

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.11.2006

THE HONOURABLE MR.JUSTICE P.JYOTHIMANI

W.P.Nos.30703,30704,30705,
30106,30707 of 2006

and

W.P.M.P.Nos.33627 to 33631 &
18395 to 18399 of 2006

in

W.P.Nos.30703 to 30707 of 2006

W.V.M.P.Nos.1864 to 1865 of 2006

in

W.P.M.P.Nos.33627 to 33631

in

W.P.Nos.30703 to 30707 of 2006

G.Anand ... Petitioner

Vs.

1. The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai 5.

2. The Secretary to Government,
Revenue Department,
Secretariat, Chennai 9.

3. The Collector,
Erode District. ... Respondents

PRAYER: This Writ petition is filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records relating to the first respondent dated 21.06.2005, 2(2)40810/2004.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.D.Srinivasan, G.A.

COMMON ORDER

In all these cases, the petitioners who have served as Special Tahsildars Adi Dravidar Welfare in Kankeyam, Erode District and subsequently, transferred to various other places have been served with the impugned charge memo, calling upon the petitioners to submit explanations.

2. A reference to the impugned charge memo shows that in respect of acquisition of 0.99.5 hectares land in Re-Survey No.82/C1 for the construction of housing plots for Adi Dravidar Community people, the Special Tahsildar by his order dated 24.12.1992 has fixed the price of the lands per acre at Rs.8,400/-, since the owners have requested for enhanced amount of compensation, a reference was made by the Special Tahsildar, Kankeyam to the Sub-court, Darapuram under Section 18 of the Land Acquisition Act and in O.P.No.4 of 1993 an enhanced amount of Rs.15,000/- per acre was ordered. As per the order dated 04.03.1994, it is also stated in the impugned charge memo that even as against the said enhanced compensation, some of the owners have approached this Court by filing A.S.No.932 of 1995 and the matter is pending, in which, the notice in C.M.P.No. 7837 of 1997 was received 26.09.1995.

3. It is also stated in the impugned charge memo that in the said First Appeal, this Court in the final judgment dated 11.12.2003 has increased the compensation to Rs.30,000/- per acre. The charge against the petitioners is, that the petitioner in W.P.No.30703 of 2006 during his period as Special Tahsildar Adi Dravidar Welfare between 04.10.2002 to 17.08.2003, the petitioner in W.P.No.30704 of 2006 during his period as Special Tahsildar Adi Dravidar Welfare between 04.02.2002 to 09.04.2002, the petitioner in W.P.No.30705 of 2006 during his period as Special Tahsildar Adi Dravidar Welfare between 05.06.1997 to 05.03.1998, the petitioner in W.P.No.30706 of 2006 during his period as Special Tahsildar Adi Dravidar Welfare between 26.07.2001 to 30.11.2001 and the petitioner in W.P.No.30707 of 2006 during his period as Special Tahsildar Adi Dravidar Welfare between 10.04.2002 to 14.09.2002 have not taken proper steps in filing counter affidavit and not closely following the case by meeting the Government Advocate, in order to file a counter affidavit which resulted in a loss of Rs.1,25,101/- to the Government in respect of the payment of compensation.

4. The second charge in all these cases is that in respect of the land situated in Thalavaipuram Village in Survey No.329 to the extent of 2.72.0 Hectare, in spite of the fact that based on the Erode District Committee's decision an amount of Rs.12,09,600/- was paid to the owners like Mr.A.N.Eswaramoorthy and 3 others and documents got registered by the Government in document No.3531 dated 11.10.1995 and on the same date the amount having been paid to the owners and having taken possession, the said owners have approached the Civil Court by filing O.S.No.455 of 1996 in the District Munsif Court, Tharapuram and obtained an order on 09.09.1996 claiming common pathway in the said land in which the Government side remained Ex-parte and therefore, the charge against the petitioners is that the petitioners have not taken steps. The third and final charge in all these cases is that in respect of Kolathupalayam Village, in order to give free house sites to the most backward class washermen relating to Re-survey No.146/1 in respect of 0.92.0 Hectare of land, the compensation was fixed at Rs.18,307/- per acre by the order of the Special Tahsildar in respect of which the amount was enhanced to Rs.80,000/- per acre by the order dated 09.08.1995 in the case filed in O.P.No.07 of 1994, apart from 30% as solesum and interest of 12% from the date of the order in the Sub-Court, Tharapuram. The certified copy of the said order of the Sub-Court has been obtained for the purpose of appeal on 30.03.2000, the proposals were sent to the Director of Backward and Schedule Caste Department, which was returned and thereafter, an

appeal was filed in the High Court against the award. When a direction was issued to send copy of the number of the appeal along with the proposals for resubmission, the petitioners who have worked as Special Tahsildars Adi Dravidar Welfare during the above said relevant period have not taken steps and due to the said delay the Government had to pay at the rate of Rs.59.85 per day additionally.

5. In challenging the said charge memo issued against the petitioners, the present writ petitions are filed mainly on the ground of delay in initiating disciplinary proceedings namely that after a period of 10 years of the alleged incident, the disciplinary proceeding is initiated and also on the ground that during the time when the process of acquisition and payment of compensation was arrived at, the petitioners have not worked in the said place at all.

6. It is the specific case of the petitioners that none of the charges relating to the period of service rendered by the petitioners as a Special Tahsildars Adi Dravidar Community which fact is not disputed. While the acquisitions in respect of the said lands were taken in the year 1992 in respect of charge No.1, 1995 in respect of charge No.2, 1994 in respect of charge No.3, the petitioners who have worked in the respective areas as it is stated above namely between 04.10.2002 to 17.08.2003, 04.02.2002 to 09.04.2002, 05.06.1997 to 05.03.1998, 26.07.2001 to 30.11.2001 and 10.04.2002 to 14.09.2002, can never be implicated, by any stretch of imagination.

7. In any event, after they served in the said area as Special Tahsildar Adi Dravidar Welfare and subsequently, were transferred to various other places or promoted, after a period of more than 10 years from the date of incident, the present charge is leveled. Further, it is the case of the petitioners as submitted by the learned counsel for the petitioners that during the time of acquisition or proposal for payment compensation or the alleged date when an easmentary right on common passage was claimed by an erstwhile owner in a Civil Court, the petitioners have never worked in the said area at all and there was absolutely no chance for them to have either known about the said incident or to take any further action in that regard.

8. It is the further case of the petitioners as submitted by the learned counsel for the petitioners that admittedly in all those cases, by due process of law, there has been an enhanced compensation by the various Courts including the High Court and there was no chance for the petitioners at all to have either advised or followed the Government Advocates, especially when at the relevant point of time they were not in-charge of the said place and therefore, the petitioners cannot be charged to have committed any lapse by such of imagination. When the court proceedings have taken place in 1994 - 1995 by which time the petitioners have not been in charge of the said area, there was no question of the petitioners taking any steps and it can never be said that the petitioners have committed any lapse resulting in loss to the Government.

9. It is also the case of the petitioners that the petitioners have served for many years and awaiting for promotion for the next post, the charge memo is issued, which is basically illegal and by compelling the petitioners to undergo the process of meeting the charge which only deprives their rights of further promotion.

10. On the other hand, the respondents have filed the counter affidavit. The specific case of the respondents in the counter affidavit is that even though originally, the charges were framed against the petitioners under Rule 17(B) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, after consideration of the above issue, the Government has now decided and issued instructions to pursue action only under Rule 17(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and therefore, the pendency of the said charges will not deny the promotional avenues of the petitioners as Deputy Collectors and it is also stated that in respect of each of the petitioners,

subsequent proceedings have been issued, treating the charge as one under Rule 17(A) and directing to give explanation in respect of non filing of appeal at an appropriate time regarding the land acquisition proceedings. This fact was filed on behalf of the respondents in the additional counter affidavit.

11. However, in the original counter affidavit filed, the respondents have stated that in respect of the first charge ultimately, this Court had to increase the compensation to Rs.30,000/- and solatium was also directed to be paid. In the counter affidavit, it is seen that except saying that in respect of each of the charges, the Courts have increased the compensation, there is no specific statement as to whether at the relevant point of time of acquisition, the petitioners have been working in the said place or not, especially, in the circumstance that the charge also specifically states that the petitioners were working in the said area much afterwards and therefore, no reason has been given as to how the petitioners can be implicated, even assuming that the steps have not been taken for the purpose of filing appeal in time. This is relevant because, it is not even the case of the respondents that by non filing of appeal in time, the appeals have been decided against the Government. The counter affidavit which proceeds to state that the petitioners have not taken steps to file counter affidavit in the first appeal before this Court and it is not known as how far it is relevant, especially, when it is not even the case of the respondents that during the time when this Court has given the judgement in the appeal, the petitioners were holding the post. The respondents in the counter affidavit have only sought to explain about the facts, which are not forming part of the impugned charge memo.

12. In these circumstances, it is relevant to consider the nature of each of the charges and as to how it can be connected with the petitioners at least remotely. Even though, this Court is conscious that normally such exercise will not be done, which requires a factual assertion, in the context of the delay in initiating disciplinary proceedings, since it would certainly cause irremediable damage to such government servants in facing not only such charges but also the charges which are not at all relatable to the individuals. It is in that view of the matter I proceed to consider each of the charges in relation to the petitioners, taking into consideration, the period of service as I have enumerated above is an admitted facts.

13. As I have stated earlier, the crux of the charge No.1 is that the High Court has enhanced the land acquisition compensation to Rs.30,000/- which was originally fixed by the Special Tahsildars Adi Dravidar Welfare as Rs.8,400/- per acre. It is not in dispute that at the time when the original Tahsildar fixed the amount that was in 1992, the petitioners have never been in the said area but a reference to the charge shows that the Sub-Court has increased the compensation to Rs.15,000/- by judgement dated 04.03.1994. Admittedly based on the facts, which I have enumerated above, as it is admitted in the charges, none of the petitioners have served as Special Tahsildars Adi Dravidar Welfare in the year at the time when the Sub-Court has enhanced the compensation. Now, the High Court is stated to have sent a notice in C.M.P.No.7837 of 1995 on 26.09.1995 and ultimately, the High Court has decided the first appeal on 11.12.2003 by enhancing the compensation to Rs.30,000/-. It is stated in the charge memo in respect of each of the petitioners who were working in different periods in the said Mathavapalayam Village that they have not taken steps to file counter affidavit in the first appeal in A.S.No.932 of 1995 and that has resulted in the enhancement of compensation by the High Court.

14. It is not the case of the respondents, as if, the High Court judgement in A.S.No.932 of 1995 dated 11.12.2003 is an ex-parte judgement and the filing of the counter affidavit in land acquisition case before this Court in first appeals is not a legal requirement, even though, there is a duty on part of the petitioners to contact the Government Advocate and to give instructions. Therefore the said charge, on the face of it not only vague but also can never be stated to implicate the petitioners.

15. In respect of the second charge, wherein also when the compensation was paid to A.N.Eswaramoorthy and others as per the District Committee decision and sale deed was obtained on 13.10.1995 and admittedly, at that time none of the petitioners were working in the said village namely Thalavaipattinam Village. But the charge is that after taking possession from the said owners, when they have moved the Civil Court by filing the suit in O.S.No.455 of 1996 there was an ex-parte order against the Government on 04.12.1996 and therefore, that has resulted in a third party claiming an easmentary rights over the land which was already purchased by the Government for being allotted to the downtrodden people. It is seen that it was much after namely on 04.12.1996 the petitioners were posted in the said Village. It is startling to note that the petitioner in W.P.No.30703 of 2006 was working in the said Village between 04.10.2002 to 17.08.2003, the petitioner in W.P.No.30704 of 2006 was working in the said Village between 04.02.2002 to 09.04.2002, the petitioner in W.P.No.30705 of 2006 was working in the said Village between 05.06.1997 to 05.03.1998, the petitioner in W.P.No.30706 of 2006 was working in the said Village between 26.07.2001 to 30.11.2001 and the petitioner in W.P.No.30707 of 2006 was working in the said Village between 10.04.2002 to 14.09.2002 and taking the above said date which are admitted even in the charge memo, as to how the petitioners can be even remotely connected to the said allegation. In respect of the ex-parte decree stated to have been obtained on 04.12.1996 it is not known as to how the people who were posted after 1998, 2001, 2002 and 2003 can be made liable. There is absolutely no reason for the respondents to proceed against the petitioners on the charge which is not only vague but also prima facie baseless.

16. Likewise, in respect of the charge No.3 also regarding the non sending of proposal by the persons who have worked in the relevant period that is in 2000, it is not known as to how the petitioners who have not worked in the above said periods can be made liable. Therefore, on reference to the individual charges in the context of the individual writ petitioners on the factual situation which is not in dispute, I have no hesitation to come to the conclusion that the charges are not only baseless but also cannot even make the petitioners remotely liable. In any event the charges on the face of them are without material evidence and any explanation given to the said charges in the counter affidavit cannot add to the charges which are already on record.

17. As I have stated earlier the incident in respect of the charges have taken place certainly before 10 years from the date of issuance of the present charge memo. In these period of 10 years when the legal process in respect of land acquisition matters have been admittedly proceeded, the authorities have not chosen to raise their objections about the conduct of the petitioners or anybody else who have acted in the said place. Having waited for so many years, the present charge memo is issued. As rightly pointed out by the learned counsel for the petitioners, it is hit by the delay in issuing the charge memo, which is not explained. It is pertinent to note that even in the counter affidavit, there is no reply about the reason for the delay in issuing the charge memo.

18. Even though it can be stated that in respect of the first charge that only relating to the filing of the counter affidavit in the first appeal in the year 2003 and therefore, the delay cannot be attributed, as I have stated, there is absolutely no implication of the petitioners and by no such of imagination it can be said that the petitioners would have been involved. Apart from the fact that in the absence of any particulars, after passage of many years, it is not possible for the delinquent to reply effectively for the purpose of enforcing his right of defense in an effective manner.

19. I am fortified by the hierarchy of judgements in this regard. A Division Bench of this Court by Hon^{ble} Justice P.Sadhasivam, and S.K.Krishnan in A.Abdula Vs. State of Tamil Nadu Rep.by its Secretary to Government, Home Department and another reported in 2005(5) CTC 380 following the principle laid down by the Hon^{ble} Apex Court in P.V.Mahadevan Vs. Md. Tamil Nadu Housing Board reported in 2005(4) CTC 403 held that the inordinate delay in initiating the departmental

proceeding will cause more prejudice to the delinquent than the punishment itself, and quashed the charge memo in that case. The Hon^{ble} Division Bench while quoting the judgement of the Hon^{ble} Apex Court has held as follows:

"14. In recent judgement in the case of P.V.Mahadevan Vs. Md.T.N. Housing Board, 2005(4) CTC 403: 2005 SCC (L&S) 861, the Supreme Court after finding that there is inordinate delay of 10 years in initiating the departmental enquiry against the appellant P.V.Mahadevan, in the absence of explanation from his employer - Tamil Nadu Housing Board, concluded that allowing the Housing Board to proceed with the departmental proceedings at this distance of time would be very prejudicial to the appellant and consequently quashed the charge memo issued against him. While arriving such a conclusion, Their Lordships made a reference to State of U.P. Vs.N.Radhakrishnan, 1998(4) SCC 154 (cited supra). After considering the factual details and rival contentions, the Supreme Court has concluded that: (Para 11)

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

After holding so, the Supreme Court quashed the charge memo issued against the appellant and also directed settlement of all retiral benefits in accordance with law within 3 months from the date of order."

20. The very fact that in the additional counter affidavit filed by the respondents in which it is admitted that the Government itself after considering the facts and circumstances has decided to convert the charge from 17(B) to that of 17(A) shows the lethargic attitude with which the charges are framed against the petitioners. Simply because the conversion of charge from 17(B) to 17(A) will not disentitle the petitioners to further promotions, that may not in any way validate the charges which are otherwise hit by the inordinate delay, vagueness and prima facie unsustainable nature.

21. In view of the above said facts, these writ petitions stand allow and the impugned charge memos against the petitioners are quashed. No Costs. Consequently, connected W.P.M.P. is closed.

To

1. The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai 5.

2. The Secretary to Government,
Revenue Department,
Secretariat, Chennai 9.

3. The Collector,
Erode District.