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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition No.39050 of 2003

&

W.M.P.No. 47323 of 2003

S.Janakiraman

... Petitioner

-Vs-

1. The Assistant Director Of Khadi
And Village Industries, Villupuram.

2. The Tahsildar,
Taluk Office, Sankarapuram,
Villupuram District.

3. The Distriact Collector,
Villupuram District, Villupuram.

4. The District Revenue Officer,
Villupuram, Villupuram District.

5. The Village Administrative
Officer, Sankarapuram,
Villupuram District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of the order No.A4/4740/2003, dated 28.11.2003, issued by the 2nd respondent and quash the same and direct the 1st respondent to adjust the loss against the public.

For Petitioner : Mr.M.L.Ganesh

For Respondents : Mr.M.Rajendran

(Additional Government Pleader)

O R D E R

The petitioner obtained a machine for extracting oil from Khadi and Village Industries on loan basis in the year 1984 as per Loan No. 251/1 to the tune of Rs.11,075 and another loan for the same purpose to a value of Rs.10,000 as per Loan No.286/1.



2. The machine got impaired and became un-serviceable in spite of the mechanics and engineers sent by the respondents. It got impaired again and again. The petitioner suffered huge loss and the engineers declared that it is an un-serviceable machine. According to the petitioner respondent assured that it will be replaced with a machine in good condition. After a period of 20 years, officials of the respondent obtained signatures on the blank forms and stated that the loan amount will be adjusted with the subsidy and their won't be any recovery. After a period of 20 years a notice under Revenue Recovery act came to be issued.

3. Resisting the statement the respondent would contend that the petitioner borrowed a sum of Rs.22,719/- and accrued interest of Rs.24,692/- total into a sum of Rs.47,411/- payable by the petitioner. On the request of the first respondent, District Collector issued the demand notice. Immediately after the receipt of the notice the petitioner remitted a sum of Rs.1000/- and thereafter, he preferred the writ petition which is an after thought.

4. The arrear sought by the 1st respondent is undisputed and invoking the provisions of Revenue Recovery Act, which is the only way to recover the dues of the State. As per the provisions of the Act, due notice was given to the petitioner and money sought to be recovered, admittedly advance made on the loan basis. The contention of the petitioner that the demand is barred by limitation and the Act does not prescribe any time limit for execution of the process. Therefore, the demand is not barred by limitation and petitioner is liable to pay the undisputable amount due to the Government.

5. Heard the submissions.

6. On the one hand the petitioner states that the machine became un-serviceable in the year 1983 itself and it broke down even after repair made by the engineers. The engineers have stated that the machine cannot be repaired and it is un-serviceable and it will be substituted with a machine in good condition as replacement. Without taking any action for two decades, the respondents are not entitled to demand money in the guise of recovery of dues. The respondents obtained signatures in blank form on the promise that the outstanding amount will be adjusted towards subsidy and there won't be any recovery.

7. On the other hand, the 1st respondent contends that it is an undisputable liability for the petitioner to pay the loan procured by him and that Revenue Recovery Act can be invoked for recovering dues payable to the state.



8. It is well settled that before invoking the provisions of Revenue Recovery Act, there should be determination for adjudication as per the liability of the persons concerned or the extent of his liability. This determination can be arrived at only after specifying the details of the loan advanced, the repayment made and the interest chargeable as per the terms and conditions of the loan and the balance money payable by the loanee. Without determining the amount, even assuming there is a provision in the loan agreement for recovery by invoking the Revenue Recovery Act, it is not possible to recover. In the above case, there are disputed questions of facts as to the serviceability of the machine its impairment and statements about replacement of the un-serviceable machine with a machine in good condition. Provisions of subsidy for this business loan without any determination of the same, the provisions of Revenue Recovery Act cannot be invoked. Further, as per the counter affidavit filed by the 1st respondent, it is noted that there is no adjudication between the parties on the disputed questions of facts with regard to liability of the petitioner to make the payment. Without any adjudication or determination of liability of the petitioner the 1st respondent cannot straightaway invoke the provisions of Revenue Recovery Act.

9. Therefore, the impugned action taken by the respondents 2 to 5 and the issuance of recovery notice at the behest of the 1st respondent is not sustainable in the eyes of law and it does not pass the acid test that the loan sought to be recovered is undisputable and that the petitioner is liable to pay the same. Therefore, the impugned notice issued in the order no. A4/4740/2003 dated 28.11.2003 issued by the 2nd respondent is set aside and this writ petition stands allowed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

10. It is open to the 1st respondent to proceed with the determination for adjudication of the liability of the petitioner in accordance with law and subject to limitation.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Director Of Khadi
And Village Industries, Villupuram.



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Taluk Office, Sankarapuram,
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RSV(CO)
CT 23/05/2022