IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2025

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

W.P.No.6261 of 2025
and WMP No.6882 of 2025

P.Deepa .. Petitioner

Vs.

1.The District Collector
Krishnagiri District
Krishnagiri.

2.The Tahsildar
Denkanikottai Taluk
Krishnagiri District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the Notice of Attachment in Form-5 issued by the 2nd respondent Tahsildar, Denkanikottai in Ref.Na.Ka.3341/2024/B2, dated 03.01.2025 for attaching the petitioner's property i.e., S.F.Nos.764/1A, 764/1B and 764/1C (Total - 4 Acres 25 Cents) in Hosapuram Village, Denkanikottai Taluk, Krishnagiri District, quash the same.

For Petitioner : Mr.V.Sanjeevi
For Respondents : Mr.Vijay Anand
Additional Government Pleader

ORDER

This writ petition has been filed challenging the impugned notice of attachment issued by the 2nd respondent dated 03.01.2025 by attaching the property belonging to the petitioner for recovery of dues.

2.The case of the petitioner is that she is the absolute owner of the subject property by virtue of a registered sale deed dated 24.08.2020 registered as D.No.4960/2020 and sale deed dated 23.09.2020 registered as Document No.6211/2020). The further case of the petitioner is that patta was also issued in her name.

3.The grievance of the petitioner is that a demand notice came to be issued by the 2nd respondent under the Tamil Nadu Revenue Recovery Act, 1864 [hereinafter referred to as 'the Act']. The impugned attachment notice was also issued to attach the property belonging to the petitioner towards the arrears of penalty recoverable from the husband of the petitioner under the Mines and Minerals (Development & Regulation) Act, 1957.

4.The 2nd respondent has filed counter affidavit. The respondents have taken a stand that the petitioner's husband had illegally quarried by violating quarry conditions and as a result, proceedings were initiated and penalty was levied against the husband of the petitioner. To recover the same, it was seen that only the property which stands in the name of the petitioner was available. Since the husband did not remit the penalty amount, the attachment notice was issued in the name of the petitioner. According to the respondents, the wife did not have any independent income to purchase the property and it was actually the husband who had purchased the property in the name of the wife. Therefore, proceedings were initiated to attach the property and to recover the dues. Accordingly, the respondents have sought for the dismissal of the present writ petition.

5.Heard Mr.V.Sanjeevi, learned counsel for the petitioner and Mr.E.Vijay Anand, learned Additional Government Pleader appearing on behalf of the respondents.

6.The short issue that arises for consideration in the present writ petition is as to whether the impugned attachment notice in Form 5 is sustainable in law.

7.To decide the above issue, Section 5 of the Act is extracted hereunder:

> **5.Arrear of revenue how recovered** :- Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with [penalty] and costs of process, by the sale of the defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided.

8.The above provision provides for mode of recovery of the dues. A careful reading of the provision shows that such recovery can be made only by the sale of the defaulter's movable and immovable property. The defaulter only indicates the person in whose name the property stands. It may be possible that the ostensible owner may be the person in whose name the property stands. Particularly in the case of husband and wife, probably the property would have been purchased in the name of the wife. However, such issue touching upon binami cannot be gone into by the Collector.

9.This issue is no longer *res integra* and it is covered by various orders passed by this Court. Earliest judgment available is that of the Division Bench in **C.Dhanalakshmi Ammal .Vs. Income Tax Officer, II Additional City Circle II, Kilpauk, Madras and Others** reported in **AIR 1956 Mad 376**. The relevant portions are extracted hereunder:

> 5. The Madras Revenue Recovery Act prescribes the procedure for recovery of arrears of revenue. The recovery can be made in -different ways; by the seizure and sale of moveable. property; by attachment and sale of immoveable property; and by execution against the person of the defaulter. (Vide S.5) Section 25 prescribes the service of a written demand upon the defaulter, and under Section 26 when the amount due has not been paid, the Collector can proceed to recover the arrear by the "attachment and sale of the defaulter's land". The mode of attachment is laid down in Section 27, There are other provisions relating to the procedure to be followed on the sale of the attached property. Section 59 saves the right of parties aggrieved by any proceedings taken

under the Act to apply to the civil Courts for redress though a short period of limitation of six months from the time at which the cause of action arose is fixed for the institution of any suit.

6. The contention of Mr; M.K. Nambiar, learned counsel for the petitioner, was that there is no provision in the Madras Revenue Recovery Act which enables the Collector to attach and sell" any land other than the land of the defaulter; and land which is registered in the name of some one other than the defaulter cannot be deemed to be the land of the defaulter for the purpose of the Revenue Recovery Act. He relied on the principle of several decisions of this Court which have held that "defaulter" can only mean, for the purpose of the Madras Revenue Recovery Act, the registered proprietor of the land, even though the real owner may by someone else.

7. In Zamorin of Calicut v. Sitarama, ILR 7 Mad 405 (B), it was held that where a landholder allows the registry of land to stand in the name of another and the revenue falls into arrears, a 'sale of the land under the provisions of Revenue Recovery Act (Madras Act II of 1864), effected after service of notice upon the person in whose name the patta stands, will pass the landholder's interest to the purchaser at the revenue sale. In Sampath V. Rajah of yenkatagirt, AIR 1931 Mad 51 (C), Madhavan Nair J. after referring to earlier authorities, held that where one person was the real owner and another was the registered proprietor, the latter and not the former was the "defaulter" within the meaning of Section 35 of the Revenue Recovery Act (Vide also Venkappa Chari v pompana Gowd, 1918 Mad WN 191: (AIR 1918 Mad 42) (D).

We agree with Mr. Nambiar that there is no provision in the Madras Revenue Recovery Act which enables the Collector to attach and sell land" not registered in the defaulter's name for arrears of 'revenue due from the defaulter. In Fadhmanabha v. Visalakshmi, AIR 1938 Mad 283 (E), It was pointed out, though in another connection, that It would not be competent to the Collector to go into the question of benami.

10.The Division Bench of this Court while dealing with the similar provision under the The Madras Revenue Recovery Act held that the Collector can attach and sell only the property belonging to the defaulter for recovering the arrears of revenue due from the defaulter. It is not within the competence of the Collector to go into the question of binami.

11.All the judgments only go by the language that has been used under Section 5 of the Act. Unfortunately, the State Government has not thought it fit to even amend this provision and it continues with the same language till date. Therefore, a Court cannot read something which is not provided under Section 5. A Court cannot enlarge the scope of the provision when it is understood in a particular manner while the same is read in the simple language as provided under the provision.

12.In the light of the above discussion, the steps taken by the respondents to attach the property belonging to the petitioner to recover the revenue is unsustainable and beyond the scope of Section 5 of the Act. Hence, the impugned notice of attachment issued under Form 5 by the 2nd respondent dated 24.12.2024, is hereby quashed and this writ petition stands allowed. It goes without saying that if ultimately the respondents are able to identify any property belonging to the defaulter, it is left open to the respondents to proceed further in accordance with law.

13.This writ petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2025

Index : Yes/No
Neutral Citation : Yes/No
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To

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N. ANAND VENKATESH, J.

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