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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2025

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 9124 of 2024

And

W.M.P.No. 10150 of 2024

B.Sivasankar

... Petitioner

..Vs..

1. Government of Tamil Nadu
Rep. By its Principal Secretary to Government
Municipal Administration and Water Supply Department
Fort St. George
Chennai – 600 009.

2. The Commissioner
Greater Chennai Corporation
Rippon Building
E.V.R. Periyar Salai
Chennai – 600 003.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the concerned records from the first and second respondent, quash the order of the first respondent bearing G.O.(D).No. 223, Municipal Administration and Water Supply (ME.4) Department, dated 26.04.2023, the order of the



second respondent dated 16.11.2018 bearing Po.thu.Na.Ka.No. E13/37449/2010, dated 14.11.2011 as illegal, arbitrary and contrary to law and consequently direct the respondents to extend the monetary value of the stoppage of three increments without cumulative effect, along with all other attendant benefits.

For Petitioner	:: Mr. Balan Haridas
For 1 st Respondent	:: Mr. C.Selva Raj Additional Government Pleader
For 2 nd Respondent	:: Mr.P.Gopinathan

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records of the order of the first respondent in G.O.(D).No. 223, Municipal Administration and Water Supply (ME.4) Department, dated 26.04.2023 and to set aside the same.

2. The writ petitioner has also incidentally sought that this Court should interfere with the order of the second respondent dated 06.11.2018 and also the order dated 26.08.2013 issued by the first respondent and the further order of the second respondent dated 04.11.2011 as those orders



have merged with the order impugned namely, the order dated 26.04.2023

in G.O.(D).No. 223, Municipal Administration and Water Supply (ME.4)

Department, dated 26.04.2023 issued by the first respondent.

3. In the affidavit filed in support of the Writ Petition, it had been contended that the writ petitioner had joined the second respondent Corporation / Greater Chennai Corporation in the year 1993 for the post of Assistant Engineer. He was then promoted as Assistant Executive Engineer on 21.03.2005. He was issued with a charge memo on 02.02.2011 in which it was alleged that when he worked as Assistant Engineer in Town Planning Section, he had issued a building permit on 18.01.996 without verifying the title of the site and thereby enabled S.Srikanth of Hotel Shan Royal Private Limited at Koyambedu to encroach upon Sarkar Poromboke land to an extent of 1003 square meters in Block No. 31, T.S.No. 9/1 of Koyambedu Village and also the adjoining Coovum River to an extent of 1013 square meters in Block No.6, T.S.No.1 of Naduvankarai and that by this grant of building permission, he had violated Rule 20 of the Madras Corporation Servants Conduct Rules, 1968.



4. The petitioner had given an explanation on 21.02.2011 denying the charges. An Enquiry Officer had been appointed and the petitioner participated in the enquiry. A report was filed dated 03.05.2011 holding that the charges were proved. But however, no witnesses were examined, no documents were marked and the petitioner had only participated by answering a few questions, according to him, put by the Enquiry Officer.

5. It had also been stated that thereafter, the petitioner had given his further representation on 21.09.2011. The second respondent had forwarded the entire report to the Department of Vigilance and Anti Corruption and a punishment of stoppage of increment for three years without cumulative effect had been imposed by an order dated 14.11.2011. The promotion of the petitioner was kept in abeyance.

6. The petitioner filed an Appeal before the first respondent and that was rejected by G.O.(D).No. 445, dated 26.08.2013.

7. Thereafter, the petitioner made further enquiries and found that the building was never constructed at the place where the building permission



had been granted. It was also found by the petitioner that earlier to the grant of building permission, the planning permission had been granted by the Chennai Metropolitan Development Authority on 22.06.1995 relating to the land in Survey No.136, T.S.No.9, Block No.29, Poonamallee High Road, Chennai. The construction was in Block No. 31, T.S.No.9 of Koyambedu Village and Block No.6, T.S.No. 1 of Naduvankarai Village.

8. It is thus seen that there was a difference with respect to the lay of the land where the planning permission was given by the CMDA and the building permission was issued by the petitioner herein.

9. The petitioner therefore filed a Review Petition before the first respondent on 29.10.2013. This was examined by the second respondent and was rejected by an order dated 16.11.2018.

10. The petitioner then submitted a mercy petition dated 20.11.2018 to the first respondent. The first respondent had called for a report from the second respondent. It was again clarified that the encroachment was only in T.S.No. 9/1 Block No. 31 of Koyambedu Village and T.S.No.1, Block No.6



of Naduvankarai Village. Specific remarks were forwarded by the second respondent. The second respondent had stated that there was no procedural lapse or mala fide intention on the part of the petitioner. However, the Government rejected the mercy petition by G.O.(D).No. 223 dated 26.04.2023 which order is impugned in the present Writ Petition.

11. Heard the learned counsel for the petitioner and also the learned counsel appearing on behalf of the respondent Nos. 1 and 2.

12. The impugned order is G.O.(D).No. 223, Municipal Administration and Water Supply (ME.4) Department, dated 26.04.2023 . The petitioner was employed as Assistant Executive Engineer when he was issued with a charge memo on 02.02.2011. The entire charge memo related to a building permission granted by the petitioner on 18.01.1996 nearly 15 years prior to the date of the charge memo. Even prior to 18.01.1996, on 22.06.1995, the CMDA had granted planning permission with respect to the land at S.No. 136, T.S.No. 9, Block No. 29, Poonamallee High Road, Chennai.



13. It is contended that the petitioner had granted building permission to a different area and enabled encroachment of Government Poromboke land and also incidentally on the Coovam River. But however, the building had not actually been constructed. The entire issue arose from the grant of planning permission by the officials of the CMDA. With respect to those officials, specific remarks had been forwarded by the second respondent to the first respondent which were as follows:-

“Action on CMDA Officials:-

It is submitted that Departmental disciplinary action has not been taken against the following officials of CMDA since the limitation period of initiating disciplinary proceedings has crossed 4 years from the date of delinquency against the retired Officers.

1. *Tr.V.Ragunath, Deputy Planner, retired on 30.07.2008.*
2. *Tmt. R.Kamatchi, Chief Planner, retired on 29.02.2000*
3. *Tr.N.Dharmalingam, Chief Planner, 30.06.2001.*



In respect of Tr.T.V.Venkatesan, Assistant Planner AO-1 and Tr.K.M.Sivasubramanian, Planning Assistant, Grade-II AO-II was also permitted to retire from service. Since the building permission issued by the officer is based on the planning permission. On balance, the person issuing building permission should receive a lower punishment when compared to the person issuing the planning permission.”

14. It had also been stated by the second respondent as follows:-

“Building permission issued:-

Building permission was issued by Thiru.B.Sivasankar, then Assistant Engineer (now Executive Engineer) based on the available records on file and no procedural lapse or malafide intention could be deciphered. At the worst, it can only be considered that the building approval was issued 'per incuriam' ie., in ignorance of certain facts which were only brought to light post facto, only when the town maps were issued in the year 2000.”



15. The service records of the petitioner had been examined by the second respondent and he had offered the following remarks:-

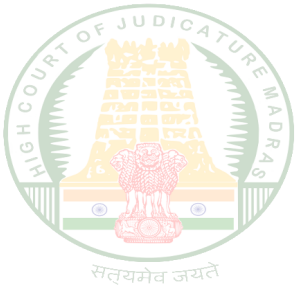
“Conduct of the official:-

As per the Conduct Certificate issued by Chief Engineer (General), the individual is ' highly disciplined, very sincere, hardworking, most obedient, honest, respectful, responsible and knowledgeable, his conduct and character are exemplary'.”

16. Finally, the second respondent had given his observation with respect to the entire issue as follows:-

“Specific Remarks:

On perusal of records, it is understood that what happened was a bonafide mistake. The individual has already undergone the punishment and his further promotion was delayed by 2 years in the cadre of Executive Engineer. He might get superannuated in 2026 before getting promoted as Superintending Engineer as he lost his seniority in the cadre of



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Executive Engineer. The mental agony suffered by the Officer is more than sufficient punishment in this case.

It is opined that the individual has undergone more punishment than he deserves, and hence his mercy petition may be considered.

The above mentioned fresh points are sent herewith to consider the mercy petition of Thiru.B.Sivasankar, Assistant Executive Engineer (now Executive Engineer)."

17. When the first respondent had called for specific remarks from the second respondent, it was incumbent on the part of the first respondent to give due weightage to the remarks of the second respondent. It is very clearly stated that disciplinary proceedings had not been initiated as against the officials of the CMDA, who had initially granted the planning permission. They had set the entire issue into motion. Three of them had retired and the limitation period of initiating disciplinary proceedings had crossed four years from the date of delinquency with respect to those, who were in service and the disciplinary proceedings were not initiated and they were permitted to retire.



WEB COPY 18. It had also been very specifically observed and found as a fact that the petitioner herein had granted building permission only because planning permission had been earlier granted by the officials of the CMDA. These facts should have been examined by the Government while considering a petition, which is termed as mercy petition. In effect, the mercy petition is a plea that any act done should be condoned if it is found it was not done with the mala fide intention. The second respondent had given very specific remarks that there was no malafide on the part of the petitioner herein.

19. A mercy petition should not be considered in the same manner as a revision of a quasi judicial order. It has to be examined whether there were material circumstances to consider whether mercy could be granted to the charged official. When examining the specific remarks of the second respondent, it is clear that there are more than sufficient circumstances to mitigate any charge which had been alleged against the petitioner herein. It is only therefore appropriate that the impugned order is set aside and the matter is remitted back to the second respondent to re-examine the entire



issue on the basis of the specific remarks offered by the second respondent.

If the said remarks are to be rejected, then the first respondent must have stated that in clear terms.

20. The Writ Petition stands allowed and the impugned order dated 26.04.2023 in G.O.(D).No. 223, Municipal Administration and Water Supply (ME.4) Department, dated 26.04.2023 is set aside. The matter is remitted back to the second respondent for fresh consideration. The first respondent if required and if is of such opinion, may issue notice to the petitioner and grant opportunity of being personal hearing. The first respondent may endeavour to dispose of the mercy petition afresh within a period of six weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition stands closed. No order as to costs.

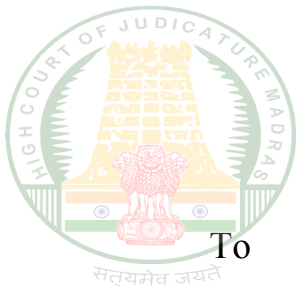
24.02.2025

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Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order



To

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Government of Tamil Nadu
Municipal Administration and Water Supply Department
Fort St. George
Chennai – 600 009.
2. The Commissioner
Greater Chennai Corporation
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C.V.KARTHIKEYAN, J.,

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