IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2019

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THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

W.P. 33157 of 2013
and
M.P. 1 of 2013

K.A.Thavamani ... Petitioner

Versus

1. The District Collector,
   Coimbatore District,
   Coimbatore.

2. The Tahsildar,
   Kinathukadavu Taluk,
   Kinathukadavu,
   Coimbatore District.

3. The Revenue Inspector,
   Kovilpalayam,
   Kinathukadavu Taluk,
   Coimbatore District. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the notice in Na.Ka.5236/13/A5, dated 14.11.2013 on the file of the 2nd respondent, quash the same.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.R.Govindasamy
Special Govt. Pleader

O R D E R

This Writ Petition has been filed challenging the notice issued by the 2nd respondent Tahsildar under the Revenue Recovery Act for recovery of surcharge amount of Rs.15,02,147/- from the petitioner.

2. The case of the petitioner is that, the petitioner was functioning as a President of one Kovilpalayam Village Panchayat in Pollachi Taluk during the year 2006-2011. Earlier, the 1st respondent has issued a notice leveling as many as 7 charges for causing loss to the panchayat, for which, the petitioner submitted his explanation. Thereafter, a proceedings has been initiated under Sec.205, of the Tamil Nadu Panchayat Act (hereinafter called as 'Act') to remove the petitioner, and the notice was challenged before this Court in a Writ Petition. Pending Writ Petition, the petitioner has completed his tenure. Hence, the Writ Petition was closed as infructuous. Thereafter, it is seen that, the Joint Director of Rural Development has passed a surcharge order for the alleged loss caused by the petitioner to an extent of Rs.15,02,147/-. For recovering the above said amount, the impugned revenue recovery act proceedings has been initiated by the 2nd respondent Tahsildar. Challenging the same, the present Writ Petition has been filed.

3. The respondents have filed a counter affidavit stating that, while the petitioner was functioning as a President, he has caused loss to the Panchayat. Hence, a surcharge order has been passed against the petitioner. Following that, the 2nd respondent was directed to recover the amount under the Revenue Recovery Act. Since the amount is due to the Government, which is a public revenue, the impugned proceedings under the Revenue Recovery Act has been initiated for recovery of surcharge amount against the petitioner.

4. I have heard the learned counsel appearing for petitioner as well as the learned counsel appearing for respondents, and perused the materials available on record carefully.

5. For recovery of surcharge amount, a separate rule called the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, (hereinafter called as "Rules") has been framed, which is dealing with initiating proceedings for recovery under Rule 6 of the said Rules. After issuing the surcharge order, if the amount is not paid, the same shall be recoverable in the same way as an amount decreed by a court by filing execution petition. The relevant rule is extracted hereunder:-

> "6. Payment of due.- Every sum certified to be due from any person by the Auditor under these Rules shall be paid by such person into the bank or post office in which the Funds of the Village Panchayat, Panchayat Union Council or District Panchayat, as the case may be, are lodged within thirty days from the date of intimation to him of the decision of the Auditor unless within that time, such person has appealed against the decision to the Inspector or any officer authorised

by the Government and such sum, if not paid or such sum as the Inspector of such officer shall declare to be due, shall be recoverable in the same way as an amount decreed by a Court by filing execution petition."

But, in the instant case, the respondents without initiating any proceedings to execute the order by filing necessary Execution Petition, they cannot initiate proceedings under the Revenue Recovery Act, as the amount is not recoverable under the Revenue Recovery Act. In the above circumstances, the impugned order vide passed by the 2^{nd} respondent is without jurisdiction, and the same is liable to be set aside. Accordingly, the impugned order in Na.Ka.5236/13/A5, dated 14.11.2013 is set aside. However, a liberty is granted to the respondents to initiate appropriate proceedings for recovery of the amount in the manner known to law.

6. In the result, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition in M.P. 1 of 2013 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The District Collector,
Coimbatore District, Coimbatore.

2. The Tahsildar,
Kinathukadavu Taluk,
Kinathukadavu, Coimbatore District.

3. The Revenue Inspector,
Kovilpalayam,
Kinathukadavu Taluk, Coimbatore District.

+1cc to the Government pleader Sr.98979
+1cc to Mr.S.Doraisamy, Advocate Sr.98118

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and
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