

**(1966) 01 MAD CK 0014**

**Madras High Court**

**Case No:** Writ Petition No. 4394 of 1965

Masseys

APPELLANT

Vs

Joint Commercial Tax Officer

RESPONDENT

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**Date of Decision:** Jan. 6, 1966

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** (1966) 17 STC 472

**Hon'ble Judges:** Veeraswami, J

**Bench:** Single Bench

**Advocate:** R. Vaidyanathan, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

Veeraswami, J.

The petition is to quash a notice served by the department on the Superintending Engineer, Madras Electricity System, u/s

26(1) of the Madras General Sales Tax Act, 1959, requiring him to pay over to the department certain moneys towards arrears of tax due from

the petitioner. The ground of the petitioner is that the requirement of Section 26(1), that a copy of the requisition to the Superintending Engineer,

Madras Electricity System, shall be forwarded to the dealer at his last address known to the assessing authority, has not been complied with. As a

result, it is said, the notice to the Superintending Engineer is invalid.

2. There are two reasons why this petition should be dismissed. One is that, by quashing the notice, no practical result will follow, because

pursuant to the requisition u/s 26(1), the Superintending Engineer had paid the amount, covered by the requisition, to the department. By quashing the notice, the petitioner, will have no effective remedy under Article 226 of the Constitution against the actual payment by the Superintending Engineer to the department. Secondly, I am unable to accept the contention that the requirement, which, according to the petitioner, has not been complied with, is a condition precedent to the exercise of the power u/s 26(1). The section is among the group of sections relating to recovery proceedings, and that gives power to the department to serve a garnishee notice as it were on persons from whom moneys are due to the assessee, requiring that such moneys should be paid over to the department towards arrears of tax. This power of the assessing authority is to be exercised by a notice in writing served on the person who is required to pay over the moneys to the department. The section no doubt says that a copy of such notice should be forwarded to the dealer at his last address known to the assessing authority. But it is manifest from the frame of Sub-section (1) that it is not designed to be a condition precedent to a valid exercise of the power of requisition u/s 26(1).

3. The petition is dismissed.