

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.1743 of 2015

Ettiappan ... Petitioner
Vs.

1. The Secretary to Government,
Revenue Department,
Fort St.George, Chennai - 9.
2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Disaster Management and Mitigation Dept,
'Ezhilagam', Chennai - 5.
3. The District Collector,
kancheepuram District. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to keep the disciplinary proceedings in abeyance initiated by the 2nd respondent against the petitioner in Ref.No.SER 2(1)/4682/2014 dt.28.05.2014 pending disposal of the criminal case registered in Crime No.69/2014 dt 30.01.2014 pending on the file of Central Crime Branch, Chennai City Police.

For Petitioner : Mr.T.Ayngaraprabhu
for Mr.M.Muthappan

For Respondents : Mr.R.S.Selvam
Government Advocate

O R D E R

The relief sought for in this writ petition is for a direction to direct the respondents to keep the disciplinary proceedings in abeyance initiated by the 2nd respondent, against the petitioner in proceedings dated 28.05.2014, pending disposal of the criminal case registered against the petitioner in Crime No.69 of 2014 dated 30.01.2014, pending on the file of the Central Crime Branch, Chennai City Police.

2. The writ petitioner was holding the post of Revenue Divisional Officer. In respect of certain irregularities regarding the grant of patta against the Government Poramboke land, a criminal case was registered against the writ petitioner in Crime No.69 of 2014. Simultaneously, the writ petitioner was placed under suspension on 14.02.2014. A charge memo was issued in proceedings dated 28.05.2014, and the following charges are framed against the writ petitioner which are extracted hereunder:

Charge 1:

That, Thiru M.Ettiyappan, Deputy Collector (under suspension) while working as Revenue Divisional Officer, Tambaram issued an order dated 14.08.2013 in Rc.No.2863/2013/B changing the classification of "Manavari Tharisu" (மாணவாரி தரிசு) land measuring an extent of 9.50 acres in the entire extent of 3.97.0 hectares in S.No.401 of Semmanchery village in Sholinganallur Taluk into "Natham" (கிராம நத்தம்) without any lawful authority and beyond jurisdiction. He has also referred to Revenue Standing Order 15(3) to make such changes. The change of classification to 'Natham' can be made only by the Competent Authority. He had changed the classification of land under Revenue Standing Order 21, which is worth about Rs.83 Crores, and assigned the same to 20 persons for pecuniary gains and against the public interest, beyond his jurisdiction as the value of land exceeds his monetary limit of Rs.50,000/-.

Charge 2:

That, Thiru M.Ettiyappan, Deputy Collector (under suspension) in his order, dated 14.08.2013 has referred to G.O.Ms.No.854, Revenue, dated 30.12.2006 to change the classification of Government Poramboke land for House-site assignment. In the said G.O., the Government have ordered to regularize the encroachments in Government lands which exist for more than five years. In this case, there are no encroachments in S.No.401 of Semmanchery Village and the land is still vacant. So with criminal intent and ulterior motive, he had issued order for change of classification and assigned to 20 persons without mentioning their names and other details.

Charge 3:

That, Thiru M.Ettiyappan, Deputy Collector (under suspension) after passing the illegal and irregular order has not handed over the connected file to the Assistant concerned of the Revenue Divisional Office. The fraudulent order has come into the notice of present Revenue Divisional Officer, Tambaram, when the Sub-Registrar of Neelankarai in her letter

No.Pending Doct.No.313/2013, dated 11.10.2013 has sought for some clarifications. It has also been found out that Thiru M.Ettiappan, Deputy Collector (under suspension) had conspired with Tmt.M.Punithavathi, then Head Quarters Deputy Tahsildar, Sholinganallur Taluk, and has changed the classification of an extent of 9.50 acres land into natham for issue of assignment to 20 unnamed persons. However, while issuing the fraudulent patta, the entire extent of 3.97.0 hectares in S.No.401 of Semmancherry village, was issued to Thiru K.Ravi S/o Krishnan under patta No.1508. Subsequently, by using the fraudulent patta, attempts have been made to sell the valuable Government lands, which has a value of about Rs.83 crores.

Charge 4:

That, Thiru M.Ettiappan, Deputy Collector (under suspension) has referred a letter No.4597/2012/B dated 16.07.2012 and 03.08.2012 as received from Tahsildar, Sholinganallur, recommending to issue house site patta to 20 persons, but without mentioning their names and other details. However, the verification of Taluk file reveals that the file No.4597/2012 is related to a petition received from Thiru Munusamy, Chennai Corporation Councilor, seeking welfare assistance to some public and not related to house site assignment. The reference has been intentionally and fraudulently made by Thiru M.Ettiappan, Deputy Collector (under suspension) to create an impression that he has passed the order on the recommendations of the Tahsildar, Sholinganallur.

Charge 5:

Thus, he has failed to maintain absolute integrity and devotion to duty and acted in violation of Rule 20(1) of the Tamil Nadu Government Servant's Conduct Rules, 1973.

3. On perusal of the charges, this Court is able to find that the charges are very serious. The statement of allegations namely imputation of misconduct or misbehaviour, in support of each charge framed against the writ petitioner was furnished in Annexure-II of the charge memo. The writ petitioner made a representation on 27.10.2014, requesting the respondents to keep the disciplinary proceedings in abeyance till the final disposal of the criminal case. Pursuant to the representation, the writ petition is moved.

4. These proceedings are independent and the criminal case is on separate proceedings. On the ground of similarity with regard to the allegations or charges, the writ petitioner cannot seek stay of the departmental disciplinary proceedings. The

case before the Criminal Court stands in a different footing and the proof and the evidences required for the Criminal case are high in nature. In other words, high standard of proof is required for establishing the criminal offence before the criminal court. However, no such strict proof is required in the departmental disciplinary proceedings, preponderance of probability is sufficient to punish an employee under the provisions of the Discipline and Appeal Rules. Thus, there cannot be any comparison between the criminal case pending before the Criminal Court and the departmental disciplinary proceedings initiated under the relevant Discipline and Appeal Rules.

5. The Constitutional Courts have time and again held that the pendency of the criminal case is not a bar for initiating departmental disciplinary proceedings and based on the records available and the evidences, the department shall proceed with the enquiry and conclude the disciplinary proceedings. Thus, the very ground raised in this writ petition to stay the departmental proceedings are not in accordance with the established principle in this regard.

6. The charge memo issued to the writ petitioner categorically enumerated the statement of allegations, imputation of misconduct on the charges framed against him. Thus, the department is of the opinion that they are having sufficient material to proceed against the writ petitioner to continue the departmental disciplinary proceedings even during the pendency of the criminal case. On perusal of the charge memo, the charge against the writ petitioner is relating to the grant of patta and all charges relating the land belonging to the Government. Thus, the disciplinary authorities are in possession of the revenue records and other relevant records and evidences to establish the charges before the enquiry. Such being the factum of the case, the question of staying the departmental proceedings during the criminal case does not arise at all and there are records to show that if the writ petitioner had involved in any of the alleged misconduct stipulated in the charge memo, there is no reason to postpone the conduct of domestic enquiry by the disciplinary authority. In this view of the matter, the prayer sought for in this writ petition deserves no merit consideration.

7. Accordingly, the writ petition stands dismissed. However, there is no order as to costs.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Secretary to Government,
Revenue Department,
Fort St.George, Chennai - 9.

2. The Additional Chief Secretary/
Commissioner of Revenue Administration,
Disaster Management and Mitigation Dept,
'Ezhilagam', Chennai - 5.

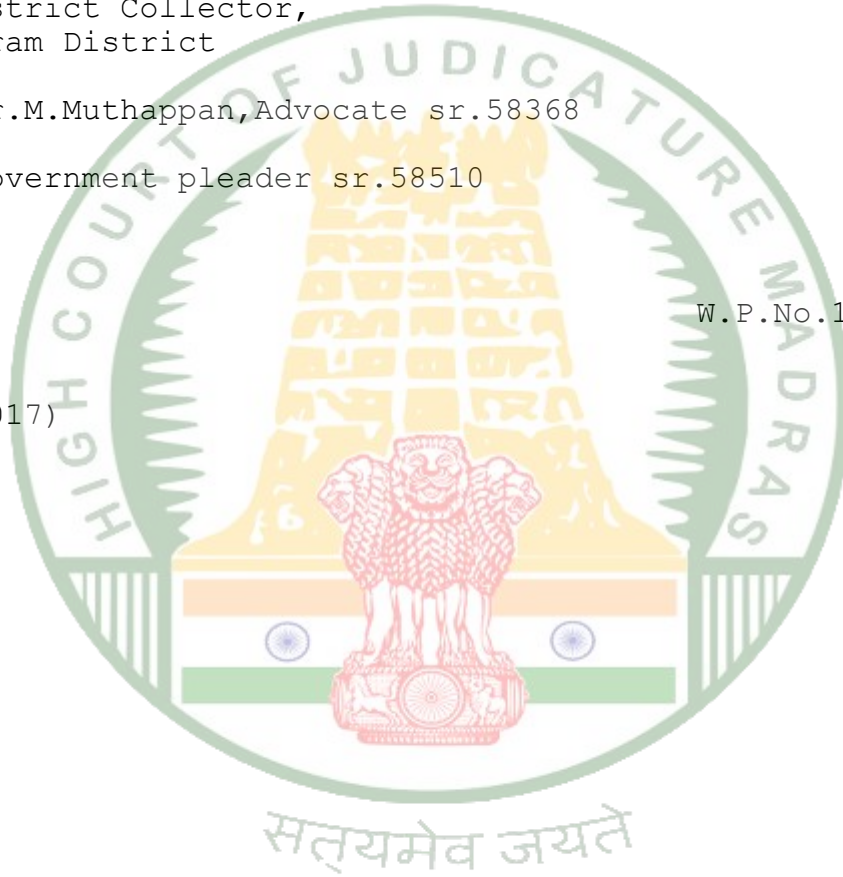
3. The District Collector,
kancheepuram District

+1cc to Mr.M.Muthappan,Advocate sr.58368

+1cc to Government pleader sr.58510

W.P.No.1743 of 2015

sks (co)
ss (14/9/2017)



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