

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.18706 OF 2017

ORDER: (per SK,J)

The petitioner is the applicant in O.A.No.6983 of 2013. His challenge therein was to the proceedings dated 12.08.2013 issued by the District Collector (Panchayat Wing), Chittoor, under Section 265 of the Andhra Pradesh Panchayat Raj Act, 1994 (*for brevity*, 'the Act of 1994'), requiring the Tahsildar, Tirupati Rural Mandal, to recover a sum of Rs.15,00,943/- from the petitioner in accordance with the aforestated provision. By order dated 22.03.2017, the Tribunal dismissed the O.A.

Perusal of the said order reflects that the Tribunal conceded that the proceedings dated 12.08.2013 quoted the wrong provision of law i.e. Section 265 of the Act of 1994, but despite the same, it opined that the petitioner-applicant could not be allowed to question the recovery sought to be made thereunder in the light of the dismissal of O.A.No.741 of 2010 filed by the petitioner-applicant on 19.07.2013.

Heard Sri V.Jagapathi, learned counsel for the petitioner-applicant, and the learned Government Pleader for Services, State of Andhra Pradesh, for the respondent authorities.

The impugned proceedings dated 12.08.2013 manifest in no uncertain terms that the recovery was directed to be made under Section 265 of the Act of 1994. However, Section 265 speaks of recovery to be effected from the Sarpanch, Upa-Sarpanch, President, Vice-President, Chairperson, Vice-Chairperson or the Executive Authority, the Mandal Parishad Development Officer or the Chief Executive Officer. The Commissioner is empowered, after following the due procedure, to do so.

In the case on hand, the petitioner-applicant is only a Junior Assistant. He therefore does not fall within the categories of officers mentioned in Section 265 of the Act of 1994. That apart, exercise of power under Section 265 of the Act of 1994 is to be by the Commissioner, whereas the proceedings dated 12.08.2013 were issued by the Collector of the District. These were crucial defects in the impugned recovery proceedings dated 12.08.2013 which could not have been brushed aside by the Tribunal as mere errors which could be overlooked.

On this short ground, the writ petition is allowed setting aside the impugned order dated 22.03.2017 passed by the Tribunal in O.A.No.6983 of 2013 as well as the proceedings dated 12.08.2013 of the District Collector (Panchayat Wing), Chittoor, impugned therein. This order shall however not preclude the authorities from initiating steps afresh for recovery, if warranted, in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR,J

M.GANGA RAO,J

Date:28.09.2018

GJ