



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.08.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P (MD) No.3853 of 2016

and

W.M.P (MD) No.3457 of 2016

V.Selvakumari

... Petitioner

vs.

1) The Inspector General of Registration,
Santhome High Road,
Chennai-28.

2) Deputy Inspector General of Registration,
Tirunelveli,
Tirunelveli District.

3) The District Registrar, (Administration),
Virudhunagar,
Virudhunagar District.

4) The District Registrar, (Audit),
Virudhunagar,
Virudhunagar District.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned charge memo made in Memorandum No.939/A1/2016 dated 15.02.2016 issued by the 2nd respondent and quash the same.

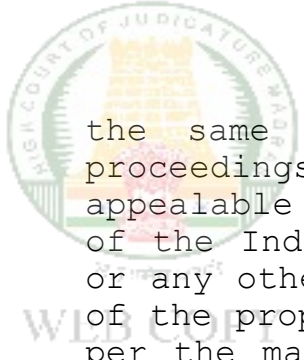
For Petitioner : Mr.D.Sadiq Raja

For R1 to R4 : Mr.M.Murugan, Government Advocate

ORDER

This writ petition has been filed challenging the charge memo dated 15.02.2016 issued by the 2nd respondent/Deputy Inspector General of Registration, Tirunelveli District.

2.Learned counsel for the petitioner, assailing the correctness of the impugned order, would submit that if there is any error on the part of the registering authority while discharging quasi-judicial function under the provisions of the Indian Stamp Act, 1899, The Registration Act, 1908, and the Rules framed thereunder,



the same cannot be questioned, by initiating any departmental proceedings, for the simple reason that the said order is always appealable to higher authority more particularly, under Section 47-A of the Indian Stamp Act, 1899, by which, the registering authority or any other competent authority, after estimating the market value of the property, which is the subject matter of such instrument, as per the market value guidelines, can re-determine the market value of the property, after following due process of law and thereby whatever the under-valuation according to the competent authority is made, can be recovered. Therefore, the petitioner, who was serving as a Grade-I Sub Registrar in Kovilpatti, Tuticorin District, having registered a document while discharging her quasi judicial authority, he pleaded, cannot be asked to face any disciplinary proceedings, for not correctly valuing the market value of the property involved in the instrument.

3. Adding further, he would submit that the petitioner as a statutory authority under the Registration Act, 1908, has discharged her statutory duties which fall under the Registration Act and the Indian Stamp Act. While so, when she judges that a document has been valued properly, she has no option but to register the same. Even on the contrary, if she concludes that the document has been under-valued, then she has to register the document and then refer the same to the authority concerned under Section 47-A of the Indian Stamp Act. While assessing the document, there may happen some error of judgment in respect of the value of the document, however, since the function is quasi-judicial in nature, even if the error of judgment allegedly resulted in any loss to the department, it cannot be a foundation for initiation of disciplinary proceedings against her.

3. Concluding his arguments, he submitted that this issue has already been decided by the Apex Court in the case of **Zunjarrap Bhikaji Nagarkar vs. Union of India and others**, reported in **1999 (7) SCC 409**, holding that initiation of disciplinary proceedings against an officer, who registered a document, on the ground that she has under-valued the document, cannot take place on information which is vague or indefinite and it has been further held that wrong exercise of the quasi-judicial authority or power cannot be the basis for initiation of disciplinary proceedings, therefore, the impugned charge memo issued against the petitioner is liable to be set aside.

4. Separate counter affidavits have been filed by the respondents 2 and 4. Mr. M. Murugan, learned Government Advocate appearing for the respondents has submitted that the petitioner, a registering officer, has miserably failed in her duty in deciding the correct value of a document presented before her, as a result, she has caused huge loss to the Government, therefore, for the said lapse committed by her, disciplinary proceedings has been rightly initiated against her, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Moreover, the Sub Registrar is not a quasi-judicial authority, while registering a document,



therefore, the contention made by the learned counsel for the petitioner that the petitioner has discharged quasi-judicial power, hence, no disciplinary proceedings can be initiated for her wrong exercise of such quasi-judicial authority, should not be accepted, he pleaded.

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5. But, this Court finds hardly any merit in the submission made by the learned Government Advocate. This Court in W.P(MD)No.7294 of 2005 while dealing with a similar issue, following the principles laid down by the Hon'ble Apex Court in the case of **Zunjarrap Bhikaji Nagarkar vs. Union of India and others**, reported in **1999 (7) SCC 409**, has clearly held that initiation of disciplinary proceedings against a registering officer, who has discharged the quasi-judicial power, is not permissible, as he is always subject to judicial supervision in appeal. In this context, it is pertinent to extract below the relevant portion of the order passed by the Apex Court in **Zunjarrap Bhikaji Nagarkar's** case.

'40. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides. Negligence in quasi-judicial adjudication is not carelessness, inadvertence or omission but a culpable negligence.

41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent

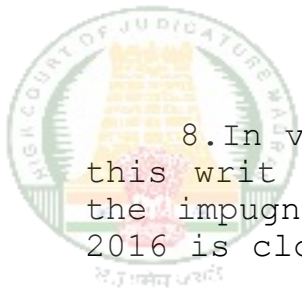


functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44.Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed.''

6.A close reading of the above judgment of the Apex Court shows that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission, is not sufficient to initiate proceedings under misconduct, therefore, unless there is a culpable negligence or ill motive, no charge could be framed. Yet another observation of the Apex Court holding that the entire system of administrative adjudication whereunder quasi-judicial powers are conferred on the administrative authorities, would fall into disrepute, if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

7.Almost in a similar circumstance, an identical issue came up before the Apex Court, whether disciplinary proceedings can be initiated against a judicial officer, who granted bail exercising discretion while discharging the the judicial function and the Apex Court while dealing with the said issue in **Ramesh Chander Singh vs. High Court of Allahabad and another**, reported in **2007 (4) SCC 247**, held that on several occasions, the Apex Court has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary, merely because the judgments/orders passed by them are wrong, since appellate and revisional courts have been established and given power to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. The above observation squarely applies to the case on hand.



8. In view of the above, this Court finds no impediment to allow this writ petition. Accordingly, the writ petition is allowed and the impugned order is set aside. No costs. W.M.P(MD)No.3457 of 2016 is closed.

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Sd/-

Assistant Registrar (CS-I)

Sub Assistant Registrar

nbi

To

1) The Inspector General of Registration,
Santhome High Road,
Chennai-28.

2) Deputy Inspector General of Registration,
Tirunelveli,
Tirunelveli District.

3) The District Registrar, (Administration),
Virudhunagar,
Virudhunagar District.

4) The District Registrar, (Audit),
Virudhunagar,
Virudhunagar District.

+1CC to Mr.D.Sadiq Raja, Advocate Sr.No.46771

GJM/SS3/SAR-I-7.9.16-5P-6C

W.P (MD) No.3853 of 2016
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