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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13th February, 2025
Date of Decision: 28th February, 2025

+ W.P.(C) 568/2019, CM APPLs. 2563/2019 & 10550/2023

GOVT. OF NCT DELHI AND ANR.Petitioners
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. N. K. Singh,
Ms. Laavanya Kaushik, Ms. Aliza Alam and
Mr. Mohnish Sehrawat, Advocates

versus

RAJESH KUMAR BHARDWAJRespondent
Through: Mr. Naresh Kaushik, Sr.
Advocate with Mr. Anand Singh and
Mr. Shantanu Shukla, Advocates

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL
J U D G M E N T

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AJAY DIGPAUL, J.

1. The relevant facts that emerged from the pleadings are as follows:

The dispute arose from a land demarcation issue in Village Bhati, New Delhi. On 31.05.2013, one Satbir Singh Tanwar filed an application before the office of K.P. Suhag, the then Sub-Divisional Magistrate/Revenue Assistant (SDM/RA), Saket, asserting his *bona fide* ownership over a plot of land bearing Khasra no. 40, situated in Village Bhati, New Delhi. In his application, he stated that



demarcation was conducted on 09.12.2012 under the orders of SDM (Hauz Khas) through TSM by M/s Dhyani Consultants Inc. This revealed an additional 75.224 square meters of land as part of Khasra no. 40. Based on this report, he requested permission to enclose the said land within the boundary wall of his property.

2. Thereafter, a report was sought from the field staff/Halqua Patwari regarding the land status. On 03.06.2013, the field staff submitted a report which formed the basis of the decision made vide order no. 145 dated 04.06.2013 by the then SDM/RA (Saket), who granted permission to Satbir Singh Tanwar to include the newly revealed piece of land into his property, subject to various terms and conditions.

3. However, this decision faced objections on 24.06.2013, when one Ashok Kumar, Director of M/s Sanjha Properties Pvt. Ltd., filed a complaint alleging misrepresentation of land ownership. He contended that the piece of land in question was already under litigation in case no. 182/RA/HK/2013 titled *Shri Satbir Singh vs. M/s Sanjha Properties (P) Ltd. & Ors.* pending before the Revenue Assistant/SDM (Mehrauli), where status quo had been ordered to be maintained by an earlier order dated 14.01.2013. Considering these objections, the then SDM/RA (Saket) reviewed the matter and withdrew the order dated 04.06.2013.

4. On 25.06.2013, the SDM/RA (Saket) directed the parties to maintain status quo regarding the disputed land and directed the parties to appear on 01.07.2013.



5. In the meanwhile, K.P. Suhag was relieved and Rajesh Kumar Bhardwaj/respondent took over the charge of SDM (Saket) on 27.06.2013.

6. On 01.07.2013, Satbir Singh Tanwar appeared for the scheduled hearing, but no representation was made on behalf of M/s Sanjha Properties Pvt. Ltd. The respondent granted both parties four days to submit their claims in writing. Satbir Singh Tanwar submitted his written claim on 05.07.2013. Since M/s Sanjha Properties Pvt. Ltd. did not respond, they were granted an extension until 15.07.2013 through notice no. 325-326 dated 09.07.2013. Subsequently, M/s Sanjha Properties Pvt. Ltd. sought a one-week's extension on 12.07.2013, which was granted. They eventually submitted their written claim on 23.07.2013. The respondent sought a report from the office of RA/SDM (Mehrauli) and Tehsildar (Mehrauli) to verify the allegations raised by M/s Sanjha Properties Pvt. Ltd.

7. The respondent after reviewing the reports and considering the documents produced on record by both the parties, passed a detailed speaking order dated 30.07.2013 restoring the original permission order no. 145 dated 04.06.2013, thereby allowing Satbir Singh Tanwar to enclose the newly revealed land measuring 75.224 square meters into his boundary wall. The concluding paragraph of the said order dated 30.07.2013 is reproduced as under:

“I, thus, considering all the material available before me, restore the original permission letter no. 145 dated 04.06.2012 issued to Shri Satbir Singh Tanwar R/o Village Bhaati, New Delhi to enclose the newly revealed strip of land measuring 75.224 sq. mts. in the already existing boundary wall at Khasra No. 40, Village Bhaati. It is also once again made clear that Shri Satbir Singh Tanwar will be



liable to every coercive action by the government. In future, if the facts relating to land change in subsequent proceeding.”

8. On 29.01.2014, Vivek Arora, Director of M/s Sanjha Properties Pvt. Ltd., filed a complaint against the respondent to GNCTD/petitioners, alleging that the respondent vide order dated 30.07.2013, had helped Satbir Singh Tanwar and illegally permitted him to include the newly demarcated land Khasra no. 40 without any authority or sanction after accepting illegal gratification.

9. The matter was referred by the Directorate of Vigilance, GNCTD/petitioner no. 2, to the Anti-Corruption Branch (hereinafter “ACB”) for enquiry. Based on the preliminary enquiry report from the ACB, the Directorate of Vigilance issued a Memorandum no. F.7(29)/2014/DOV/7714 dated 31.07.2014 against the respondent, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [hereinafter “CCS (CCA) Rules”], alleging misconduct in passing the 30.07.2013 order. It also included a statement of article of charge and a statement of the imputation of the misconduct in support of each article of charge. Article-I of the said statement is reproduced as under:

“Article-I

That the said Sh. Rajesh Kumar Bhardwaj, adhoc DANICS, while functioning as Sub-Divisional Magistrate (Saket) during the period July, 2013 to June, 2014 committed grave misconduct in as much as he passed an order dated 30/07/2013, granting permission to one Sh. Satbir Singh Tanwar r/o village Bhati, New Delhi to enclose the newly revealed strip of land measuring 75.224 sq. mtrs. in the already existing boundary wall at Khasra No.40, village Bhati, without conducting any detailed enquiry as to whether the said newly revealed piece of land belonged to Gram Sabha/Govt. He also failed to invoke the provision of DLR Act, 1954 for initiating ejection proceedings at the disputed piece of land, falling



in agricultural jurisdiction of two different villages.

By the above acts of omission & commission, the aforesaid Sh. Rajesh Kumar Bhardwaj, Adhoc DANICS, exhibited lack of integrity, gross negligence and dereliction of duty, which is unbecoming of a Govt. servant, thereby violating the provisions of rule 3 of CCS (Conduct) Rules, 1964.”

10. In response to the aforementioned Memorandum, the respondent submitted a detailed representation during the personal hearing on 13.10.2014, apprising the Lt. Governor of Delhi of all the facts and legal justifications, and ultimately denying the charge.

11. However, the petitioners did not give any response and without considering the representation of the respondent, appointed Manjit Raj Arora, DANICS (JAG-II) as the enquiring authority and Bir Singh, ACP/ACB, the Presenting Officer by order dated 27.10.2014.

12. During the pendency of the enquiry proceedings, the respondent challenged the Memorandum and Article of Charge dated 31.07.2014 before the Central Administrative Tribunal (hereinafter “Tribunal”) by filing O.A. No. 1307/2015 on 01.04.2015 wherein the following reliefs were sought:

- “ (i) Allow the present Original Application;
- (ii) Quash and set aside the impugned Memorandum dated 31.07.2014;
- (iii) Quash and set aside the Article of Charge and Statement of Imputations;
- (iv) Pass any order(s) as this Hon’ble Tribunal deem fit and proper in the existing facts and circumstances of the case.”

13. The Tribunal, vide order dated 05.04.2016, quashed the charge sheet and the departmental enquiry, holding that the respondent was acting in a quasi-judicial capacity, and any error in his decision could



only be challenged through a statutory appeal, not through disciplinary action. The Tribunal noted that there was no evidence of *mala fide* intent or extraneous consideration and considered the ruling of the Hon'ble Supreme Court in *Zunjarrao Bhikaji Nagarkar v. Union of India*¹, which held that wrong exercise of jurisdiction by a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. The concluding paragraphs of the order are reproduced as under:

“35. Meaning thereby, once the applicant while acting as Revenue Officer (SDM) has passed the order Annexure A-8 in exercise of quasi-judicial power and statutory jurisdiction, in that eventuality the respondents cannot legally be permitted to initiate the departmental enquiry against the applicant in that regard.

36. Hence, we hold that the impugned Memorandum/Article of Charge and all other subsequent departmental enquiry proceedings cannot legally be sustained and they deserve to be and are quashed and set aside in the obtaining circumstances of the case.

37. No other point, worth consideration, is either urged or pressed by the learned counsel for the parties.

38. In the light of the aforesaid reasons, the OA is allowed. The impugned Memorandum of Charge dated 31.07.2014 (Annexure A-1) and the subsequent departmental proceedings arising from it are hereby quashed and set aside. No costs.”

14. On 22.06.2016, the petitioner no. 2 submitted before the Lt. Governor of Delhi that the administrative department to review the order dated 05.04.2016 passed by the Tribunal and explore the aspect of challenging the said order in consultation with the Law Department of GNCTD (hereinafter “Law Department”). Thereafter on 27.07.2016, the file was sent to the Law Department by the Revenue Department.

¹ (1999) 7 SCC 409



15. However, on 09.08.2016, the Law Department opined that there was no infirmity in the order passed by the Tribunal. Despite this, internal deliberations continued between the petitioner no. 2, Revenue Department, and Law Department regarding the feasibility of an appeal.

16. On 08.08.2017, the Lt. Governor of Delhi directed that an appeal be filed against the order passed by the Tribunal. After further discussions and consultations, the present writ petition was filed on 17.01.2019 before this Court, where the following reliefs are sought:

“(a) Quash and set aside the per-se perverse the order dated 05.04.2016 in O.A No. 1307/2015 passed by the Ld. Central Administrative Tribunal, Principal Bench, New Delhi,

(b) Pass any other relief which this Hon’ble Court may deem fit and proper in the facts and circumstances of the case

17. Upon careful consideration of the arguments advanced by both parties and the documents placed on record, it is evident that the primary contention in the present case revolves around the ownership of the additional land measuring 75.224 square meters, revealed following the TSM demarcation. The records and orders annexed by the respondents, including the order no. 145 dated 04.06.2013, contain mere assertions regarding the land being Gram Sabha land without any conclusive proof establishing the same. The relevant portion of the order no. 145 dated 04.06.2013 is reproduced as under:

“Now, considering the above applicant and the report of the revenue field staff of Sub-Division (Saket), I, K P Suhag, SDM (Saket) do hereby allow to construct the boundary wall and the applicant intends to include the newly revealed piece of land measuring 75.224 meters in the already existing boundary wall at



Khasra No. 40, Village Bhaati, subject to the following conditions:-

4. That if the land is ever acquired by the government, then this permission shall stand null & void.”

18. In the present case, no substantive material was placed before any court that could validate the claim that the additional land was, in fact, Gram Sabha land, and in the absence of such evidence, it will ultimately be a futile exercise to have any proceedings against the respondent.

19. Furthermore, there were ample opportunities for the authorities to initiate proceedings under Section 84 of the Delhi Land Reforms Act, 1954, which provides a mechanism for the ejectment of persons occupying land without title, but they failed to do any such thing and had the government been confident in its claim, it ought to have followed the due process of law by instituting proceedings under the said provision. The absence of such a crucial step indicates a lack of substantiation in the claim that the additional land belonged to the government.

20. A similar controversy was adjudicated by one of us, [Justice C. Hari Shankar] in *Akshay Bipin v. Union of India*² of this court, where it was held that disciplinary proceedings initiated in the absence of legally sustainable grounds ought to be quashed. It was held in *Akshay Bipin* that the mere issuance of charges without substantive basis would not justify prolonged proceedings against an officer in the absence of any evidence of corrupt motives. The relevant portion of

² 2018 SCC OnLine Del 11624



the judgment is reproduced as under:

“25. There can be no quarrel with the proposition that disciplinary proceedings, once commenced, ought to be allowed to proceed to their logical conclusion, at the hands of the disciplinary authority and, if so provided in law, further at the hands of the appellate and revisional authorities. The Supreme Court has, on numerous occasions, highlighted the indisability of courts interfering with disciplinary proceedings midway. As such, there can be no cavil with the proposition mooted by Mr. Soni, or the law relied upon, by him, in that regard.

26. At the same time, it is equally trite that, if the allegations against the officer concerned, even at their face value, do not disclose commission of any misconduct, it is the solemn duty of every constitutional court to step in and ensure that the officer is not unnecessarily harassed and subjected to the ignominy of a disciplinary enquiry, which has pernicious ramifications, financial, personal and social.

27. The boundaries of permissible disciplinary action, against officers exercising judicial or quasi judicial powers, have been examined, and delineated, in a number of decisions.”

21. The Division Bench of this court in *Union of India v. Akshay Bipin*³ subsequently upheld this decision, thereby reinforcing the principle that disciplinary proceedings cannot be allowed to continue when the foundational allegations themselves are unsubstantiated.

22. Following the principles laid down by the Hon’ble Supreme Court in *Union of India v. Duli Chand*⁴ by placing reliance on *Union of India v. K.K. Dhawan*⁵, the court in *Duli Chand* clarified that the immunity to a quasi-judicial authority is not absolute and must be examined on a case-by-case basis. The relevant portion of *Duli Chand* is reproduced as under:

“5. The law on the subject was considered in, extenso in the three-

³ 2019 SCC OnLine Del 9525

⁴(2006) 5 SCC 680

⁵ (1993) 2 SCC 56



Judge Bench decision of *Union of India v. K.K. Dhawan* ((1993) 2 SCC 56), wherein it was noted that the view that no disciplinary action could be initiated against an officer in respect of judicial or quasi-judicial functions was wrong. It was further said that the officer who exercises judicial or quasi-judicial-powers acting negligently or recklessly could be proceeded against by way of disciplinary action. The Court listed six instances when such action could be taken:

- "28. (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in, order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago though the bribe may be small, yet the fault is great."

6. The Court, however, made it clear that ultimately the matter would, have to depend upon the facts of a particular case. The present case would fall squarely within the fourth instance listed above."

23. In *Ramesh Chander Singh v. High Court of Allahabad & Anr.*⁶, the Hon'ble Supreme Court observed that a High Court cannot initiate disciplinary proceedings against a judicial officer solely based on a complaint, particularly when it does not find the contents of the complaint to be true. The Court held that for a High Court to initiate disciplinary proceedings based on a judicial order, there must be strong grounds to suspect the officer's bona fides, and the order itself must be actuated by malice, bias, or illegality. The Supreme Court has consistently disapproved of disciplinary proceedings against judicial officers merely because the judgments or orders passed by them are wrong. It has reiterated that the appellate and revisional courts exist to

⁶ (2007) 4 SCC 247



address such errors, and that the High Court must exercise extra caution before initiating any disciplinary action based on judicial orders.

24. Similarly, in *Krishna Prasad Verma (Dead) Through Legal Representatives v. State of Bihar and Ors.*⁷, the Hon'ble Supreme Court laid down that while a judicial officer passing a wrong order is not immune from action, such action should be administrative in nature and should not result in disciplinary proceedings unless there are clear-cut allegations of misconduct, extraneous influences, or gratification of any kind. The Court held that wrong or illegal orders should be recorded in the service record of the judicial officer and taken into account for promotions and career progression. However, unless there is a persistent flow of such orders indicative of gross incompetence or misconduct, compulsory retirement or administrative action is the more appropriate recourse rather than disciplinary proceedings.

25. The principles laid down in the above judgments establish that disciplinary action can only be justified under exceptional circumstances, such as cases where the officer in question acted with *mala fide* intent, recklessness, or for personal gain.

26. In the present case, it could be understood that the petitioners have nothing to substantiate the allegations, thereby rendering the initiation of proceedings against the respondent unjustified.

⁷ (2019) 10 SCC 640



27. The extant legal position is that judicial and quasi-judicial officers must be given the freedom to exercise their discretion independently. If every decision made in an official capacity were to be questioned through disciplinary proceedings, it would create a chilling effect on governance, deterring officers from making decisions in good faith for fear of retributive action. In the present case, the respondent exercised his quasi-judicial authority in a manner that was neither arbitrary nor tainted with *mala fides*.

28. Accordingly, this Court finds no reason to interfere with the well-reasoned decision of Tribunal in O.A. No. 1307/2015. The present writ petition is dismissed.

29. No orders as to costs.

AJAY DIGPAUL, J.

C.HARI SHANKAR, J.

FEBURARY 28, 2025

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Click here to check corrigendum, if any