



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.12319 of 2014

and

M.P. (MD) .No.1 of 2014

WEB COPY

S.Shanmugasundaram

.. Petitioner

Vs.

The Assistant Executive Engineer,
Agricultural Engineering Department,
Opp. to Kalasalingam University,
Kunnur Post, Srivilliputhur Taluk,
Virudhunagar District.

.. Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 12.05.2014 passed by the respondent in No.E/4531/2005 and quash the same as illegal and consequently direct the respondent to refund the recovered amount if any.

For petitioner

: Mr.V.P.Rajan

For respondent

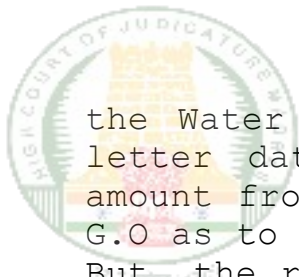
: Mr.S.Dhayalan,

Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the order of recovery passed by the respondent dated 12.05.2014.

2. The learned counsel for the petitioner submitted that while the petitioner was working as Assistant Engineer in the Office of the respondent, the Government issued G.O.Ms.No.256, Agriculture (WD3) Department dated 26.06.2007 for implementing Micro Irrigation System to the cost of Rs.8 lakhs for laying underground pipelines in Kodikulam Village, Virudhunagar District. As per the said G.O., the beneficiary farmers has to contribute 10% of total cost and the same shall be deposited in the account of Water Users Association, which is formed by the farmers, for maintaining the asset created under the scheme. The petitioner utilized the fund of Rs.6,47,370/- and carried out certain work during his tenure. Pending work, the petitioner was transferred on 15.05.2008. The remaining fund and work were carried out by his successor under the supervision of the respondent. While so, after about five years, the respondent has passed an order, by his proceedings dated 31.05.2013, directing the petitioner to deposit 10% of the total cost of Rs.8 lakhs in the account of Water Users Association. The petitioner has deposited the amount in the account of Water Users Association. The respondent has not yet passed an order for refund of the amount deposited by the petitioner. The petitioner is aggrieved by the order of the respondent and prays for the writ of Certiorari to quash the order of the respondent and for the writ of Mandamus to direct the respondent to refund the amount deposited by the petitioner.



the Water Users Association Account. The petitioner has sent a letter dated 14.06.2013 stating that he has not collected any amount from the beneficiaries, as it is not mentioned in the said G.O as to who has to collect and as to when it is to be collected. But, the respondent, without any notice or conducting any enquiry, has passed the impugned order of recovery of Rs.64,737/- fixing entire liability on the petitioner. Hence, the petitioner has come up with this writ petition.

3. He would further submit that as the impugned order has been passed, without issuing any notice and conducting any enquiry, the impugned order is liable to be set aside. He would further submit that in G.O.Ms.No.256, it has not been mentioned as to who has to collect the amount from the beneficiary farmers and as to when it has to be collected and further, G.O.Ms.No.249 mentioned in the impugned order has been issued after the transfer of the petitioner from the said place and therefore, the entire responsibility cannot be fixed on the petitioner based on the said G.Os. He would further submit that the successor of the petitioner also did not collect 10% of cost from the beneficiaries, however, no recovery order passed against him and as such, the petitioner alone has been discriminated by fixing liability and ordering recovery and therefore, the impugned order is liable to be set aside. Thus, he prayed to allow this writ petition.

4. The learned Government Advocate appearing for the respondent submitted that as the petitioner has not deposited the amount after collecting 10% of the amount from the farmers as per the G.O., the respondent issued notice dated 31.05.2013 directing the petitioner to deposit the collection amount of Rs.64,737/- in the account. On 06.06.2014, the petitioner has submitted his explanation. When the project was introduced in 2007, the petitioner was at work and he was transferred only on 15.05.2008. As the petitioner has executed the project, he is liable to collect and deposit amount. But, the petitioner has failed to do so and hence, the impugned order has been passed. As the impugned order has been passed after giving an opportunity to the petitioner by giving notice dated 31.05.2013, the impugned order need not be set aside. Thus, he prayed to dismiss the writ petition.

5. Heard both sides and perused the records carefully.

6. A perusal of the impugned order shows that no notice has been issued to the petitioner before passing the order of recovery. According to the respondent, notice has been issued to the petitioner by the proceedings dated 31.05.2013. A bare perusal of the proceedings dated 31.05.2013 shows that it is not a



notice, but it is only an order directing the petitioner to deposit the amount collected from the beneficiaries. The respondent has not produced any document to show that a notice has been issued to the petitioner and enquiry has been conducted before passing the order of recovery. Though it is stated by the respondent that the petitioner had submitted his explanation on 06.06.2014, the same has not been produced before this Court by the respondent.

7. Further, in the impugned order dated 12.05.2014, it is stated that the explanation given by the petitioner dated 14.06.2013 in reference No.6 in the impugned order is not acceptable. However, the reference No.6 of the impugned order shows that it is a letter of the Executive Officer and not the explanation of the petitioner. It is seen that the petitioner has given an explanation dated 14.06.2013 only to the direction issued by the respondent in his proceedings dated 31.05.2013 to deposit the amount collected from the beneficiaries and the same cannot be construed to be proper explanation to the impugned order after notice. As the impugned order has been passed in violation of the principles of natural justice, this Court is inclined to set aside the impugned order on this sole ground and remit the matter to the respondent for considering the matter afresh after providing sufficient opportunity to the petitioner. It is needless to say that it is open to the petitioner to raise all the grounds raised in this petition before the respondent.

8. In view of the above, the impugned order is set aside and the matter is remitted to the file of the respondent. The respondent is directed to issue notice to the petitioner and conduct enquiry and after providing sufficient opportunity to the petitioner, pass order on merits and in accordance with law. The said exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this order.

9. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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To

The Assistant Executive Engineer,
Agricultural Engineering Department,
Opp. to Kalasalingam University,
Kunnur Post, Srivilliputhur Taluk,
Virudhunagar District.

+1 CC to SPL.GP (SR-287[F] dated 06/01/2020)

+1 CC to MR.V.P.RAJAN, Advocate (SR-579[F] dated 07/01/2020)

Order made in
W.P(MD)No.12319 of 2014
03.01.2020

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