IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2018

Delivered on : 19.06.2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.28398 of 2014

K.Chinthanai Selvam .. Petitioner

versus

1. The Inspector General of Registration,
   100, Santhome High Road,
   Santhome, Chennai.

2. The Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St. Chennai-9. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the proceedings of the 1st respondent in Charge memo No.407050/V3/2014 dated 05.09.2014 and quash the same.

For Petitioner : Mr.V.Vijay Shankar

For Respondents: Mr.J.Pothiraj, Spl.G.P.

ORDER

The present writ petition has been filed, seeking for the following relief:

> "To issue Writ of Certiorari, to call for the proceedings of the 1st respondent in Charge memo No.407050/V3/2014 dated 05.09.2014 and quash the same."

2. The petitioner joined as Sub Registrar Grade-II recruited through Tamil Nadu Public Service Commission. He was promoted as Sub Registrar Grade-I and thereafter as District Registrar. In June 2011, he was further promoted to the post of Assistant Inspector General of Registration. He was due for retirement on attaining the age of superannuation on 31.12.2014.

3. A few months before his retirement, a charge memorandum was issued under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules on 05.09.2014. The allegation contained in the charge memorandum was that in July 2014, two document Nos.7986 and 7987 of 2014 were registered in the office of the Sub Registrar, Palladam on 04.07.2014, for a lower value and therefore, there was a revenue loss of Rs.3,55,200/- to the Government and as a District Registrar, he was responsible for the said loss.

4. According to the petitioner, as far as the registration of the documents was concerned, it was entirely the responsibility of the Sub Registrar concerned at Palladam and the registration of documents for lower value by the Sub Registrar concerned cannot be subject matter of the charge memorandum, as far as the petitioner was concerned, since he being a superior officer and 15 Sub Registrar were working under him in the District. As per the duties attached to the office of the District Registrar, he was not liable in any manner for registration of documents in the Sub Registrar's Office unless certain discrepancies were pointed out and brought to the notice of the District Registrar by the Sub Registrar concerned. According to the petitioner, only when the Sub Registrar entertains a doubt regarding the value of the property, there was no occasion for the District Registrar to know about the declaration of the value of the documents by the District Registrar particularly in view of thousands of documents being registered every day in the District in various Sub Registrars' Offices.

5. According to the petitioner, the charge memorandum has been issued by the first respondent in order to settle scores with him, since earlier he had moved this Court a Contempt Petition against him in respect of service matter concerning fixation of his seniority in the cadre of the Sub Registrar. According to the petitioner, the first respondent was ostensibly infuriated by the initiation of contempt proceedings against him and others and therefore waiting for an opportunity to wreack vengeance on him. The Sub Registrar who registered the subject documents, was not proceeded against by way of any departmental action and it was only the petitioner who was taken to the task by issuing the impugned charge memorandum for obvious reasons. In these circumstances, the petitioner has approached this Court seeking to challenge the charge memorandum, dated 05.09.2014.

6. Shri. Vijay Shankar, learned counsel appearing for the petitioner would strenuously contend that the allegation contained in the charge memorandum, namely, that the Government has suffered a loss due to the registration of two documents for a lower value, cannot be sustained both in law and on facts for the reason that the value which was fixed in respect of survey

numbers of the registration of two documents, was correctly applied by the Sub Registrar as reflected in the guideline value fixed by a Committee. He would draw the attention of this Court to the guidelines fixed in respect of Survey Nos.612/1A1 and 612/1A2, wherein guidelines value was fixed as Rs.150/- per sq. ft. in respect of residential zone-Clause II. According to the learned counsel, as per the Notification issued vide G.O.Ms.No.75, dated 01.06.2010, in paragraph-3, it is provided that every year, a valuation sub-committee in each revenue district for the purpose of estimation and revision of the market value guidelines of the properties, being constituted, consisting of the following members, viz.,

i) District Collector - Chairman
ii) District Revenue Officer,
iii) Deputy Inspector General of Registration,
iv) District Registrars of the concerned Registration district,
v) District Registrar of the Head Quarters of the concerned revenue district - Secretary,
vi) Assistant Director of Town Panchayats,
vii) Assistant Director of Panchayats;
viii) Regional Director of Municipalities and
ix) Representative of local bodies.

7. The learned counsel would point out that the Valuation Committee was expected to issue instructions in respect of general policy guidelines for the estimation of market value/guidelines of the properties for the next calendar year. In paragraph-4 of the Notification, it is provided 'Estimation of market value guidelines", which is extracted as under:

> "4. Estimation of market value guidelines.-(1) The Valuation Committee shall, as far as possible in the first week of October of every calendar year, issue instructions along with general policy guidelines to all the valuation sub-committees in the State for the estimation of market value guidelines of properties for the next calendar year. Such instructions may be sent to any valuation sub-committee, at any time aof the calendar year for the revision of the rates, if required.
>
> (2) The valuation sub-committee shall on receipt of the instructions publish the intention of such estimation or revision, as

the case may be, in local newspapers and also on the notice board of important offices. A period of 15 days may be allowed for receipt of objections and suggestions from the public and all such suggestions and objections so received, shall be considered by the concerned District Registrars and placed before then valuation sub-committee for discussion. The Valuation sub-committee shall meet as often as it may require to discuss and decide on the estimation and revision of market value guidelines and prepare a statement showing the average rates of agricultural lands, residential, commercial and industrial sites in village municipal or any other local body area in its jurisdiction as specified in these rules. The data shall be arranged Village and local body wise and the statement shall be prepared in Form A and signed by the Chairman and the District Registrars of the concerned Registration district of the valuation sub-committee. The data so prepared shall be both in paper copy and in electronic media and shall be sent to the Registrar of the concerned Revenue district, in the last week of November of every calendar year. The paper copy of the data shall be in a booklet form and the valuation sub-committee may also record its view on the suggestions and objections received from the public in it.

(3) the Registrar shall on receipt of the statement received under sub-rule (2), shall verify and if he finds any discrepancy or omission may remit it back to the valuation sub-committee immediately for rectification or supply of the omission. Such references shall be attended by the valuation sub-committee and the statement be sent to the Registrar within 15 days from the date of reference. The Registrar of the concerned registration district shall finally examine the data and record his views in the appropriate column for any improvement or change and send the booklets and soft copies of the same to the valuation sub-committee in the first week of December for approval."

8. According to the learned counsel, the Committee is collectively responsible for fixing the market value guidelines of the properties in respect of each of the survey numbers in

various localities in the District and in case of any discrepancy in the value provided by the Committee, it can be noticed only at the time of registration and such contingency will occur at the time of registration by the Sub Registrar concerned and he alone would be the competent to refer the matter to the District Registrar for rectifying any under valuation and for fixing the proper value in respect of documents registered. In the instant case, the Sub Registrar did not entertain any doubt at all in respect of documents registered and did not refer the documents to the District Registrar. Unless the documents were referred and brought to the notice of the District Registrar, there was absolutely no occasion for the District Registrar to take note of the fact whether the documents registered was for lower value or for correct value. In day-to-day administration, the District Registrar cannot be held responsible for registration of every document in each of the Sub-Registrar office which comes under his control. The learned counsel would also submit that the documents which were registered in respect of industrial shed Nos.34 and 35 in SIDCO Industrial estate, the Sub-Registrar concerned ought to have noted that it was industrial property and not residential property and he should have immediately taken steps to refer the matter to the petitioner/District Registrar to enable him to rectify by applying the correct market value. In the absence of such reference by the Sub Registrar concerned, the petitioner cannot be directly accused of any liability towards any loss of revenue caused to the Government in this regard. In any case, according to the learned counsel, if the Sub Registrar concerned had taken steps to identify the classification of the property which came up for registration, the notional loss which the Government suffered could have been avoided. According to the learned counsel, the scheme of the Notification which provided for constitution of Valuation Committee and its function, would point out to the fact in clear and unambiguous terms that the Committee collectively was resposible for any decision regarding fixation of market/guideline value in respect of areas covered under the District and once such value was fixed in respect of various survey numbers, the petitioner cannot be singled out for discrepancies in the guideline value fixed in the survey numbers. Moreover, there was allegation that the petitioner had failed to act as per duties attached to the Office of the District Registrar and in the absence of specific allegation of dereliction of duty in regard to the duties attached to the Office, the allegations as contained in the charge memorandum, cannot be sustained both legally and factually and therefore, the petitioner was constrained to approach this Court by challenging the charge memorandum.

9. In view of the submissions made by the learned counsel for the petitioner, the question of petitioner subjecting

himself to the departmental enquiry, does not arise at all since the charge memorandum is blatantly issued for mala fide consideration and suffers from illegality which calls for intervention from this Court at the preliminary stage itself.

10. In support of his submissions, the learned counsel for the petitioner relied upon decisions of the Hon'ble Supreme Court reported in (1979) 2 SCC 286 (Union of India and others versus J.Ahmed) and (2007) 4 SCC 566 (Inspector Prem Chand versus Govt.of NCT of Delhi and others) for the proposition that the negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation, of course, may be negligence in discharge of duty, but that would not constitute any misconduct unless the consequences would directly attributable to negligence. According to the learned counsel, admittedly, the Sub Registrar has not brought the discrepancy to the notice of the District Registrar, the petitioner herein, it cannot be held that there was negligence on the part of the petitioner in fixing the proper value for registering the subject documents and that he failed to discharge his duty.

11. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for the respondents and filed a detailed counter affidavit.

12. The learned Special Government Pleader, relying upon various averments contained in the counter affidavit, stoutly resisted the submissions made on behalf of the petitioner. According to the learned Special Government Pleader, the position of the District Registrar carries higher responsibility than that of the Sub Registrar concerned and the charge which was framed against him was that in respect of fixation of lower value for the survey numbers concerned for which, the District Registrar had a special role being the Secretary of the Valuation Committee. He would draw the attention of this Court to various averments in respect of the above contentions particularly, paragraph-7 of the counter affidavit, wherein, it was elaborately stated the role of the District Registrar in identifying the market value guidelines for the properties in the district. Paragraph-7 is reproduced hereunder:

> "7. With regard to the averments made in paragraph 4 of the Affidavit, it is submitted that the duties, responsibilities in scrutinizing the work relating to preparation of market value of guidelines and the quantum of revenue loss caused by him are submitted hereunder:-
>
> (i) The petitioner elaborates only the procedures to be adopted by the Registering Officers in the event of registering the documents presented before him. In an attempt to hide his serious lapse in having approved the erroneous classifications of land values in draft guidelines

in respect of “Ganapathy Palayam village” of Palladam Sub-Registrar office, he elaborates the duties of Sub-Registrar, which does not absolve his responsibility. On the basis of instructions communicated in Inspector General of Registration's letter No.29310/L1/2010, dated 04.01.2011 for the implementation of “Policy, methodology and administration of the Market Value Guidelines” issued under the authority of State Level Valuation Committee constituted under Section 47AA of the Indian Stamp Act, 1899, in pursuance of its meeting held on 23.12.2010, the District Registrars are entrusted with the responsibility of ensuring accuracy while preparation of guidelines relating to his Registration District.

(ii) Under the Tamil Nadu Stamp (Constitution of Valuation Committee for Estimation, Publication and Revision of “Market Value Guidelines of Properties) Rules, 2010 Valuation Sub-Committee in each Revenue District is formed under the Chairmanship of District Collector. It consists 9 members including the District Collector. One of the members is District Registrar of the Head-Quarters of the concerned Revenue District, who acts as Secretary for this purpose. Further, one of the members of the committee is the District Registrar of the concerned Registration District. The petitioner herein has acted in both the capacities, namely, the Secretary of the Committee and as well as a member in his capacity as the District Registrar of the respective Registration District. The role of valuation Sub-Committee (District Valuation Committee) is only to approve the compilation of data relating to the market value of the properties, for which the District Registrar owes responsibility.

(iii) A compact module of instructions have been issued under Authority of the Valuation Committee under Section 47AA of Indian Stamp Act, 1899 regarding Policy, methodology and administration of market value guidelines to the officials. The said instructions were circulated by Inspector General of Registration to all District Registrar for preparation of market value guidelines.

(iv) In the Second Chapter of the above module, in Section II(X), it is clearly instructed that Certificate of Approval of values shall be added by the District Registrar after due verification. In Chapter III(2)(d)(viii), it is instructed that the District Registrar shall satisfy that the proposal for all villages are submitted for approval by the Sub-Committee. Further, in Chapter V of the module in instruction (v) it is instructed that the final form of Market Value Guidelines Register shall be approved by the District Registrar to the effect that all the entries are in accordance with the rates approved by Sub-committee (District Valuation Committee)."

13. The learned Special Government Pleader would submit that the District Registrar is vested with a special role in the Valuation Committee and in the instant case, he failed to discharge his duties properly which resulted in fixing lower value for industrial property and consequently, the Government suffered revenue loss because of registration two documents, as if the properties covered under the documents as residential area, which were factually, in industrial area. Therefore, the petitioner cannot wriggle out of the charges by blaming his subordinate, Sub Registrar concerned for not noticing discrepancies at the time of registration of documents. According to the learned Special Government Pleader, the alleged mala fides against the first respondent in view of petitioner's moving contempt petition against first respondent in this Court, is far fetched and has absolutely no nexus in regard to the issuance of the impugned memorandum. The averments in this regard against first respondent, are made only for the purpose of a case and has no legal or factual basis. In any event, the learned Special Government Pleader would submit that the petitioner can always participate in the departmental enquiry and it is open to him to canvass all the points in support of his defence. Without doing so, the petitioner has approached this Court by pre-empting the departmental action which was set in motion against him. Unless the jurisdictional error is canvassed out, the challenge to the charge memorandum, cannot be maintained successfully in the writ petition. In this case, the petitioner is seeking to challenge the charge memorandum on merits and such challenge cannot be entertained by this Court at this preliminary stage without subjecting the petitioner to full-fledged departmental enquiry for establishing the charge against him. He would therefore, submit that the Writ Petition has to be dismissed as not maintainable and also as devoid of merits.

14. This Court has given its anxious consideration to the rival submissions put forth by the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and perused the entire materials placed on record.

15. Although there appears to be little force in the contentions put forth by the learned Special Government Pleader,

the Courts must be wary in entertaining writ petition at a preliminary stage of issuance of charge memorandum, however, as far as the case on hand is concerned, the charge against the petitioner is confined only to discharge of his duties as District Registrar in respect of two documents which were registered by the Sub Registrar, Palladam on 4.7.2014. What need to be looked into in this Writ Petition is whether such charge is maintainable against the petitioner, who being a District Registrar and superior officer in view of the fact that whether the petitioner was alone was responsible for fixing market guideline value in respect of survey numbers in question?

16. Further, the issue which is placed for consideration before this Court is whether there was any dereliction of duties on the part of the petitioner as District Registration in registration of the subject documents and if there was any such dereliction, to what extent, the petitioner can be held to be liable? Further, what is to be considered by this Court is whether the scheme of duties attached to the Office of the District Registrar envisage overseeing each document which was registered in various sub registrars' offices coming under his control and whether every discrepancy in registration of documents for lower value by the Sub Registrar, can District Registrar can be held to be directly and entirely responsible and not the Sub Registrar?

17. It is also to be seen that whether in the absence of any reference by the Sub Registrar of any discrepancy in the market guideline value in respect of the subject property, there was any scope for the District Registrar to take note of such discrepancy on his own and whether such contingency was possible in the first place?

18. The allegation as such in the charge memorandum presupposes the existence of duty to see any discrepancy at the time of registration of the subject documents in respect of the value quoted in the documents and as a consequence of such duty, whether the District Registrar, the petitioner herein had failed to discharge the same with conviction and devotion to duty cast upon him? Whether the petitioner alone can be held liable or responsible for the valuation of the various properties covered in the District in the scheme of Notification prescribed in G.O.Ms.No.75 dated 1.6.2010?

19. In the above circumstances, since the issues raised in the Writ Petition are so fundamental in nature assailing the charge memorandum, this Court overrules the objections raised by the learned Special Government Pleader that the Writ Petition was not maintainable at this preliminary stage and hence decided to embark upon the other issues on merits and demerits of the

claim of the petitioner and the respondents in regard to sustainability of the charge memorandum.

20. The first and foremost aspect which has to be looked into in this matter is whether the petitioner alone can be held responsible for fixing the market guideline value in respect of the property registered by two subject documents? As per Clause 3 of the Notification issued vide G.O.Ms.No.75, dated 1.6.2010, Valuation Committee would constitute a valuation Sub-committee in each revenue district comprising nine officials as extracted supra, and the procedure for valuation by the Committee as stated in Clause 4 and the learned counsel in fact, has brought to the notice of this Court Clause 6 which deals with revisions, special revisions and rectification of anomalies by the Valuation Committee, which could revise or defer of market value guidelines in respect of any specified sub district or district or all the sub districts of any local body areas. Although, as contended by the learned Special Government Pleader, the District Registrar, being the Secretary of the Committee, was entrusted with the responsibility to receive various suggestions and data from all the stake holders and on the basis of such data record his views and send the same to the valuation sub-committee to for approval, it appears in the scheme of the Notification that ultimately the Committee would take final decision and fix the market/guideline value for each district concerned and it is collectively responsible for such fixation of market/guideline value. The officials who are part of the Committee are all responsible authorities and hence final decision is taken towards fixation of the market value by the Committee, it cannot be gain said that the petitioner being the District Registrar, is the sole guiding factor for fixation of such market /guideline value. Such approach by the first respondent in singling out the petitioner on the basis of the fact that the was the District Registrar and he alone was responsible for fixing the lower value, would undermine the position of the Valuation sub-Committee. It is not the case of the department that the petitioner has misled the Committee in fixing the lower value in respect of survey numbers, which were registered by the Sub-Registrar concerned, which is the subject matter of controversy in the writ petition.

21. Once the market/guideline value is fixed by the Committee, it is presumed that the Committee had gone into all aspects and taken into consideration all the documents for fixation of such value in respect of various properties in the District. This Court, failed to see as to how the petitioner alone can be held responsible for fixation of lower value for the subject properties as this Court does not see any leading role of the District Registrar in fixing the market/guideline value except being positioned as Secretary of the Committee only in receiving and consolidating the data for fixing the

market/guideline value by the Committee.

22. More over as rightly contended by the learned counsel for the petitioner that in the absence of any reference by the Sub Registrar regarding discrepancy in the market value mentioned in the subject documents registered, where was the occasion for the District Registrar to come to know about the declaration of lower value in the subject documents which were registered in the Sub Registrar's office. This Court does not see as to how the petitioner/District Registrar can be charged for dereliction of duty in registering the documents when admittedly he was not the authority who registered the documents, but it was only the Sub Registrar concerned who registered the documents. Unless the discrepancies brought to the knowledge of the District Registrar, where was the occasion for the District registrar to take note of any discrepancy in the registration value and where was the occasion for the District Registrar to come to know that survey numbers mentioned in the documents represented industrial class and not residential class. From the conspectus of the notification dated 1.6.2010 and from the scheme of the registration procedure, it was very much clear that it is the primary responsibility of the Sub Registrar concerned to bring to the notice of his superior namely, the District Registrar regarding the discrepancy in the fixation of the market value in respect of survey numbers and declaration of value in the documents and untill and unless such discrepancy is brought to the notice of the District Registrar, he cannot be directly held liable for any loss occasioned due to such registration. Strangely, the Sub Registrar concerned was not proceeded against even assuming there was negligent on his part for registering the document for lower value. In the absence of any action against the Sub Registrar concerned, this Court does not see any iota of justification for proceeding against the petitioner who is the superior officer. Needless to mention that the Stamp Act envisages for reference of documents for clarification from the District Registrar or from other higher authorities. In the absence of such reference under the provisions of the Act, how could the charge as framed is maintainable against the petitioner, particularly when no such attempt was made by the first respondent in proceeding against the Sub Registrar concerned, at the first instance.

23. Once the value is fixed for various properties in the District, unless the same is varied from time to time, the actual value need to be applied in the registration of documents. This Court finds that in the instant case, the Sub Registrar has followed the guidelines, but unfortunately, failed to take note of the classification of the property mentioned in the documents. In such situation, the Sub Registrar ought to have brought to the knowledge of the petitioner and despite such

attempt, if the petitioner had failed to take note of such discrepancy, then this Court can understand that there was some basis for proceeding against the petitioner departmentally. In the absence of such action on the part of the Sub Registrar, this Court does not see how the first respondent can initiate action against the petitioner without casting any shadow on the discharge of duties by the Sub Registrar concerned in the matter. Moreover, the notification for fixation of guideline value, provides for revision of current land value in the first week of October of every calender year and therefore, it was always possible to revise guideline value in case of any discrepancy in respect of certain survey numbers and such discrepancy can be noticed only at the level of registration on the field and it was therefore, the paramount duty as Sub Registrar to note all such discrepancies while registering the documents presented for registration before him. This Court does not see how a superior officer, namely, the District Registrar under whose control, as many as 15 Sub Registrar Offices functioning can take note of each and every discrepancy in the registration of every document in respect of market guideline value at the time of registration in every Sub Registrar office. As rightly contended by the learned counsel for the petitioner that every day thousands of documents being registered in the above said Sub Registrars' Offices, which are exclusively under the control of the District Registrar and he cannot be expected to verify each and every document with reference to survey numbers and that is why, a provision has been made in the Stamp Act that a reference should be made to the higher officials in case of wrong declaration of value. In fact, it was not the case of the respondents as reflected in the charge memo that the Committee was completely misled by the action of the petitioner acting as District Registrar and on being misled such, lower value was fixed in respect of survey numbers in question. No such imputation is found in the impugned charge memorandum. In the absence of such imputation or allegation, this Court does not see what is the basis on which the petitioner can be singled out for fixation of market/guideline value by the valuation sub committee in which eight other members were all responsible government officials. In fact, in the scheme of the notification for fixing the market/guideline value, the Committee's pre-eminence is reflected for fixing the market/guideline value. Of-course, the District Registrar has a special role in the Committee in the consolidating and collecting various data for the purpose of fixing market/guideline value. However, once the Committee takes a decision and fixes the market/guideline value, it become a collective responsibility of the Committee and not the District Registrar alone, unless it is the case of the first respondent that the petitioner herein had deliberately misled the Committee for mala fide consideration and the Committee members had acted only on the basis of petitioner's input. In the absence of such allegation on the part of the first respondent, this Court does not see as to how the petitioner alone can be singled out and can be alleged to have caused loss to the Government in respect of registration of two documents concerned.

24. On the whole, this Court does not see any legal or factual basis for proceeding against the petitioner by issuing the impugned charge memorandum. Although the Court is conscious of the fact that the departmental action ought not to be interfered at the preliminary stage of furnishing of charge memorandum, however, in this case, as set out above, this Court finds that charge memorandum is completely unwarranted and misconceived and the same is also issued on the basis of non-application and mis-application of mind particularly with reference to the role of the District Registrar in the scheme of actual registration of the documents and the duties attached to him in this regard. On the basis of the materials placed for consideration before this Court and the submissions made on that basis, this Court can come to safe conclusion that the charge memorandum dated 05.09.2014 issued against the petitioner is not factually and legally sustainable and the same has to go lock, stock and barrel.

25. For the above said reasons, Writ Petition is allowed and the impugned charge memorandum in No.407050/V3/2014 dated 5.9.2014 is hereby set aside. No costs. Consequently, connected MPs 1 and 2 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector General of Registration,
100, Santhome High Road,
Santhome, Chennai.

2. The Secretary to Government,
Commercial Taxes and Registration Department,
Fort St. Chennai-9.

+1cc to Mr.V.Vijay Shankar, Advocate sr.no.38543
+1cc to Government Pleader in sr.no.38667

W.P.No.28398 of 2014

nr 26/06/2018