

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.08.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.23454 of 2017
and
W.M.P.No.24627 of 2017

S.K.Gurusamy

.. Petitioner

vs

The Managing Director,
Tamilnadu Housing Board,
Nandanam,
Chennai - 600 035.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the proceedings in Memo No.DC-6/13440/2016-1 dated 09.01.2017 of the respondents and quash the same.

For Petitioner : W.M.Abdul Majeed

For Respondent : Mr.V.Anandhamoorthy

सत्यमेव जयते
O R D E R

The order of suspension dated 9th January, 2017 issued by the respondent is under challenge in this writ petition. On a perusal of the order impugned, it is stated as follows:

"WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit while working in the said office in collusion with others and without following and without adhering and in total violation of the following allotment rules and procedure which have to be followed has prepared and got approved the sale deed for the plot No.158 at Vellore Phase-1 from the Executive Engineer and Administrative Officer, Vellore Housing Unit on 24.02.2016 to Tmt

K.S.Shantha, bogus allottees through fraudulently and by illegally creating documents:-

- a) closing entry not obtained from the Assistant Revenue officer,
- b) Scrutiny fees for issue of sale deed
- c) Entry in the sale deed issue register
- d) Signature varies with the one available in the application form
- e) Difference in date of birth of the allottee.

WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit had proposed, prepared and forwarded to the competent authority for approval and got issued sale deed to an impersonate person for MIG House No.962 at Tirupattur Scheme by falsification of office records and apparently committed the offence of forgery with ulterior motive to issue the sale deed to impersonate person.

WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit by his above action of issuing sale deed to an impersonate person has caused a loss of Rs.8,74,742/- to the Board for which he is held responsible.

WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit had proposed, prepared and forwarded to the competent authority for approval and got issued sale deed for plot No.308 at Vellore Phase-I on 16.10.2015 at reduced cost resulting in loss to the Board.

WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit had proposed, prepared and forwarded to the competent authority for approval and got issued sale deed to an impersonate person for LIG House No.184 at Vellore Scheme by falsification of office records and apparently committed the offence of forgery with ulterior motive to issue the sale deed to impersonate person at reduced cost resulting in loss to the Board.

WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit has allowed outsiders Thiru Prabhu and Tmt Shalini to occupy the HIG House No.C-15 at Vellore Neighbourhood scheme-III for pecuniary gains.

WHEREAS, Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit while working in the said office has not entered the issue of the above sale deeds in the "Sale deed issue register" maintained for the purpose and has not produced the original allotment files relating to the issue of sale deeds

till date in order to hide and suppress the above facts for which he is held fully responsible as a custodian of the file and ledgers.

WHEREAS, an inquiry into grave charges against Thiru.S.K.Gurusamy, Assistant, Vellore Housing Unit is contemplated.

WHEREAS, an inquiry into grave charges against Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit is pending and charges have been framed in memo No.DC6/63940/2004 dated 01.07.2016 is pending.

AND WHEREAS in the circumstances of the case, it is necessary in the public interest and in the interest of the Board to place the said Thiru S.K.Gurusamy, Assistant, Vellore Housing Unit, Tamil Nadu Housing Board under suspension from service.

2. The learned counsel appearing for the writ petitioner states that the writ petitioner who is working as a Assistant is no way responsible for the allegations set out in the impugned suspension order and further, there is no allegation of misappropriation as stated in the regulation warranting an order of suspension. In this regard, Rule 36 of the Tamil Nadu State Housing Board Service Regulations, 1969, is stated as follows:

"36. When an Officer or Servant can be Suspended. - (a) An officer or servant may be placed under suspension when -

(i) an enquiry into grave charges of suspected disobedience or malpractice, misappropriation is contemplated or is pending or during enquiry his continuance in service is considered to be detrimental to the interest of the Board; or

(ii) a complaint against him of any criminal offence involving moral turpitude is under investigation or trial and if such suspension is necessary in the public interests.

(b) An employee of the Board who is detained in police custody whether on a criminal charge or otherwise for a period longer than forty-eight hours shall he deemed to have been suspended under this regulation.

(c) An order of suspension under clause(a) may be revoked at any time by the authority making the order or by any authority to which it is subordinate."

3. On reading of the Regulation, it is clear that an enquiry into grave charges of suspected disobedience or malpractice, misappropriation are contemplated or during enquiry, his continuance in service is considered to be detrimental to the interests of the Board. The impugned order

states that already grave charges against the writ petitioner is contemplated and the charges have been framed in Memo No.DC6/63940/2004 dated 01.07.2016 and the same is pending. However, that memo has not been enclosed in this writ petition.

4. On a perusal of the order impugned itself, it is clear that certain allegations are set out against the writ petitioner and now, it is for the writ petitioner to face the departmental disciplinary proceedings and to prove his innocence.

5. Suspension is not a punishment, it is an order which is passed in order to keep an employee away from the office for the purpose of conducting a fair departmental domestic enquiry, to find out whether there is any misconduct, irregularity or illegality has been committed by any public servant. Such being the concept of suspension, the writ petitioner, at this stage, cannot adjudicate the merits of the allegations set out in the order of suspension. All the merits and the demerits are to be considered by the departmental disciplinary enquiry and this Court, at this stage of suspension, cannot adjudicate the merits and the other aspects as narrated in the writ petition. It is left open to the writ petitioner, to defend his case in accordance with the rules by submitting his explanation/objections and by participating in the domestic enquiry which is to be conducted by the competent authorities under the Regulations. This being the view of this Court, no interference is required into the order impugned in this writ petition.

6. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The Managing Director,
Tamilnadu Housing Board,
Nandanam,
Chennai - 600 035.

+1cc to Mr.M.Abdul Majeed, Advocate sr.62895
+1cc to V.Anandha Moorthy, Advocate sr.63104

W.P.No.23454 of 2017

ss (22/9/2017)