today.
2. Therefore, considering the urgency of the matter, leave is granted to the petitioner to move this writ application without the requirement of serving a copy of the writ petition on the concerned respondents, by invoking the provisions of the second proviso to Rule 26 of the Rules of the High Court at Calcutta, relating to applications under Article 226 of the Constitution of India.
3. Mr. Jayapal, learned advocate representing the petitioner, submits that the petitioner, a person of limited means, has been operating a small shop to support himself and his family. Drawing attention to several resolutions adopted by the Council in its various meetings, he contends that the Council has, on multiple occasions, resolved to levy rent on the petitioner and, in fact, allotted a room to a similarly situated individual through an order. However, the petitioner has been treated differently.
4. He submits that previously, the petitioner's request for the allotment of a shop room was rejected on the grounds that the petitioner had illegally encroached upon the space under the staircase, thereby disrupting the business activities of bona fide tenants and obstructing the movement of building materials. Since similar requests made by other individuals in the same situation were also denied on the same grounds, the petitioner, along with three others in a similar position, filed four separate writ petitions. These petitions were disposed of by a common order dated 25.09.2024, which set aside the earlier rejection and directed the authorities to make a fresh decision.
5. He argues that, under the guise of complying with the order dated 25.09.2024, the Secretary of the Council, by issuing the order challenged in this writ petition, has directed the petitioner to remove his shop setup within two days, claiming that the illegal occupation of the space under the staircase is causing

inconvenience to the public. He contends that the order incorrectly states that the petitioner has not applied for a lawful shop space from the Council. He further asserts that the respondents have acted in extreme haste and engaged in discriminatory practices by allotting a shop room to one individual while denying the same benefit to the petitioner. He prays that unless the order dated 29.01.2025 is stayed, the petitioner will lose his only source of livelihood and suffer irreparable harm, rendering the present writ petition infructuous.

6. The record shows that the Council, in its various meetings, resolved to levy rent on the petitioner. It also indicates that by order No. 6110, shop room No. 37 was allotted to A. Mraimuthu. The petitioner's previous request for a shop room was rejected on the grounds that his illegal occupation of space under the staircase was obstructing bona fide tenants' business activities and hindering the movement of building materials. The petitioner's request was again denied on the basis that his occupation was causing inconvenience to the public. Prima facie, the petitioner's request has been rejected on similar grounds. Furthermore, in the order challenged in this writ petition, it was incorrectly stated that the petitioner had not applied for a lawful shop, although the record contains the petitioner's application for a shop room.
7. It is a settled principle of law that any decision by the State or its functionaries to grant largesse or confer benefits must be based on a sound, transparent, and well-defined policy, ensuring a non-discriminatory and non-arbitrary approach in determining the beneficiaries. I find no prima facie justification for the respondents' discriminatory practice of allotting a shop room to one individual while denying the same benefit to the petitioner. Furthermore, it appears prima facie that the concerned authority has acted in undue haste by setting an unreasonably short deadline of only two days for the removal of the petitioner's shop setup.
8. Having heard the submissions made on behalf of the petitioner and after reviewing the materials on record, I am satisfied that the petitioner has established a strong prima facie case. I find merit in the submission of Mr. Jayapal that unless the operation of the order dated 29.01.2025 is stayed at least for a limited period, the petitioner will suffer significant prejudice. In light of these circumstances, I am inclined to grant an interim order for a limited period
9. Consequently, the operation of the order dated 29.01.2025 passed by the Secretary Municipal, Sri Vijaya Puram Municipal Council District be stayed till 07.02.2025 or until further order whichever is earlier.
10. List the matter for further consideration at the top of the list on 06.02.2025.
11. The petitioner is directed to serve a copy upon the respondents in the meantime and file affidavit of service.
12. A plain copy of this order may be provided to the learned Advocate representing the petitioner with a liberty to communicate the same to the concerned respondents who is directed to act on the basis of such communication.

(Partha Sarathi Chatterjee, J.)