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WP Nos.39813 and 39814 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-04-2023

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.39813 and 39814 of 2015

And

MP No.1 of 2015 and WMP Nos.20641 and 20660 of 2020

Vishnu Lakshmi Trust,
103/153, B R Main Street,
Bungalow Thottam,
Dharapuram – 638 656,
Represented by its Managing Trustee,
K.Baskaran, S/o.V.Krishnaswami,
103/153, B R Main Street,
Bungalow Thottam,
Dharapuram.

.. Petitioner in both WPs

Vs.

- 1.The Union of India, Represented by Secretary
to Government,
Ministry of Human Resource Development,
Department of Human and Child Development,
Sastri Bhavan,
New Delhi – 110 001.
- 2.The Secretary to Government,
Social Welfare and Nutritious Meals Programme
Department,
Secretariat,



Chennai-600 009.

3.The Commissioner of Social Welfare,
Chepauk,
Chennai-600 005.

4.The District Social Welfare Officer,
Tiruppur District,
Tiruppur.

5.The District Collector,
Tiruppur District,
Tiruppur.

6.The Tahsildar,
Dharapuram Taluk,
Dharapuram.

.. Respondents in both WPs

WP 39813 of 2015 filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the fourth respondent in Roc No.119/A1/2009 and to quash the proceedings dated 17.11.2014 made therein.

WP 39814 of 2015 filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the fifth respondent in Na.Ka.No.2175/2012/E3 and to quash the proceedings dated 18.02.2015 made therein and consequently to direct the respondents to forbear from resorting to the provisions of the Revenue Recovery Act to coerce the petitioner for payment of the disbursed Grant.

For Petitioner in both WPs : Mr.T.M.Hariharan



For Respondent-1 in both WPs : Mr.J.Madanagopal Rao,
Senior Panel Counsel.

For Respondents-2 to 6 in both
WPs : Mr.T.Arunkumar,
Additional Government
Pleader.

COMMON ORDER

WP No.39813 of 2016 is filed against the order passed by the respondent dated 17.11.2014 asking the petitioner to return the subsidy amount of Rs.20,70,000/- is under challenge.

2. WP No.39814 of 2016 is filed calling for the records of the fifth respondent in Na.Ka.No.2175/2012/E3 and to quash the proceedings dated 18.02.2015 made therein and consequently to direct the respondents to forbear from resorting to the provisions of the Revenue Recovery Act to coerce the petitioner for payment of the disbursed Grant.

3. The petitioner is the Trust, which has been established in the year 1990 with an object of promoting education, culture, sports, women and child welfare in the backward area of Dharapuram. The Trust has been



rendering service in the cause of promoting education and has established and is managing Vishnu Lakshmi Matriculation Higher Secondary School and Vishnu Lakshmi B.Ed., College at Dharapuram. Recently, the Trust has commenced the Vishnu Lakshmi College of Engineering and Technology at Vellalore at Coimbatore District.

4. The first respondent has implemented the Scheme of Assistance to Voluntary Organisations for construction of Hostel Building for Working Women with Day Care Centre for Children. The petitioner has engaged in such Schemes for public welfare, came forward to set apart its lands, measuring 25 cents in Survey No.344, R.S.No.287, Chitrauthampalayam Village, Dharapuram. The petitioner submitted an application to the first respondent-Union of India under the Scheme.

5. The application of the petitioner was considered and the subsidy amount was released. The first installment was released and the condition stipulates is that the building construction work is to be commenced in part stage, the petitioner has to submit the report and thereafter further installment will be released. The petitioner states that they



have commenced the building and it was half a way through and the Authorities without adjudication issued the impugned order directing the petitioner to return the subsidy amount of Rs.20,70,000/-. Pertinently, the second installment was also paid and at that stage, the Authorities stopped further payment and initiate action to recover the subsidy already granted to the writ petitioner.

6. The learned counsel for the petitioner relied on the judgment of this Court in the case of **V.D.Swami and Co. Ltd., by its Managing Director M.Balaji vs. The Chief Engineer, Public Health Engineering Department [1987 (1) MLJ 120]**, wherein in paragraph-4, it has been observed as under:-

“4. Thus the legal position as culled out from the relevant decisions may be stated as under:-

(i) Before invoking the provisions of the Revenue Recovery Act, there should be a determination or adjudication as to the liability of the person concerned or the extent of his liability.

(ii) The determination and adjudication



need not take the place of determination and adjudication in a Civil Court, but the determination or adjudication should be in the nature of a preliminary ascertainment of the existence or the extent of the liability and such determination will be a condition precedent for invocation of the provisions of the Revenue Recovery Act.”

7. In the case of **M.P.Abdul Hameed and Company vs. The Tamil Nadu Civil Supplies Corporation Limited [1997 (II) CTC 357]**, wherein in paragraph-15, the Hon'ble Division Bench of this Court held as under:-

“15. A division bench consisting of Veeraswami, CJ and Natarajan. J held in the decision reported in Commr. of Civil Supplies vs. V.Seethuraman, 1974 TLNJ 511 that when applying Section 52, it is requisite by the other provisions of the Act, that notice of demand will have to be made and an opportunity for payment or representation should be given. But, such opportunity does not imply a jurisdiction on the part of the authority empowered to act under



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Section 52 to decide a dispute by himself, though it is controversial. Therefore where either the liability or its quantum is fairly and reasonably in dispute and it does not appear prima facie that a dispute is raised merely as a make belief to circumvent the application of Section 52, resort to that section cannot be made. The Bench, in the concluding para of its judgment observed as follows:-

“It is a well established proposition of construction that an authority which is entrusted with only powers of execution cannot assume for itself a jurisdiction to resolve anterior disputes by adjudication. Judicial Power to decide civil disputes should not be confused with execution enturment of recovery powers of a summary character as an expedient for quick recovery on grounds of state necessity. Section 52 being first an enabling summary recovery process, it cannot extend to and cover



jurisdiction for finding a solution of a dispute, and then applying the summary process of recovery under Section 52.

Merely because a contract provides for a liability for any deficiency in delivery, it does not follow that once the loss is found ipso facto the liability to compensate arises. This only means that the Government will have to institute suits, if they so think fit, to establish the liability and its quantum against each of the respondents.”

8. Relying on the above judgments, the learned counsel for the petitioner reiterated that in the absence of any adjudication by affording an opportunity to the writ petitioner, the order impugned is untenable and therefore, it is to be set aside. The Authorities have not verified the report submitted by the petitioner and also the representations. Thus the writ petitions are to be considered.



9. The learned Additional Government Pleader appearing on behalf of respondents 2 to 6 made a submission that the first respondent-Union of India released a sum of Rs.10,35,000/- on 21.09.2000 and the second installment was released on 12.03.2012, but the petitioner has not completed the work within the stipulated time and as per the conditions of the Agreement. Since the work was not commenced, the fourth respondent inspected the site and sent a letter in Na.Ka.No.119/200 dated 03.02.2012 and 04.03.2015 to the third respondent stating that there is no progress in the construction work entrusted to the petitioner and as such, the petitioner is liable to repay the subsidy amount of Rs.20,70,000/- with interest at the rate of 10% per annum to the Government. Subsequently, the Tahsildar, Dharapuram vide letter in Na.Ka.No.6518/2012 B4 dated 06.03.2015 issued a letter to the petitioner to pay the subsidy amount of Rs.20,70,000/- with interest at the rate of 16% per annum.

10. The Authorities Competent conducted an inspection and found that the petitioner has not made any progress in the building construction work. Therefore, the Authorities have initiated action to recover the subsidy amount granted to the writ petitioner.



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11. It is contended by the respondents that the petitioner has accepted the release of funds to the tune of Rs.34,50,000/- in three installments. But the project has not been completed by the petitioner. The petitioner has not even commenced the work as per the terms and conditions of the Agreement. Thus the request of the petitioner to conduct further inspection of the project was denied by the respondents.

12. The learned Senior Panel Counsel appearing on behalf of the first respondent made a submission that the first respondent issued directions to recover the amount, since the petitioner failed to comply with the terms and conditions of the Agreement. The said instructions given by the first respondent has been reiterated by the State Authorities in their counter by stating that the first respondent vide letter D.O.Bi,37/2011/WH(Pt) dated 18.09.2012 requested to inform the status of the Working Women Hostels maintained by the Ministry of Women and Child Development. Accordingly, the fourth respondent by letter dated



29.11.2013 informed the second respondent that the construction work is incomplete and that there is no progress at all in the building and thus an action was initiated to recover the subsidy amount of Rs.20,70,000/- along with interest at the rate of 16% per annum.

13. The petitioner submit their explanation with reference to the stage of construction of the building. The petitioner has stated that the construction of Hostel could not be completed due to the delay caused by the respondents in issuing necessary Certificate etc. There was a delay in processing the documents. However, the said delay cannot be a ground to condone the inaction of the petitioner in commencing building construction work.

14. Admittedly the petitioner has received two installments and therefore, the petitioner ought to have progressed the building construction work. In the present cases, the explanation submitted by the petitioner was not accepted, since the Authorities during inspection found that the building construction work was not even commenced.



15. The photographs enclosed by the petitioner along with the typed set of papers show that the building was not constructed in full and in accordance with the terms and conditions and mere skeleton structure cannot be utilised for dwelling purposes. The photograph itself would reveal that the building was not in a living condition wherein the Women Hostel can function and therefore, this Court is of the considered opinion that the petitioner is not entitled for the relief as such sought for in these writ petitions.

16. The fourth respondent-Tahsildar has initiated action under the Revenue Recovery Act to recover the dues to be paid to the Government under the provisions of the Revenue Recovery Act.

17. With reference to the judgment relied on by the petitioner, in the case of **V.D.Swami and Co. Ltd. [1987 (I) MLJ 120]**, cited supra, the Hon'ble Division Bench of this Court has held that before invoking the provisions of the Revenue Recovery Act, there should be a determination or an adjudication as to the liability of the case or the extent of the liability. The said principle has already been complied with by the respondents.



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18. In the present cases, an adjudication was done based on the inspection report and by considering the explanation submitted by the petitioner. Even during the first round of litigation an order was passed on 17.11.2014 by the fourth respondent-District Social Welfare Officer.

19. Therefore, before invoking the provisions of the Revenue Recovery Act by the Tahsildar, there was an adjudication and determination as to the liability of the person concerned and in the present cases, the liability of the petitioner was determined by the Competent Authority i.e., the fourth respondent herein and thereafter, the Tahsildar invoked the provisions under the Revenue Recovery Act. Hence the judgment relied on by the petitioner is of no support to their case and in fact it is in support of the case of the respondents.

20. It is needless to state that the amount recovered from the petitioner is to be refunded to the first respondent in the manner known to



law.

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21. Accordingly, both the writ petitions stand dismissed.

However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are also dismissed.

19-04-2023

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To

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Union of India,
Ministry of Human Resource Development,
Department of Human and Child Development,
Sastri Bhavan,
New Delhi – 110 001.
- 2.The Secretary to Government,
Social Welfare and Nutritious Meals Programme
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- 3.The Commissioner of Social Welfare,
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S.M.SUBRAMANIAM, J.

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