IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06/11/2019

Pronounced on: 19/12/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8477 of 2017

T.K.Jagadeesan ... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Department of Commercial Taxes
and Registration (K),
Fort St.George,
Chennai - 600 009.

2. The Inspector General of Registration,
No.100, Santhome High Road,
Chennai - 28. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of Certioararified Mandamus, calling for the records pertaining to the impugned order of the 1st respondent in G.O.(D).No.13 dated 11.01.2017, disposing the appeal by confirming the punishment of compulsory retirement on invalid charges imposed by the 2nd respondent in an arbitrary manner in his proceedings No.39032/B1/2012 dated 04.11.2015 and to quash the same and direct the 1st respondent to issue an order treating the retirement of the petitioner as retirement on superannuation with all consequential pension benefits without diminution.

For petitioner ... Mr.R.Rajendran

For respondents ... Mr. T.M.Pappiah, Spl.G.P.

O R D E R

The present case arises from the registration of a lease deed for the purpose of three years with two optional extention of three years each on which stamp duty of Rs. 7,45,100/- was paid.

2. The writ petitioner was working a Sub-Registrar in the office of the Joint Sub-Registrar II, Royapettah, Chennai. On 21.04.2010, the above mentioned lease deed was admitted for registration on receipt of stamp duty for three years. Following this, a Quarterly Audit Report for period ending June, 2010 found that the lease period was for nine years and that collecting stamp duty for only three years deprives the Government of Rs.15,60,300/-. A special report was submitted by the District Registrar (Audit) to the Inspector General of Registration on 25.04.2011, on the basis of Quarterly Audit Report. District Registrar (Administration) issued proceedings against lessor and lessee of the above mentioned lease deed demanding deficit stamp duty of Rs.15,60,300/-

3. A charge memo dated 10.09.1992 was issued by the Inspector General of Registration under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, based on special report submitted by the District Registrar (Audit), stating that this was failure on the part of the petitioner to collect the required stamp duty for nine years. The petitioner was negligent in not collecting the stamp duty and he thus violated Rule 20(1) of the Tamil Nadu Government Servant's Conduct Rules,1973.

4. The lessor has filed Writ Petition No.25694 of 2012, challenging the order demanding deficit stamp duty of Rs.15,60,300/-. The order has been stayed and writ petition is pending. Explanations were submitted by the writ petitioner denying all charges in the charge memo and claiming that the period for extension was only optional and that stamp duty only needed to be paid for three year. Enquiry officer was appointed by the Inspector General of Registration. Before the enquiry officer could submit his report, the lease deed was cancelled by the parties on 28.12.2012, which is before the completion of three year lease period, and the reason for cancellation was stated to be that the lease was actually in the nature of agreement to the lease and was not acted upon or performed by the parties and the demise of the scheduled property did not come into effect. The enquiry officer on 13.05.2013, submitted his report stating that the charge was not proved as the lease deed was cancelled before three years and since no renewal of the lease took place.

4. The Inspector General of Registration by an order dated 07.10.2013, disagreed with the finding of the enquiry officer to hold that the charge was proved. The writ petitioner sought for a personal hearing before the Inspector General of Registration. On 01.04.2014, the writ petitioner was suspended by the Inspector General of Registration and the following day, proceedings were initiated stating that the writ petitioner was not permitted to retire and was placed

under suspension.

5. On 04.11.2015, the Inspector General of Registration imposed a punishment of compulsory retirement and deducting a third of the petitioner's gratuity. An appeal was filed by the writ petitioner against this order on 28.12.2015. The Inspector General of Registration on 11.01.2017, issued G.O.(D).No.13 of 2017 rejected the appeal after calling for the opinion of the Tamil Nadu Public Service Commission, which agreed with the initial order of the Inspector General of Registration. The writ petitioner claims that this order is bad in law, as the lease deed was only for three years with the option to renew for two more period of three years each and since the renewal is not a distinct matter within a meaning of section 5 of the Indian Stamp Act, a duty must only be collected for three years.

6. He further contend that a lock-in-period of five year present in the lease applied only to the lessee and the contract impliedly provided by the fact that it can be terminated by the both parties mutually. He further contended that the lease was anyway terminated before the period of three years and the petitioner could not be forced to collect stamp duty for the whole nine years and therefore there was no loss caused to the Government.

7. The respondents have filed a counter stating that the order of the disciplinary authority cannot be challenged merely on the ground of error in applying the law and cites. Reliance has been placed on the judgment of this Court in R.Ramani Vs. Secretary to Government, WP.No.49502 of 2006 dated 29.02.2012, stating that this would impinge on the rights of an administrative body.

8. The respondents further contend that the disciplinary authority does not need to concur with the report of the enquiry officer and that in the present case, the enquiry officer had wrongly interpreted the term "renew" without looking at the intention behind the clause in the lease deed.

9. Heard the counsel for the parties.

10. Regarding the preliminary issue raised by the respondents regarding competency of this Court to set aside the orders of the disciplinary authority, the Hon'ble Supreme Court in Principal Secretary, Govt. of Andhra Pradesh Vs. M.Adinarayana, 2004 (12) SCC 579, in para 24 observed as under:-

> "24. The order of the Administrative Tribunal interfering with the well-considered order of TDP is unwarranted. APAT cannot sit as a court of appeal over a decision based on the finding of the

enquiry authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably supported the conclusion reached by the disciplinary authority, it is not the function of APAT to review the same and reach a different conclusion. So, it is well settled that if the findings recorded by the tribunals or of the disciplinary authorities, are found to be perverse, which are not based on the legal evidence, then the Administrative Tribunal or the court is empowered to treat such flaw as a legal flaw and quash the impugned action. In the instant case, the fact-finding authority has based its findings on legally permissible substantive evidence. And, therefore, such a finding on fact based on substantive evidence is not permissible to be interfered with."

11. Further Karnataka High Court in the case of V.Ramachandrappa Vs. The Divisional Controller and Disciplinary Authority, Management of KSRTC, Bengaluru, 2013 SCC Online Kar 5067, has held that the order of the disciplinary authority can be set aside only if the same is perverse and bad in law. A perusal of the above two judgments demonstrate that this Court does have the competency to set aside the orders of the disciplinary authority if it can be shown that the same are bad in law.

12. Relevant portion of the lease deed is extracted hereunder:-

"2.3 The lease period shall come into effect from the date of expiry of the fit out period and the said date is called the “Lease Commencement Date” The lease shall thereafter continue to be in force and binding between the Parties for a period of three years from the Commencement Date and the lease shall be renewed for further 2 terms of three years each at the option of the Lessee.

The total period of the lease shall be nine years including the renewal period of 2 terms of three years each) In case the Lessee does not intend to renew the lease after the lock in period the Lessee shall intimate the same m writing to the Lessor six months in advance.

2.4. The Lessee shall intimate its intention to renew/not to renew the lease to the Lessor sir months before the expiry of the third term of lease If the Lessee does not intend to renew the lease after the expiry of the Third Term the Lessee shall hand over vacant and peaceful possession of the Schedule “S' Property to the Lesser on the date of the expiry of the lease

2.6. The first 5 (five) years is a lock in period and the Lessee snail not vacate the Demised Premises The Parties agree that the Lessee shell not be entitled to terminate this lease for any reason whatsoever during the initial period of 5 (five) years of the Term from the commencement date except in a case Where there is a defect m title In the event of termination by the Lessee within the lock-in period at its sole discretion, the Lessee shall be liable to pay the unrealized rentals for the balance period of the lock-in period from the date of termination."

13. In order to decided whether or not the stamp duty need to be collected for the whole nine years or only for three years. Reliance must be placed on Section 5 of the Indian Stamp Act 1899. Section 5 of the said Act reads under:-

"5. Instruments relating to several distinct matters. — Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act."

14. It can be seen that stamp duty can be collected for this optional renewal period only if the same can be termed as the distinct matter under the definition of this Act. Reliance is placed by the writ petitioner on the decision of the Delhi High Court in M. Mohan Vs. Maheswari Seth, AIR 1987 Del 115 of which para 15 states as under:

"15. Section 5 of the Stamp Act is as under :
"Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act."

15. A perusal of the above judgment shows that optional terms of renewal in a lease deed would not be a distinct matter within a meaning of Section 5 and that the stamp duty must be collected for the contract of lease only for the initial period. This view has been further reiterated by this Court in Central Bank of India Vs. Inspector General of Registration, CDJ 2006 MHC 2788 and by the Hon'ble Supreme Court in Provash Chandra Dalui & Another Vs. Biswanath Banerjee, AIR 1989 SC 1834.

16. In view of the above it can be seen that there was no negligence or dereliction of duty on the part of the petitioner. At best it could be only be an error of judgment for which the petitioner could not be punished. This Court

does not intend to go into the question as to whether stamp duty was payable or not, since it is the matter of adjudication in another writ petition. The purpose of discussing the relevant provisions was only to show that it cannot be said that the petitioner has committed any act which would entail initiation of disciplinary proceedings against the petitioner. As stated above, mere error of judgment based on appreciation of law cannot amount to any misconduct which would attract or warrant impositions of any penalty.

17. For the above reasons, the writ petition is allowed and G.O.(D).No.13 dated 11.01.2017, is thus quashed. The retirement of the writ petitioner must thus be treated as retirement on superannuation dated 30.04.2014 and all attendant benefits are to be provided. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pkn.

To

1.The Principal Secretary to Government,
The State of Tamil Nadu,
Department of Commercial Taxes
and Registration (K),
Fort St.George,
Chennai - 600 009.

2.The Inspector General of Registration,
No.100, Santhome High Road,
Chennai – 28.

+1cc to the Government Pleader SR.106716
+1 CC to Mr.R.Rajendran, Advocate sr 92065(13/03/2020)

W.P.No.8477 of 2017

BP(CO)
CB(10/02/2020)