BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.02.2021

CORAM:

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.(MD)Nos.6181 and 6182 of 2016
and
W.M.P(MD)Nos.5455 to 5458 of 2016

V.Madhavachary
Sub Registrar (Admn.)
District Registrar Office,
Mayiladuturai ... Petitioner in both W.Ps

Vs.

1.The Inspector General of Registration
Office of the Inspector General of Registration,
No.100, Santhom High Road,
Chennai-600 028.

2.The Deputy Inspector General of Registration,
No.60, Giri Road,
Srinivasapuram,
Thanjavur-613 009.

3.The District Registrar,
No.62, Kamaraj Road,
Srinivasapuram,
Thanjavur 613 009 ... Respondents in both W.Ps

Prayer in W.P(MD)No.6181 of 2016: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relates to the impugned charge memo issued by the respondent No.2 in his proceedings 2425/A/2016 dated 10.03.2016, quash the same.

Prayer in W.P(MD)No.6182 of 2016: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relates to the impugned charge memo issued by the respondent No.2 in his proceedings Na.Ka.1618/A/2015 dated 15.09.2015, quash the same.

For Petitioner : Mr.A.Selvendran
in both W.Ps
For Respondents : Mr.K.Sathiyasingh
in both W.Ps Additional Government Pleader

COMMON ORDER

These Writ Petitions have been filed challenging the impugned charge memo issued by the second respondent in his proceedings 2425/A/2016 dated 10.03.2016 and Na.Ka.1618/A/2015 dated 15.09.2015.

2.The case of the petitioner in W.P(MD)No.6181 of 2016 is that while he was working as Sub Registrar (Admn.), the second respondent issued a charge memo against the petitioner on 10.03.2016.

3.The case of the petitioner in W.P(MD)No.6182 of 2016, is that while he was working as Sub Registrar(Admn.) in the Registration Department, the second respondent issued a charge memo against the petitioner dated 15.09.2015 as if the petitioner caused revenue loss to an extent of Rs.10,72,037/-. Challenging the aforesaid charge memos, these writ petitions have been filed.

4.The learned counsel appearing for the petitioner submitted that both the charges were challenged on the ground that the second respondent is not a competent authority to initiate disciplinary proceedings against the petitioner and the first respondent is the only competent authority to initiate the disciplinary proceedings. The assessment of the market value of the property and the stamp duty is a quasi judicial function and if there is an error, it amounts to an error of law and it does not make a cause for the charge of misconduct. If at all any revenue loss due to the wrong assessment of the market value of the property and Stamp Duty, it can be corrected by way of the proceedings enumerated under Section 47(A)(3) of the Stamps Act. As per Section 47(A)(3) of the Stamps Act, the Collector may, *suo motu* or otherwise, within five years from the date of registration of any instrument of conveyance, call for examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject matter of conveyance. However, without following the said procedure, issuing the charge memos against the petitioner is non est in the eye of law. He further submitted that the very same issue came up for consideration before the Hon'ble Apex Court in the case of ***(1999)6 Supreme 523 (SUNJARRAO BHIKAJI NAGARKAR VS UNION OF INDIA)***. Accordingly, he prays for allowing these writ petitions.

5.Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner's function cannot be termed as a quasi-judicial function, since he does not decide the *lis* between the parties and in view of Rule 161 of the Tamilnadu Registration Rules, the petitioner is liable for any loss to the Government and therefore the charges have been rightly framed against him. He further submitted that during the audit the said loss was found and in view of audit report, the charge memos were issued and the same need not be interfered with.

6.The issue as to whether the functioning of the Sub Registrar could be termed as a quasi-judicial function, has already come up for consideration before the learned Single Judge of this Court in the case of ***B.K.Gunasekaran Vs. The State of Tamil Nadu and others*** in W.P.Nos.12044 of 2009 etc., and by placing reliance on the various decisions of the Hon'ble Supreme Court, the learned Judge held that the function of the Sub Registrar to be quasi-judicial in nature in view of duties prescribed under Section 33(A) of the Indian Stamp Act and had further held that such a failure to determine the stamp duty in its correct perspective, cannot be termed as a misconduct. The relevant portion of the order reads thus:-

> *14. Thus, it is to be noted that the pre-requisite for invoking Section 33-A is that it has to be found that proper Stamp duty payable under the Act in respect of the instrument has not been paid or has not been sufficiently paid and on determining such fact the Registrar of the District may issue a certificate for recovery of such amount and no such certificate shall be granted unless enquiry is made and such person is given an opportunity of being heard and no such enquiry shall be commenced after the expiry of three years from the date of Registration of the instrument. Thus, the determination as to whether proper Stamp Duty has been paid under Act is a quasi-judicial function to be exercised by the registering authority by going through the contention of the document and coming to an opinion as to determine as to what calls the document could be classified for demanding proper Stamp Duty as per the rates specified in Schedule I to the Act. Therefore, there is an element of adjudication involved in the matter for determination of proper Stamp Duty chargeable on an instrument. Even according to the respondents the concerned Joint Sub-Registrar central Chennai treated the document as a release deed and held that the document would fall within the description under Article 55 of Schedule I. The allegation is that an Audit objection was raised by the Audit Department stating that such instrument which was admitted for registration by a Sub-Registrar ought to have been treated as a*

deed a of conveyance under Article 23 and not under Article 55 and therefore, deficit stamp duty is payable and in spite such Audit objection said to have been confirmed by the Inspector General, the petitioner failed to invoke Section 33-A for recovery of deficit stamp duty. In my view the power of the Sub-Registrar is a quasi-judicial power in determining the Stamp Duty. Likewise, the officer in the position of the petitioner is required to render a quasi-judicial findings before issuing a certificate for recovery that the document in question was not sufficiently Stamped. This finding cannot be done without an enquiry to the aggrieved person.

15. Therefore, I am of the clear view that the power, which the respondents state that the petitioner ought to have exercised is a quasi-judicial power.

6.The aforesaid observations made in the decision are self explanatory. This Court is also of the view that the duties vested under the Indian Stamp Act, casts a duty on the Sub Registrar to adjudicate and arrive at a conclusion for the purpose of issuance of a certificate under Section 33(A), after hearing the objection of the parties, and in view of such duty cast under a statutory law, the function of the Sub Registrar is deemed to be quasi-judicial in nature.

7.The next question that would consequently arise as to whether the failure or lapse on the part of the Sub Registrar to determine the value of a instrument correctly, would amount to a misconduct. The learned Government Advocate had placed reliance on Rule 161 of the Tamilnadu Registration Rules, 1983 and submit that, whenever a loss to the Government has arisen from the negligence on the part of the Registering Officer, he should be held liable for such a loss, in view of his negligence and therefore the same would amount to a misconduct.

8. Unable to agree with the said contention. Firstly, the rule only imposes a lability on such a registering officer to make good of the loss to the Government, which cannot be termed as a misconduct. The term misconduct could be defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, wilful in character, improper or wrong behavior. Any unlawful behavior by a public officer in relation to the duties of his office,

wilful in character could be termed as a misconduct (Black's Law Dictionary).

9.In ***P.K.Gunasekaran's case (supra)***, this Court had also ventured to render its finding as to whether a failure on the part of the Registering Officer to determine the stamp value correctly, would amount to a misconduct or not, in the following manner:-

15. Therefore, I am of the clear view that the power, which the respondents state that the petitioner ought to have exercised is a quasi-judicial power. If such power has not been exercised whether it could form the basis for a disciplinary action. This question is no longer res-integra and having been settled by various decision of the Hon'ble Supreme Court and this Court and it would be useful to refer the recent decision of this Court in S.Muthuramu Vs. State of Tamil Nadu, rep. by its Chief Secretary to Government, Public (Special-A) Department, Chennai-9 and Another (2008) 3 MLJ 766 in which, the earlier decisions have been considered by the learned Judge and wherein it has been held as follows:-

"6. From the perusal of the charge memo it could be seen that the allegation against the petitioner is that he has fixed the market value at Rs.22/- per sp.ft. in Document No.70 of 1998 whereas the adjacent lands were acquired by the Government on negotiation at the rate of Rs.58/- per sp.ft. in the year 1999. No motive or ill-will is alleged in the said imputation of charge. Admittedly, petitioner is exercising quasi-judicial function under Section 47-A (1) of the Indian Stamp Act. If the Department is not satisfied with the valuation, nothing prevented the Department from filing appeal before the Inspector General of Registration challenging the order passed by the petitioner, fixing the market rate of Rs.22/- per sp.ft. In the absence of any motive or bad intention, no charge could be framed against the Quasi-Judicial Authority and the same is well settled.

7. (a) In the decision in Zunjarrao Bhikaji Nagarkar v. Union of India, AIR 1999 SC 2881:(1999) 7 SCC 409,:2000-I-LLJ-728:(1999) Supp MLJ 71 the Supreme Court considered similar issue and held that negligence in exercising quasi-judicial power by mere carelessness or inadvertence or omission is not sufficient to initiate proceedings under misconduct. Unless there is a culpable negligence or ill-motive, *no charge could be framed. In paragraphs 43 and 44, the Supreme Court held as follows at p.85 of MLJ:*

"43.If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. The charge of misconduct against him was not proper. It has to be quashed."

(b) Whether the disciplinary proceeding can be initiated against a judicial officer, who granted bail exercising discretion while discharging the Judicial function, was considered by the Supreme Court in the decision in Ramesh Chander Singh v. High Court of Allahabad,(2007) 4 SCC 247 : (2007) 2 SCC (Criminal) 266:(2007) 4 MLJ 1055. In paragraph 12 the Supreme Court held as follows at p.1062 of MLJ:

"12.This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking

disciplinary action based on judicial orders, the High Court must take extra care and caution."

(c) In the decision in Inspector Prem Chand V. Government of N.C.J. of Delhi (2007) 4 SCC 566 following the earlier decisions, the Supreme Court held that the acts of negligence, error of judgment or innocent mistake, do not constitute misconduct. In the above case, the appellant/Police Officer failed to seize the tainted money on receipt of complaint of alleged demand of bribe by an Inspector (Malariya). Department initiated disciplinary proceeding on the charge that he had not seized the tainted money, which could be an important piece of evidence in criminal proceeding. The Supreme Court held that the Police Inspector could not be said to have committed any misconduct merely because in the opinion of the higher authorities he ought to have seized the tainted money. The Supreme Court in paragraphs 10 to 12 dealt with the term misconduct, which reads as follows:

"10.In State of Punjab v. Ram Singh, Ex-Constable AIR 1992 SC 2188:(1992) 4 SCC 54 : 1993-I-LLJ-218 it was stated, in para. 5, at page 522:

5. Misconduct has been defined in Blacks Law Dictionary, 6th Edn. at p. 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character, improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not negligence or carelessness. Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

11. In P. Ramanatha Aiyars Law Lexicon, 3rd Edn., at p. 3027, the term misconduct has been defined as under:

The term misconduct implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct involving moral turpitude. The word misconduct is a relative term, *and has to be construed with reference to the subject-matter and the context wherein the term occurs, having regard to the scope of the Act or statute which is being construed. Misconduct literally means wrong conduct or improper conduct. (See also Bharat Petroleum Corpn. Ltd. v. T.K. Raju 2006(2)LLN 54)*

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India v. J. Ahmed AIR 1979 SC 1022: (1979) 2 SCC 286:1979-II-LLJ-14 whereupon Mr Sharan himself has placed reliance, this Court held so stating:

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster 17 Q.B.536, 542). A disregard of an essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers 1959 (1) WLR 698)]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur 61 BLR 1569 and Satubha K. Vaghela v. Moosa Raza 10 GLR 23. The High Court has noted the definition of misconduct in Strouds Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct. (emphasis supplied)

(d) A Division Bench of this Court in the decision in A.M.Sankaran V. Registrar, High Court, Madras, 1999 (2) LW 174 quashed an order of compulsory retirement passed against the judicial officer for

destroying the seized spirit without examining or recording any evidence regarding the inflamable nature of the spirit. This Court held that the said order having been passed during discharge of the function as judicial officer, framing such charge without any allegation or recklessness or abuse of power, cannot be sustained.

8. Applying the principles laid down in the above decisions to the facts of this case, particularly when there is no motive or recklessness attributed against the petitioner and no mis-conduct is committed by the petitioner. I hold, the charge as framed is not maintainable against the petitioner, who is a quasi-judicial authority. The impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petitions are closed."

16. Thus, the only conclusion, which could be arrived at after placing reliance on all the above decisions is that the charges framed against the petitioner is not maintainable. That apart, I am also convinced that the entire disciplinary action has been grossly delayed and the petitioner has been put to irreparable hardship and mental agony. In reply to the allegation regarding the valuation of the buildings, it is common knowledge that any re-evaluation has to be done within a reasonable period. In the instant case, the Inspector General of Registration has issued circular dated 14.06.2004 stating that re-inspection should be done within a period of three months. In the instant case, the re-inspection was conducted without notice to the petitioner by an officer, who subordinate to the petitioner, after nearly a period of four years. Inspection and valuation are technical matters to be done based on the amenities provided in the concerned building and the schedule of rates prescribed in this regard.

17. Therefore, for applying the schedule of rates, the essential feature is the condition of the building. Undoubtedly the condition of the building after a period of four years could be different in the sense that there could have been value addition, remodeling or partial re-construction or even deterioration. Therefore, this aspect of the matter also involves a technical assessment and cannot be construed as purely as administrative act. Therefore, to dislodge the report submitted by the petitioner on the valuation of the building, there should be *sufficient and cogent material to establish that the petitioner willfully under valued the buildings. In my view the charge does not appear to be so. The charge itself is based on the sub-enquiry officer's report, who inspected all the 10 buildings after a period of nearly four years without notice to the petitioner and the copy of the calculation sheet has not been furnished to the petitioner, in spite of nearly 10 representations given and in spite of a direction issued by this Court to give the copies of the document. Thus, the entire proceedings appears to have not been conducted in a fair and reasonable manner and the petitioner has been put to disadvantage at every stage of the matter. That apart as pointed out by the learned Senior counsels for the petitioner one other person by Mr.A.M.Jameed Bhasha, who has also a delinquent has been exonerated of the charge and there is no reason as to why the petitioner alone should be made to suffer.*

7.Now that this Court has found that the function of the Sub Registrar is quasi-judicial in nature and that the lapse pointed out in the charge memos against him cannot be construed to be a misconduct, it would not be appropriate to permit the respondent herein to proceed against the petitioner on the charges framed against him.

8.In the light of the above observations, the impugned charge memo in Nos.2425/A/2016 dated 10.03.2016 and Na.Ka.1618/A/2015 date 15.09.15 issued by the second respondent is set aside. Accordingly, these Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed. It is needless to say that the respondents shall settle the terminal benefits, if any.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Inspector General of Registration
Office of the Inspector General of Registration,
No.100, Santhom High Road,
Chennai - 600 028.

2.The Deputy Inspector General of Registration,
No.60, Giri Road,
Srinivasapuram,
Thanjavur-613 009.

3.The District Registrar,
No.62, Kamaraj Road,
Srinivasapuram,
Thanjavur 613 009.

+2 CC to M/s.D.SIVARAMAN, Advocate (SR-7693 and SR.7694)

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and
W.M.P(MD)Nos.5455 to 5458 of 2016

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