



RAJASTHAN HIGH COURT
HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 324/2010



----Petitioners

Versus

1. State of Rajasthan through the Principal Secretary, Panchayati Raj Department, Secretariat Building, Jaipur.
2. Chief Executive Officer, Zila Parishad, Bundi.
3. Additional Chief Executive Officer, Zila Parishad, Bundi.
4. Development Officer, Panchayat Samiti, Hindoli, District Bundi.

----Respondents

For Petitioner(s) : Mr. Amit Jindal

For Respondent(s) : Mr. Gajanand Misra Manav-Addl.GC

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

14/02/2024

Reportable

1. The legal issue involved in this petition is "whether any enquiry and recovery proceedings can be conducted against a dead person or against the legal representatives of such dead person?"

2. The instant petition has been filed by the petitioners with the following prayer:-

"It is, therefore, most humbly and respectfully prayed that your Lordships may graciously be pleased to accept and allow this writ petition and be further pleased to:-

I. quash and set aside the warrants of attachment dated 06.03.2007 (Annexure-2) issued by the



respondent No.3 and dated 12.04.2007 (Annexure-3) issued by the respondent No.4 and the recovery notices dated 29.06.2007 (Annexure-4) and dated 09.06.2009 (Annexure-5)

II. direct the respondents not to take any coercive action against the petitioners and issue no objection certificate to them;

III. Direct the respondents to appoint an independent authority to re-assess the development work carried out by the mother of the petitioners Smt. Kesar Bai during her tenure as Sarpanch; and

IV. pass such other writ, order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of the case may please to be passed in favour of the petitioners."

3. By way of filing this petition, the petitioners have challenged the impugned warrants of attachment dated 06.03.2007 and 12.04.2007 and the recovery notices dated 29.06.2007 and 09.06.2009 issued by the respondents.

4. Learned counsel for the petitioners submits that mother of the petitioners, i.e, Smt. Kesar Bai was elected as Sarpanch, Gram Panchayat Chatarganj, Tehsil Hindoli, District Bundi for the tenure commencing from 1995 till 2000. Counsel submits that mother of the petitioners expired on 13.01.2004 and during her life time neither any notice was ever served upon her with regard to any dues against her nor any enquiry proceedings were initiated against her. Counsel submits that after death of mother of the petitioners, two notices dated, i.e., 29.06.2007 and dated 09.06.2009 were issued dead person, i.e., against the mother of the petitioners who expired long back in the year 2004 itself, i.e., 13.01.2004. Counsel submits that subsequently, a notice was issued to the petitioners showing them as legal representatives of the deceased-Sarpanch and the petitioners were directed to



deposit a sum of Rs.99,507/-. Counsel submits that without holding any enquiry such recovery proceedings cannot be initiated against deceased person or her legal representatives. Counsel submits that at this belated stage, no enquiry can be conducted against a dead person. Hence, interference of this Court is warranted and the impugned legal proceedings are liable to be quashed and set aside.

5. Per contra, learned counsel for the State-respondents opposed the arguments raised by the counsel for the petitioners and submitted that several irregularities were found in the working mother of the petitioners, during her tenure on the post of Sarpanch Gram Panchayat Chatarganj, period commencing from the year 1995 to 2000. Counsel submits that the audit proceedings were conducted and in the audit objection, this fact came into notice of the respondents that the requisite works were not done by the then Sarpanch, hence, on the basis of the audit objection, the recovery proceedings were initiated against the then Sarpanch-Kesar Bai. Counsel submits that the respondents-authorities were not aware about the death of the then Sarpanch and accordingly, the proceedings were initiated against the then Sarpanch and her legal representatives, i.e., the petitioners. Counsel submits that according to the provisions contained under Section 38 of the Rajasthan Panchayati Raj Act, 1994, the recovery proceedings can be initiated against a Sarpanch, even after completion of his/her tenure. Counsel submits that under these circumstances, the respondents have not committed any illegality in passing the impugned warrants of attachment and



recovery notices. Hence, under these circumstances, interference of this Court is not warranted.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. This fact is not in dispute that mother of the petitioners was holding the charge of Sarpanch, Gram Panchayat Chatarganj, Tehsil Hindoli, District Bundi for the term commencing from 1995-2000. This fact is not in dispute that she expired on 13.01.2004. This fact is also not in dispute that till her death neither any audit proceedings nor any enquiry was initiated against her for the alleged irregularities committed by her, during her occupancy on the post of Sarpanch. Without holding any enquiry against the deceased-Sarpanch, now, the respondents are in process of recovering the amount in question from the petitioners.

8. Counsel for the respondents could not point out any provision of law which empowers the respondents to initiate the recovery proceedings against the deceased erstwhile Sarpanch or her legal representatives. If death of any delinquent person occurs during pendency of any enquiry proceedings, such proceeding would stand abated automatically.

9. The instant case is a classic example of non-application of mind on the parts of the respondents. It is very ridiculous on the part of the respondents to issue warrants of attachment on 06.03.2007 and 12.04.2007, against the deceased-mother of the petitioners and the issuance of recovery notice dated 29.06.2007 for the same amount against the petitioners. In fact, such an act of the respondents is absolutely suffers from non-application of mind inasmuch as, how it is possible for the petitioners to submit



reply with regard to the alleged act of misconduct committed by their late mother.

10. A person must be alive against whom any enquiry or recovery proceedings are initiated. As soon as, a person dies, he/she breaks all his connections with the worldly affairs. No punitive action can be taken against a dead person. This Court feels pity on the part of the respondents for initiating recovery proceedings against the dead mother of the petitioners who had already died way back in the year 2004 and this information was well communicated to the respondents authorities. Thereafter, they initiated the same recovery proceedings against the petitioners without holding any enquiry. It is well-settled proposition of law that enquiry against a delinquent totally abets on death of such person. Once a person died, his/her all kinds of relationship with the authority ceases. The defence, if any, is a personal defence available to such person and no other person can be substituted in place of such dead person and defend the conduct of the dead person.

11. No disputed amount can be recovered from the legal representatives of the deceased person until and unless any enquiry is conducted against the deceased and the same cannot be done now because the petitioners were not aware about the irregularities or illegalities committed by their mother.

12. Had it been a case that mother of the petitioners was alive, then the respondents could have an opportunity to proceed against her, in terms of the provisions contained under Section 38 of the Act of 1994, but after her death, no proceedings can be



initiated against the petitioners who are legal representatives of the deceased-Sarpanch.

13. Accordingly, the impugned warrants of attachment dated 06.03.2007 and 12.04.2007 and the recovery notices dated 29.06.2007 and 09.06.2009 stand quashed and set aside.

14. The instant writ petition accordingly stands allowed.

15. Stay application and all application (pending if any) also stands disposed of.

16. No costs.

(ANOOP KUMAR DHAND),J

Aayush Sharma/106