

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.25525 of 2014
and
M.P.Nos.1 and 2 of 2014
and
W.P.No.31444 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

A.Manikandan ... Petitioner in W.P.No.25525/2014

R.Thennarasu ... Petitioner in W.P.No.31444/2014

vs.

1. The Commissioner
Attur Municipality
Salem Main Road
Attur Town and Taluk
Salem District. ...1st Respondent in W.P.No.25525/2014
and 2nd respondent in W.P.No.31444 of 2014

2. The Chairman
Attur Municipality
Salem Main Road
Attur Town and Taluk
Salem District. ...2nd Respondent in W.P.No.25525/2014

The Regional Director of
Municipal Administration
Arisipalayam,
Salem District. ...1st respondent in W.P.No.31444 of 2014

Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a (i) writ of certiorarified mandamus to call for the records relating to the special resolution No.10 dated 26.08.2014 introduced by the second respondent for approval in the council meeting to quash the same; and to

consequently forbear the respondents in any manner placing clause 10 of the special resolution dated 26.08.2014 issued by the second respondent in the council meeting for approval in any of the subsequent council meetings to be held in future date or dates and (ii) writ of mandamus to direct the first and second respondent not to allot the petitioner Shop No.20, Attur Town Bus Stand West Side, Attur, Salem District to any third parties without following any due process of law.

For Petitioner : Mr.G.Ethirajulu
in W.P.No.25525/2014

For Petitioner : Mr.A.Radhakrishnan
in W.P.No.31444 of 2014

For Respondents : Mr.P.Srinivas for R2
(in W.P.No.31444/14)

Mr.S.Gunasekaran, GA
for R1 (in W.P.No.31444/14)

Mr.C.Ragavan for R1
(in W.P.No.25525/2014)

No appearance for R2
(in W.P.No.25525/2014)

COMMON ORDER

Heard Mr.G.Ethirajulu and Mr.A.Radhakrishnan, learned counsel for the petitioners and Mr.P.Srinivas, learned counsel appearing on behalf of the Attur Municipality.

2. These two writ petitions relate to allotment of shops within the Athur Municipality and therefore, they were tagged together and heard and disposed of by this common order.

3. In W.P.No.25525 of 2014, the petitioner-A.Manikandan, who is a lessee of Shop Nos.2 and 3 in Attur Town Bus Stand, Attur Town, Salem District has filed the writ petition seeking to quash the Special Resolution No.10 dated 26.08.2014, which was proposed by the said Municipality council and to forbear them from approving the same.

4. The facts are that the petitioner is the lessee of two

shops, viz., Shop Nos.2 and 3 and the same has been renewed in his favour. According to the petitioner, the lease period is valid till 31.03.2017. There is no other allegation. However, the respondent-Municipality alleges that the petitioner has not been keeping the shop in a clean manner and has dumped garbage. Whereas the petitioner would allege that in order to disturb his possession, the garbage bin was thrown in front of his shop and it was also dumped by the miscreants. He would further submit that he has been running the shop peacefully. The impugned resolution, which was proposed by the Municipal Council of the second respondent is to accommodate one Thennarasu, who is a lessee in the same place in Shop No.20, in a place, which is adjoining the petitioner's shop to an extent of 2.20 x 1.95 metre. Admittedly, there is no shop in existence, but that was the area, which was carved out near the petitioner's shop and sought to be allotted to Thennarasu.

5. The said Thennarasu is the petitioner in W.P.No.31444 of 2014, which has been filed for a direction not to allot Shop No.20 to any third party. In fact, the said Thennarasu was running a flower shop based on a permission granted by the respondent Municipality and it appears that the said area was taken over for the purpose of widening the National Highways. As a result, the said Thennarasu has to be disturbed. Therefore, the Municipality passed the aforesaid resolution to accommodate him near the petitioner's shop by demolishing the stair case leading to the petitioner's shop.

6. Admittedly, the lease period of the petitioner-Manikandan in W.P.No.25525 of 2014 is valid upto 31.03.2017. Therefore, the question of passing the resolution and trying to allot the portion of the frontage of his shop in favour of Thennarasu, the petitioner in W.P.No.31444 of 2014 as proposed by the second respondent-Municipality is illegal and the same is grossly liable to be dismissed.

7. In the result,

(i) The impugned proposed Special Resolution No.10, proposing to allot the adjoining portion in between Shop Nos.2 and 3 of Manikandan-Petitioner in W.P.No.25525 of 2014 in favour of Thennarasu-Petitioner in W.P.No.31444 of 2014 is quashed. Accordingly, W.P.No.25525 of 2014 is allowed.

(ii) As regards W.P.No.31444 of 2014, is concerned, since the petitioner-Thennarasu is being dispossessed from the shop in question for no fault committed by him, because the land was taken over by the National Highways Department,

it is the duty of the respondent-Municipality to ensure that the said Thennarasu is allotted a shop in some other place and not in the one between or beside any existing shops.

(iii) Accordingly, W.P.No.31444 of 2014 is disposed of directing the Commissioner-Attur Municipality to allot another shop in an unobjectionable area to the petitioner-Thennarasu within a period of three weeks from the date of receipt of a copy of this order.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The Commissioner
Attur Municipality
Salem Main Road, Attur Town and Taluk
Salem District.
2. The Chairman
Attur Municipality
Salem Main Road, Attur Town and Taluk
Salem District.
3. The Regional Director of
Municipal Administration
Arisipalayam, Salem District.

1 CC to Mr.G.Ethirajulu, Advocate SR.No. 12017

WP.No.25525 of 2014
and W.P.No.31444 of 2014
and Connected MPs

RV(CO)
PSI (19.03.2015)

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