BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

C O R A M

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD)Nos.12949, 12950, 12951 and 12952 of 2011
and
W.M.P.(MD)No.1 of 2011
and
W.M.P.(MD)No.2 of 2011
in
W.P.(MD)No.12952 of 2011

1.M.Sekar ... Petitioner in W.P.(MD)No.12949 of 2011

2.A.M.Rathinam ... Petitioner in W.P.(MD)No.12950 of 2011

3.Rajeswari ... Petitioner in W.P.(MD)No.12951 of 2011

4.P.Devaki ... Petitioner in W.P.(MD)No.12952 of 2011

Vs.

The Commissioner,
Palani Municipality,
Dindigul District. ... Respondent in all writ petitions

Common Prayer : Writ Petition filed under Article 226 of the constitution of India, to issue a writ of Certiorari, calling for the records relating to the impugned order of the respondent in ref. Na.Ka.No.2250/11/A3 dated 17.05.2011and quash the same respectively.

For Petitioner : Mr.S.Ramasamy
(in all W.Ps)

For Respondent : Mr.J.Parekhkumar
for P.Srinivas
(in all W.Ps)

C O M M O N O R D E R

The order of recovery issued by the respondent in proceedings dated 17.05.2011 is under challenge in this writ petition.

2.The writ petitioners are employed in the respondent

Municipality and was holding the post of Bill Collector (Revenue Assistant).

3.The learned counsel appearing on behalf of the writ petitioners made a submission that the recovery is imposed in respect of un-recovered tax arrears from the respective assesses. In other words, it is a case of the recovery of time barred arrears and the responsibility is fixed at the shoulders of the writ petitioners. The question arises, whether such a recovery can be imposed on the employees.

4.This Court is of an opinion that undoubtedly the assesses are liable to pay their respective tax arrears in time. If the tax amount or arrears are not paid within the time, the competent authorities are bound to initiate appropriate legal action to recover the tax arrears from the assesses concerned. In fact, all the officials including the higher officials are liable for all inactions in this regard. This Court is of an opinion that the head of the department himself is responsible for not collecting the tax arrears from the concerned assesses, when there was no timely action both by the higher officials as well as by the filed officials.

5.The learned counsel appearing on behalf of the respondent brought to the notice of this Court that the Commissioner of Municipal Administration has issued an order dated 23.06.1993, categorically stating that all the officials are responsible for non-collection of time barred arrears of tax accordingly, various percentages are re-fixed to recover the time barred arrears from the officials, who are responsible for such an non-collection. Thus, there is no irregularity whatsoever in imposing on the petitioners as per the circular.

6.This Court is of the opinion that the public servants are responsible for collection of tax in time. The officials are responsible for not collecting the arrears of tax from the concerned assesses. In this view of the matter, the responsibility of the petitioners cannot be waived. However, it is brought to the notice of this Court that no show cause notice or an opportunity was given to the writ petitioners to defend their case. Thus, the impugned order is in violation of principles of natural justice.

7.In view of the fact that no notice was issued before passing the impugned order of recovery, this Court inclined to consider the case of the writ petitioners. Accordingly, the order of recovery issued by the respondent in proceeding Na.Ka.No.2250/11/A3 dated 17.05.2011, is quashed and the matter is remitted back to the respondent for issuing proper show cause notice to the writ petitioners and after getting explanations from the writ petitioners pass orders on merits and in accordance with law within the reasonable period of time. Accordingly, this Writ Petitions stands allowed. There is no order as to costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO Mr.P.Srinivas , Advocate in SR No.44310
+ 4 ccs TO Mr.S.Ramasamy, Advocate in SR Nos.43583,43584,43585, 43586

ia/mm
AE/MR/SAR2/15.02.2018/3P/6C

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