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W.P.(MD)No.2651 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2651 of 2023

in

WMP(MD)Nos.2420 and 2422 of 2023

V.Devaki

... Petitioner

Vs.

- 1.The Government of Tamilnadu
represented by its Principal Secretary,
Rural Development and Panchayat Raj Department,
Fort St. George, Secretariat,
Chennai-600 009.
- 2.The Director of Rural Development and Panchayat
Raj Department,
Saidapet, Chennai - 600 015.
- 3.The Inspector of Panchayat / District Collector,
Pudukottai District,
Pudukottai.
- 4.The Assistant Director (Audit),
Pudukottai District,
Pudukottai.
- 5.The Assistant Director of Panchayats,
Pudukottai District,
Pudukottai.
- 6.The Block Development Officer (Village Panchayats)
Aranthangi Panchayat Union,



Pudukottai District.

7.The Deputy Development Officer (Audit),
Aranthangi Panchayat Union,
Pudukottai District.

8.P.Thiyagarajan
Village Panchayat Secretary,
Eganivayal Village Panchayat,
Residing at Thodakki Village,
Pudukottai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned orders and passed by the 4th respondent herein in Roc.A4/1818/2022 dated 18.01.2023 and quash the same as illegal, arbitrary and non application of mind and consequently, directing the respondents herein to recover the misappropriation amount from 8th respondent.

For Petitioner : Mr.M.Rajarajan
For R1 to R7 : Mr.M.Lingadurai
Special Government Pleader

* * *

ORDER

Heard the learned counsel for the writ petitioner and the learned Special Government Pleader for the fourth respondent.

2.The writ petitioner is the president of Eganivayal village



Panchayat. She has been served with the impugned demand. The learned Special Government Pleader appearing for the local body submits that the authorities are entitled to recover any misappropriated or misapplied panchayat funds under the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000. While the power and authority of the respondents to recover such misapplied or misappropriated funds may not be in dispute, the procedure set out therein will have to be scrupulously adhere to. Rule 4 of the said rule is as follows:

"4. Issue of surcharge certificate.- (1) The Auditor who is empowered to issue a Surcharge Certificate, before issuing a Surcharge Certificate, shall give a show cause notice to the person concerned, calling upon him to state his defence about the proposed notice in writing within a specified time which shall not be less than fifteen days. If such person desires to be heard in person, the opportunity of personal hearing shall be given by the Auditor. In such personal hearing, the Auditor shall record the proceedings of such hearing. The Auditor shall issue Surcharge Certificate after taking into consideration the representation, if any, given by the person concerned and the proceedings by the personal hearing. The show cause notice and the Surcharge Certificate shall be in Tamil version.

(2) Wherever the Collector, the Inspector or other Competent Authority takes execution proceedings on behalf of



a Village Panchayat, Panchayat Union Council or District Panchayat in respect of which a Surcharge Certificate has been issued by an Auditor, the expenditure for such purpose shall be met from the Government initially and recovered from the Funds of the respective Village Panchayat, Panchayat Union or District Panchayat."

In the case on hand, the aforesaid rule has not at all been complied with.

3.In this view of the matter, the demand impugned in the writ petition is set aside. The matter is remanded to the file of the fourth respondent to proceed afresh on merits and in accordance with law. This writ petition stands allowed on these terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

15.02.2023

NCC : Yes / No
Index : Yes / No
Internet: Yes/ No

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To
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- 5.The Assistant Director of Panchayats,
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G.R.SWAMINATHAN,J.

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