

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.2527 of 2018
and CMP No.20407 of 2018

1. Government of Tamil Nadu,
Rep. by its Principal Secretary,
Agriculture Department,
Fort St. George, Chennai - 600 009.

2. The Director of Agricultural Marketing and
Agri Business, Guindy, Chennai - 600 032.

3. The Secretary,
Erode Market Committee,
Erode.

... Appellants

Vs.

M.S.Subburaman

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the Order dated 17.04.2018 made in W.P.No.11099 of 2012.

WP.No. 11099 of 2012: Petition filed before this Court to issue
a Writ of Certiorarified Mandamus calling for the records
relating to the order passed by the 1st respondent in G.O.(3D)
No.147 Agriculture (Va.Ni.5) Department dated 19.7.2011
confirming the order of their 2nd respondent in Semu No.Aao
No.2/6098/03 dated 30.12.2006 quash the same consequently
direct the respondents to confer all consequential service and
monetary benefits to the petitioner.

For Appellants : Mr.V.Jayaprakash Narayanan
Special Government Pleader

For Respondent : No Appearance

J U D G E M E N T

(Order of the Court was delivered by SUBRAMONIUM PRASAD, J)

The instant writ appeal is directed against the order dated
17.01.2018 passed by a learned Single Judge in W.P.No.11099 of
2010.

2. The writ petitioner / respondent herein was appointed as a Junior Assistant in the Erode Marketing Committee on 04.12.1986. He was promoted as Supervisor on 08.07.2002 and further promoted as Superintendent of Markets. The writ petitioner wanted to purchase land admeasuring 1275 sq.ft. in Survey No.101/06 in Mettunasuvampalayam Village, Erode District, for a sale price of Rs.30,000/-. He wrote a letter on 07.02.2002 to the Commissioner of Agricultural Sale and Commerce, Chennai, for grant of permission for purchasing the above said vacant house land. The purchase price was Rs.25,500/- and the expenditure towards the stamp duty and the registration fee, came to Rs.4,500/-, in all totalling to Rs.30,000/-.

3. The writ petitioner / respondent herein in his letter dated 07.02.2002, has stated that he kept his salary savings, in his house without depositing the same in any institution and that therefore, he had the requisite funds to purchase the property. He wrote another letter on 10.03.2002. In the said letter, he has expressed that there is an urgency in as much as the owner of the land was insisting that the sale transaction should take place at the earliest. There was no response from the government. Since there was no response from the state government, the writ petitioner / respondent herein entered into a sale transaction and executed a sale deed on 10.04.2002.

4. The petitioner wrote a letter dated 11.04.2002, intimating the government that he had purchased the property. He has stated in the intimation letter that he went ahead with the transaction, because the owner was putting pressure on him that if the sale is not completed before 10.04.2002, he would sell the property to somebody else. He has categorically stated that since the government has not replied to the letters written by him seeking permission, he had gone ahead with the purchase.

5. Writ petitioner / respondent herein wrote another letter dated 21.04.2002, asking for the ex-post facto sanction for the purchase of the property. On 30.12.2002, the writ petitioner / respondent herein wrote a letter to the Commissioner of Agricultural Sale and Commerce, Chennai, stating that he proposed to construct a house on the property purchased by him at a cost of Rs.3,40,000/-. He has stated that he is availing a bank loan for Rs.3,25,000/-. He has further stated that his Post Office-Recurring Deposit Scheme for Rs.16,600/- has matured and therefore, he has the means to go ahead with the construction.

6. On 24.01.2003, the writ petitioner / respondent herein received a letter from the Office of the Erode Marketing

Committee, calling for certain particulars requesting construction. The requisite information was given, but the State Government did not accord any sanction, for construction on the property. The writ petitioner started construction, since he was being burdened with the payment of interest of the housing loan, obtained by him from the bank.

7. The appellants herein (State) issued a charge memorandum under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, framing three articles of charges, vide charge memo dated 18.06.2004. Charges framed read as under:

Charge No.1:

Thiru.M.S.Subburaman, Supervisor, Sales Store working in Erode Sales Committee suppressed the purchase of the extent of 1275 sq.ft. of land bearing Plot No.30, comprised in S.No.101/06, on 10.4.2002 itself, and after the details were called for by the head of the department, he informed about his purchase of land and through this he acted in an irregular manner.

Charge No.2:

Thiru.M.S.Subburaman, Supervisor of Anthiyur Regulatory Sales Store of Erode Sales Committee, had without the prior permission of the Chief Officer of the Department purchased the plot which is worth of Rs.25,500/- (Rupees twenty five thousand only) without showing the proper financial sources, and commenced the construction on the above said land without the prior permission in an estimate of Rs.3.40 Lakhs and through this violated the Rules 7(1)(a) and 7(1)b(1) and 7(2)(a) of the Tamil Nadu Public Servants Conduct Rules.

Charge No.3:

Thiru.M.S.Subburaman, Supervisor of Anthiyur Regulatory Sales Store of Erode Sales Committee, had without the prior permission of the Chief Officer of the Department purchased the plot which is worth of Rs.25,500/- (Rupees twenty five thousand only) without showing the proper financial sources, and commenced the construction on the above said land without the prior permission in an estimate of Rs.3.40 lakhs, and through this Act he had neglected the government rules and had failed to perform his duty and responsible and violated the Rule 20 of the Tamilnadu Public Servants Conduct Rules."

8. An enquiry was conducted. The Enquiry Officer submitted an Enquiry Report holding that the charges are proved against the writ petitioner / respondent herein. The Disciplinary Authority imposed a punishment of stoppage of increment for a

period of one year with cumulative effect, which will have effect on pension.

9. The order of Disciplinary Authority was challenged by way of an appeal, before the 1st appellant herein on 27.03.2007. The Appellate Authority by an order dated 19.07.2011, after more than four years of filing the appeal, rejected the appeal and confirmed the order of the Disciplinary Authority on the basis of the opinion given by the Tamil Nadu Public Service Commission. The order in appeal passed by the Government is the subject matter of challenge in the instant writ petition in W.P.No.11099 of 2012.

10. The learned Single Judge allowed the writ petition holding that the writ petitioner / respondent had not violated any of the rules and that the mistake was only on the part of the Government in as much as there is no prompt action forthwith coming from the State, in granting or rejecting the prayer sought for in the writ petition. The learned Single Judge therefore held that the writ petitioner / respondent herein cannot be found fault with for the purchase of the property and for commencing construction thereon.

11. Rules 7(1), 7(2) and 7(2-A) of the Tamil Nadu Government Servant's Conduct Rules, 1973 which are relevant for the present case read as under.

7. Movable, immovable and valuable property - (1)
(a) No Government servant shall, except after notice to the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, exchange or otherwise either in his own name or in the name of any member his family.

Such a notice will be necessary even where any immovable property is acquired by any member of the family of the Government servant out of the resources of the Government servant:

Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with the Government servant.

Provided further that the previous sanction of the prescribed authority shall not be necessary for the acquisition of immovable property in respect of house-site assigned by the Government to the Government servant.

Explanation - A Government servant is not required to give notice to the prescribed authority or seek

prior permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under clause (a), if the immovable property in question is not acquired from the resources of the Government servant concerned.

(b) Every Government Servant, for the construction or extension or acquisition of a house, shall report to the prescribed authority in the following manner:-

(i) before starting the construction or extension or entering into transaction for acquisition of a house either from out of loan or advance from the Government or others or part-final withdrawal from the Provident Fund, he shall obtain previous sanction of the prescribed authority in Form VI or VI-A, as the case may be, in Schedule I appended to these rules;

(ii) after completing the construction or extension, he shall report to the prescribed authority in Form VII in Schedule I appended to these rules.

The details in Forms VI and VII in Schedule I appended to these rules shall be furnished wherever it is possible to do so. Where, however, it is not possible to furnish details, the Government servant shall mention the covered area on which the building is erected or proposed to be erected and the estimated cost of the building.

(c) Every Government servant, shall, if he is a member of the Hindu undivided family and if the share of the Government servant in the cost of repairs made to the undivided property of the joint family, out of the joint fund exceeds Rs.50,000/- (Rupees Fifty thousand only) intimate the fact to the prescribed authority as and when such repairs are brought to his notice.

(2) A Government servant who enters into any transaction concerning any movable property exceeding # Rs.80,000/- (Rupees Eighty thousand only) in value in respect of 'A' Group Officers, Rs.60,000/- (Rupees Sixty thousand only) in value in respect of 'B' Group Officers, Rs.40,000/- (Rupees Forty thousand only) in value in respect of 'C' Group Officers and Rs.20,000/- (Rupees Twenty thousand only) in value in respect of 'D' Group Officers" whether + (by way of purchase or sale,) shall report to the prescribed authority within one month from the date of every such transaction;

Provided that the previous sanction of the prescribed authority shall be obtained if any such transaction is with a person having official dealings with the Government servant:

Provided further that a Government servant who is about to quit the local limits of his official authority may, without reference to the prescribed authority dispose of any of his movable property by circulating lists of it among the public generally or by causing it to be sold by public auction.

Explanation I - For the purpose of this sub -rule the expression "movable property" includes the following property, namely:-

- (a) Jewellery, Insurance Policies, Shares, Services and debentures;
- (b) omitted.
- (c) Motor cars, Motor cycles, Horses or any other means of conveyance; and
- (d) Refrigerators, Colour Television and Video Cassette Recorder.

(2-A) The prescribed authority shall dispose of the application seeking the sanction/permission referred to in sub-rules (1) and (2) within a period of six months from the date of receipt of such application from the Government Servant. If any clarifications or particulars are sought for from the Government Servant, the said period of six months shall be reckoned from the date of receipt of such clarifications or particulars. Where no order according such sanction or granting such permission is issued within the said period of six months, it shall be deemed that the prescribed authority has accorded the sanction or granted the permission on the expiry of the said period of six months and the Government Servant can acquire or dispose the immovable property; purchase or sale the movable property or commence the construction/extension of the house."

12. Perusal of Rule 7 (1) would shows that a government servant, can acquire or dispose of any immovable property after giving notice to the prescribed authority. Previous Sanction from the Government is required only when the transaction is with a person having official dealings with the Government servant. The second proviso to Rule 7(1)(a) further stipulates that no sanction is required for acquisition of immovable property in respect of a house site assigned by the Government to the government servant. The writ petitioner / respondent herein by letters dated 07.02.2002 and 10.03.2002, had intimated

the Government of his intention to purchase the property. He has also categorically mentioned the source of funds which was utilized for purchasing the property. All the conditions stipulated in Rule 7(1) has been complied with by the writ petitioner.

13. The writ petitioner also wrote a letter on 30.12.2002 seeking for permission to construct. The letter is sent by the appellant on 24.01.2003 seeking for clarification. The writ petitioner gave the clarifications on 10.03.2003. Despite that, the government did not write any letter either granting sanction or denying the permission. Only after the petitioner started construction, the respondents have framed charges under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, vide charge memo dated 18.06.2004.

14. Rules 7(2-A) stipulates that the prescribed authority shall dispose of the application seeking sanction / permission referred to under sub rules (1) and (2), within a period of six months from the date of receipt of such application from the government servant and if any clarification or particulars are sought for from the Government servant, the said period of six months shall be reckoned from the date of receipt of such clarifications or particulars. The said rule categorically states that when no order is issued within the period of six months. The contention of the government that the government servant must wait for 6 months before commencing the construction cannot be accepted.

15. The charges had been framed on 18.06.2004, after one year and three months. There is nothing on record to show that the permission had been granted or refused. The learned Single Judge is right in coming to the conclusion that the petitioner could not be found fault with, for starting construction. Had the rejection order been issued within six months of 10.03.2003 and the petitioner had started construction, then disciplinary enquiry could have been initiated against writ petitioner for violating Rule 7(1)(b) of the Tamil Nadu Government Servant's Conduct Rules, 1973. In the absence of the government either accepting or rejecting the application for presumption, the petitioner cannot be said to have violated Rule 7(1)(b). The writ petitioner cannot be made to pay interest on the amount borrowed for 6 months without starting construction. Writ appeal is devoid of merits and hence, dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

TO

- 1.The Principal Secretary,
Government of Tamil Nadu,
Agriculture Department,
Fort St. George, Chennai - 600 009.
2. The Director of Agricultural Marketing and
Agri Business, Guindy, Chennai - 600 032.
3. The Secretary,
Erode Market Committee,
Erode.

W.A.No.2527 of 2018
and CMP No.20407 of 2018

NM(CO)
GN(02/01/2019)