



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P. (MD) No.1521 of 2020 and

WMP (MD) No.1225 of 2020

A.Kumerasan

...Petitioner

Vs

1. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli District.

2. The Assistant Commissioner,
Thachanallur Ward of Tirunelveli Corporation,
Tirunelveli District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent pertaining to its proceedings in Na.Ka.No.C147922015 dated 28.04.2016, with regard to condition No.1 as well as the consequential proceeding bearing Na.Ka.No.C147922015 dated 04.01.2017 with regard to recovery of a sum of Rs.3,44,937 and to quash the same as illegal and consequently direct the respondents to refund the amount so recovered, without affording opportunities, within a time frame fixed by this Court.

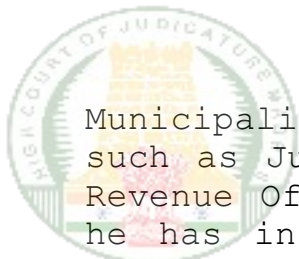
For Petitioner : M/s.S.C.Herold Singh
For Respondents : Mr.Aayiram K.Selvakumar
Additional Government Pleader.

O R D E R

This Writ Petition is filed to quash the 1st respondent's proceedings in Na.Ka.No.C147922015 dated 28.04.2016, with regard to condition No.1 as well as the consequential proceeding bearing Na.Ka.No.C147922015 dated 04.01.2017 with regard to recovery of a sum of Rs.3,44,937/- and to direct the respondents to refund the amount so recovered, without affording opportunities,

2. By consent of both parties, the Writ Petition is taken up for final disposal at the stage of admission itself.

3. The case of the petitioner is that initially he was appointed as a Bill Collector on 01.08.1989 at Thoothukudi



Municipality and subsequently, he was promoted to various posts such as Junior Assistant, Assistant, Superintendent and Assistant Revenue Officer. On assuming charge as Assistant Revenue Officer, he has initiated various steps to recover the dues towards the Corporation by sending notice to the defaulters. In the meantime, the petitioner was again transferred to Thachanallur ward as Superintendent on 30.12.2015. During his tenure as Assistant Revenue Officer, he had sent a detailed communication to the Commissioner through the Assistant Commissioner, to initiate appropriate steps to recover over dues of taxes as well as rents to the tune of Rs.13 Crores. The 2nd respondent by communication dated 20.03.2014 have communicated that the officers, who were holding the post as Superintendent and A1 Assistant would be held responsible for the loss, which would be caused to the Corporation. At the time of petitioner's retirement, the 1st respondent has imposed a clause stating that 15% of the time bar dues should be borne by the petitioner, based on which, the second respondent had passed an impugned order of recovery for a sum of Rs.3,44,937/- from the petitioner, without giving notice and without affording sufficient opportunity. Hence, the petitioner is before this Court with the present Writ Petition.

4. The learned counsel for the petitioner submitted that neither notice nor opportunity of hearing has been given to the petitioner, before passing the impugned order of recovery. Hence, the impugned order has to be set aside.

5. A perusal of the records shows that without issuing notice to the petitioner and without affording opportunity of hearing, the impugned order of recovery came to be passed by the first respondent. During his tenure as Assistant Revenue Officer, he had sent a detailed communication to the Commissioner to initiate appropriate steps to recover over dues of taxes as well as rents to the tune of Rs.13 Crores. Based on his Communication only, the 2nd respondent by communication dated 20.03.2014 informed that the officers, who were holding the post as Superintendent and A1 Assistant would be held responsible for the loss occurred to the Corporation. The petitioner, being in the capacity of Assistant Revenue Officer, had discharged his duties for recovery of over dues of taxes. Thereafter, at the time of the his retirement, he was imposed with a clause stating that 15% of the time bar dues should be borne by the petitioner, based on which, the second respondent had passed an impugned order of recovery for a sum of Rs.3,44,937/-. The said amount has also been recovered from the petitioner's pensionary benefits. Further, it is pertinent to note that no reasons have been assigned by the respondent for fixing liability on the petitioner, for such huge recovery.



6. Considering the facts and circumstances of the case and taking into consideration no notice has been given to the petitioner before effecting recovery order, I am inclined to interfere with the impugned order. Accordingly, the impugned order of recovery is hereby set aside. The matter is once again remitted to the authorities for passing fresh orders by giving reasonable opportunity to the petitioner and such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order. If no orders are passed within the above stipulated time, the respondents shall refund the amount withheld from the petitioner within two weeks thereafter.

7. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar(Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vrn

To

1. The Commissioner,
Tirunelveli Municipal Corporation,
Tirunelveli District.
2. The Assistant Commissioner,
Thachanallur Ward of Tirunelveli Corporation,
Tirunelveli District.

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-11118[F] dated 11/03/2020)

+1 CC to M/s.AAYIRAM K SELVAKUMAR, Advocate (SR-11413[F] dated 12/03/2020)

W.P. (MD) No.1521 of 2020 and
WMP (MD) No.1225 of 2020
11.03.2020

VR (CO)

TR(10.07.2020) 3P 5C