

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on  
19.04.2018

Delivered on  
26.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN  
AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1811 of 2017

and

C.M.P.No.22668 of 2017

V.Arivudai Nambi,  
S/o.T.Veeraputhiran,  
aged 48 years, residing at  
No.4, Kalaimagal Street, Puzhuthivakkam,  
Chennai - 600 091.  
Now working as Bonded Manufacturing Officer,  
in the cadre of Tahsildar,  
Werdex Pharmaceutical Private Ltd.,  
Chennai - 600 029.  
Formerly employed as Tahsildar,  
Velacherry Taluk, Chennai.

[Cause title amended vide  
Court order dated 13.04.2018  
made in CMP.No.22764/2017 in  
WA.No.1811/2017]

... Appellant/4<sup>th</sup> Respondent

versus

1.N.Raman

Rep. by his Power Agent T.R.Sahadevan

... Respondent/Petitioner

2.The Commissioner,

Corporation of Chennai, Chennai - 600 0003.

3.The Assistant Engineer / Assistant Executive Engineer,  
Town Planning Approval Section,  
Regional Office South,  
Greater Chennai Corporation,  
115, Dr.Muthulakshmi Salai,  
Adyar, Chennai - 600 020.

4.The Deputy Director of Town Plannin,  
Chengalpattu Region, GST Road,  
Chengalpattu.

... Respondents/Respondents 1 to 3

Appeal filed against the order passed by this Court dated 22.12.2017 passed in W.P.No.11119 of 2016.

Prayer in W.P.No.11119 of 2016:-

Writ Petition filed under article 226 of the constitution of India, praying this court for the issuance of Writ of Certiorari calling for the concerned records relating to the order no.W.D.C.No.T.P.SD/WDCN13/00056/2016 dated 06.04.2016 passed by the 2<sup>nd</sup> Respondent and quash the same.

For Appellant : Mr.Govardhan  
for M/s. G.Pavendhan

For Respondents : Mr.M.Gnanasekar for R1

Mr.A.Nagarajan, Additional Government Pleader  
for R2 and R3

Mr.N.Manikandan, Government Advocate for R4

#### J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN, J.)

The challenge in this intra-Court appeal is confined to certain observations of the learned Single Judge made against the appellant while disposing of the Writ Petition in WP.No.11119 of 2016.

2. The Writ Petition in WP.No.11119 of 2016 was filed by the 1<sup>st</sup> respondent in this appeal challenging the order of the 2<sup>nd</sup> respondent made in W.D.C.No.T.P.SD/WDCN13/00056/2016 dated 06.04.2016, in and by which the application seeking planning permission filed by the 1<sup>st</sup> respondent was rejected for the reason that the proposed site falls in the area earmarked for Community Hall purpose as per the approved layout in LPDM/DTP.No.152/73. Hence, the sub-division plot proposal could not be considered in the said site.

3. The petitioner in the said Writ Petition had contended that he has produced the necessary documents sought for by the Authorities for considering his application for sub-division approval in respect of the property. He claimed that he purchased the property in layout No.152/73 and consequent upon the said purchase patta was also issued to him. Therefore, according to the 1<sup>st</sup> respondent herein the order rejecting his application for sub-division approval is illegal. It is also claimed that the petitioner in WP.No.11119 of 2016 has been

paying vacant land tax to the Authorities and that there is no dispute over the title and possession of the property. It is also the contention of the 1<sup>st</sup> respondent herein that he had filed Writ Petition in WP.No.15808 of 2015 to direct the respondents 2 and 3 therein viz., the Assistant Commissioner/ Assistant Executive Engineer to remove the notice board put up by them that the property belongs to Chennai Corporation. It is the further contention that during the pendency of the Writ Petition in WP.No.15808 of 2015, the Tahsildar, Velacherry had granted patta in his favour.

4. The said Writ Petition was resisted by the respondents contending that upon verification of the revenue records it was found that in the approved layout in LPDM/DTP.No.152/73, the land in question was earmarked for Community Hall purposes and hence the request for sub-division cannot be considered. It is also claimed that the District Revenue Officer, Zonal Officer 13, Zone XIII, Corporation of Chennai, Adyar, Chennai had in fact sent a communication to the Tahsildar, Velacherry who was impleaded as the 4<sup>th</sup> respondent in the Writ Petition requesting him not to issue patta in respect of any land in layout No.152/73. Taking note of the fact that the Tahsildar, Velacherry had issued the patta on 27.07.2015 ignoring the communication dated 26.05.2015 addressed by the District Revenue Officer, Zonal Officer, Zone-XIII, Corporation of Chennai, Adyar, Chennai, the learned Single Judge had directed the Government to take disciplinary proceedings against the Tahsildar, Velacherry. While doing so, the learned Single Judge had observed as follows:-

"18. In this case, as the Tahsildar concerned of the Velacherry Taluk who issued patta by proceedings signed on 29.07.2015, in respect of the property of the petitioner in WP.No.11119 of 2016, in spite of his instructions from his superior authority not to issue patta, shall be placed under suspension and disciplinary action shall be taken against him, which shall be proceeded on day-to-day basis. The authority concerned shall preferably pass an order of dismissal from service against the said Tahsildar, Velacherry Taluk, who was in-charge at that relevant point of time, and if the disciplinary authority is going to impose any other capital punishment less than the dismissal order, it is open for the authority to do so and the imposition of such major punishment shall be recorded in the Service Register of the Tahsildar and he is not entitled for any promotion and he shall be

posted in any non-sensitive post, and if he is a direct recruit to any other post and promoted to the post of Tahsildar, he shall be reverted back to the lowest post in which he was appointed and he will be paid salary applicable to the lowest post in which he is posted."

5. It is the above direction issued by the learned Single Judge that is challenged in this intra-Court appeal by the appellant who was the then Tahsildar of Velacherry. Originally, this intra-Court appeal was filed by the appellant in his official capacity. It appears that when the appeal came up for orders as to admission the maintainability of the appeal by the appellant in his official capacity was put in issue. Hence, the appellant had filed CMP.No.22746 of 2017 seeking amendment of cause title in the appeal showing the appeal as having been filed by the appellant in his individual capacity. An application for leave to file the appeal was also filed in CMP.No.22745 of 2017. Both the CMPs viz., 22745 of 2017, leave to file an appeal and 27746 of 2017 seeking amendment of the cause title were allowed by us on 13.04.2018.

6. We have heard Mr.C.Govarthan, learned counsel appearing for Mr.G.Pavendhan for the appellant and Mr.M.Gnanasekar, learned counsel for the 1<sup>st</sup> respondent and Mr.A.Nagaraj for respondents 2 and 3 and Mr.N.Manikandan, learned Government Advocate for the 4<sup>th</sup> respondent.

7. Mr.Govarthan, learned counsel appearing for the appellant would contend that the learned Single Judge was not right in issuing the directions as contained in paragraph 18 of the order extracted above. According to the learned counsel, the directions of the learned Single Judge are rather sweeping in nature and any disciplinary proceedings initiated against the appellant pursuant to the above directions would only end in his being found guilty, in view of the nature of the observations made by the learned Single Judge. It is his further contention that he has been condemned without being heard.

8. Per contra Mr.A.Nagaraj, learned counsel appearing for the respondents 2 and 3 and Mr.N.Manikandan, learned Government Advocate appearing for the 4<sup>th</sup> respondent would contend that since it was found that the appellant had issued patta in contravention of the orders passed by the superior authority, the learned Single Judge was justified in issuing the directions which are impugned in this Writ Appeal.

9. We have considered the rival submissions. We find much force in the submissions of Mr.Govarthan, learned counsel

appearing for the appellant. Having concluded that the appellant had issued patta to the 1<sup>st</sup> respondent in respect of the lands in question on 27.07.2015 de-horse the communication dated 26.05.2015 issued by the District Revenue Office, Chennai Corporation, the learned Single Judge was justified in directing action to be taken against the appellant, but, we find it difficult to subscribe to the entire directions issued by the learned Single Judge. We are of the considered opinion that while it is open to this Court to direct disciplinary proceedings against the erring officials, this Court cannot go ahead and issue directions to place the erring official under suspension, to direct the disciplinary action to be conducted on a day-to-day basis and also suggest the nature of punishment to be imposed by the disciplinary Authority. Whether an erring official is to be placed on suspension or not pending enquiry, the time frame for the conclusion of the disciplinary proceedings and punishment to be imposed if the erring official is found guilty by the Disciplinary Authority are all within the domain of the Disciplinary Authority. May be that this Court has got a power of judicial review on such actions, but, at the same time this Court exercising power under Article 226 cannot issue directions as to how the disciplinary enquiry should be proceeded with and also suggest the ultimate punishment to be imposed after the conclusion of the disciplinary proceedings. This Court does not have the advantage of the evidence that is to be let in, in the disciplinary proceedings and the nature of the delinquency etc., Therefore, we are in entire agreement with the submissions of Mr.Govarthan, learned counsel for the appellant to the extent that the learned Single Judge ought not to have issued directions for suspension, manner in which the disciplinary proceedings are to be conducted and the ultimate punishment that is to be imposed on the delinquent official. We however, find it difficult to accept the submissions of Mr.Govarthan, that this Court should not have ordered initiation of disciplinary proceedings at all.

10. We are therefore, constrained to interfere with the conclusions of the leaned Single Judge particularly in paragraph 18 which has been extracted above. Hence, we deem it fit to modify the directions as follows:

There will be a direction to the Authorities to initiate disciplinary proceedings against the appellant for the misconduct alleged. The other directions of the learned Single Judge regarding suspension, the manner in which the disciplinary proceedings should be conducted as well as the suggested punishment will have to be set aside and they are accordingly set aside. We make it clear that we have not disturbed the directions of the learned Single Judge with regard to the initiation of disciplinary proceedings. It will be open to the

Authorities to initiate appropriate disciplinary proceedings against the appellant for the delinquencies claimed to have been committed by him in issuing the patta despite the direction of a superior officer not to issue pattas in respect of the property in question.

11. It is also brought to our notice that the 1<sup>st</sup> respondent in this Writ Appeal had challenged the order impugned in this Writ Petition by way of a separate appeal in W.A.No.191 of 2018 and the said Writ Appeal was disposed of with directions by a Division Bench of this Court on 09.04.2018, wherein, directions have been issued by the Division Bench to the Authorities to reconsider the order of rejection after giving an opportunity to the 1<sup>st</sup> respondent herein to justify his claim of title over the property and a time frame has also been fixed by the Division Bench.

12. To our pointed query regarding the validity of the patta issued to the 1<sup>st</sup> respondent herein on 27.07.2015, the learned counsel appearing for the respondents 2 and 3 as well as the learned Government Advocate appearing for the 4<sup>th</sup> respondent would submit that they have no instructions regarding the same. From the order of the learned Single Judge we find that the claim of the Corporation of Chennai is that the area in question for which patta has been granted to the 1<sup>st</sup> respondent herein has been classified as land meant for public purposes. While so, it is not known as to how patta was issued to the 1<sup>st</sup> respondent herein by the appellant. We make it clear that either our observations made herein or the observations of the Division Bench made in its order dated 09.04.2018 in W.A.No.191/2018 will not preclude the Government from initiating appropriate steps for cancellation of the patta, if it is opined that patta should not have been granted to the 1<sup>st</sup> respondent herein. The Writ Appeal is disposed of with the above observations. However, in the circumstances of the case there will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

dsa

To

1.The Commissioner,  
Corporation of Chennai,  
Chennai - 600 0003.

2.The Assistant Engineer / Assistant Executive Engineer,  
Town Planning Approval Section,  
Regional Office South,  
Greater Chennai Corporation,  
115, Dr.Muthulakshmi Salai,  
Adyar, Chennai - 600 020.

3.The Deputy Director of Town Plannin,  
Chengalpattu Region, GST Road,  
Chengalpattu.

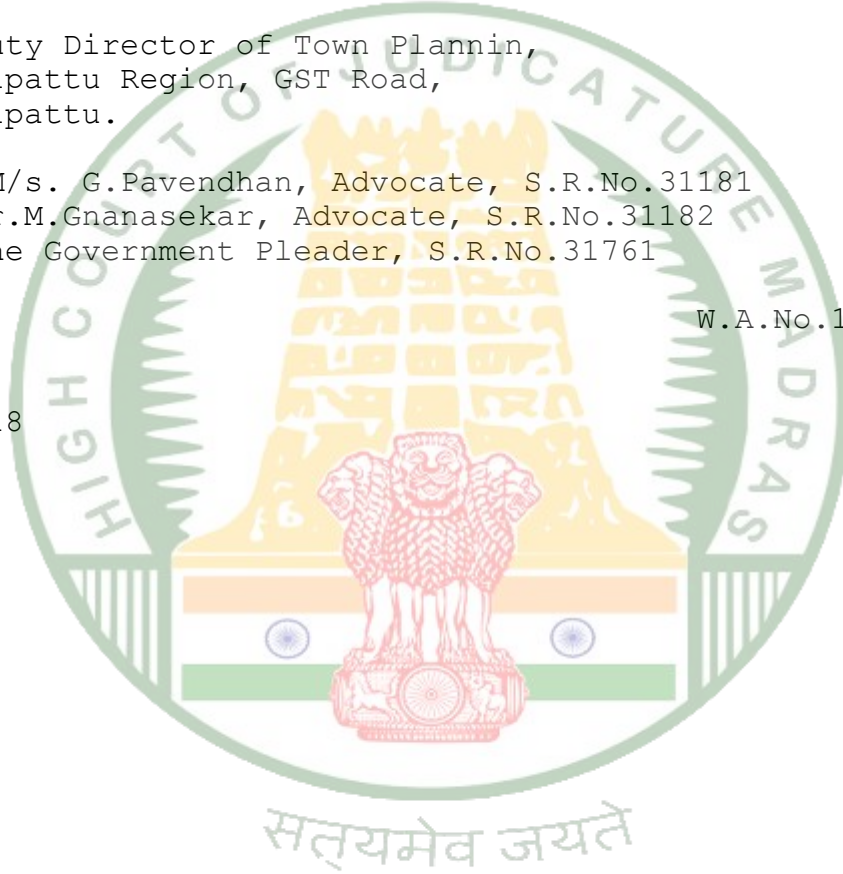
+2ccs to M/s. G.Pavendhan, Advocate, S.R.No.31181

+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.31182

+1cc to the Government Pleader, S.R.No.31761

W.A.No.1811 of 2017

gj(co)  
cs/07/06/18



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