



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P. (MD) Nos.7214 and 6460 of 2015

and

M.P. (MD) Nos.1 and 1 of 2015

M.Muthuvel ... Petitioner in W.P.(MD)No.7214 of 2015

Eswari Shanmugavel ... Petitioner in W.P.(MD)No.6460 of 2015

Vs

1.The District Collector /
Inspector of Panchayat,
Dindigul District.

2.The Assistant Director,
Rural Development and Panchayat Raj,
Dindigul District.

3.The Block Development Officer,
Ottanchathiram Panchayat Union,
Ottanchathiram Post,
Dindigul District.

4.R.Karuppasamy

(R4 is impleaded vide Court order
dated 07.03.2019 in M.P.No.2 of 2015 in
W.P. (MD)Nos.7214 and 6460 of 2015)

... Respondents in both writ petitions

COMMON PRAYER: 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 passed by the first respondent dated 22.12.2014 in Na.Ka.No.0549/2015/A9 and quash the same.

For Petitioner : Mr.R.Vijayakumar

For R1 & R2 : Mr.M.Karuppasamy
Government Advocate

For R3 : Mr.R.Velmurugan

For R4 : Mr.M.Saravanakumar

(in both writ petitions)

**ORDER**

Heard the learned counsel either side.

2. The writ petitioner in W.P.(MD)No.7214 of 2015 is the Secretary of Sinthalapatti Village Panchayat, Oddanchatram Panchayat Union. The petitioner in W.P.(MD)No.6460 of 2015 was the President during 2011 to 2016. By the order impugned in these writ petitions, the first respondent / Inspector of Panchayat has directed recovery of certain sums of money from the writ petitioners. The ostensible reason for ordering such a recovery was the alleged misappropriation of scheme funds by the petitioners herein. In fact, the orders came to be passed after holding an enquiry into the complaint of one Karuppasamy. These orders are under challenge primarily on the ground that the statutory procedure has not been followed.

3. When the matter taken up for hearing, the learned Government Advocate submitted that when the said Karuppasamy lodged a complaint, it was not initially acted upon. He therefore filed W.P.(MD)No.7214 of 2015 and this Court by order dated 18.08.2014 directed the Inspector of Panchayat to enquire into the matter. Thereafter the Assistant Director, Rural Development and Panchayat Raj, Dindigul District conducted an enquiry. He submitted a report giving a categorical finding that there was misappropriation of the scheme funds. Since loss to the Government was thus established, in order to recover the same, these impugned orders have been passed.

4. It is true that if the Panchayat officials, whether he / she is a president or secretary, can be fastened with such orders and recovery can be made from them. These are known as surcharge proceedings. The proceedings will have to be conducted as per Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, issued vide G.O.32 RD(C4) Department, dated 11.02.2000. Rule-4 contemplates issuance of surcharge certificate by the Auditor. Thereupon the Inspector of Panchayat will take execution proceedings for enforcing the said Surcharge Certificate. Rule-6 provides for enforcing a Surcharge Certificate by filing an execution petition.

5. In the present case, the aforesaid surcharge procedure has not been adopted. Admittedly, no surcharge enquiry was conducted against the writ petitioners. Therefore, on this ground, the order impugned in these writ petitions are set aside. However, liberty is given to the first respondent to hold a proper enquiry in terms of the aforesaid Rules.



6. With this liberty to the first respondent, these writ petitions are allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The District Collector /
Inspector of Panchayat,
Dindigul District.

2. The Assistant Director,
Rural Development and Panchayat Raj,
Dindigul District.

+2CC TO MR. R. VIJAYAKUMAR, Advocate Sr. No. 52950 & 52951

+2CC TO MR. M. SARAVANAKUMAR, Advocate Sr. No. 53171 & 53172

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR. No. 53069

W.P. (MD) Nos. 7214 and 6460 of 2015

and

M.P. (MD) Nos. 1 and 1 of 2015

08.03.2019

TR (29.03.2019) 3P 8C