

(2014) 11 MAD CK 0551

**Madras High Court****Case No:** Writ Petition No. 28585 of 2004, W.P.M.P. No. 34707 of 2004 and W.V.M.P. No. 88 of 2008

T. Padmanabhan

APPELLANT

Vs

The Special Commissioner

RESPONDENT

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**Date of Decision:** Nov. 14, 2014**Acts Referred:**

- Constitution of India, 1950 - Article 14, 21

**Hon'ble Judges:** C.S. Karnan, J**Bench:** Single Bench

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**Judgement**

@JUDGMENTTAG-ORDER

C.S. Karnan, J.

The petitioner joined the service as Section Writer in the Survey Department on 03.12.1984 under the control of the Assistant Director, Survey and Settlement. He was absorbed as Surveyor on consolidated basis on 27.10.1989. His service was regularized on 22.08.1997 in the cadre of the Junior Assistant. The petitioner was promoted as an Assistant on 30.06.2003 and has been serving in the respondent Department without any remarks. The petitioner is serving in the office of the Director of Survey and Settlement. During the year 2001, the petitioner was working as Junior Assistant in the office of the Special Commissioner of Survey and Settlement. The Mandiragiri Velayudhaswamy Temple, Palladam previously owned vast extent of land. The Village was taken over under the Inam Abolition Act 30 of 1963 and parties were granted pattas after conducting an enquiry. The Settlement Tahsildar in his proceedings SR No. 664/68, dated 21.08.1968 granted patta for an extent of 5.57 acres and 4.62 acres comprised in S.No. 232/1 and 234/1 in favour of Venkatachala Gounder and others under Section 8(2)(1)(b) of the Act 30 of 1963. The Tahsildar has granted patta to an extent of 28 acres 40 cents comprised in S.Nos. 232/2 and 234/2 in favour of Mandiragiri Velayudhaswamy Temple located at Parameswarampalayam, represented by its Poojari, Subramania Gurukul. The above

said order has become final as early as in the year 1968. But subsequently Palaniswamy and 12 others filed C.M.A.No. 30 of 2000 before the Inam Abolition Tribunal, Coimbatore challenging the said order dated 21.08.1968 on the ground that the Settlement Tahsildar did not consider the claims of the appellant in respect of Survey No. 232/2 and 234/2 and prayed for fresh enquiry in accordance with law. The petitioner who was serving as a Junior Assistant in the respondent office has not sent any communication addressing any authority with reference to that case.

2. The petitioner has submitted that the Inam Abolition Tribunal held that no opportunity was given to the appellants to put-forth their contention before the Settlement Enquiry and by an order dated 18.11.2002, the Tribunal was pleased to set-aside the order dated 21.08.1968 and remanded the matter to the Assistant Settlement Officer to conduct an enquiry afresh and pass orders in accordance with law. Subsequently, the Assistant Settlement Officer (South), Chennai-5 who was holding the post of Settlement Tahsildar due to the abolition post issued notice to the parties, conducted an enquiry and granted patta in favour of Rasappa Gounder and 20 others in Survey Nos. 232/2 and 234/2. In the enquiry, on the side of the claimant, one Rasappa Gounder was examined and on the side of the temple, the Trustee, the Village Administrative Officer, Nallur and the Tahsildar, Tiruppur was examined and the objection raised by the temple was negated and the claimants were directed to pay the land assessment tax (20 times) and grant of patta for their possession and enjoyment under Section 11 Sub-Section 8(2)(1)(b) of the Act 30 of 1963 was ordered.

3. The petitioner further submits that against the grant of patta, the temple has filed a writ petition before the High Court, Madras in W.P.No. 21360 of 2003 and initially this Court granted stay, but subsequently, the stay was vacated. It is submitted that when the order was passed by the statutory authority, viz., the Assistant Settlement Officer (South), Chennai, the petitioner, during that relevant time, was promoted as Assistant and serving in a different seat and he was not in charge of the files. Hence, the petitioner cannot be blamed that he has colluded with any party in order to grant pattas in favour of the parties. The petitioner was served with a charge memo as early as 28.03.2008 under Rule 17(b) of the TNCS (D&A) Rules containing 3 charges stating that he was responsible for granting of patta to an extent of 28.40 acres in favour of Palaniswamy and others. The petitioner further submits that when the statutory authority passes an order based on the records and oral evidence, the only course open to the aggrieved parties is to prefer an appeal in the appellate forum and no motive can be attributed in favour of the Government officials who work under them. The petitioner as a Junior Assistant in the office has not given any instructions to the Government regarding the nature of the land, etc and did not favour grant of patta in favour of any of the parties. The Assistant Settlement Officer (South), Chennai has considered all the relevant facts and has come to the conclusion that the claimants are entitled for grant of patta. It is also submitted that the Assistant Settlement Officer who passed the order has been allowed to retire

from service and have not been proceeded against in the disciplinary proceedings. According to Section 47(2), (3) and (4) of the Minor Inam Act 30 of 1963, any order passed under the Act cannot be challenged in the civil Court and no civil, criminal or any other proceedings can be initiated for any act done under this act. There was no allegation against the petitioner that he has helped the claimants to get the patta. Moreover, when the Inam Abolition Tribunal heard the matter, the petitioner was not serving in the section which deals with the grant of patta.

4. The petitioner further submits that he was served with an additional charge memo on 03.09.2003 containing 2 more charges. The petitioner submitted a detailed explanation for the charges issued to him immediately thereafter. An enquiry was conducted by the P.A. to the Director of Survey and Land Records Department and the enquiry officer held that all the 8 charges framed against him have not been proved and submitted a report to the Disciplinary Authority. The Department instead of dropping the charges against the petitioner had issued another charge memo modifying the earlier charge memo from 17(b) to 17(a) by an order dated 03.06.2004 and directed the petitioner to submit an explanation for the charges. The petitioner submitted a detailed explanation for the charge memo issued to him under Rule 17(1) of TNCS (D&A) Rules. Now again, after an enquiry was conducted and after a finding has been recorded holding that the charges have not been proved, the petitioner has been issued with a charge memo again under Rule 17(b) of the TNCS Rules by the respondent in Na.Ka.No. A1/4514/03, dated 28.07.2004 for the same set of allegations and he has been directed to submit the explanation.

5. The petitioner further submits that proceeding against him, when he has been issued with a charge memo and a finding has been recorded, modification of charge memo from Rule 17(a) to 17(b) based on the findings, is unsustainable. The petitioner cannot be proceeded against twice for the same set of allegations when there is "no evidence" report with regard to the alleged delinquency which amounts to double jeopardy. Moreover, the petitioner was not in charge of the seat (I-1) when patta was granted by the Assistant Settlement Officer to the individuals. The petitioner was serving in the office and during that relevant time when he was discussing with the Assistant Settlement Officer regarding the establishment rules, he was comparing an order and he has requested him to assist him to correct some of the papers along with him and as a subordinate he has helped him to compare some orders. Hence, the petitioner cannot be held responsible if patta has been granted in favour of the third parties on merit by the Assistant Settlement officer (South). The petitioner further submits that when he has already been issued with a charge memo and an enquiry has been conducted and a findings has been recorded for the same set of allegations, he cannot be issued with another charge memo after a lapse of one year for the same set of allegations. Hence, the petitioner has filed the above writ petition to quash the impugned charge memo.

6. The respondent has filed a counter affidavit and resisted the writ petition. The respondent submits that the Village Nallur in Palladam Taluk of Coimbatore District was taken over under the provisions of the Tamil Nadu Minor Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963. (Tamil Nadu Act 30/1963) and Ryotwari Settlement was introduced. During the course of introduction of Ryotwari Settlement, the then Settlement Tahsildar, Gobichettipalayam in his S.R.664/68/MI Act / Palladam Taluk, dated 21.08.1968 ordered to register the land in S.No. 232/2 (16.56 acres) and 234/2 (11.82 acres) totally 28.40 acres in the name of the deity Sri Manthiragiri Velayudhaswami Temple. These lands, covered by Title deed 1388, were classified as dry. The income derived from the land was used for temple maintenance. After a lapse of 33 years, one Thiru Palanisamy and 11 others filed an appeal before Inam Abolition Tribunal Coimbatore in I.A.No. 30/2001 against the orders of the Settlement Tahsildar, Gobichettipalayam. Admitting the appeal, the Inam Abolition Tribunal, Coimbatore in its orders pronounced in I.A.No. 30/2001 dated 18.11.2002 remanded the case to lower Court, viz., Assistant Settlement Officer (South), Chennai for denova enquiry. As a major flaw in the light of Limitation Act applicable to civil Courts, the remand order among other things do not contemplate the delay in filing this case and the Court did not condone the delay before admitting it.

7. The Assistant Settlement Officer (South), Chennai-5 took up the remanded case on his file and passed orders in S.R.6/2002 on 18.03.2003 granting ryotwari patta for the lands in question to the claimants without examining the legal aspects involved in this case. The Assistant Settlement Officer (South) is a quasi-judicial authority and his decision of granting patta should be on his own. In this case, the petitioner herein has misled the Assistant Settlement Officer (South) by writing a note on the above file recommending to grant patta to the applicants of the Inam Abolition Tribunal case. While going through the case file S.R.6/2002 of Assistant Settlement Officer (South), the above lapses were noticed. Hence, it was decided to take disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules against all the delinquencies responsible for the wrong issue of pattas. As a result Disciplinary Proceedings was initiated against the petitioner herein who worked in the concerned section as Assistant. Further, the petitioner herein has filled up the omissions in the Statutory Order after his transfer from the concerned seat. In a Disciplinary Proceedings under rule 17(b) of the issuance of charge memo is preliminary and only at the end of the procedure, the final decision either dropping of charges or awarding punishment will be taken. The respondent further submits that orders were passed only in good faith in the course of execution of the duties of the discharge of the functions imposed by order under the Act 30/63 will alone deserve the protection of Section 47 and sub clauses thereunder of the Act 30/63. Whether the petitioner deserves the protection of Section 47 will be decided only at the time of completion of Disciplinary Proceedings initiated against him. Therefore, the contention of the petitioner has no merit at this point of time.

8. The respondent further submits that the Enquiry Officer's report is not final in a Disciplinary Proceedings. As the report of the Enquiry Officer was not satisfactory, revised charge memo has been framed under Rule 17(b) in this case. This would not mean that the allegations had been finalized as contended by the petitioner. The petitioner has to prove his integrity before the disciplinary authority. The respondent further submits that Assistant Settlement Officer (South), Superintendent Thiru.R.Ganesh Singh and the writ petitioner herein have violated the procedure of conducting the quasi-judicial enquiry and by misleading the officer in recommending grant of patta, were held responsible for illegal act. In view of their mischief and misbehaviour, charges under Rule 17(b) has been framed. Hence, the contentions of the writ petitioner that the disciplinary proceedings is without jurisdiction is not sustainable. The respondent further submits that an action has already been initiated against the concerned Assistant Settlement Officer (south) by the Government (Public Department) / Special Commissioner and Commissioner of Revenue Administration, Chennai-5 who is the disciplinary authority for District Revenue Officers under Tamil Nadu Pension Rules though he was permitted to retire from service on superannuation. Besides, issuing charge memo under Rule 17(a) or 17(b) is preliminary in a Disciplinary Procedure. The Enquiry Officer's report is not a final decision in a Disciplinary Procedure. In this case of this petitioner, there were no lapses in revising the charge memo from rule 17(a) to 17(b). The issue of fresh charge memo under Rule 17(b) is in order considering the veracity of the charges. The petitioner has to explain his case to prove his integrity before the Disciplinary Authority. Hence, the allegation of the petitioner is not correct. The respondent further submits that the petitioner and the quasi-judicial authority, viz., Assistant Settlement Officer (south) loses the protection of this section 47 and subsections thereunder of the Tamil Nadu Minor Inam (Abolition and Conversion into Ryotwari) Act 1963 (Tamil Nadu Act 30/63) as the quasi judicial orders was not in order. It is open to the petitioner to prove his integrity and innocence before the Disciplinary Authority on this point. The respondent further submits that without giving valid explanation to the charges, the petitioner sought the remedy of this Court. The petitioner is not above suspicion and immune to Disciplinary Proceedings. Issue of charge memo on the basis of available evidence and imputations pointed out are not final. The petitioner has an opportunity to explain his case. Hence, the respondent entreats the Court to dismiss the above writ petition.

9. The highly competent senior counsel, Mr.K.Venkataramani appearing for the petitioner submits that the respondent has conducted domestic enquiry after issuing charge memo against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. After comprehensive enquiry, the allegation that the petitioner misused his official power and granted patta in favour of third parties has not been proved. Thereafter, as an afterthought, the respondent had issued another charge memo under Rule 17(a) TNCS (D&A) Rules. To that effect, the

petitioner has submitted his explanation. Once again, the petitioner was issued another charge memo for the same set of acts, which is against the principles of natural justice. The petitioner's official position was Assistant in the office of the respondent and he has not given any instructions to the Assistant Settlement Officer or Inam Abolition Tribunal regarding grant of patta in favour of third parties. If any error is committed by the Assistant Settlement Officer, South, Chennai and Inam Abolition Tribunal, these erroneous views have to be rectified by way of further appeal or revision. The petitioner has no nexus or having any power for granting patta of the land. Further, the Assistant Settlement Officer and Inam Abolition Tribunal had not decided the matter regarding grant of patta on the basis of any oral evidence. Both the authorities have passed orders after scrutinizing the relevant records maintained by the concerned Departments. Under the circumstances, the petitioner / innocent person was served three charge memos and the impugned order was passed which is violative of Articles 14 and 21 of Constitution of India. The Assistant Settlement Officer, who granted patta in favour of the third parties, was permitted to retire after completing his qualifying service i.e., superannuation. As such, the petitioner is also entitled to be discharged from the charge memos.

10. The highly competent senior counsel appearing for the petitioner further submits that the respondent had not initiated any disciplinary proceedings against the Assistant Settlement Officer, who had granted patta to the claimants. The petitioner herein has no power to pass any order for granting patta. Therefore, the innocent petitioner should be discharged from the allegations which have been levelled by the respondents by way of memos.

11. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondent submits that the Village Nallur in Coimbatore District was taken over under the provisions of Tamil Nadu Minor Inam Estates Act. During the course of introduction of Ryotwari Settlement, the then Settlement Tahsildar, Gobichettipalayam had ordered to register the land in S.F.Nos. 232/2 and 234/2 in total an extent of 28.40 acres in the name of Mandiragiri Velayudhaswamy Temple. After a lapse of 33 years, one Palaniswamy and 11 others filed an appeal before Inam Abolition Tribunal, Coimbatore against the order of the Settlement Tahsildar, Gobichettipalayam, dated 21.08.1968. The Tribunal had remanded the case / appeal to the Assistant Settlement Officer, South, Chennai for further enquiry. In turn, the Settlement Officer, South had conducted enquiry and granted Ryotwari Patta to the claimants without considering the legal aspects involved in this case. In this case, the petitioner has misled the Assistant Settlement Officer, South by writing a note on the above file recommending to grant patta to the applicants of the Inam Abolition Tribunal case. As such, the Assistant Settlement Officer had committed lapses on the basis of petitioner's misguidance. Therefore, the petitioner is also equally responsible for taking an erroneous view. Further, the charge memo issued to the petitioner is for a detailed enquiry and under the circumstances the above

writ petition is not maintainable and this Court should not prevent the respondent to proceed with the Disciplinary Enquiry against the petitioner in order to determine the veracity of the case. As such, the writ petition filed by the petitioner has been filed at a premature stage. The erroneous view has been taken by the Assistant Settlement Officer on the basis of false representation made by the petitioner out of the official records. Therefore, the petitioner is liable to be punished under Rule 17(a) or 17(b) of the Disciplinary Proceedings. Hence, the highly competent Additional Government Pleader entreats the Court to dismiss the above writ petition.

12. From the above discussions, this Court is of the view that:-

(i) the writ petitioner's official position is Assistant in the office of the respondent. Further, the respondent has not disclosed the form of misguidance made by the petitioner to the Assistant Settlement Officer. Besides, the Assistant Settlement Officer had decided the patta proceedings on the basis of documentary proof. Further, the Assistant Settlement Officer had completed qualifying service period i.e., reached the age of superannuation and he was permitted to go on retirement and no disciplinary proceedings were initiated against him.

(ii) The petitioner has no power to issue patta to the third parties in an erroneous way. For issuing patta, the authorities concerned are solely responsible. In this case, there is no specific complaint from the Assistant Settlement Officer stating that the petitioner has misled him for granting patta in favour of third parties. In the absence of specific complaint from the particular officer, the respondent has suo moto issued charge memos one after another which runs against the principles of natural justice.

13. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and the views listed as (i) and (ii) above, this Court is inclined to allow the above writ petition. Accordingly, the writ petition is allowed. Consequently, the impugned charge memo issued by the respondent in Na.Ka.No. A1/4514/2003, dated 28.07.2004 is quashed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.