



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P. (MD)No.3904 of 2018

and

W.M.P. (MD)Nos.4045 & 4046 of 2018

V.Jinnah

... Petitioner

vs

1. The Secretary to Government,
Municipal Administration and Water Supply
Department,
Fort St.George,
Chennai - 9.

2. The Commissioner of Municipal Administration,
O/o, the Commissioner of Municipal Administration,
Chepauk, Chennai-5.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records and relating to the impugned Order passed by the 1st respondent dated 03/03/2017 vide G.O.(D).No.102 Municipal Administration and Water Supply(ME.3) Department which is confirming the order of the 2nd respondent dated 20/04/2016 passed in proceeding Roc.No.87634/2002/C2 and set aside the same as illegal and consequently direct the respondents to disburse the monetary and other benefits which entitle to the petitioner.

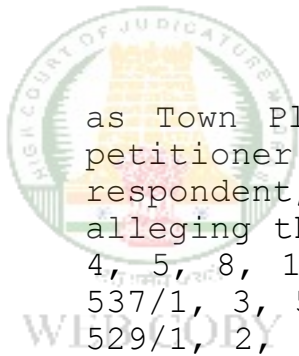
For Petitioner : Mr.T.Arul
for Mr.S.Sukumar

For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus, challenging the impugned order passed by the first respondent dated 03.03.2017, vide G.O.(D)No.102 Municipal Administration and Water Supply (ME.3) Department, confirming the order of the second respondent dated 20.04.2016 and disburse the monetary benefits.

2. The brief facts of the case are that the petitioner was posted as Town Planning Inspector in Sankarankovil Municipality. Thereafter, from 24.02.1999 to 21.02.2022 the petitioner was working



as Town Planning Inspector at Puliangudi Municipality. While the petitioner was working in Sankarankovil Municipality, the second respondent, vide proceedings, dated 29.09.2003 served a charge memo alleging the lands in S.Nos.523/1, 2, 3, 4, 10, 527/3, 5, 528/1, 2, 4, 5, 8, 11, 529/1, 2, 3, 4, 5, 531/1, 2, 532/2, 5, 536/2, 3, 4, 5, 537/1, 3, 5, 6, 7, 8, 538/1, 3, 539//7, 543/5, 544/6, 545/3, 10, 11, 529/1, 2, 3, 4, 5 of Thirumalainaickam Pudukudi Village, Puliangudi are situated in Agricultural Zone and to conversion of the site from Agricultural Zone to Institutional Zone the Puliangudi Municipality Commissioner, vide letter, dated 02.01.2001 sent a proposal to the Government which is pending for consideration. The allegation is that the petitioner had recommended to one Thiru. Thangam and his family members for construction of Institutional building in the above mentioned lands.

3. The contention of the petitioner is that while he was working as Town Planning Inspector at Puliangudi, a Charge Memo dated 29.09.2003 was issued for the above charge committed in the year 2001. The petitioner submitted an explanation on 12.11.2003 and 17.11.2003. Thereafter, an Enquiry Officer was appointed on 28.03.2014 after a lapse of 11 years and the delay has not been explained. The enquiry officer submitted a report on 17.11.2014 stating that the charge was proved. Without issuing the enquiry report, the second respondent passed the impugned order dated 29.05.2015 imposing the punishment of postponement of increment for a period of five years with cumulative effect. Aggrieved over the same, the petitioner has preferred a writ petition in W.P. (MD) No. 24162 of 2015 and this Court, vide order, dated 11.08.2015 directed to consider the mandatory clause of Rule 8(3) of the Tamil Nadu Municipal Services (Discipline and Appeal) Rules, 1970 and allowed the writ petition partly and directed to furnish the enquiry report. Thereafter, the enquiry report was provided to the petitioner and he was directed to submit his explanation. The petitioner submitted his explanation on 08.12.2014, but the respondents without considering the explanation has rejected the petitioner's further explanation and passed the same order on 20.04.2016 by imposing the punishment of postponement of increment for a period of five years with cumulative effect. Since it is a non speaking order, the petitioner has challenged the same.

4. The contention of the petitioner is that in the year 2001 the land in S.No.523/1, Thirumalain Naiken Pudukudi Village situated within the Puliangudi Municipality limit, the Agricultura Zone was maintained. One V.Murugaiah and others without the approval of the Municipality constructed a building and the petitioner on inspection found unauthorized and illegal construction has issued a notice under Section 216 (1)(2) of the Tamil Nadu District Municipalities Act, 1920. Thereafter, the said Murugaiah submitted a building plan for the proposed construction of a ' Farm House'. Since it is an Agricultural Zone, the petitioner has accepted the proposal and

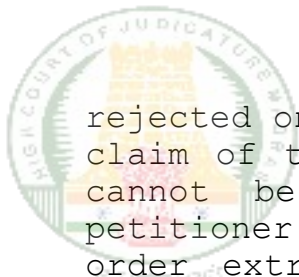


approval for the farm house, the said Murugaiah and others started construction deviating from the approved plan. Hence on 27.04.2001 itself, a notice was issued for the unauthorized construction to the said Murugaiah and others under Section 205(1)(2) of the Tamil Nadu District Municipalities Act, 1920. Even then the unauthorized construction works had been continued, a final notice was issued and the criminal case was initiated by filing a case before the learned Judicial Magistrate, Sivagiri in STC.No.676/2001 and the Magistrate Court has imposed the fine on 14.08.2001. Thereafter, a revised plan was submitted stating that originally they proposed to construct a Farm House but now proposed to construct a College and therefore sought for approval. But the approval was rejected. In spite of the fact that the petitioner had initiated action against the said Murugaiah, the respondents have not considered the same but imposed punishment. Aggrieved over the same, the petitioner has preferred this writ petition.

5. The respondents have filed a counter affidavit stating the enquiry officer has reported that the contention of the petitioner that he has recommended for the construction of Farm House only is contrary to the record as in File No.80/2001/F1 of Puliangudi Municipality. In the file it was found in the plan submitted by one Thangam wherein it is clearly stated that in both the building plan annexed as "plan showing the proposal building for S.Veerasamy Chettiar Educational and Charitable Trust" and in the Schedule II, it has been clearly indicated as "Institutional Building". Based on petitioner's recommendation, the then Commissioner who was the Local Planning Authority in terms of G.O.Ms.No.651 Rural Development and Local Administration Department, dated 08.04.1975 approved the building permission. Thereafter, a notice was issued and launching criminal proceedings was only an afterthought. The claim of the petitioner is that he has initiated criminal proceedings in STC No.276/2001 cannot be agreed. After initiating such criminal proceedings, the petitioner in utter violation of the delegation of power has recommended for the plan approval for Institutional building. The claim of the respondents are that it is only an Institutional Building in the plan approval, but he has not submitted the plan approval before this Court.

6. Heard Mr.T.Arul, learned Counsel appearing for the petitioner and Mrs.D.Farjana Ghoushia, learned Special Government Pleader appearing for the respondents.

7. It is seen from the records that the petitioner has initially processed the application in the year 2001 for putting up the construction, namely, Farm House (Vivasaya Kattadam) and even it has been mentioned in the plan as Vivasaya Pagudhi. Since there was a deviation in the construction, the petitioner has initiated the proceedings against the said Murugaiah and others by issuing a notice under Section 201. The said Murugaiah and others have filed a



rejected on 14.08.2001 and the fine was paid on 17.08.2001. But, the claim of the respondent is that it is only an afterthought and it cannot be approved. The learned Counsel appearing for the petitioner submitted that the respondents originally has passed an order extracting the contents of the petitioner's reply but the respondents have not scrutinized the records. Therefore, preferred a writ petition before this Court and this Court remitted the case back to the authorities for reconsideration. In spite of remand back to the authorities, the respondents have again passed the same order by reiterating the earlier order and imposed the punishment of stoppage of increment for five years with cumulative effect. The charge against the petitioner is that he has given the approval but it has not been substantiated by the respondents that the petitioner has given the approval for construction of college. When the said Murugaiah had submitted the revised plan the same was rejected. Hence this Court is of the considered opinion that the respondents have not perused the records properly. If the case is again remitted back, there will not be any useful purpose and therefore, this Court is inclined to modify the punishment which is absolutely disproportionate. This Court is reducing the punishment to six months without cumulative effect and the Official respondents are directed to implement this order within a period of four weeks from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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,
Municipal Administration and Water Supply
Department,
Fort St. George,
Chennai - 9.

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Commissioner of Municipal Administration,
O/o, the Commissioner of Municipal Administration,
Chepauk, Chennai-5.

+1 CC to M/s.S. SUKUMAR, Advocate (SR-19043[F] dated 18/04/2022)

+1 CC to M/s.SPL.GP. (SR-18584[F] dated 13/04/2022)

Order made in

W.P. (MD)No.3904 of 2018

12.04.2022

MA (CO)

GC (02.06.2022) 5P 5C