

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.11.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.21631 of 2019
and
W.M.P.No.20856 of 2019

R.Manikantan

..Petitioner

Vs

1 The State of Tamil Nadu
Rep by the Principal Secretary to Government
Housing and Urban Development Department
Fort.St.George chennai

2 The Principal Secretary
Commissioner of Town and Country Planning
(FAC) Directorate of Town and Country
Planning 807 Anna Sala, Chennai-2

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the Proceedings of the 2nd Respondent vide No ROC. No 25101/2018/k1 DATED 2.1.2019 and to quash the same by reinstating the Petitioner with back wages.

For Petitioner : Mr. S.Nagarajan

For Respondents : Mr.A.N. Thambidurai, Spl.GP

O R D E R

Writ Petition is filed challenging the proceedings of the 2nd respondent in Roc. No. 25101/2018/k1, dated 02.01.2019 and consequently, directing the respondents to reinstate the petitioner with back wages.

2.Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents. By consent, the writ petition is taken up for final disposal.

3. The case of the petitioner is that the petitioner was appointed as Surveyor and Assistant Draughts Man on 20.12.2000. Thereafter he was promoted and joined as Supervisor /Draughts Man Grade-II in Dharmapuri Region on 13.06.2013. With regard to approval of lay out, a real estate broker namely Govindaraj had lodged a complaint before the Superintendent of Police V&AC, Krishnagiri on 13.12.2018, subsequently FRI was also registered against the petitioner in Crime No. 10/AC/2018 for the offence under Section 7(a) of the Prevention of Corruption Act. While the petitioner was on leave from 14.12.2018 to 25.12.2018, the petitioner's subordinates uploaded the unapproved layout plan via online and sent the same to the head office for getting concurrence. The petitioner was arrested by the Superintendent of police V& AC, Krishnagiri on 28.12.2018. The 2nd respondent initiated the proceedings and passed impugned order in Roc. No. 25101/2018/K1 dated 02.01.2019. Even after lapse of 7 months, the 2nd respondent has not reviewed the order of suspension as provided under G.O.Ms. NO, P &AR Department, dated 30.01.1996 and the petitioner has also submitted his representation dated 24.06.2019 to the 2nd respondent, but there is no response from the 2nd respondent. Against which, the petitioner filed the present writ petition.

4. The learned counsel for the petitioner submitted that though the order of suspension has been passed on 02.01.2019, there has been no review. Hence, the prolonged suspension cannot be allowed to continue for a long time.

5. This Court is unable to go into the merits of the allegations made by the petitioner. So long as the power of suspension is available with the respondents and it has been exercised by the competent authority, the Court cannot go behind the order of suspension.

6. The Supreme Court in its decision reported in 1990 (3) SCC 60 (Director General and Inspector General of Police, Andhra Pradesh, Hyderabad and others Vs. K.Ratnagiri) has held in paragraph 7 as follows:

"7....The Rule 13(1) empowers the authority to keep the respondent under suspension pending investigation or enquiry into the criminal charges where such suspension is necessary in the public interest. When the first information report is issued, the investigation commences and indeed it has commenced when the respondent was kept under suspension. The order of suspension cannot, therefore, be said to be beyond the scope of Rule 13(1) merely because it has used the word 'prosecution' instead of investigation into the charges against the respondent. A wrong wording in

the order does not take away the power if it is otherwise available. The Tribunal seems to have ignored this well accepted principle."

Further, it was observed in paragraph 3 as follows:

"3....The government may review the case and make further or other order but the order of suspension will continue to operate till it is rescinded by an appropriate authority."

7. Once again, the Supreme Court vide its decision reported in 1994 (2) SCC 617 (State of Haryana Vs. Hari Ram Yadav and others) held in paragraph 10 as follows:

"10....The law is well settled that in cases where the exercise of statutory power is subject to the fulfilment of a condition then the recital about the said condition having been fulfilled in the order raises a presumption about the fulfilment of the said condition, and the burden is on the person who challenges the validity of the order to show that the said condition was not fulfilled. In a case, where the order does not contain a recital about the condition being fulfilled, the burden to prove that the condition was fulfilled would be on the authority passing the order if the validity of the order is challenged on the ground that the condition is not fulfilled...."

Further, in paragraph 11 of the judgment, it was observed as follows:

"11....There is no averment in the said petition challenging the validity of the impugned order of suspension on the ground that the Governor of Haryana was not satisfied that it was either necessary or desirable to place Respondent 1 under suspension. In the absence of any such averment it must be held that the impugned order was passed after fulfilling the requirement of Rule 3(1) of the Rules in view of the presumption as to the regularity of official acts which would be applicable and the absence of a recital in the order about the Governor being satisfied that it was either necessary or desirable to place respondent 1 under suspension is of no consequence...."

8. In the light of the above, the writ petition filed by the petitioner is misconceived and deserves to be dismissed.

Accordingly, the writ petition shall stand dismissed. However, it is open to the petitioner to seek a review of the order of suspension by making a representation before the competent authorities and if such a representation is made, it is needless to state that the authorities will consider the said representation and pass orders on the same in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

1 The Principal Secretary to Government
Housing and Urban Development Department
Fort.St.George,
Chennai

2 The Principal Secretary
Commissioner of Town and Country Planning
(FAC) Directorate of Town and Country
Planning 807 Anna Sala, Chennai-2

+1cc to Mr.S.Nagarajan, Advocate, S.R.No. 94793

+1cc to the Government Pleader, S.R.No. 94622

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MP (CO)
GN(17/12/2019)

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