
(2010) 02 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No's. 14682, 12044 of 2009, W.P. No. 20807 of 2008 and M.P. No's. 1 and 2 of 2009 and M.P. No. 1 of 2008

B.K. Gunasekaran

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Stamp Act, 1899 — Article 23, 55, 55(D), 55C, 33A

Citation : (2010) 02 MAD CK 0054

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : N.R. Chandran, for R. Natarajan, in W.P. No. 14682/09, K.V. Venkatapathy, for M.A. Gowthaman, in W.P. No. 12044/09 and P.V. Balasubramaniam and D. Ferdinand, for B.F.S. Legal in W.P. No. 20807/08, for the Appellant; P. Subramanian Addl. Govt. Pleader, for the Respondent

Judgement

T.S. Sivagnanam, J.—By consent the Writ Petitions are taken up for disposal. Since, the petitioner in all the three writ petitions is the same

person and the issue involved in all the three writ petitions raised a common question, they are disposed of by a common order.

2. The prayer in the Writ Petition No. 14682/2009 is to quash the charge memo issued to the petitioner dated 18.10.2004. W.P. No.

12044/2004 has been filed to quash the charge memo dated 30.01.2004 and W.P. No. 20807/2008 was filed challenging the charge memo dated 21.09.2006.

3. The facts leading to the filing of the writ petition could be briefly set down as hereunder. While, the petitioner was functioning as Assistant

Inspector General of Registration, Coimbatore, the charge memo dated 18.10.2004 came to be issued containing two sets of charged. Both the

charges related to a release deed presented for registration before the Joint Sub Registrar II Central Madras, in document No. 561/2001 dated

20.06.2001 and the allegation in the first charge was that such document ought to have been treated as conveyance and the appropriate Stamp

Duty to be collected is 13% and this has been pointed out in the audit report dated 19.02.2003 and such audit report was approved by the

Inspector General of Registration and that the petitioner being the District Registrar (Administration) at Chennai during the relevant time ought to

have exercised the powers u/s 33(A) of the India Stamp Act (hereinafter referred to as the Act) and failure to do so is in violation of Rule 20(1)

of the Conduct Rules. The second article of charge also pertains to the same allegation by stating that on account of the petitioner, that has been

loss of Stamp Duty to the extent of Rs. 2,97,810/-. The petitioner submitted his explanation to the charge on 02.02.2005. The petitioner's

explanation being that he joined as Assistant Inspector General of Registration central Chennai on 31.07.2002, held additional charge of Audit

Department between 10.12.2002 to 06.06.2004 and the said document No. 561/2001 was presented for registration on 20.06.2001 and on that

date, he was not holding charge and the concerned Sub-Registrar found that the document was a release deed between blood brothers and also

Co-owners of an ancestral property and the releasor released his Co-parcenary right of un-divided share in favour of the other Co-parcener and

therefore the concerned Sub-Registrar treated the transaction under Article 55(A) as a release deed and not as a deed of conveyance as

contemplated under Article 23 of Schedule I of the Indian Stamp Act. Therefore, it was contended that the question of taking action u/s 33-A

does not arise.

4. An enquiry officer was appointed to enquire into the charges and a report was submitted on 08.06.2005 holding that the petitioner failed to

invoke the power u/s 33-A Indian Stamp Act. The allegation in the charge memo, which is impugned in W.P. No. 12044/2009 pertains to an

allegation that during his tenure as District Registrar, Vellore from 31.03.1997 to 31.07.2002, he has inspected several buildings and during the

year 2001 in respect of 10 documents, which were registered before the Sub-Registrar, Vaniyambadi, it was alleged that the petitioner had

calculated the value of the building at a lower rate and therefore, the same has caused loss to the Government. The petitioner is stated to have promptly submitted his reply to the charge memo and an enquiry officer was appointed, who in turn directed a sub-enquiry officer to submit a report and based on such report came to a conclusion that the charges are proved. In fact the case of the petitioner itself is based on a circular issued by the Inspector General of Registration dated 14.06.2004, which is to the effect that re-inspection of buildings has to be completed within a period of three months, but in the instant case, the sub-enquiry officer re-inspected the buildings without notice to the petitioner after a period of nearly four years from the date on which the petitioner inspected the buildings. Thereafter, the petitioner has submitted representations on 29.08.2005, 13.10.2005, 27.03.2006, 05.12.2006, 19.02.2007, 22.06.2007, 24.07.2007 and 05.05.2008 requesting for copies of the deposition, the copy of the inspection report of the sub-enquiry officer, the calculation sheet, which was the basis of the revised calculation, the deposition given by the petitioner, the deposition given by the District Registrar, Vellore (Administration) and such other documents. In spite of all these representations, the petitioner was not favoured with the reply and therefore, the petitioner filed W.P. No. 20842/2008, challenging the charge memo dated 30.01.2004, and the enquiry officer's report dated 13.04.2005. This Court by order dated 27.01.2009 disposed of the writ petition with a direction to the second respondent to furnish copies of the documents sought for by the petitioner within two weeks and on receipt of the same. The petitioner would be entitled to submit his objections and thereafter the competent authority shall pass final orders. This Court also fixed time limit within which the same has to be complied with. The petitioner submitted representation on 16.02.2009 and 11.02.2009 requesting for the copies of the documents and also enclosed the copy of the order passed by this Court. However, the copies were not furnished and the second respondent had stated that the documents are not available.

5. Therefore, the petitioner filed W.P. No. 12044/2009 to quash the charge memo dated 30.01.2004. The petitioner was also served with the another charge memo dated 21.09.2006, which also related to a release deed, which was registered by the Joint Sub-Registrar central Chennai,

wherein document No. 969/2003 under Article 55(D) as a release deed. The allegation in the charge is that when the petitioner was as District

Registrar, while conducting inspection failed to take into consideration the Audit Objection dated 14.06.2006, which pointed out that a sum of Rs.

47,33,468 ought to have been collected as Stamp Duty in respect of the said document. The petitioner submitted his explanation on 23.11.2006

and thereafter there has been no further proceedings and therefore filed W.P. No. 20807/2008 challenging the charge memo dated 21.09.2006.

6. Thus based on the above factual background, the petitioner is before this Court challenging the three charge memos served against the petitioner.

7. Mr. N.R. Chandran, learned Senior counsel and Mr. K.V. Venkatapathy, learned Senior counsel and P.V. Balasubramaniam, learned Counsels

appearing for the petitioner would raise the common legal issue based on which the impugned charge memo is liable to be set aside. It is contended

that the power exercised by the registering authorities under the provisions of the Indian Stamp Act, the Registration Act and the Rules framed

there under are quasi-judicial powers and adjudicatory in nature and if there is any error in the violation or assessment or discharge of such quasi-

judicial power, the same cannot be a basis for a disciplinary proceedings in the absence of proof of any motive or bad intention. The learned

Senior counsels would therefore submit the allegation in the charge memo itself is regards the matter as to whether the petitioner ought to have

exercised the statutory power u/s 33 (A) of the Act for recovery of deficit stamp duty and such power being a quasi-judicial power, since a

decision has to be arrived at whether proper Stamp Duty payable under the Act in respect of such instrument has not been paid or has been

insufficiently paid and based on a certificate of the Registrar of District could be recovered from the person liable to pay the Stamp Duty.

Therefore, it is contended that failure to exercise such statutory power, which is in the nature of a quasi-judicial power can hardly be a ground for

initiation of disciplinary proceedings. In support of such contention, the learned Senior counsels referred to the decision of the Hon"ble Supreme

Court in *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, , and the decision of the Hon"ble Division Bench of this Court in *The Special*

Commissioner and Commissioner of Commercial Taxes and The State of Tamil Nadu Vs. N. Sivasamy, Commercial Tax Officer (Under

suspension) and The Registrar, Tamil Nadu Administrative Tribunal, , Union of India (UOI) Vs. A. Kannan and The Central Administrative

Tribunal, and the decision of the learned Single Judge of this Court in S. Muthuramu Vs. State of Tamil Nadu, .

8. The second issue which was raised is that the document in question was a release deed and such release was between blood brothers in respect

of an un-divided share in a co-parcenary property. Therefore, it is contended that the document was correctly treated by the concerned Sub-

Registrar under Article 55 Schedule I of Indian Stamp Act as a release deed and not as a conveyance under Article 23 of Schedule I. Further, by

relying upon the clarification issued by the Government in Government letter No. 85 Commercial Taxes and Registration Department dated

10.06.2006, which has clarified that the instrument of settlement or release executed in favour of brother or sister is an instrument in favour of a

member of a family as defined under Article 55 Schedule I of the Indian Stamp Act and the earlier clarification applies to release deeds also. The

petitioner also placed reliance on another clarification issued by the Government in letter No. 962 dated 24.03.2009, which further clarified the

decision. Therefore, it is contended that there was no error in the assessment of the document as a release deed under Article 55 of Schedule I of

the Indian Stamp Act.

9. Mr. K.V. Venkatapathy, learned Senior counsel appearing for the petitioner in W.P. No. 12044/2009 would contend that if the department

chose to conduct a re-inspection, they ought to have done so within a period of three months and this has been clearly spelt out in the guidelines

issued by the Inspector General on 14.06.2004 and the re-inspection was conducted by a sub-enquiry officer, who is a person lower in rank than

the petitioner after a period of nearly four years. Further, the learned Senior counsel would submit that the request for supplying documents was

not granted and the stand taken by the respondents is that the documents are not available. This cannot be the stand of the respondents since this

Court had earlier directed to supply these documents. Further, the learned Counsel would contend that at every stage there has been a delay by

stating that the allegation pertain to inspection done by the petitioner in 2001 for which charge memo came to be issued in 2004 in spite of several representations for supply of documents deposition etc., the same were not granted and the respondents failed to obey the direction issued by this Court to supply the documents and after a long lapse of time in 2009, a reply is sent stated that the documents are not available and all these events would establish that there is an in-ordinate delay from the initiation of the proceedings till date and on this ground also the impugned charge is liable to be quashed. The learned Senior counsel placed reliance on the decision of the Hon"ble Supreme Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, . The learned Senior counsel would further submit that in respect of a similarly placed person by name Mr. A.M. Jameed Bhasha who was also a District Registrar and action was taken under 17b of the rules, was exonerated of one of the charges on the ground that re-inspection of the buildings were conducted after a long lapse of four years and during such period, possibilities of expansion of the building and addition of amenities is there. Therefore, by relying on the said contention the learned Senior counsel would submit that the impugned order is liable to be set aside.

10. Mr. P.V. Balasubramaniam, learned Counsel appearing for the petitioner in W.P. No. 20807/2008, while adopting the submissions made by the learned Senior counsels would submit that there is absolutely no allegation of any corrupt motive against the petitioner and the petitioner had a clear service horoscope and also won several medals for his distinguished service and the entire disciplinary proceedings initiated against the petitioner is to some how deny the petitioner, his promotion and the petitioner is to attain the age of superannuation on 26.02.2010.

11. On behalf of the respondents elaborate submissions were made by the learned Additional Government Pleader by relying upon the counter affidavit as well as the records, the first and foremost objection of the respondents is that the writ petition itself is not maintainable at this stage and the petitioner having submitted his explanation to the charge memo and having participated in the enquiry cannot question the charge memo at this point of time. The learned Additional Government Pleader elaborately stated that in respect of the charge memo dated 30.01.2004 pertain to 11

documents for which inspection was conducted and in the subsequent inspection, it came to light that a loss of nearly Rs. 2,93,635/- had occurred

on account of the improper valuation of the buildings by the petitioner and the sub-enquiry officer after conducting the inspection noted that the

buildings have not been correctly valued and there is loss to the Government. Only under such circumstances, the charge memo was issued and the

enquiry officer in his report dated 13.04.2005 concluded that the charges are proved and therefore further legal proceedings have to be initiated to

recover the amount.

12. The learned Additional Government Pleader would further submit that the charge is clear, specific and based on material evidence and the

respondents should be permitted to proceed further. In respect of W.P. No. 14682/2009, the learned Additional Government Pleader would

submit that the Accountant General has pointed out that the document No. 561 has been registered by the concerned Sub-Registrar by collecting

lesser amount of Stamp Duty by treating it as a release deed, but in spite of the such Audit report, the petitioner did not take any steps to recover

the money u/s 33 (A) of the Indian Stamp Act. Therefore, it has caused loss of Rs. 2,97,810/- to the Government. It is further contended that the

clarification issued in respect of chargeability under Article 55-C of Schedule I of the Indian Stamp Act came into effect only on 16.12.2004 and

such subsequent amendment cannot cure the earlier defect. It is further submitted that the document in question does not come under the purview

of Section 47 (A) and hence question of recovering deficit Stamp Duty u/s 47(A) (6) of the Act does not arise. The learned Additional Government

Pleader would further submit that the enquiry report is under the consideration of the Government and at this stage the charges should not be

quashed.

13. I have considered the submissions made on either side and perused the materials available on record. Though elaborately submissions have

been made on either side as regards the factual contentions raised, the first of the legal issues which would arise for consideration is to whether the

allegations contained in the charge memo would clothe the respondents with power to initiate disciplinary action. It has been alleged in the charge

memo that the petitioner ought to have invoked Section 33 A of the Indian

Stamp Act for recovering a deficit Stamp Duty on a release deed

submitted before the Joint Registrar Central Chennai, who treated the document as a deed of release under Article 55 of Schedule I of the Stamp

Act. Section 33 A deals with recovery of deficit Stamp Duty of the Stamp Act and provides for contingencies for such recovery and procedure to

be followed. At this stage, it is useful to refer to 33A which reads as follows:

33-A. Recovery of deficit stamp duty:

(1) Notwithstanding anything contained in Section 33 or in any other provisions of this Act, if, after the registration of any instrument under the

Registration Act, 1908 (Central Act XVI of 1908), it is found that the proper stamp duty payable under this Act in respect of such instrument has

not been paid or has been insufficiently paid, such duty or the deficit, as the case may be, may, on a certificate from the Registrar of the district

under the Registration Act, 1908 (Central Act XVI of 1908) be recovered from the person liable to pay the duty, as an arrear of land revenue:

Provided that no such certificate shall be granted unless due inquiry is made and such person is given an opportunity of being heard:

Provided further that no such inquiry shall be commenced after the expiry of three years from the date of registration of the instrument.

(2) The certificate of the Registrar of the district under Sub-section (1) shall, subject only to appeal under Sub-section (3), be final and shall not be

called in question in any court or before any authority.

(3) Any person aggrieved by a certificate of the Registrar of the district under Sub-section (1) may appeal to the Chief Controlling Revenue

Authority. Any such appeal shall be preferred within such time, and shall be heard and disposed of in such manner, as may be prescribed.

14. Thus, it is to be noted that the pre-requisite for invoking Section 33-A is that it has to be found that proper Stamp duty payable under the Act

in respect of the instrument has not been paid or has not been sufficiently paid and on determining such fact the Registrar of the District may issue a

certificate for recovery of such amount and no such certificate shall be granted unless enquiry is made and such person is given an opportunity of

being heard and no such enquiry shall be commenced after the expiry of three years from the date of Registration of the instrument. Thus, the

determination as to whether proper Stamp Duty has been paid under Act is a

quasi-judicial function to be exercised by the registering authority by going through the contention of the document and coming to an opinion as to determine as to what calls the document could be classified for demanding proper Stamp Duty as per the rates specified in Schedule I to the Act. Therefore, there is an element of adjudication involved in the matter for determination of proper Stamp Duty chargeable on an instrument. Even according to the respondents the concerned Joint Sub-Registrar central Chennai treated the document as a release deed and held that the document would fall within the description under Article 55 of Schedule

I. The allegation is that an Audit objection was raised by the Audit Department stating that such instrument which was admitted for registration by a

Sub-Registrar ought to have been treated as a deed a of conveyance under Article 23 and not under Article 55 and therefore, deficit stamp duty is

payable and in spite such Audit objection said to have been confirmed by the Inspector General, the petitioner failed to invoke Section 33-A for

recovery of deficit stamp duty. In my view the power of the Sub-Registrar is a quasi-judicial power in determining the Stamp Duty. Likewise, the

officer in the position of the petitioner is required to render a quasi-judicial findings before issuing a certificate for recovery that the document in

question was not sufficiently Stamped. This finding cannot be done without an enquiry to the aggrieved person.

15. Therefore, I am of the clear view that the power, which the respondents state that the petitioner ought to have exercised is a quasi-judicial

power. If such power has not been exercised whether it could form the basis for a disciplinary action. This question is no longer res-integra and

having been settled by various decision of the Hon"ble Supreme Court and this Court and it would be useful to refer the recent decision of this

Court in S. Muthuramu Vs. State of Tamil Nadu, in which, the earlier decisions have been considered by the learned Judge and wherein it has

been held as follows:

6. From the perusal of the charge memo it could be seen that the allegation against the petitioner is that he has fixed the market value at Rs. 22/-

per sp. ft. in Document No. 70 of 1998 whereas the adjacent lands were acquired by the Government on negotiation at the rate of Rs. 58/- per

sp. ft. in the year 1999. No motive or ill-will is alleged in the said imputation of

charge. Admittedly, petitioner is exercising quasi-judicial function

u/s 47A(1) of the Indian Stamp Act. If the Department is not satisfied with the valuation, nothing prevented the Department from filing appeal

before the Inspector General of Registration challenging the order passed by the petitioner, fixing the market rate of Rs. 22/- per sp. ft. In the

absence of any motive or bad intention, no charge could be framed against the Quasi-Judicial Authority and the same is well settled.

7. (a) In the decision in *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, the Supreme Court considered similar issue and held that negligence in

exercising quasi-judicial power by mere carelessness or inadvertence or omission is not sufficient to initiate proceedings under misconduct. Unless

there is a culpable negligence or ill-motive, no charge could be framed. In paragraphs 43 and 44, the Supreme Court held as follows at p.85 of

MLJ:

43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like

the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet

on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a

quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration

influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if

sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative

adjudication where under quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such

functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44. Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the

appellant. The charge of misconduct against him was not proper. It has to be quashed.

(b) Whether the disciplinary proceeding can be initiated against a judicial officer,

who granted bail exercising discretion while discharging the

Judicial function, was considered by the Supreme Court in the decision in Ramesh Chander Singh Vs. High Court of Allahabad and Another, . In

paragraph 12 the Supreme Court held as follows at p.1062 of MLJ:

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate

judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given

powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts.

While taking disciplinary action based on judicial orders, the High Court must take extra care and caution.

(c) In the decision in Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, following the earlier decisions, the Supreme Court held that

the acts of negligence, error of judgment or innocent mistake, do not constitute misconduct. In the above case, the appellant/Police Officer failed to

seize the tainted money on receipt of complaint of alleged demand of bribe by an Inspector (Malariya). Department initiated disciplinary

proceeding on the charge that he had not seized the tainted money, which could be an important piece of evidence in criminal proceeding. The

Supreme Court held that the Police Inspector could not be said to have committed any misconduct merely because in the opinion of the higher

authorities he ought to have seized the tainted money. The Supreme Court in paragraphs 10 to 12 dealt with the term misconduct, which reads as

follows:

10. In State of Punjab and Others Vs. Ram Singh Ex. Constable, it was stated, in para. 5, at page 522:

5. Misconduct has been defined in Black's Law Dictionary, 6th Edn. at p. 999, thus:

A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behavior, willful in character,

improper or wrong behavior; its synonyms are misdemeanor, misdeed, misbehavior, delinquency, impropriety, mismanagement, offense, but not

negligence or carelessness.

Misconduct in office has been defined as:

Any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces acts which the office-holder had

no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act.

11. In P. Ramanatha Aiyar's Law Lexicon, 3rd Edn., at p. 3027, the term "misconduct" has been defined as under:

The term "misconduct" implies a wrongful intention, and not a mere error of judgment. Misconduct is not necessarily the same thing as conduct

involving moral turpitude. The word "misconduct" is a relative term, and has to be construed with reference to the subject-matter and the context

wherein the term occurs, having regard to the scope of the Act or statute which is being construed. "Misconduct" literally means wrong conduct or

improper conduct.

(See also Bharat Petroleum Corpn. Ltd. v. T.K. Raju 2006 (2) LLN 54)

12. It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment

and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an

unlawful behaviour in relation to discharge of his duties in service, which was wilful in character. No such finding was arrived at. An error of

judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India (UOI)

and Others Vs. J. Ahmed, whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct

which is blameworthy for the government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way

inconsistent with due and faithful discharge of his duty in service, it is misconduct (see Pierce v. Foster 17 Q.B. 536, 542). A disregard of an

essential condition of the contract of service may constitute misconduct [see Laws v. London Chronicle (Indicator Newspapers 1959 (1) WLR

698)]. This view was adopted in Shardaprasad Onkarprasad Tiwari v. Divisional Supdt., Central Rly., Nagpur Division, Nagpur 61 BLR 1569

and Satubha K. Vaghela v. Moosa Raza 10 GLR 23. The High Court has noted the

definition of misconduct in Stroud's Judicial Dictionary which runs as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.

(d) A Division Bench of this Court in the decision in A.M. Sankaran v. Registrar, High Court, Madras 1999 (2) LW 174 quashed an order of

compulsory retirement passed against the judicial officer for destroying the seized spirit without examining or recording any evidence regarding the

inflammable nature of the spirit. This Court held that the said order having been passed during discharge of the function as judicial officer, framing

such charge without any allegation or recklessness or abuse of power, cannot be sustained.

8. Applying the principles laid down in the above decisions to the facts of this case, particularly when there is no motive or recklessness attributed

against the petitioner and no mis-conduct is committed by the petitioner. I hold, the charge as framed is not maintainable against the petitioner, who

is a quasi-judicial authority. The impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petitions are

closed.

16. Thus, the only conclusion, which could be arrived at after placing reliance on all the above decisions is that the charges framed against the

petitioner is not maintainable. That apart, I am also convinced that the entire disciplinary action has been grossly delayed and the petitioner has

been put to irreparable hardship and mental agony. In reply to the allegation regarding the valuation of the buildings, it is common knowledge that

any re-evaluation has to be done within a reasonable period. In the instant case, the Inspector General of Registration has issued circular dated

14.06.2004 stating that re-inspection should be done within a period of three months. In the instant case, the re-inspection was conducted without

notice to the petitioner by an officer, who subordinate to the petitioner, after nearly a period of four years. Inspection and valuation are technical

matters to be done based on the amenities provided in the concerned building and the schedule of rates prescribed in this regard.

17. Therefore, for applying the schedule of rates, the essential feature is the

condition of the building. Undoubtedly the condition of the building after a period of four years could be different in the sense that there could have been value addition, remodeling or partial re-construction or even deterioration. Therefore, this aspect of the matter also involves a technical assessment and cannot be construed as purely as administrative act.

Therefore, to dislodge the report submitted by the petitioner on the valuation of the building, there should be sufficient and cogent material to establish that the petitioner willfully under valued the buildings. In my view the charge does not appear to be so. The charge itself is based on the sub-enquiry officer's report, who inspected all the 10 buildings after a period of nearly four years without notice to the petitioner and the copy of the calculation sheet has not been furnished to the petitioner, in spite of nearly 10 representations given and in spite of a direction issued by this Court to give the copies of the document. Thus, the entire proceedings appears to have not been conducted in a fair and reasonable manner and the petitioner has been put to disadvantage at every stage of the matter. That apart as pointed out by the learned Senior counsels for the petitioner one other person by Mr. A.M. Jameed Bhasha, who has also a delinquent has been exonerated of the charge and there is no reason as to why the petitioner alone should be made to suffer.

18. Hence, for the above reasons, the impugned charge memos dated 18.10.2004, 30.01.2004, & 21.09.2006 are held to be not maintainable and accordingly they are quashed and the writ petitions are allowed as prayed for. Consequently, connected miscellaneous petitions are closed.

No costs.