



W.P.(MD)No.17222 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.17222 of 2021

and

W.M.P.(MD)No.14090 of 2021

Balasubramanian

... Petitioner

Vs.

1. The Assistant Director
Rural Development (Audit),
Tirunelveli.
2. The District Collector,
Tirunelveli District,
Tirunelveli.
3. The Superintendent of Police,
Tirunelveli District,
Tirunelveli.
4. The Secretary to Government,
Rural Development Department,
Government of Tamil Nadu,
Fort St.George,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to



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call for the records pertaining to the impugned proceedings of the first respondent in Na.Ka.No.A4/667/2008 dated 03.02.2021 and quash the same and consequently forbearing the respondents from taking any recovery proceedings except under the provisions of the Tamilnadu Panchayats (Surcharge, disallowance and charge) Rules 2000.

For Petitioner : Mr.V.Kannan

For R1, R2 & R4 : M/s.K.Christy Theboral
Additional Government Pleader

For R3 : M/s.M.Aasha
Government Advocate (Crl. Side)

ORDER

The Writ Petition is directed against the communication dated 03.02.2021 sent by the first respondent to the writ petitioner directing him to pay the amount for causing loss to the Panchayat, failing which, action will be taken under the Revenue Recovery Act.

2. The first respondent has initiated surcharge proceedings against the writ petitioner's father alleging that he purchased sitting benches and name boards for Rs.91,500/- instead of Rs.20,672/- and got a wrongful gain of Rs.70,828/-. Thereafter, the first respondent has issued a



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surcharge certificate for Rs.70,828/- vide proceedings dated 07.06.2002.

The writ petitioner's father preferred an appeal before the Inspector of Panchayat/District Collector, Tirunelveli and the same was dismissed on 14.11.2002.

3. The writ petitioner's father was also removed from the post of President of Muthoor Village Panchayat by the second respondent and the same was challenged by preferring an appeal and the same was also dismissed vide order dated 23.03.2000.

4. The writ petitioner's case is that the first respondent has already filed an execution petition in E.P.No.133 of 2008 before the Principal Subordinate Court, Tirunelveli for realization of the amount passed in surcharge certificate by attachment and sale of movable properties belonging to the writ petitioner's father and the learned Subordinate Judge allowed the petition and ordered for attachment of movables on 25.11.2009, that the writ petitioner's father has preferred a revision before this Court in C.R.P.(MD)No.2182 of 2009 against the said order passed by the learned Principal Subordinate Judge, Tirunelveli and that



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subsequently, execution petition was dismissed on 14.06.2010 and hence, the writ petitioner's father allowed the civil revision petition to be dismissed on 14.06.2010.

5. The main contention of the writ petitioner is that the respondents, without initiating any proceedings to execute the order by filing necessary execution petition before the competent civil Court, they are taking proceedings under the Revenue Recovery Act and that since they have to invoke the provisions of Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000, their action under the Revenue Recovery Act cannot be sustained.

6. The learned counsel appearing for the writ petitioner would rely on the decision of this Court in ***K.A.Thavamani Vs. The District Collector, Coimbatore and others*** in ***W.P.No.33157 of 2013 dated 25.11.2019***, wherein, notice issued by the Tahsildar under the Revenue Recovery Act for recovery of surcharge amount came to be challenged and a learned Judge of this Court, by observing that the Tamil Nadu Panchayats (Surcharge, Disallowance and Charge) Rules, 2000 deals



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with initiating proceedings for recovery of surcharge amount and after issuing the surcharge order if the amount is not paid, the same shall be recoverable in the same way as an amount decreed by a Court by filing execution petition, has held that the respondents therein without initiating any proceedings to execute the order by filing necessary execution petition, they cannot initiate proceedings under the Revenue Recovery Act, as the amount is not recoverable under the Revenue Recovery Act and that since the impugned order is without jurisdiction, the same is liable to be set aside.

7. The learned Additional Government Pleader appearing for the respondents 1, 2 and 4 would submit that the respondents have not initiated any proceedings under the Revenue Recovery Act against the writ petitioner till now and that since no proceedings are initiated, the present writ petition cannot legally be entertained.

8. The learned counsel appearing for the writ petitioner would submit that some persons have been visiting the house of the writ petitioner alleging that they were taking action under the Revenue



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Recovery Act and that is why the writ petitioner was constrained to approach this Court.

9. The learned counsel appearing for the writ petitioner would further submit that since the learned Additional Government Pleader has submitted that they have not initiated any proceedings under the Revenue Recovery Act, the same may be recorded and the petition may be closed and may also be clarified that the respondents are not entitled to invoke the provisions of the Revenue Recovery Act for the recovery of surcharge amount.

10. In view of the above and taking note of the specific submission made by the learned Additional Government Pleader that they have not initiated any proceedings under the Revenue Recovery Act against the writ petitioner, nothing survives for further adjudication in the present writ petition.

11. Recording the submission made on either side, the Writ Petition is ordered to be closed. It is clarified that the respondents are not



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entitled to invoke the provisions of the Revenue Recovery Act for recovery of surcharge amount. Consequently, connected Miscellaneous Petition is closed. No costs.

25.06.2024

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

To

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Tirunelveli.
2. The District Collector,
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Tirunelveli.
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K.MURALI SHANKAR, J

csm

Order made in
W.P.(MD)No.17222 of 2021
and
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Dated : 25.06.2024