BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.03.2023

CORAM:

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

WP(MD)No.18642 of 2014
and
WMP(MD)Nos.1 of 2014 and 1 of 2015

R.Vijaya ... Petitioner

Vs

1.The Assistant Director (Audit),
Rural Development,
Dindigul District.

2.The Tahsildar,
Aathoor Taluk,
Dindigul District.

3.The Block Development Officer,
Aathoor Taluk,
Dindigul District.

4.The Village Administrative Officer,
Keelakottai Village,
Aathoor Village,
Dindigul District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the 2nd respondent by his proceedings in Na.Ka.No. 6326/14/B2, dated 13.10.2014 in pursuance to the notification dated 29.09.2011 and quash the same and consequently direct the respondents to drop the surcharge proceedings initiated against the petitioner.

For Petitioner : Mr.M.O.Thevan Kumar
For Respondents : Mr.S.Shaji Bino,
Special Government Pleader

ORDER

This writ petition is filed as against the order of attachment issued in Form No.I under Section 8 of the Revenue Recovery Act in 6328/2014-B2, dated 13.10.2014.

2.The petitioner is the erstwhile president of the Gadhigram village panchayat from the year 1996 to 2001. The 1st respondent issued show cause notice on 29.09.2011 calling upon the petitioner to offer her explanation that there was some misappropriation to the tune of Rs.1,64,224/- from the fund of the panchayat during her tenure as panchayat president. Therefore, show cause notice was issued to the petitioner. Consequently, the petitioner has made a request on 31.10.2011 requesting the respondent to allow her to peruse the records, since the issue is relating to the period 1996 - 2001. However, the respondents have issued the impugned order of attachment on 13.10.2014 without issuing surcharge proceedings as required under the Act.

3.The learned Counsel for the petitioner submits that the incident, which was referred to in the notice is of the year 1996-2001 and the surcharge proceedings were initiated in the year 2011 and therefore, the petitioner has requested the 1st respondent to permit her to peruse the records enabling her to offer her explanation to the show cause notice. But without providing an opportunity to the petitioner, the impguned order of attachment has been passed in the year 2014. After the show cause notice, the petitioner was not provided with any opportunity and the petitioner was prevented from offering her explanation and the respondent without passing any orders, pursuant to the show cause notice, have proceeded with the Revenue Recovery Act for attaching the property and therefore, the impugned order of attachment is liable to be set aside.

4.The learned Special Government Pleader appearing for the respondents by referring the counter affidavit filed by the respondents submits that the petitioner was the President of the Gandhigram panchayat and during her tenure she has misappropriated a sum of Rs.1,64,234/-, which was detected during the audit in the year 1997 - 1998. Therefore show cause notice was issued to the petitioner on 29.09.2011 as required under the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000. The petitioner was issued with a charge memo in Na.Ka.No. 292/2002/A7, dated 18.02.2002. However, the petitioner has not offered her explanation to the charge memo. Consequent to the charge memo several communications were also sent to the petitioner calling upon her to offer her explanation on 12.03.2003 and 23.10.2003, 18.12.2003, 13.05.2004, 10.06.2006. Though the petitioner has been provided with sufficient opportunities, she has not offered her explanation and therefore, the respondent has proceeded further by issuing show cause notice and proceeded with the Revenue Recovery Act. What is challenged in this writ petition is only an inter departmental communication and it is not subject to challenge by the writ petitioner.

5.This Court considered the rival submissions made and perused the materials placed on record.

6.The petitioner was working as the President of Gandhigram village during the period 1996 to 2001. Audit was conducted with regard to the affairs of the panchayat in the year 1997 -1998. It was identified by the department that the petitioner has misappropriated a sum of Rs.1,64,274/- and therefore, charge memo was issued vide proceedings in Na.Ka.No.292/2002/A7 dated 18.02.2002 and further communication was sent vide proceedings in Na.Ka.No.292/02/A7, dated 12.03.2003, Na.Ka.No.2113/03/B4 dated 23.10.2003, 18.12.2003, 13.05.2004, 10.06.2006. The petitioner has not offered her explanation to the said charge memo. The respondents have proceeded with the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 by issuing show cause notice on 29.09.2011 calling upon the petitioner to offer her explanation within a period of 15 days. While so the petitioner made a request on 31.10.2011 that the allegations made against her are pertaining to the period 1991-1996 and therefore she had to peruse the records for offering her explanation. It is not known whether her representation dated 31.10.2011 was considered by respondents and she was provided with any opportunity. Thereafter the department has issued notice under Section 8 of the Revenue Recovery Act, which is under challenge in this writ petition.

7.As per Order 41 appendix I of (Form I) Board of Revenue Standing Orders, any auditor empowered by the Government is expected to certify, the amount which is liable to be recovered from a person. The auditor who is empowered to issue such surcharge certificate before issuing such certificate shall give show cause notice to the person concerned calling upon him to state his defence about the proposed notice in writing within a specified time, not less than 15 days. If the said person needs to be heard in person, an opportunity of hearing shall be given by the auditor and the auditor shall record the proceedings and shall issue the surcharge certificate, after taking into consideration of the representation if any given by the person concerned and the surcharge certificate shall be as contemplated under Rule 4 of the above Rules. In this case show cause was issued on

29.09.2011 after which, the petitioner has made a representation that the charges referred to are pertaining to the years 1991 - 1996, therefore she needs to verify the records to offer her explanation. Further no surcharge certificate was issued under Rule 4 of the above Rules. However, the department has proceeded with the Revenue Recovery Act without issuing surcharge certificate as required under the Rules. The petitioner is also having an appeal remedy in Rule 5(1) of the Rule before the Inspector of Panchayat or the person authorised by the Government. Further proceedings have been issued without issuing surcharge certificate. Therefore this Court is inclined to set aside the impugned order. However, considering the allegations made as against the petitioner that this petitioner has misused the funds, this Court issues the following directions:

> "i.The petitioner shall make a fresh request to the respondents for perusing the records within a period of three weeks from the date of receipt of a copy of this order.
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> ii.Upon such request from the petitioner, the respondents shall permit the

petitioner to peruse the records.

iii.After perusal of the records the petitioner shall offer her explanation to the show cause notice dated 29.09.2011 within a period of three weeks from the date of perusal of the records.

iv.Upon receipt of her explanation, the officer concerned shall provide an opportunity of hearing to the petitioner and thereafter shall issue surcharge certificate within a period of four weeks from the date of personal hearing of the petitioner:

v.Thereafter, the respondents are at liberty to proceed under Section 34 of the Revenue Recovery Act after providing the prescribed time for filing any appeal.

v.If such appeal is filed by the petitioner, the Inspector of Panchayat concerned or the competent authority shall dispose of the appeal within a period of four months from the date of appeal."

8.The impugned order is set aside. The writ petition is disposed of with the above directions. Consequently connected miscellaneous petitions are closed.

28.03.2023

Internet : Yes / No

dsk

To

1.The Revenue Divisional Officer,
Paramakudi,
Ramanathapuram District.

2.The Tahsildar,
Kadaladi Taluk,
Ramanathapuram District.

B.PUGALENDHI, J.

dsk

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