IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2019
PRONOUNCED ON : 18.11.2019

CORAM

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CRL.O.P.NO.10824 of 2019
AND
CRL.M.P.NO.5556 of 2019

R.Pushpavathi,
W/o.V.Selvaraju. ... Petitioner/Accused No.1

Vs.

State Rep. by
The Deputy Superintendent of Police,
V&AC Police,
Namakkal.
(Ref.: Crime No.3/AC/2018) ... Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the First Information Reportin Crime No.3/AC/2018 on the file of the Deputy Superintendent of Police, for offences under Sections 120(B), 420, 477A IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and pass further or other suitable orders as this Court deems fit.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel for Mr.D.Sathyaraj

For Respondent : Mrs.M.Prabhavathi, Additional Public Prosecutor

O R D E R

This Criminal Original Petition is filed to call for the records and quash the First Information Report in Crime No.3/AC/2018 on the file of the Deputy Superintendent of Police, for offences under Sections 120(B), 420, 477A IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act and pass further or other suitable orders as this Court deems fit.

2.The petitioner herein was earlier working as Tahsildar, Namakkal. A case has been registered by the respondent in Crime No.3/AC/2018 for the offence under Sections 120(B), 420, 167, 468, 471 and 477 ipc AND 13(2) R/W 13(1)(d) of the

Prevention of Corruption Act 1988 r/w 109 IPC against the petitioner and one G.Namasivayam (A2). Against which the petitioner/A1 had filed the quash petition.

3.The case of the prosecution is that the petitioner while she was working as Tahsildar, Namakkal from 22.07.2011 to 05.09.2013, she is the competent authority to effect name changes in patta. Before issuing name transfer order, she should conduct enquiry with the joint pattatars, legal heirs and any other authority through Revenue Inspectors and Village Administrative Officers concerned to effect name change. A2, G.Namasivayam is a private individual and he is a tenant of the shop of Sri Arulmigu Varatharaja Perumal Temple in Pavitharam Village, Namakkal District. The ancestors of one K.Narayanasamy Reddiyar donated lands to the temple during the year 1911 and 1913 for the purpose of forming nandavanam. The temple is under the control of Hindu Religious and Charitable Endowments Department. Now an Executive Officer has been posted for this temple to look after its affairs.

4.During the year 1956 the survey and settlement operations were conducted and the records of Pavithiram Village were handed over to the revenue authorities for maintenance. According to the settlement records, the land with an extent of 52.54 acres located in S.No.136 of Pavithiram village was sub divided. Out of 52.54 acres, the land with an extent of 97 cents belongs to Sri Arulmigu Varadharaja Perumal temple was sub divided as S.No.136/1 and the land with an extent of 47.56 acres belongs to village Natham was sub divided into S.No.136/3. Remaining portion of the land was sub divided to the name of concerned persons.

5.After Updating Data Register (UDR) operations, Natham survey and settlement operations were undertaken by Pavithram village during the year 1990. At that time the entire land in S.No.136/1, 2, 3 were clustered and correlated to Natham survey and Survey No.461 was assigned. Accordingly new Survey number for the temples land with an extent of 97 cents is 461/1-14 (except 10) corresponding old S.No.136/1 in which S.No.461/7 alone which has with an extent of 78 cents belongs to the temple. New Survey Number for village Natham with an extent of 47.56 acres is 461/15 to 59 and 462/10. Corresponding old S.No.136/3. The temple has got 34 shops and 22 other buildings owned by the temple located in old S.No.136/1. Apart from the shop and buildings, now the temple has 78 cents (3166 sq.mts.) of vacant land in new S.No.461/7 corresponding to old S.No.136/1. One T.Ganapathi Pillai S/o Thandavaraya Pillai of Pavithram Village had taken a shop on lease with an extent of 1764 Sq ft. from the year 1981. G. Namasivayam , A2 is the S/o T.Ganapathi Pillai.

6.The said G.Namasivayam (A2) with dishonest intention to grab the land with an extent of 3166 Sq mts, located in old S.No.136/1 (New S.No.461/7) of Sri Arulmigu Varadharaja

Temple, created a false patta No.1033 in his name for the purpose of cheating the Government. Further, deliberately sold the temple's land as house sites to 3 three persons in the year 2007 in order to derive monetary gain from them. G.Namasivayam (A2), presented an application with request to effect his name in the village accounts. In pursuance of the criminal conspiracy A1/ the petitioner being a responsible officer issued a false order in favour of A2 vide Proceedings in Moo.Mu.13935-2011-B3 Dated 28.09.2011 without observing due procedures, which is mandatory while effecting name transfer in patta and further caused to be framed incorrect records in the Register of Adangal and Chitta maintained at the Taluk Office as well as in the Village Accounts. Thereby, the petitioner had conspired with G.Namasivayam (A2), in issuing the above order and carrying out the corrections in order to derive pecuniary advantage. Hence, the case came to be registered against the petitioner and the said G.Namasivayam (A2).

7.The contention of the learned counsel for the petitioner is that patta No.1033 in the name of G.Namasivayam (A2), was issued on 25.05.1995 for land in New S.No.461/1, Old S.No.136/3. The said Namachivayam had executed a sale deed in favour of Poongkodi for the land in S.No.461/7 vide Document No.984 of 2007 on 01.08.2007. Likewise he had executed a sale deed in favour of Indra for the land in S.R.No.461/7 vide Document No.985 of 2007 on 01.08.2007. Another document had been executed in favour of Ponmozhi for the land in S.No.461/7 vide Document No.1535 of 2009 on 25.09.2009.

8.The said Namasivayam made request on 05.10.2010 to Tahsildar for the inclusion of his name in the Village accounts based on the UDR Patta bearing No.1033 of 1995, which was issued in his name in 1995 by the Special Tahsildar, Namakkal. The petitioner joined as Tahsildar, Namakkal on 04.08.2011 and she was in the post till 16.08.2012. Thereafter she was posted as P.A. to DSO on 17.08.2012, from 17.08.2012 to 04.09.2013 held the said post on 05.09.2013 she joined as Deputy Collector at Trichy. During the period of her service as Tahsildar on 04.08.2011 to 16.08.2012 she worked as a Tahsildar without any remarks or allegations against her.

9.Thus being so, the petition dated 05.10.2010 was submitted by the said Namasivayam even earlier to the petitioner joining as Tahsildar. After the petitioner joined duty, the said petition came to her knowledge by her subordinates for suitable orders, on verification of the said petition the petitioner found that the said Namasivayam requested the authority to include his name in the Village account based on the UDR patta bearing No.1033 of 1995 issued by the Special Tahsildar, Namakkal. Thereafter, she had forwarded the application to Village Administration Officer and Revenue Inspector. On 03.12.2010 the Village

Administrative Officer and the Revenue Inspector after enquiry submitted a report to the Deputy Tahsildar with regard to the said application. Further on 06.12.2010, the Deputy Tahsildar had forwarded the report to the Tahsildar with regard to the said application and recommended for the inclusion of the name in the Village Account.

10.Further the proceedings dated 16.09.2011 of the Zonal Joint Tahsildar, No.3, Namakkal had ordered to issue the joint patta in favour of Indira and Poongkodi along with the Namasivayam in Patta No.1033 of 1995. Based on the above reports the petitioner had issued the order Moo.Mu.13935-2011-B3 dated 28.09.2011 with regard to include the name of said Namasivayam in the village accounts. Hence, the petitioner by following the due process based on the enquiry and reports of the subordinates viz., Village Administrative Officer, Revenue Inspector and Deputy Tahsildar had issued the above order. The prosecution intends to proceed in this case, since the Hon'ble High Court had directed the Revenue authorities to conduct an enquiry on the allegation made before it. The Revenue Divisional Officer as well as the District Revenue Officer have cancelled the order passed by the petitioner. In both the proceedings, the Revenue Divisional Officer and the District Revenue Officer had proceeded on a wrong premise, as though, the petitioner had issued patta to A2, Namasivayam. The said patta No.1033 of 1995 had been issued during the year 1995.

11.Further submitted that Form IV and Form VII have not been issued by the petitioner. These were issued in the year 1995. Admitedly the sale deeds have been executed based on the patta No.1033 of 1995 in the year 2007 and 2009. The above case is said to have been registered on a petition sent by R.Velusamy, S/o. Rasappan Gounder, Contractor, Keerampur, P.Velur (TK), Namakkal District. Crl.O.P.No.16408 of 2017 and W.P.No.22865 of 2017 have been filed in the name of the said R.Velusamy, wherein said R.Velusamy is shown as the petitioner. The said R.Velusamy appeared in person before the High Court on 05.02.2018 in W.P.No.22865 of 2017 and proved his identity and thereafter withdrawn the writ petition. The said Velusamy had also sent a representation to the Revenue Secretary, District Collector stating that he has not filed any complaint or petition against the petitioner.

12.When the said Velusamy was called for enquiry in connection with Crl.O.P.No.16408 of 2017 and W.P.No.22865 of 2017, then only he came to know about the above two petitions filed in his name and he had not instructed or authorised any person to pursue any such petitions and informed the authorities that he had submitted these things in the Court and withdrawn the petition. In view of the above, the petitioner submits that the entire case is on a wrong premise. The petitioner had also submitted a detailed report to the District Collector on 23.03.2012.

13.The entire case is proceeding on a wrong premise. As though the petitioner had issued patta to said Namasivayam (A2), the over jealous and enimical person in the name of retrieving the temple property without proper verification of records have made the allegation against the petitioner. The respondent/police, Revenue authorities in their orders have also referred as though the petitioner had issued the patta. Following the same the respondent/police have arrayed the petitioner as an accused in this case. As though she had issued the patta to the other accused. In fact, the petitioner made proper enquiry based on the report from the Village Administrative Officer, Revenue Inspector, Zonal Deputy Tahsildar.

14.On 03.12.2010, S.Indra, Village Administrative Officer, Pavithiram Village, Namakkal District had given a statement before the Deputy Tahsildar, Namakkal stating that Namasivayam requested for transfer the patta in his name for the land in Survey No.461/7. Likewise on 03.12.2010, the Revenue Inspector, Erumapatti, Namakkal District had given a statement before the Deputy Tahsildar, Namakkal. Thereafter on 06.12.2010, the Deputy Tahsildar recommended for the name transfer of the patta in favour of Namasivayam for the land in S.R.No.461/7.

15.Thereafter, issued orders on 28.09.2011. In the said order she had given reason and thereafter, ordered entry to be made in the Village accounts and no point of time the petitioner had issued any patta.

16.On 16.09.2011, the proceedings of Zonal Deputy Tahsildar has issued joint patta in favour of Indra, Poongkodi for the land to an extent of 1445 Sq. Ft. out of 0.3166.0 Sq. Mt. comprised in S.No.461/7. Thereafter only on 28.09.2011 the petitioner had issued an order to include the name of the Namasivayam in the Village accounts. Now, the petitioner is in the verge of retirement. The petitioner is left with one year of service and she is at the fag end of her career, due to the above case foisted against her. The petitioner is denied of her peaceful retirement and putting her future in jeopardy. Assailing these reasons she prayed to quash the FIR.

17.The learned Additional Public Prosecutor filed her counter along with the proceedings of the Revenue Divisional Officer and District Revenue Officer. From the counter it is seen that Sri Arulmigu Varadharaja Perumal Temple in Pavithiram Village had 97 cents of land in S.No.136/1 after updating Data Register (UDR) Operations, Natham Survey and Settlement operations were undertaken by Pavithiram Village during the year 1990. At that time, the entire land in S.No.136/1, 2, 3 were clustered and correlated to Natham Survey and Survey No.461 was assigned. Accordingly, new

Survey Number for the temple's land with an extent of 97 cents is 461/1-14 (except 10) corresponding to Old S.No.136/1 in which S.No.461/7 alone which has with an extent of 78 cents belongs to the temple. One T.Ganapathi Pillai, F/o. Namasivayam, A2 had taken a shop on lease with an extent of 1764 Sq.Ft. from the temple in the year 1981. The said A2, G.Namasivayam with dishonest intention to grab the land with an extent of 3166 Sq. Mts. located in Old S.No.136/1 (New S.No.461/7) of Sri Arulmigu Varadharaja Perumal Temple, created a false patta No.1033 in his name for the purpose of cheating the Government. Further, he deliberately sold the temple's land as house sites to three persons viz., Indra, Poongkodi and Ponmozhi in the years 2007 and 2009 in order to derive monetary gain from them. He further conspired with the petitioner and presented an application with request to effect his name in the Village accounts. In pursuance to the conspiracy, the petitioner being a responsible Officer issued a false order in favour of A2 vide Proceedings in Moo.Mu.13935-2011-B3 dated 28.09.2011 without observing due procedures which are mandatory while effecting the name transfer in patta and further caused to be framed incorrect records in the Register of Adangal and Chitta maintained at her office as well as in the Village Accounts.

18.She further submitted that sufficient documents have already been collected and the investigation is being carried out. The petitioner's service as Tahsildar, Namakkal was rightly mentioned in the FIR. The procedure followed in the issuance of pattas during Natham Settlement is that the pattas issued during Natham Settlement were clearly entered in the Natham Adangal and in Natham Chitta and handed over to the Revenue Authorities. In this case according to Village accounts the Natham Settlement Operation was completed at Pavithiram Village, Namakkal District and Natham Settlement Adangal and Chitta were handed over to Revenue Authorities on 30.06.1993 in which it was entered that the said Survey No.461/7 at the extent of 78 cents belongs to temple and classified as Government Poromboke. Patta No.1033 of 1995 hold by A2, G.Namasivayam could not be issued by the Special Tahsildar, Natham Settlement and it would be forged one.

19.Further as per G.O.Ms.No.1971, Revenue (SS.II) Department, dated 14.10.1988, Notification has been issued for effecting Settlement of Natham Village site and Agricultural lands used for non-agricultural purpose. In the said G.O. In Paragraph No.4 of Part 2 Classification, it is stated that Lands belonging to various institutions such as "temple", Church, Mosque, School with play ground etc., will be distinguished and recorded in records accordingly and in Paragraph No.5 of Part 4 Rough pattas, it is stated that "The Special Tahsildar will take up each holding as a separate case and issue notices to the owner (as indicated by the filed staff in the land Register) to be present at a hearing. The

Village Administrative Officer will also invariably attend the hearing. The Special Tahsildar will satisfy himself about the ownership of the property.

20.Further relied upon Paragraph No.10 of Circular in RC.7573/92-C1 of Settlement Head Office, Thanjavur, dated 01.07.1992, it is stated that "Natham Patta" in village site should not be given for more than 35 cents. In this case the said A2, Namasivayam has obtained a patta to an extent of 78 cents, which could not be issued by the Special Tahsildar, Natham Settlement.

21.Further G.O.(Ms).No.248, Revenue (LD-I(2)) Department, dated 28.07.2009, the monetary limits of District Revenue Officials for Assignment of cultivable land and assignment of house sites. The maximum area that could be assigned is 3 cents. In view of the above Government Orders and Circulars, the petitioner has no authority to pass order on the land to the extent of 78 cents classified as Government Poromboke and belongs to temple authority. She further submitted that the said land belongs to the temple but she had passed the said order with the influence in favour of A2, Namasivayam.

22.On considering the rival submissions and on perusal of materials, it is seen from the records that T.Ganapathi Pillai, F/o. A2, Namasivayam had taken a shop on lease with an extent of 1764 Sq. Ft., as a tenant to the temple he had paid the rent and also given a letter to the temple authorities admitting his tenancy. Further he had filed a Civil Suit in O.S.Nos.578 and 580 of 1998 before the learned Additional District Munsif Court, Namakkal, not to evict him without due process of law. The Civil Court had given a finding that the above said land in S.No.461/7 belongs to the temple. Against which no appeal is filed.

23.The order of Revenue Divisional Officer has been confirmed by the District Revenue Officer. Thus, the finding of the Revenue authorities in respect of the patta No.1033 issued in the year 1995 is not a genuine one. Admittedly, the petitioner had not issued patta No.1033. The petitioner had joined duty as Tahsildar only on 04.08.2011 even before that Namasivayam (A2) had submitted an application on 05.10.2010, for inclusion of the name of Namasivayam (A2) in the Village accounts.

24.The petitioner on taking into consideration the enquiry and the reports of the Village Administrative Officer, Revenue Inspector and the Zonal Deputy Tahsildar had issued the order on 28.09.2011. Now, this order has been cancelled. Further, the defacto complainant/R.Velusamy had appeared before this Court in a Writ Petition proceedings and had categorically stated that he had not filed any complaint and not filed any case against the petitioner. The above said R.Velusamy had sent a representation to the respondent. In view of the above, there seems to be some cloud in the manner the case is being initiated and progressed.

25.The Government Orders and the Circulars referred by the Additional Public Prosecutor is with regard to the guidelines and the proceedings of the Settlement Tahsildar, while issuance of patta. Admittedly, in this case, the petitioner had not issued patta No.1033, which is the foundation of the case.

26.It is submitted that investigation is being carried out. Since the case is at the stage of investigation, this Court is not inclined to abort the investigation mid-way. The respondent/police is directed to consider the documents and plea of the petitioner in its right perspective, if needed record her statement and verify the same. Thereafter on perusal of the documents and collection of evidences, if the respondent finds that the petitioner has acted with bona fide and there is no criminality in the act of the petitioner, drop further action against the petitioner. Further the persons responsible for issuance of patta No.1033 of 1995 has to be investigated which will go to the root of the case. The fulcrum of the case is issuance of patta No.1033 of 1995. The respondent is directed to conduct thorough investigation with regard to the persons responsible for the issuance of patta No.1033 of 1995 and proceed against them.

27.Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Superintendent of Police,
V&AC Police, Namakkal.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.D.Sathyaraj, Advocate, S.R.No. 95332

CRL.O.P.NO.10824 of 2019
AND
CRL.M.P.NO.5556 of 2019

BR(CO)
GN(31/12/2019)