

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS 836, 837 & 838/2015

DISTRICT : PUNE

1) ORIGINAL APPLICATION NO 836 OF 2015

Shri Anil Pandurang Kamble,)
Occ : Deputy Director, VJNT,)
Social Welfare [now under suspension])
Having office at 3, Church Road,)
Pune-1, R/o: 717, Laxmichandra Apt.)
Kumathekar Marg, Sadashiv Peth.)
Pune - 30.)
Add for service of notice)
R/o: 717, Laxmichandra Apt.)
Kumathekar Marg, Sadashiv Peth.)
Pune - 30)...Applicant

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Social Justice and Special)
Assistant Department, Mantralaya,)
Mumbai 400 032.)

1. The Commissioner,)
 Social Welfare, having office at)
 3, Church Road, Pune-1.)...**Respondents**

2) ORIGINAL APPLICATION NO 837 OF 2015

Smt Manisna Devendra Pule,)
 Occ : District Social Welfare Officer,)
 Class-I, [now under suspension])
 Having office at Dr Babasaheb Ambedkar)
 Samajik Nyaya Bhavan, Saat Rasta,)
 Solapur.)
 R/o: Sobasavera Apartment, Bibwewadi,)
 Pune-37)
 Add for service of notice:)
 R/o: Sobasavera Apartment, Bibwewadi,)
 Pune-37.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Principal Secretary,)
 Social Justice and Special)
 Assistant Department, Mantralaya,)
 Mumbai 400 032.)
 2. The Commissioner,)
 Social Welfare, having office at)
 3, Church Road, Pune-1.)...**Respondents**

3) ORIGINAL APPLICATION NO 838 OF 2015

Shri Sanjay Vishwas Pawar,)
 Occ : District Social Welfare Inspector,)
 Class-III, [now under suspension])
 Having office at Assistant Commissioner)
 Social Welfare, Satara.)
 R/o: Shabari Apts, Ganesh Nagar.)
 5th Lane, Sangli.)
 Add for service of notice:)
 R/o: Shabari Apts, Ganesh Nagar.)
 5th Lane, Sangli.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through Principal Secretary,)
 Social Justice and Special)
 Assistant Department, Mantralaya.)
 Mumbai 400 032.)
 2. The Commissioner,)
 Social Welfare, having office at)
 3, Church Road, Pune-1.)...**Respondents**

Shri A.V Bandiwadekar, learned advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 03.02.2016

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. These Original Applications have been heard together and are being disposed of by a common order as the issues under consideration are similar.

3. The Applicants in these O.As have challenged the orders dated 18.9.2015 (separate orders in each case), suspending them from service, pending Departmental Enquiries (D.Es) against them.

4. Learned Counsel for the Applicants argued that all the Applicants have been placed under suspension for actions taken by them in purchasing private lands in Islampur and Shirala, Dist-Sangli when the Applicant in O.A no 836/2015 was working as Regional Deputy Commissioner of Social Welfare, Pune, while the Applicants in O.A no 837/2015 working as Assistant Commissioner, Social Welfare Sangli and the Applicant in O.A no 838/2015 was working as Social

Welfare Inspector at Sangli. Learned Counsel for the Applicants argued that the Respondent no. 1, i.e. the State Government has taken a policy decision that private lands can be purchased for, inter alia, Government Hostels for S.C Boys & Girls, where suitable Government lands were not available. A G.R dated 12.3.2012 was issued enunciating the above policy. For rural areas (Gram Panchayat areas) and Class 'B' and 'C' Municipal Council areas, the land could be purchased by a Committee at Divisional level, headed by Regional Deputy Commissioner, Social Welfare, subject to certain conditions. There was provision of a State Level Committee also, but that is not relevant in the present case. A Government Hostel for 75 boys was being run at Shirala, Dist-Sangli in rented premises. As no suitable Government land was available, it was decided to purchase private land to construct a Hostel. The meeting of Divisional Committee was held on 21.12.2010, 14.9.2012, 28.11.2012 and 21.12.2012. The Committee decided to purchase 69.48 Guntha land at Shirala at the cost of Rs. 1,08,22,882/- This price was 35% above the price of lands in the vicinity at the rate of Rs. 1,15,685/- per Guntha. Learned Counsel for the Applicants argued that the Divisional Committee had senior officers like Joint Registrar, Registration, Sangli and District Superintendent of Land Records, Sangli as its members. The price was fixed by the Committee. An order dated 7.1.2013 was passed by the Applicant in O.A no

836/2015 on 7.1.2013 copies of which were submitted to the Respondents no 1 & 2. A proposal was then sent on 22.2.2013 to the Respondent no. 2 to place the necessary funds at the disposal of the Applicant in O.A no 836/2015. The Respondent no. 2 sanctioned funds by order dated 26.3.2013 for purchase of this land. For the land for Government Boy's Hostel, and Government Girls Hostel at Islampur, the Divisional Committee met on 13.6.2013 and decided to purchase 121 Guntha land at the rate of Rs. 4,69,004/- per Guntha, which was the average price of land in the vicinity and 25% more, i.e. at the rate of Rs. 5,86,000/- per Guntha at a total cost of Rs. 7,09,06,000/-. An order dated 23.7.2013 was passed by the Respondent no. 1 in O.A no 836/2015 sanctioning this transaction. Learned Counsel for the Applicants stated that the Respondent no. 2 passed an order on 17.8.2013 sanctioning the amount for purchase of these lands at Islampur. Learned Counsel for the Applicants argued that both the transactions were found to be in order by the Respondent no. 2. Learned Counsel for the Applicants argued that after the Applicant in O.A no 836/2015 was transferred from the post of Deputy Commissioner of Social Welfare, Pune, his successor Shri S.B Bhandare, sent a report to the Respondent no. 2 on 8.12.2014 that there were financial illegalities committed by the Divisional Committee in purchase of lands at Shirala and Islampur. The Respondent no. 2 sent two reports to the Respondent no. 1 on 31.12.2014 and

20.1.2015 recommending initiating departmental enquiries against the Applicants. The Respondent no. 1 set up a 3 member Committee by order dated 22.5.2015 to determine loss to the Government due to these transactions. The Committee was asked to submit report within a month. It is not known whether any report was submitted by this Committee. However, by order dated 19.8.2015, another Committee was set up, but without waiting for the report of the Committee, impugned orders were issued by the Respondents. Learned Counsel for the Applicants argued that the Applicants have acted strictly and in accordance with the provisions of G.R dated 12.3.2012 and the action of the Divisional Purchase Committees to purchase private land at Shirala and Islampur was endorsed by the Respondent no. 2, who released funds to purchase the said lands. Shri S.B Bhandare, who had personal enmity with the Applicant in O.A no 836/2015, sent reports to the Respondent no. 1 against the Applicant without verifying facts and the Respondent no. 1 also, without waiting for reports of two Committee passed impugned orders. The impugned orders therefore, deserved to be quashed and set aside.

5. Learned Counsel for the Applicants contended that Government has issued a G.R on 14.10.2011 regarding suspension cases. As per para 7A of the said G.R, the cases of Government servants, who are placed under suspension, in view of D.E being contemplated.

against them, should be reviewed after 3 months of suspension. The Applicants were suspended by orders dated 18.9.2015. No D.Es have yet been started against him. However, their cases have not been reviewed with a view to reinstating them in service. Learned Counsel for the Applicants relied on the judgment of Hon'ble Andhra Pradesh High Court in the case of Rajender Vs. Union of India & Another reported in 2001 (3) SLR 749 (A.P).

C. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Respondent no. 2 had submitted a report to the Respondent no. 1 on 31.12.2014, wherein it was mentioned that the Applicants had purchased land for Government Hostel at Islampur, Dist-Sangli at the rate of Rs. 4438/- per se. meres, while just 5 months ago, the same land was purchased at Rs. 302/- per sq. metres. The sale transaction 8 months prior to the Committee purchasing land at Rs. 7,09,06,000 was just for Rs. 48,40,000/- for the same land. Similarly, in the purchase of land at Shirala, the provisions of G.R dated 12.3.2012 regarding determining the price of private land were not followed. The Committee was required to consider the sale purchase transactions of lands in the vicinity in the last five years. However, the Applicants considered only one or two transactions and decided the rates, which are highly inflated. Learned Presenting Officer argued that the issue involved huge loss caused by the Applicants to

the Government and therefore, they have been placed under suspension in contemplation of D.E against them. As regards the decision to appoint a Committee to scrutinize the transaction, by order dated 22.5.2015, a Committee was indeed appointed. However, before the said Committee could submit its report, one of the members was transferred and another was trapped by the Anti Corruption Bureau (ACB). The new Committee which was appointed as per order dated 19.8.2015, had not submitted report. However, the Respondent no. 1, decided to place the Applicants under suspension, as there was prima facie material to show serious financial illegality committed by them in the report of the Respondent no. 2 and it was necessary to inquire into the conduct of the Applicants. Learned Presenting Officer argued that the suspension orders by no stretch of imagination be called arbitrary or malafide. There is prima facie material against the Applicants, and therefore, they have been placed under suspension pending D.E. Learned Presenting Officer stated that the Applicant has made some allegations against his successor Shri S.B Bhandare. However, he has not been made a party. Accordingly, such allegations, at best, can be ignored. Learned Presenting Officer argued that the Applicants have been placed under suspension under Rule 4 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. There is a remedy of Appeal provided in the rules, to which the Applicants have not

taken recourse. As such this Original Application is premature. Even on merits, no case has been out which will necessitate interference by this Tribunal.

7. The Applicants have been placed under suspension by separate orders, all dated 18.9.2015. However, all the three of the Applicants were involved in decision to purchase lands at Shirala and Islampur in Sangli district for which orders were issued by the Applicant in O.A no 836/2015 on 22.2.2013 (Shirala land) and 23.7.2013 (Islampur land) respectively. Other Applicants had participated in the meetings of the Divisional Committee, which had powers to purchase private lands, inter alia, for Government Hostels, where Government lands are not available. The procedure for purchase of these lands is given in G.R dated 12.3.2012. The claim of the Applicants is that they have issued orders for purchase of private lands strictly adhering to the provisions of the aforesaid G.R. The Respondents have stated that the Applicants have purchased lands in violation of provisions of this G.R and at exorbitant rates, thus causing considerable financial loss to the Government.

8. In the preamble to G.R dated 12.3.2012, it is stated that already, there were Committees headed by Collector to purchase private lands in each district. The

Committee has to take the following facts into account viz:-

- (i) Last 5 years sales/purchase transaction of land in the vicinity of the land to be purchased and the rates as per Ready Reckoner.
- (ii) If the land owner was not ready to accept the above rates, the Committee could increase the rates by 20%.

If it becomes necessary to purchase land at a price in excess of 20% ,the Committee at Divisional level has powers to purchase land up to 40 in excess of the maximum rate as per sale purchase prices of last 5 years for the land in vicinity or the ready reckoner rates, whichever is higher as per G.R dated 12.3.2012. From Exhibit 'D' (page 41 of the Paper Book), it appears that there is no mention of Ready Reckoner Rate for the land at Shirala while deciding to purchase private land at Shirala by the Divisional Committee. The rate of land for only one transaction by Shri Nirankari Mandal, Delhi has been mentioned. It is, therefore, an open question whether provisions of G.R have been fully complied with. In the last part of the note, condition no. 6(b) of the purchase of private land, the following is mentioned:-

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... ब):- जमिन खरेदी बाबतचा शासन निषय दि.१२/०२/२०१२ अन्वये समितीची कार्यकक्षा व अधिकार नमूद केले आहेत. त्यामध्ये अ-वर्ग नगरपालिका, व महानगरपालिकेच्या हद्दीतील खाजगी जमिन खरेदी करावयाच्या जमिनीच्या कक्षाचे अधिकार सचिव सामाजिक न्याय विभाग, मंत्रालय, मुंबई यांना आहेत. सबब सदरचा प्रस्ताव त्यांचेकडे पाठविण्यास सर्वांनुमते मंजुरी देण्यात आली.”

This note is signed by the Applicants in O.A no 836/2015 and 837/2015. However, the Applicant has not placed any material on record to show that the proposal was sent for approval of the Respondent no. 1. The order sanctioning purchase of Shirala land dated 7.1.2013 also does not mention any sanction from the Respondent no. 1. As regards the land at Islampur, the minutes of the meeting of the Divisional Committee dated 13.6.2013 are placed by the Applicant at Exhibit 'G' (page 50 of the Paper Book). In these minutes also, though it is mentioned that ready reckoner rates have been obtained, but the same have not been mentioned. The rates of the sale-purchase of lands for last 5 years have not been mentioned, only two transactions are mentioned. The Respondents have mentioned that just 8 months back, the same land was purchased by the present sellers at Rs. 48,40,000/- while Government was asked to pay Rs. 7,09,06,000/- for the same land. It cannot be said that in the face of such facts, no enquiry is necessary. There is prima facie material, which will justify action against the Applicants.

9. Learned Advocate had stated that the Respondents suspended the Applicants without waiting for the reports of the Inquiry Committee appointed by orders dated 22.5.2015 and 19.8.2015. It is explained by learned Presenting Officer, that the Committee appointed by order dated 22.5.2013 had to be reconstituted as one person was transferred and another was trapped by A.C.B. In any case, the Government had decided to take action against the Applicants, considering the report of the Respondent no. 2 against the Applicants and the gravity of the charges against them. It was decided not to wait for the report of the Committee before passing impugned orders. The clarification given by the Respondents appear to be satisfactory as the Applicants have been placed under suspension pending D.E/D.Es against them. They will be given full opportunity to defend themselves.

10. Applicants have relied on the case of *T. RAJENDER (supra)* where Hon'ble Andhra Pradesh High Court has held that it is expected that the competent authority will apply its mind before passing order of suspension. The public interest as well as relevant facts and circumstances will also have to be considered as to how far and to what extent the public interest may suffer if the delinquent officer is not placed under suspension. In the present case, it cannot be said that the Respondent no. 1 has not applied mind while passing the

impugned orders. There is enough prima facie material on record. Considering the gravity of charges against the Applicants, there is scope to hold that facts and circumstances are such that suspension was in public interest.

11. Hon'ble Supreme Court has held in the case of **ALLAHABAD BANK & ANR Vs. DEEPAK KUMAR BHOLA (1997) 4 SCC 1** that:-

"It would be indeed conceivable that a bank would allow an employee to continue to remain on duty when he is facing serious charges of corruption and misappropriation of money. Allowing such an employee to remain in the seat would result in giving him further opportunity to indulge in the acts for which he was been prosecuted."

In the present case, it has not yet been decided to prosecute the Applicants as stated by the Respondents in their affidavit in reply. However, Departmental Enquiries are contemplated against them. Charges appears to be serious. The Applicants have been suspended less than 5 months back. No case has been made out to quash the impugned orders.

12. The Applicants have relied on G.R dated 14.10.2011. It is, however, not mentioned in the O.As whether any representations to review their suspension cases under this G.R have been made before the competent authority. In case, no review has been done, the Respondents may do so in terms of para 7(a) of the aforesaid G.R, within a period of one month from the date of this order. This relief was, however, not sought in the Original Application.

13. Having regard to the aforesaid facts and circumstances of the case, these Original Applications are dismissed with no order as to costs.

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 03.02.2016
Dictation taken by : A.K. Nair.