BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2020

CORAM:

THE HONOURABLE **MR.JUSTICE C.V.KARTHIKEYAN**

Writ Petition (MD).No.17159 of 2018
and
W.M.P.(MD).No.18682 of 2018

M.Rajathi ... Petitioner

Vs.

1.The District Collector,
Madurai District,
District Collectorate,
Madurai 625 020.

2.The Divisional Excise Officer,
O/o. The Divisional Excise Officer,
Usilampatti @ Thirumangalam,
Thirumangalam,
Madurai District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records in Na.Ka.783/1986, dated 07.05.2018 on the file of the second respondent and quash the same.

For Petitioner : Mr.P.Gnanasekaran

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

The writ petition has been filed in the nature of Certiorari by M.Rajathi, W/o. Late S.A.Maharajan, resident of Viraganur Village, Madurai South Taluk, Madurai, questioning the order of the second respondent in Na.Ka.No.783/1986, dated 07.05.2018 and to set aside the same.

2. This is the case which reflects the retrograde bureaucratic approach of the Government officials. An auction which took place in the year 1982, participated by an impersonator and admitted by the respondents that an impersonator had participated in the auction proceedings has now been reopened to be proceeded under the Revenue Recovery Act to recover what the respondents have themselves calculated as "notional loss". The Court can only express its dismay at the strange ways in which the wheels of the Government Departments, particularly, the Revenue Department works. As stated, the petitioner is a widow. Her husband was Late S.A.Maharajan. Unfortunately, he died on 15.01.2004, nearly 15 years back. At least he was alive from 1982 to 2004. During his life time, the respondents have not taken any action. After his life time, they did not take any action for 15 years. Now, the impugned order has been served on the widow, the petitioner, asking her to pay a sum of Rs.1,80,900/- which as stated above is not an actual loss suffered by the Government, but notional loss said to have been suffered by the Government.

3. The background facts necessitating the filing of the writ petition are as follows:

The Taluk Excise Officer, Thirumangalam in Roc.No.7478/82 E1, dated 20.08.1982, had submitted a report to the first respondent viz., the District Collector, Madurai, stating that an auction was conducted for arrack shop No.1 in Thirumangalam (North) on 11.06.1982. There were several bidders for the arrack shop and one of them was, who even according to the respondents, is described as an impersonator of S.A.Maharajan. Even the respondents admit that the actual Maharajan did not participate in the auction. The impersonator also calling himself as S.A.Maharajan offered the highest bid of Rs.45,180/-. As a pre-condition, he had to remit ½ months kist before the end of the day. As an impersonator, he naturally did not come forward to pay the said amount. Therefore, the respondents re-auctioned the shop. On re-auction, the arrack shop fetched a sum of Rs.30,105/-. The difference in the auction price, between Rs.45,180/- and Rs.30,105/- of Rs.15,075/- is now been recovered from the widow of late S.A.Maharajan, calculated for 12 months at Rs.1,80,900/-. This recovery is initiated after 38 years. This Court is unable to comprehend as to whether the official, who issued the impugned notice had actually applied his mind before signing the impugned order. The petitioner herein is natually aggrieved with the said notice.

4. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

5. The learned counsel for the petitioner pointed out that S.A.Maharajan had died in the year 2004 and even at that time, in the death certificate, his address has been given as 4-87A, Mela

Theru, Viraganur Village, Madurai. The address of the present petitioner is also the same. The address has never changed. The person, who impersonated himself as S.A.Maharajan, had also given his address as Viraganur Village. Had the respondents thought it fit to initiate action against S.A.Maharajan at the earliest, they could have easily found out the address of S.A.Maharajan in Viraganur Village. The Government has appointed Village Administrative Officers only for this purpose. The respondents have not taken any action as stated above for 36 years. It is also pointed out by the learned counsel for the petitioner that, even in the counter affidavit filed by the respondents, they have admitted that the person, who actually participated was an impersonator. It is stated as follows:

> *"8. It is submitted that after verifying the signature in the sale records and the signature in the statement given by Thiru S.A.Maharajan, the then Tahsildar came to be understand that the person who participated in the sale (on 11.06.1982) has impersonated as Thiru S.A.Maharajan."*

6. Thereafter, in the counter affidavit, it is stated that a confidential enquiry was conducted and that confidential enquiry revealed that there must be a link between the person, who participated in the sale and the actual S.A.Maharajan. I am unable to comprehend what actually the dependent of the counter affidavit tried to imply. A counter affidavit has a sanctity. The deponent of the counter affidavit as a responsible official should disclose before this Court necessary and vital information. Even if the source of confidential information is not to be disclosed, the facts as to the nature of information received must be disclosed. It cannot be based on presumptions. Even in the present case, it is stated that the confidential enquiry revealed that "there must be" a link between the person, who participated in the sale and S.A.Maharajan. The deponent has not given a specific word "is" but used the words "must be". Therefore, that statement by the deponent in the counter affidavit is rejected by this Court.

7. The learned Special Government Pleader based her arguments on the fact that a Solvency Certificate was produced, and that production of the Solvency Certificate can be done only by the person, who had applied for the solvency certificate and for whom the solvency certificate was issued. It was contended that the auction was held on 11.06.1982 and it had been stated by S.A.Maharajan that he had lost solvency certificate on 10.06.1982 and an advertisement was given on 12.06.1982. But, it is seen that the statement of S.A.Maharajan had actually been given at the contemporaneous period and is reflected in the order dated 20.08.1982 of the Taluk Excise Officer in Roc.No.7478/82 E1, dated 20.08.1982. The said official had enquired with S.A.Maharajan and that enquiry, which was conducted immediately after the auction of the arrack shop, had revealed the following finding:

"As Thiru S.A.Maharajan failed to remit the ½ months rental before the close of the sale day, (i.e. before 5 p.m. on 11.06.82), orders were passed in Roc.No.7478/82 E1 dated 11.06.82 forfeiting the E.M.D. deposited by him. He replied that he had not at all participated in the sale on 11.06.82 at Taluk Office, Thirumangalam. Based on his reply, Thiru S.A.Maharajan was summoned and enquired on 09.08.82. He has stated that he lost his solvency certificate on 10.06.82 at Madurai and an advertisement was given through the Tamil Newspaper "Daily Thanthi" on 12.06.82 (published on 13.06.82). Thiru S.A.Maharajan has further stated that his solvency certificate was utilised by the person who acted as S.A.Maharajan in the sale on 11.06.82. A copy of his statement is enclosed herewith.

After verifying the signature in the sale records and the signature in the statement given by Thiru S.A.Maharajan, I come to understand that the person who participated in the sale (on 11.06.1982) has impersonated as Thiru S.A.Maharajan."

8. The said officer had compared the signatures and had come to a definite finding that the signatures are by two different persons. Thereafter, he comes to the conclusion that there must be a link between the impersonator and the actual S.A.Maharajan. This actually works out the disadvantage of the respondents since there can be a link only between two different persons and even on the face of it, if the said official had stated that there were two different persons and S.A.Maharajan did not participate in the auction, then certainly no liability can be fastened on him and also on his legal representative and that too after a period of 38 years. In the counter affidavit, no explanation has been given as to why steps were not taken for a period of 38 years under the Revenue Recovery Act.

9. The learned Special Government Pleader has also made a vain attempt to justify the order by stating that the price which was offered for the auctioned shop was Rs.45,180/- and the price offered for re-auctioned was Rs.30,1050/- and therefore, a notional loss of Rs.15,075/- had accrued to the Government every month and for one year, the amount now demanded had actually accrued. But, it should be noted that the upset price was only Rs.15,000/-. Therefore, in effect, even according to the Government records, the shop had fetched a profit of Rs.15,070/- every month, if notional profit is to be calculated. I find no justification in the impugned order at all. Accordingly, the Writ Petition is allowed and the impugned order of the second respondent dated 07.05.2018 is quashed and the Revenue Recovery proceedings are also quashed.

10. It is also informed by the learned counsel for the petitioner that the copy of the impugned order had been forwarded to the jurisdictional Sub Registrar Office. A copy of this order is to be forwarded to Theppakulam Sub Registrar Office, Madurai, with direction to make necessary entries insofar as the property in Survey Nos.81/1B, 81/2A and 82/6B are concerned, that Revenue Recovery Proceedings have been quashed, forthwith, without any delay. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

To

1.The District Collector,
Madurai District,
District Collectorate,
Madurai 625 020.

2.The Divisional Excise Officer,
O/o. The Divisional Excise Officer,
Usilampatti @ Thirumangalam,
Thirumangalam,
Madurai District.

3.The Sub Registrar,
Theppakulam Sub Registrar Office,
Madurai.

+1 CC to M/s.P.GNANASEKARAN, Advocate (SR-10143[F]

+1 CC to M/s.Special Govt.Pleader (SR-10165[F]

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