



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.07.2020

DELIVERED ON : 24.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

WP(MD).No.3329 of 2011 and

MP(MD).Nos.1 of 2011 and 2012

WEB COPY

M. Swaminathan

...Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Secretariat, Chennai.

2.The District Collector,
Tirunelveli.

3.The Enquiry Officer,
The Assistant Commissioner (Exercise),
Tuticorin.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order of the first respondent in G.O.Ms.(2D). No.344, dated 09.06.2010 and quash the same and further direct the first respondent to disburse recovery of amount made on the basis of the impugned order along with interest @12% within the time fixed by this Court.

For petitioner : Mr. H. Arumugam

For Respondents : Mr.G. Gunaseelan Muthaiah

Additional Government Pleader

ORDER

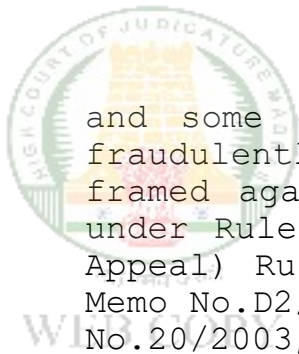
This Writ Petition has been filed to quash the impugned order of the first respondent made in G.O.Ms.(2D). No.344, dated 09.06.2010 and consequently, to direct the first respondent to disburse the recovery made on the basis of the impugned order along with interest @12% within the time frame to be fixed by this Court.

2. When the matter was taken up for hearing on 22.03.2011, this Court admitted the Writ Petition and Rule Nisi was ordered.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

4. One A.M.Paulraj of Tharuvaikulam Village has given a complaint dated 20.09.2003, stating that the writ petitioner has issued several bogus pattas for Government Poramboke land fraudulently in the name of individuals as patta lands in Thoothukudi Part I, Part II Villages and Meelavittan Part-II Village and requested to take necessary action against the writ petitioner.

The matter was enquired into and it was found that the petitioner



and some officials are responsible for issuing patta pass books fraudulently to the Government Poramboke lands. Hence, charges were framed against the writ petitioner along with the other officials under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules in Thoothukudi, District Collector office vide charge Memo No.D2/33919/2003, dated 01.11.2003 and a Criminal Case in Crime No.20/2003, dated 31.10.2003, was also registered in District Crime Branch, Thoothukudi, for the offences under Sections 120(B), 409, 465, 468, 471 and 420 IPC. The charge memo was issued to the writ petitioner for the following allegations:-

"1.Issue of bogus patta pass book, bearing No.164809 to one Tmt.Shanthi for lands in S.No.1/1A2, 1/1A3,1/1B2 in Pulipanchankulam Village over which Tmt.Shanthi has no right.

2.Issue of bogus patta pass book, bearing No.177018 to one Nagakani indicating 1.25 cent Government Poramboke land in Thoothukudi Part-1 Village Ward-4, Block-32, Town Survey No.4133, to the individual as patta land.

3.Issue of bogus patta pass book, bearing no.172143 to Durai Singh and two others for 30 cent Government Natham land in Survey No.932/2 of Meelavittan Part-2 Village, Thoothukudi Taluk, to the individual as patta land."

5. Since the enquiry and criminal case are pending, the petitioner was suspended vide District Collector's Order No.A6.27127/2004, dated 30.05.2004 and he was not permitted to retire on his reaching the age of superannuation i.e., 31.05.2004 and he retained in service under Rule 56 (1) (c) of the Fundamental Rules.

6. The writ petitioner has not represented any requisition for verifying of records or enquiry of any witnesses during the course of enquiry conducted by the third respondent on 04.04.2005 and oral enquiry conducted by the Disciplinary Authority and District Collector, Thoothukudi on 13.03.2006. The enquiry was conducted on 04.04.2005 and the statement was recorded by the Enquiry Officer and he submitted a report on 25.05.2005 with the conclusion that all the six charges framed against the writ petitioner were held as proved after considering all relevant facts.

7. The Government has decided to take action against the writ petitioner under the Tamil Nadu Pension Rules and the suspension order was revoked and the writ petitioner was permitted to retire on the date of superannuation i.e., 31.05.2004. A consent was called for from the writ petitioner for the proposed punishment of recovery of Rs.1,000/- per month for three years from the pension of the writ petitioner for the proved charges. The writ petitioner submitted his willingness to the Government on 19.05.2010 with a request to



reduce the proposed punishment. A punishment of recovery of Rs.1,000/- per month for three years was awarded from the pension of the writ petitioner for proved charges, after observing all the procedures as per the existing Government Rules.

8. The petitioner has filed this Writ Petition challenging the recovery order on the ground that the enquiry was not conducted in a proper manner. But, it is alleged that the petitioner had issued several bogus patta pass book in the name of various individuals for Government Promboke Land. However, no patta pass book said to have been issued are produced in the enquiry nor marked in the enquiry and no opportunity was given to him. Furthermore, on the oral enquiry conducted on 04.04.2005, no witness was examined on the part of the Management.

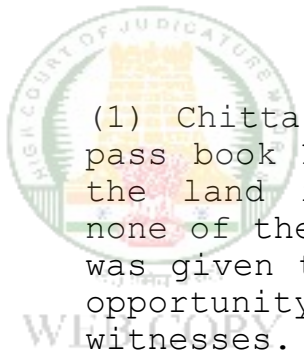
9. The learned Additional Government Pleader appearing for the respondents would contend that proper procedure has been adopted and punishment was imposed.

10. On perusal of the statement of defence given by the petitioner it is specifically averred by the petitioner that true different copies are available in respect of Patta Pass Book No.172143 with two different names i.e., one contains six names and another contains three names. That the photo copy of Patta Pass Book No.172143 contains only six names as per records. The writ petitioner also alleged that the copies of patta pass books are fraudulently created by rubbing the name of patta holders and over writing the name of the above said persons by using some other patta pass books. It is clear from the photo copy of the Patta Pass Book No.172143. When the writ petitioner was called upon to produce the file as to whether any original patta pass book which is said to have been issued by the petitioner is not available on file.

11. Today, it is represented by the learned Additional Government Pleader appearing for the respondents that no original patta pass book was seized by the respondents nor marked during the course of enquiry. It appears that the police complaint was also closed as a mistake of fact. Even in the xerox copies of the patta pass book it was appeared that there was a rubbing the name of the patta holders and over writing the name of the above said persons using some other patta pass books and hence, the contention of the writ petitioner is found to have a force.

12. Yet another point is that the writ petitioner in his explanation dated 27.07.2004 in respect of charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules stated that the Patta Pass Book No.177018 issued in favour of Tmt.Nagakani was not issued by him.

13. Though the Department has come forward with the specific name of Tmt. Shanthi was fraudulently included in 10



(1) Chitta, by the Village Administrative Officer and bogus patta pass book No.168409 was issued to her without any valid right over the land in Survey No.11/1A, 1/1B2 of Pulipanchankulam Village, none of the documents produced during the enquiry and no opportunity was given to the petitioner for perusing the documents and also no opportunity was given to the petitioner to cross examine any of the witnesses. Since no document is produced in the enquiry, I am of the considered view that punishment imposed by the Government based upon the charges are not made out and hence, punishment imposed by the Government in G.O(2D).No.344, Revenue Department, dated 09.06.2010, is hereby set aside. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

trp

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Revenue Department,
Secretariat, Chennai.

2.The District Collector,
Tirunelveli.

3.The Enquiry Officer,
The Assistant Commissioner (Exercise),
Tuticorin.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-13227[F] dated 24/07/2020)

PRE-DELIVERY ORDER MADE IN
WP(MD).No.3329 of 2011 and
MP(MD).Nos.1 of 2011 and 2012
24.07.2020

KB(29.07.2020) 4P 5C