



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P(MD)Nos.9046,9047 and 9431 of 2011
and
M.P(MD)Nos.1, 1, 1 and 2 of 2011

A.Sivabalan ... Petitioner in W.P(MD)No.9046 of 2011
P.Rajammal ... Petitioner in W.P(MD)No.9047 of 2011
T.Murugan ... Petitioner in W.P(MD)No.9431 of 2011

Vs

1.The District Collector,
Virudhunagar District,
Virudhunagar.

2.The Project Officer cum
Joint Director of Agriculture,
District Water Bed Development Agency,
Virudhunagar.

... Respondents in all WPs

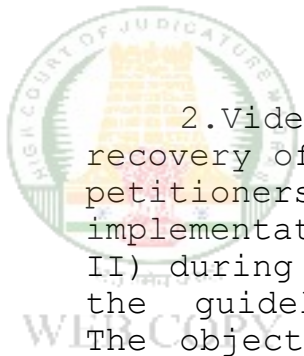
COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of writ of certiorari, to call for the records pertaining to the impugned order passed by the second respondent in his proceedings No.Thane.783/2009, dated 01.08.2011 and quash the same.

For Petitioner : Mr.S.Karthik
in W.P(MD)Nos.9046
and 9047 of 2011
: No representation
in W.P(MD)No.9431 of 2011

For Respondents : Mr.G.Suriyanarayanan
Additional Government Pleader
in all WPs

COMMON ORDER

These writ petitions are filed as against the order dated 01.08.2011 of the second respondent / the Project Director cum Joint Director of Agriculture, District Water Bed Development Agency, Virudhunagar.



2. Vide impugned order, the second respondent has ordered for recovery of a sum of Rs.1,32,473/- from these petitioners that these petitioners are responsible for irregular payment made in the implementation of Integrated Wasteland Development Programme (IWDP-II) during the year 2004 - 2005. This scheme was implemented as per the guidelines issued by the Government in the year 2003. The object of the scheme is to develop the dry barrier land by establishing ponds, desliting of supply channel, horticulture plantation, avenue plantation, fodder cultivation, fish culture, etc.,. The scheme was implemented with the funding by the Central and State Governments, through respective District Collectors by forming Water Bed Development Team. The petitioners being members of the Team are responsible for implementing the scheme. The work under the scheme has to be executed through beneficiaries and not by way of any contract. In this case the petitioners issued cheques to various other persons, who are not beneficiaries at all under the scheme. On the complaint of some of the beneficiaries, enquiry was contemplated by the District Collector and after ascertaining that the cheques were issued to non-beneficiaries, the impugned order of recovery came to be passed.

3. The learned Counsel for the petitioners submits that the petitioners are the Vice President, President of Malarajakulam Panchayat and Scientist of Watershed Development Team (WDT) and member of the scheme respectively. The impugned order of recovery came to be passed at the instance of one Loganathan and others, who are encroachers in the village panchayat and these petitioners as Vice President and President have issued notice for removal of encroachment and therefore, they have foisted the complaint against these petitioners and the second respondent has passed the impugned order in a mechanical manner behind the back of the petitioners without even affording any opportunity to the petitioners. Since all the works have been executed there is no question of misappropriation or loss.

4. The learned Additional Government Pleader appearing for the respondents submits that the scheme is implemented to develop the waste lands by digging ponds, desliting supply channels, horticulture plantation, avenue plantation, fodder cultivation, fish culture, etc.,. The object of the scheme is to provide work to the beneficiaries and therefore, the work has to be executed by the beneficiaries themselves. However, in the present case, during the enquiry conducted by the District Collector, based on the complaint of one of the beneficiaries, it was found that the cheques were issued by these petitioners in favour of the third parties, who are non-beneficiaries. Therefore, the order of recovery came to be passed, which is challenged before this Court.

5. This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.



6. Though the respondents filed a counter affidavit that the order of recovery was issued based on the enquiry report of the Assistant Director (Audit) Rural Development Department Virudhunagar, the fact remains that the enquiry report is not available in the files.

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7. The ground raised by the learned Counsel for the petitioners is that the order of recovery has been passed without providing any opportunity of hearing to the petitioners. The Respondents claim that this order of recovery came to be passed only based on the enquiry report of the Assistant Director (Audit) Rural Development Department Virudhunagar, which was also approved by the District Collector/ Chairman in Note File No. 783/2009, dated 29.07.2011.

8. Though the respondents have not produced the enquiry report, the Note file of the District Collector is placed before this Court.

9. The very object of the scheme is to develop the dry/ waste lands by establishing ponds, desilting of supply channel, etc., and such works are carried out by the beneficiaries of the scheme and not by way of any contract. The respondents have filed a detailed counter affidavit stating that the cheques were issued by these petitioners, who were Vice President, President of the panchayat and Member of the Scheme respectively to third parties, who are non-beneficiaries.

10. The fact remains that the President, Vice President and Member of the Scheme have misused the funds meant for the scheme, against the object of the scheme. This action on the part of the petitioners is an offence under the provisions of the Indian Penal Code. However, the respondents have not chosen to prefer any criminal complaint, instead ordered for recovery of the amount disbursed to the third parties. Therefore, this Court is not inclined to interfere with the orders of the second respondent.

11. Accordingly, these writ petitions stands dismissed. No costs. Consequently, connected miscellaneous petitions also stand dismissed.

Sd/-

Assistant Registrar (AD II)

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/ /2022

Sub Assistant Registrar (CS)

dsk



To

1. The District Revenue Officer,
Tirunelveli at the Office of the
Collector, Kokkirakulam,
Tirunelveli District.

2. The Project Officer cum
Joint Director of Agriculture,
District Water Bed Development Agency,
Virudhunagar.

+2 CC to M/s.S. KARTHIK, Advocate (SR-19304[F] dated 19/04/2022)

+1 CC to M/s.B.Balamurugan, Advocate (SR-19399)

+1CC to Spl.GP(SR.No.19384)

**W.P (MD) Nos. 9046, 9047 and
9431 of 2011
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MGJ(02.05.2022) 4P 7C