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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **20.06.2022**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.6583 of 2012
and
M.P(MD)No.1 of 2012

Vimala ... Petitioner

Vs.

1.The Post Master General,
Southern Region,
Madurai-625 002.

2.The Superintendent of Post Officers,
Karaikudi Division,
Karaikudi-630 003.

3.The Collector,
Sivagangai District,
Sivagangai.

4.The Tahsildar,
Thirupathur Taluk,
Sivagangai District. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the fourth respondent impugned order of Roc.B5/6840/2005 dated 09.03.2012 issued under Section 25 in Form No.4 of the Tamil Nadu Revenue Recovery Act, 1864 and quash the same as illegal.

For Petitioner : Mr.R.Murugappan

For Respondents : Mr.S.Jeyasingh
for R1 and R2
Mr.P.Thambi Durai
Government Advocate
for R3 and R4

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ORDER

The present writ petition has been filed challenging a notice issued by the fourth respondent under the Revenue Recovery Act, 1864, calling upon the writ petitioner to pay a sum of Rs.5,28,820.25/-(Rupees Five Lakhs Twenty Eight Thousand Eight Hundred and Twenty and Twenty Five Paise only), on the ground the same has been demanded by the second respondent.

2. The learned counsel for the petitioner submits that the petitioner's husband was working as Sub Post Master at Nerukuppai Post Office, Thirupathur Taluk and he had passed away on 01.06.2005. On 20.07.2005, the fourth respondent Tahsildar had issued a notice under Section 25 of the Revenue Recovery Act, 1864 in the name of the petitioner's husband. The said notice was challenged before this Court in W.P(MD)No.1845 of 2006. By an order, dated 14.07.2011, this Court was pleased to allow the writ petition on the ground that the notice has been issued as against a death person, granting liberty to the respondent to proceed further in accordance with law to recover the amount, if so advised. Pursuant to the said order, the second notice has been issued by the fourth respondent on 09.03.2012 to the writ petitioner.

3. The basis of the said notice is that the petitioner's husband was working in the second respondent office and while he was working there, he is said to have been committed misappropriation to a tune of Rs.5,28,820.25/-(Rupees Five Lakhs Twenty Eight Thousand Eight Hundred and Twenty and Twenty Five Paise only). The said amount was sought to be recovered through revenue recovery proceedings by the impugned notice issued by the fourth respondent.

4. The learned counsel for the petitioner submits that no charge memo was issued to the petitioner's husband or any enquiry conducted, while he was alive. Even after his death, no orders have been passed by the postal department. However, without any orders being passed by the postal department, the fourth respondent herein has proceeded under the Revenue Recovery Act, 1864.

5. Per contra, the learned counsel for the respondents 1 and 2 contended that the petitioner's husband was involved in a major scam and immediately when fraud was discovered, the petitioner's husband, namely Manoharan had passed away. Hence, the respondents 1 and 2 were not in a position to issue a charge memo or conduct any enquiry. However, since public money is involved, proceedings were initiated under the Revenue Recovery Act, 1864 for recovering the said amount from the property of the deceased Manoharan.

6. I have carefully considered the submissions made on either side.

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7. The petitioner's husband, who was working as a Sub Post Master, had passed away on 01.06.2005. While he was in service, no charge memo was issued nor he was facing any enquiry. However, the revenue recovery proceedings were initiated after his death on 20.07.2005, which were quashed by this Court in W.P(MD)No.1845 of 2006 on the ground that it was issued as against a dead person. Thereafter, the second notice has been issued by the fourth respondent under the impugned order, dated 09.03.2012, attempting to recover a sum of Rs.5,28,820.25/-(Rupees Five Lakhs Twenty Eight Thousand Eight Hundred and Twenty and Twenty Five Paise only) from the writ petitioner. When no charge memo was issued while the petitioner's husband was alive nor any enquiry was conducted, the respondents 1 and 2 are not entitled to recover the amount from the property of the petitioner's husband. That apart, no orders have been passed by the respondents 1 and 2 to recover the amount from the petitioner or from the petitioner's husband. Without there being an order passed by the respondents 1 and 2 for recovery of the amount, the fourth respondent has chosen to initiate proceedings under Section 25 of the Revenue Recovery Act, 1864. Hence, the impugned notice issued by the fourth respondent is without any basis, whatsoever. The contention of the learned counsel for the respondents 1 and 2 that since he had passed away immediately, no steps could be taken to issue a charge memo or conduct any enquiry is not legally sustainable. Once the delinquent dies, the entire proceedings even if it had already been initiated, gets abated. In the present case, no proceedings been initiated before the death of the petitioner's husband. Hence, the impugned order has no legs to stand.

8. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

1.The Post Master General,
Southern Region,
Madurai-625 002.

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3.The Collector,
Sivagangai District,
Sivagangai.

4.The Tahsildar,
Thirupathur Taluk,
Sivagangai District.

+1 CC to M/s.S. JEYASINGH, Advocate (SR-26686[F] dated 20/06/2022)

+1 CC to M/s.SPL.GP (SR-27128[F] dated 21/06/2022)

+1 CC to M/s.R. MURUGAPPAN, Advocate (SR-27035[F] dated 21/06/2022)

Order made in
W.P.(MD).No.6583 of 2012
20.06.2022

SS/01/07/2022/ 4P 8C

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