

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON	04.12.2017
JUDGMENT PRONOUNCED ON	22.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.36254 of 2003

Sri Raman Constructions,
rep. by its Managing Partner,
Mr.V.Ramachandran,
127, Calvey Subburaya Chetty Street,
Puducherry. ... Petitioner

Vs.

1. The Union of India,
Rep. by the Executive Engineer,
Irrigation Division,
Public Works Department,
Govt. of Puducherry, Puducherry.
2. The Revenue Inspector,
Taluk Office, Pondicherry. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the distraint proceedings of the second respondent, dated 08.12.2003 issued under Section 8 of the Revenue Recovery Act and quash the same.

For Petitioner : Mr.M.Krishnappan, Senior Counsel for
Ms.R.Swarnalatha

For Respondents : Mr.J.Kumaran,
Govt. Advocate (Pondicherry)

WEB COPY
O R D E R

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorari to call for the records of the distraint proceedings of the second respondent, dated 08.12.2003 issued under Section 8 of the Revenue Recovery Act and quash the same.

2. According to the petitioner, during 1978-1979, tender was notified by the respondents for strengthening the Western bund of Ousteri Tank. The petitioner's tender was accepted and the

work commenced in April 1978. The work was successfully completed by the petitioner. As the amount was not settled in terms of the contract, arbitration proceedings were initiated and a retired District Judge was appointed as single Arbitrator. The appointment of Arbitrator was unsuccessfully challenged by the respondents before this Court and this Court dismissed the challenge to the appointment of the Arbitrator. Ultimately, an Award was passed on 04.12.1984. The District Court, Puducherry passed a judgment and decree on 27.09.1985 in terms of Section 17 of the Arbitration Act and it has become final. In terms of the Award, final bill was settled by the respondents on 15.11.1991. After a lapse of one year, on 14.12.1992, the respondents claimed a sum of Rs.2,49,000/- on the ground that it was over paid to the petitioner inadvertently. The petitioner disputed the claim and stated that the amount was paid in terms of the Award. Ultimately, on 08.12.2003, the impugned distraint order was passed, which is challenged in this Writ Petition.

3. While admitting the Writ Petition on 11.12.2003, this Court granted an order of interim stay of the impugned order, and the interim order of stay was made absolute on 12.07.2004.

4. It is the contention of the learned Senior Counsel appearing for the petitioner that the Award has become final and unless and until it is modified by means of application, there cannot be any demand. That apart, the Arbitration Award cannot be modified by means of distraint proceedings. According to the petitioner, before initiating the distraint proceedings, a notice should be given and only after adjudication, the amount has to be determined. On the face of the Arbitrator's award, the respondents have initiated the distraint proceedings. It is contended that the amount demanded by means of the impugned distraint proceedings, is based on the audit report. At no point of time, the Auditor's report was produced before the impugned proceedings was issued. It is further contended by the learned Senior Counsel appearing for the petitioner that the first respondent has never claimed any interest and the second respondent cannot claim interest payable on the so-called amount said to have been over paid. It is finally contended that the Arbitrator's award was passed in 1984 and the distraint proceedings have been initiated only in 2003 and on account of delay, the entire impugned proceedings have got to be interfered with.

5. In reply, learned Government Advocate (Pondicherry) appearing for the respondents submitted that when there is over payment and the petitioner was intimated, the question of adjudication does not arise. He further submitted that in terms of Section 52 of the Pondicherry Revenue Recovery Act, 1970, there is no need for any detailed adjudication. If there is any

amount due, which can be arrived at by means of calculation, wrong payment made can be recovered in terms of the said Act. As excess payment had been made to the petitioner, there is no need for seeking any clarification or filing any modification petition before the Civil Court with regard to the amount due. If there is any erroneous amount being paid to the petitioner pursuant to the Award, there is no need for any clarification or adjudication before the distraint proceedings are issued.

6. Heard the learned counsel on either side and perused the materials available on record.

7. At the outset, it has to be stated that in view of the judgment of the Apex Court in the case of Fabril Gasosa Vs. Labour Commissioner and others, reported in 1997 (3) SCC 150, when there is arithmetical calculation, there is no need for detailed adjudication, as, based on the records, Revenue Recovery proceedings shall be initiated. When there is erroneous excess payment, the same can be demanded/recovered by means of distraint proceedings and the said proceedings is only summary, as calculation alone need to be made and excess payment to be demanded/recovered and there is no need for any clarification or modification by the Civil Court or any forum regarding the amount due before the Distraint proceedings.

8. With regard to the delay, I had an occasion to deal with the provisions of the Puducherry Limitation (Repeal of Local Laws) Act, 1994, in S.A.No.1222 of 2008, and this Court, by a judgment dated 21.09.2017, observed that the time limit to recover the amount due is 30 years and the question of delay as raised in this Court is not correct and hence, the amount claimed to be paid by the petitioner in this case, is well within 30 years time.

9. In fine, I find no merits in the contentions of the petitioner and there is no need to interfere with the impugned Distraint order and the proceedings initiated under the Revenue Recovery Act is perfectly in order.

Hence, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cs/aeb

To :

1. The Executive Engineer,
Irrigation Division,
Public Works Department,
Govt. of Puducherry, Puducherry.

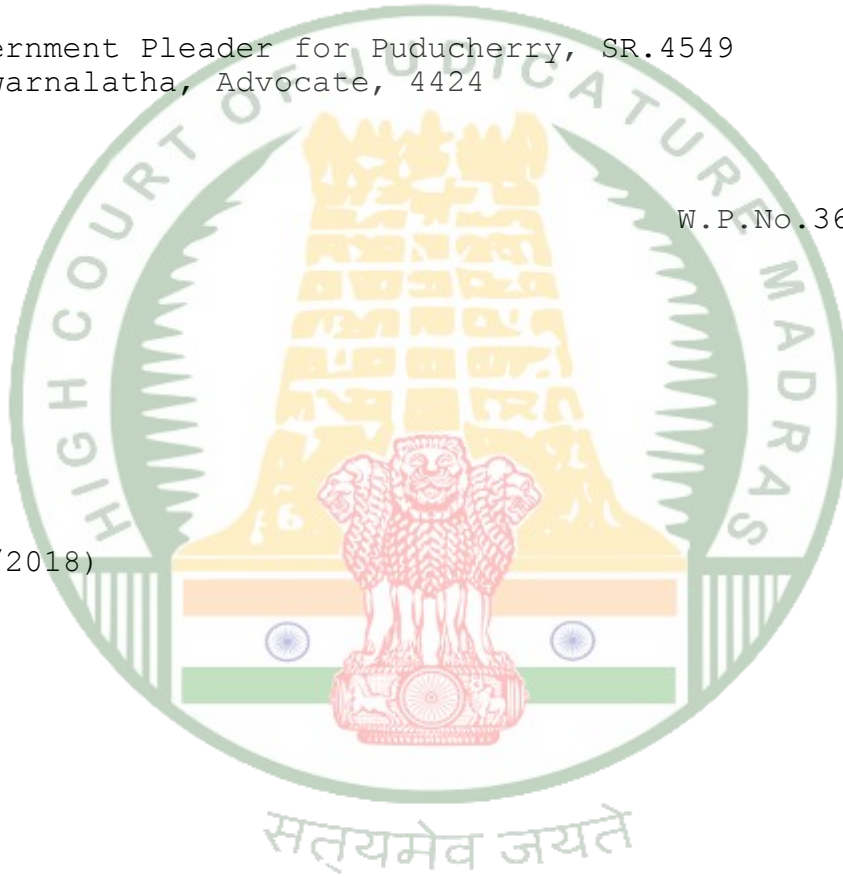
2. The Revenue Inspector,
Taluk Office, Puducherry.

3. The Government Pleader for Puducherry, SR.4549

4. Mrs. R. Swarnalatha, Advocate, 4424

order
in
W.P.No.36254 of 2003

KK (CO)
kas (03/02/2018)



WEB COPY