

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.12324 of 2019

Kanna Pillai

.. Petitioner

Vs.

1. The District Collector-cum-Election Officer,
Villupuram.
2. The Tahsildar-cum-Assistant Election Officer,
Vanur Taluk, Vanur,
Villupuram District.
3. The Station House Officer,
Kiliyanur Police Station
(Crime No.377/2016)
4. The District Revenue Officer,
Villupuram. **
- ** R3 and R4 impleaded as per order dated
24.02.2020 made in WMP No.33514/2019
in WP No.12324 of 2019
5. The Sub-Treasury Officer,
Vanur, Villupuram District.
6. The Reserve Bank of India
represented by its Regional Director,
Rajaji Salai,
Chennai-600 001. @

.. Respondents

@ R5 and R6 impleaded as per order dated
18.12.2020 made in WMP No.20707/2020
in WP No.12324 of 2019

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus, directing the respondents or their subordinates to return the sum of Rs.6,78,010/- vide receipt bearing No.Nil dated 13.05.2016, with interest at the rate of 12% per annum from 13.05.2016 till date of disbursement.

For Petitioner : Mr.T.Sai Krishnan

For Respondents : Mr.R.S.Selvam,
Government Advocate for RR 1 to 5

Mr.C.Mohan for
M/s.King and Patridge for R6

O R D E R

The petitioner, who is a farmer, seeks a direction to the respondents (original respondents 1 and 2) or their subordinates to return the sum of Rs.6,78,010/-, which was seized from him vide receipt bearing No.Nil dated 13.05.2016, with interest at the rate of 12% per annum from 13.05.2016 till date of disbursement.

2. The petitioner owns certain extent of nanja and punja lands in Andiyarpalayam village of Vanur Taluk with valid patta. He has been residing in the said land and installed a pump shed. The petitioner entered into an agreement with one Sundararaja Pillai on 10.01.2016 for sale of casurina trees, which were ready for cutting and received total sum of Rs.7,15,000/- as sale consideration between January and April, 2016. After incurring certain agricultural and personal expenses, the petitioner had a balance sum of Rs.6,78,010/- with him. The petitioner alleged that someone had informed the Election Flying Squad with mala fide intention that the distribution of money for the election was made in the petitioner's pump shed and hence, the Flying Squad visited his premises and seized the said money, for which, he was issued with a receipt. A First Information Report was registered in Crime No.377 of 2016 on the file of Kiliyanur Police Station for the offence under Section 171(E) of IPC. The petitioner filed CMP No.104 of 2017 before the District Munsif-cum-Judicial Magistrate, Vanur, for the return of the said money, which was dismissed on 04.03.2017 only on the ground that the police did not seize the money, which was deposited with the Sub Treasury and not with the Court. Thereafter, the petitioner submitted a representation with relevant documents to the respondents 1 and 2 on 14.03.2017 seeking return of money. It is claimed by the petitioner that on 05.09.2017, the taluk level officials, concurring with the claim of the petitioner, submitted a report, but till the date of filing of the writ petition, no order has been passed on the same. It is also stated by the petitioner that the police have not filed any final report in the case. In this backdrop, the petitioner is before this Court in the instant writ petition.

3. The second respondent filed a counter-affidavit dated 22.10.2016, wherein, it is stated that the second respondent, being the Assistant Election Officer for the Vanur Constituency seized the sum of Rs.6,78,010/- on 13.05.2016 from the petitioner under a seizure, in which, the petitioner put his signature and also given his statement and the money was kept in the safe custody of the Sub Treasury, Vanur. It is also claimed by the second respondent that the petitioner had not filed any proper particulars and records in accordance with the election rules for the claim of the money, but only on 14.03.2017, he sent a representation seeking return of money. The second respondent also claimed that after demonitization, they have taken the money from the Sub Treasury to the Reserve Bank of India (RBI) for exchange of currency note on 22.03.2017, but they were informed that when the money was seized in connection with any case, the Court order has to be produced for exchange. Relying upon the Gazette Notification No.365 issued by the Department of Economic Affairs, Government of India, on 12.05.2017, the second respondent admitted that the amount having been seized before 30.12.2016, the RBI has to exchange the specified notes with legal tender. The second respondent also informed the petitioner to approach the District Revenue Officer, the fourth respondent herein, who is the competent authority, to decide the issue of return of seized amount.

4. The fourth respondent/the District Revenue Officer, who was impleaded in this writ petition subsequently, filed a status report dated 09.11.2020, pursuant to the directions of this Court dated 24.02.2020. The fourth respondent admitted the seizure of the money from the petitioner and also claimed that the Inspector of Police, Kiliyanur Police Station, who is the third respondent herein, filed a final report on 14.03.2017 before the Judicial Magistrate, Vanur. The petitioner, after having suffered a dismissal order from the District Munsif-cum-Judicial Magistrate, Vanur, on 04.03.2017 in CrI.M.P.No.104 of 2017 preferred the representation only on 14.03.2017 seeking return of money without proper documents of source of money falsely stating that the money was seized from his residence, when it was actually seized from his motor shed. The fourth respondent submitted that the authorities would act as per the directions of this Court, though the petitioner till date has not produced any proper documents in support of his claim.

5. The learned counsel for the petitioner contended that when the Election Flying Squad seized any money, the authorities have to find out the following : (i) whether the money is involved in any offence, then they have to hand it over to the police authorities so as to be deposited before the appropriate court ; (ii) if it is simply an income of an individual and it is unaccounted and taxable, they have to hand over it to Income

Tax Department so that the individual can claim the money back; and (iii) if the money is properly accounted, they have to return to the claimant; and no other course is open to them. It is further contended by the learned counsel for the petitioner that the petitioner having accounted for the money as his agricultural income, which is outside the purview of the income tax, the petitioner should have been given back the money, but the action of the respondents 1 and 2 is violative of Article 300-A of the Constitution and hence, the petitioner is entitled interference from this Court for the return of money with interest at the rate of 12% per annum.

6. Heard the learned Government Advocate for the respondents 1 to 5 and the learned Standing Counsel appearing on behalf of RBI on the above submissions and perused the materials placed before this Court.

7. There is no dispute that the petitioner is a farmer and he entered into an unregistered agreement with one Sundararaja Pillai for sale of casurina trees and kept the remaining sale consideration with him. The only allegation of the respondents is that the said money was kept for the purpose of illegal distribution to voters and a case in Crime No.377 of 2016 for the offence under Section 171(E) of IPC was registered against the petitioner in this regard. Though the petitioner claimed that no final report was filed, the fourth respondent stated that the final report was filed on 14.03.2017, but the case was not taken on file.

8. Be that as it may, admittedly, the amount in question was seized on 13.05.2016 and Crl.M.P.No.104 of 2017 was filed by the petitioner on 01.02.2017 seeking return of the same, which was dismissed on 04.03.2017 and thereafter, the petitioner submitted the representation on 14.03.2017. Though the second respondent claimed that the petitioner was directed to approach District Revenue Officer, there is no material placed before this Court to show that any such communication was given to the petitioner. The second respondent cannot take umbrage that they have given oral direction, when the representation of the petitioner dated 14.03.2017 was pending with them. On the other hand, the second respondent either should have advised the petitioner what has to be done in accordance with law or ought to have sought a direction from the District Revenue Officer to proceed further in the matter.

9. The revenue officials, who are conferred with quasi-judicial power, cannot shrink their responsibility in considering the request of a citizen, which is for return of money. Unless the guilt is proved, the petitioner cannot be denied the hard-earned money. The officials cannot take their

own sweet time in ensuring the proceedings to reach its logical conclusion. In such matters, the officials could get an undertaking or indemnity bond from the person concerned for the amount and return the same, if the same is not deposited with the Court.

10. At this juncture, it is relevant to note that the Department of Economic Affairs, Ministry of Finance, Government of India, notified G.S.R.460(E), dated 12.05.2017, in exercise of its power conferred by sub-section (1) of section 11 read with clause (c) of the proviso to section 5 of the Specified Bank Notes (Cessation of Liabilities) Act, 2017, issuing the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017. Rule 3 of the said Rules states that it would not apply to the specified bank notes confiscated or seized after 30.12.2016.

11. A Division Bench of this Court in the judgment dated 23.03.2018 in W.A.Nos.409 and 445 of 2018, held as follows :

"22. Be that as it may, considering the fact that the Appellant/Writ Petitioner was given a clean chit after investigations were completed and the Assistant Director of Income Tax (Investigation), Tirunelveli, through his letter, had informed the Second Respondent/Project Director, DRDA, Thoothukudi and Appellate Committee even as early as 28.11.2016 that money may be released back to him as per procedure and also this Court, taking note of the fact that the Learned Standing Counsel for the Fifth Respondent/Reserve Bank of India has fairly brought to the notice of this Court some of Notifications issued by the Ministry of Finance, the Specified Bank Notes (Cessation of Liabilities) Act, 2017 and the Operational Instructions relating to the Rules, 2017 and also keeping in mind the facts and circumstances of the present case, which float on the surface and taking into consideration the primordial fact that as on date, there is no impediment for the return of the said sum of Rs.9 lakhs seized from the Appellant by the Authority concerned, this Court, in the interests of justice, fair play, equity and good conscience and even as a matter of prudence, directs Respondents 1 to 4, by adhering to the relevant provisions such as the Specified Bank Notes (Cessation of Liabilities) Act, 2017 and the Rules made thereunder and also the Operational Instructions issued by the Fifth Respondent/Reserve Bank of India dated 25.5.2017, to take necessary steps to hand over the seized sum of Rs.9 lakhs to the Fifth Respondent/Reserve Bank of India together with the serial numbers of the seized notes. After a careful and meticulous scrutiny of the

same, by exercising utmost caution and circumspection, the Fifth Respondent/Reserve Bank of India shall transfer the said amount to Respondents 1 to 4, who, in turn, shall transfer the said amount to the Appellant/ Writ Petitioner after subjectively satisfying and adhering to all the relevant provisions of the aforesaid Act, 2017, the Rules framed thereunder and the Operational Instructions and also the Procedural Requirements, which are in force. The handing over exercise of the aforesaid amount by the concerned Respondent(s) shall be carried out within a period of two weeks from the date of receipt of a copy of this order. After receipt of the same from the Fifth Respondent/Reserve Bank of India, Respondents 1 to 4 shall remit the sum of Rs.9 lakhs in the bank account of the Appellant to be specified by him within a period of 10 days thereafter."

12. Following the decision rendered by the Division Bench of this Court and Rule 2 of the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017, this Court is of the view that the petitioner is entitled for a refund of a sum of Rs.6,78,010/-.

14. Accordingly, this writ petition is allowed, directing the fourth respondent to tender the seized currency notes at the office of the fifth respondent after taking it from the custody of the Sub-Treasury, Vanur, in accordance with Rule 2 of the Specified Bank Notes (Deposit of Confiscated Notes) Rules, 2017, who, in turn, shall refund of the aforesaid amount to the second respondent in terms of the operational instructions dated 25.05.2017, within a period of two weeks and the second respondent shall, in turn, give back the said amount to the petitioner's account or issue a Cheque in favour of the petitioner within a period of two weeks thereafter. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
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//True Copy//

Sub Assistant Registrar

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To

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represented by its Regional Director,
Rajaji Salai,
Chennai-600 001.

+1cc to M/s.T.Saikrishnan, Advocate, sr no.42526

+1cc to The Government Pleader, sr nos.42998 & 42285

AD(CO)
RMP (11/01/2021)

W.P.No.12324 of 2019

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