



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.08.2015

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE R. SUBBIAH

W.P. (MD) Nos. 11461 of 2013 and 6333 of 2015
and
M.P. (MD) No. 1 of 2013 and 1 and 2 of 2015

W.P. (MD) No. 11461 of 2013:-

M. Abdullah ... Petitioner

Vs

1. The Commissioner,
Madurai City Corporation,
Madurai.

2. The Assistant Commissioner,
Division-II, Madurai City Corporation,
Madurai.

3. N. Syed Ibrahim ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned notice issued by the 2nd respondent in his proceedings Z2R7/12495/12 dated 09.07.2013 and quash the same.

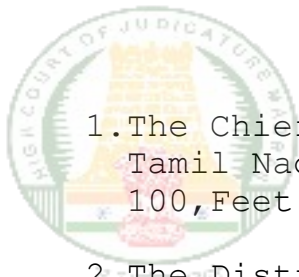
For Petitioner : Mr. K. Seemaraaj

For Respondents : Mr. G. Prabhu Ramachandran
for R1 and 2
M/s. J. Lawrence for R.3
Mr. S. Raja Mohamed
(impleading party)

W.P. (MD) No. 6333 of 2015:-

A. Mytheen Mathar ... Petitioner

Vs.



1. The Chief Election Commissioner,
Tamil Nadu State Election Commission,
100, Feet Road, Vadapalani, Chennai-106.
2. The District Collector,
Madurai District, Madurai-20.
3. The District Supply Officer,
Collectorate Campus, Madurai-20.
4. The Returning Officer,
Madurai City Municipal Corporation,
Madurai.
5. The Special Tahsildar,
Civil Supplies, Madurai North Division,
Collectorate Campus, Madurai-20.
6. The Regional Transport Officer,
Madurai North, Near Matttuthavani Bus-stand,
Madurai-07.

7. M. Abdullah

... Respondents

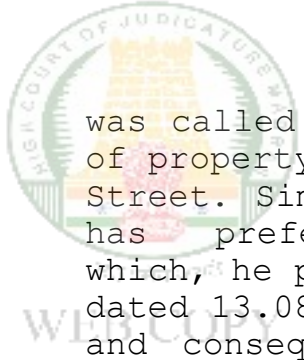
Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records in pursuant to the impugned order passed by the 5th respondent in Na.Ka.No.13551/2014 dated 13.08.2014 and the consequential order passed by the 4th respondent in removing the petitioner and his wife name from the Electoral List and the consequential order passed by the 6th Respondent in Ku.No.17662/A2/2015 dated 13.04.2015 and quash the same and consequently direct the Respondents to supply the essential commodities and other Government Welfare Schemes to the Petitioner's Family Card bearing in Family Card No.24/G/0051339 without any deviation.

For Petitioner : M/s.M.Saravanakumar

For Respondents : Mr.T.S.Mohammed Mohideen
Additional Govt.Pleader
for R1 to 6
Mr.K.Seemaraj

COMMON ORDER

The Writ Petition in W.P.(MD).No.11461 of 2013 is preferred by one M. Abdullah, who is the father of A. Mytheen Mathar. By the said Writ Petition, the petitioner has challenged the notice dated 09.07.2013 issued by the Assistant Commissioner Division - II, Madurai City Municipal Corporation, Madurai, whereby, the petitioner



was called upon to submit his explanation with regard to the change of property tax for Ward No.45, D.No.6, Karpaka Vinayakar Colony, 4th Street. Similarly, the son of M.Abdullah, namely, A.Mytheen Mathar, has preferred a Writ Petition in W.P.(MD).No.6333 of 2015, in which, he prayed for quashing of the orders of the fifth respondent, dated 13.08.2014 and sixth respondent, dated 13.04.2015 respectively and consequently, to supply the essential commodities and other Government Welfare Schemes to him.

2. Since the issue involved in both the Writ Petitions are one and the same, they are taken up together and decided by a common order.

3. The case of the petitioner in W.P.(MD).No.11461 of 2013 is that the property bearing Door Nos.5&6, Karpaga Vinayagar Colony, 3rd & 4th Street, K.Pudur, Madurai-7 belongs to his mother. The petitioner has seven children. Out of love and affection, the petitioner's mother had executed a Will in favour of him in respect of the afore-said property. While so, the petitioner mother died on 21.12.1992. Soon after the death of his mother, the Will came into force. While so, the petitioner executed a Settlement Deed in favour of his children including A.Mytheen Mathar, who is the petitioner in W.P.(MD).No.6333 of 2015. Subsequently, the settlement deed was cancelled excluding the said Mytheen Mathar. As a result, it is alleged that the said Mytheen Mathar instigated the other legal heirs of the petitioner resulting in filing a criminal complainant against him. The third respondent in W.P.(MD).No.11461 of 2013 is one of the petitioner's brother son. He sent a representation to the second respondent making objection to receive house tax properties for Door No.6, 6/1, 5/14 Karpaga Vinayagar Colony, K.Pudur, Madurai-7. Pursuant to the same, the second respondent had issued a notice to the petitioner during the month of February 2010 asking the petitioner to submit his explanation and documents, who in turn, submitted the relevant documents to the authorities.

3.1. While the matter stood thus, the legal heirs of the petitioner's sister once again sent a representation dated 30.10.2012 to the second respondent making objection to receive house tax in respect of the above said house in the petitioner's name. Thereafter, the second respondent once again called upon the petitioner to produce all the relevant documents, which he did so. Again, another representation was sent by the third respondent on 06.03.2013 to the second respondent making objection regarding the tax paid by the petitioner in respect of D.No.6, Karpaga Vinayagar Colony. The petitioner also appeared and updated the earlier proceedings which took place in the year 2010 and 2012. However, the second respondent did not consider the plea of the petitioner citing the suit filed by the third respondent in O.S.No.99 of 2009 on the file of the Principal District Judge, Madurai and O.S.No.556 of 2011 on the file of the District Munsif Court, Madurai. Therefore, challenging the notice of the second respondent dated 09.07.2013, the Writ Petition in W.P.(MD).No.11461 of 2013 has been preferred.

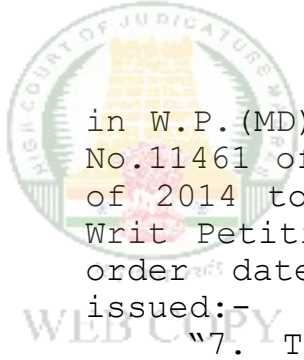


4. When the matter is taken-up for consideration, the learned counsel for the petitioner submitted that as early as in the year 2010 itself, the petitioner has produced all the documents before the second respondent. Based on that, the second respondent has also permitted the petitioner to pay the tax in his name. While that being so, at the instance of the last representation, dated 06.03.2013 sent by the third respondent, the second respondent has issued the notice dated 09.07.2013, which is unsustainable in the eye of law.

5. In my considered opinion, the impugned order dated 09.07.2013 is only a show cause notice calling upon the petitioner to appear before the authorities concerned and submit his explanation. There is nothing wrong in calling upon the petitioner to substantiate his claim. Therefore, the petitioner shall appear before the second respondent within a period of two weeks from the date of receipt of a copy of this order. In case, any order is passed against the petitioner, it is always open to him to challenge the same in the manner known to law.

6. The facts narrated in W.P.(MD).No.6333 of 2015 is that the property situated at Door No.5/14, Karpaga Vinayagar Colony 3rd Street, K.Pudur, Madurai, originally belonged to the paternal grandmother, named Ponnammal, wife of Matar Rowther by virtue of registered sale deed dated 06.11.1945. She has been in possession and enjoyment of the said property till her life span and that she died on 21.11.1992 leaving behind the petitioner's father as one of the legal heirs. After the demise of the said Ponnammal, the petitioner and his father demolished the tiled house on the north and put up a new RCC building on availing loan from Madurai Co-operative Buildings Society, K.Pudur, Madurai District to the tune of Rs.3,50,000/- by mortgaging the said property. It is pertinent to note that the petitioner and his father jointly availed loan from the said society by executing a registered mortgage deed dated 23.03.2000 in respect of the above-said property.

6.1. While the situation stood thus, on the ill-advice given by the sisters of the petitioner, the petitioner's father was making all sorts of troubles to dispossess the petitioner from the property in question by creating and procuring forged and concocted documents in his favour and his other son and daughters. Therefore, the petitioner has filed O.S.No.559 of 2010 on the file of the Principal District Munsif, Madurai Town for bare injunction with a prayer not to disturb the possession over the property in question and the same was allowed by the Court below, on 06.01.2014. While so, the petitioner's father sent a petition to the respondents 2 to 6 stating that the petitioner is not residing in the property in question. On receipt of the said petition, the fifth respondent, namely, the Special Tahsildar, Madurai, issued a Memo in Na.Ra.No:15/2014 dated 20.02.2014. Challenging the said Memo, the petitioner in W.P.(MD).No.6333 of 2015 earlier filed a Writ Petition



in W.P.(MD).No.3849 of 2014. While so, the petitioner in W.P.(MD).No.11461 of 2013 has also filed a Writ Petition in W.P.(MD).No.3969 of 2014 to consider his representation dated 23.04.2012. Both the Writ Petitions were taken up together and disposed of by a common order dated 21.04.2014, in which, the following direction is issued:-

"7. The District Collector, Madurai District, the first respondent in both the Writ Petitions, is directed to issue fresh notice to both the parties and conduct enquiry by taking into consideration all the documents produced on either side, including the decree of the civil court and pass appropriate orders on merits within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion with regard to the merits of the claim made by the petitioners in these Writ Petitions."

6.2. Pursuant to which, the fifth respondent in W.P.(MD).No.6333 of 2015 has passed the impugned order dated 13.08.2014 stating that the essential commodities could be supplied to the petitioner only in the event that he resides in the address mentioned in the ration card. On the strength of the impugned order, dated 13.08.2014, the petitioner's father, namely, M.Abdullah, filed an application before the Returning Officer, the Regional Transport Officer and the Madurai Corporation stating that his son is not residing in the address mentioned by him. Thereafter, the Returning Officer removed the petitioner's name, namely A.Mytheen Mathar and his wife from the electoral roll. The sixth respondent, namely, the Regional Transport Officer, has also issued a notice to the petitioner vide his memo dated 13.04.2015 directing the petitioner to appear before him for an enquiry. Aggrieved over the same, the petitioner has filed Writ Petition in W.P.(MD).No.6333 of 2015.

7. The learned Government Advocate was put on notice who in turn submitted that there is a civil court decree in favour of the petitioner in W.P.(MD).No.6333 of 2015.

8. Heard the submissions made by the parties concerned and perused the materials available on record.

9. On the face of it, this Court infers that it is a fight between the flesh and blood, namely, the father and son. However, in my considered opinion, the notice of the Special Tahsildar, dated 13.08.2014 and the notice of the Regional Transport Officer, dated 13.04.2015 are only a notice for enquiry calling upon him to substantiate his claim. The Returning Officer, Madurai alone has straight away removed the name of the petitioner and his wife from the electoral roll, on the basis of the alleged representation sent by the father of the petitioner. Even according to the learned counsel for the petitioner there is a Civil Court decree to the effect that the petitioner resides only in the address mentioned in the ration card, driving licence and in the voter's identity card.



Therefore, the petitioner is directed to appear before the Special Tahsildar, Madurai, the Regional Transport Officer, Madurai, the Returning Officer, Madurai, with a Civil Court decree to substantiate his claim, within a period of two weeks from the date of receipt of a copy of this order. All the three respondents are directed to consider the claim of the petitioner on the basis of the documents to be produced by the petitioner as well as the Civil Court decree rendered in favour of the him and pass appropriate orders, on merits and in accordance with law, without being influenced any of the observations made in this order, within a period of four weeks, thereafter.

Both the writ petitions are disposed of, in the above-terms. No costs, consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Commissioner,
Madurai City Corporation,Madurai.
 - 2.The Assistant Commissioner,
Division-II, Madurai City Corporation, Madurai.
 - 3.The Chief Election Commissioner,
Tamil Nadu State Election Commission,
100,Feet Road, Vadapalani, Chennai-106.
 - 4.The District Collector, Madurai District, Madurai-20.
 - 5.The District Supply Officer,
Collectorate Campus, Madurai-20.
 - 4.The Returning Officer,
Madurai City Municipal Corporation, Madurai.
 - 6.The Special Tahsildar,
Civil Supplies, Madurai North Division,
Collectorate Campus, Madurai-20.
 - 7.The Regional Transport Officer,
Madurai North, Near Mathtuthavani Bus-stand, Madurai-07.
- +One cc to Mr.J.Lawrence, Advocate, SR.No.44194
+One cc to Mr.S.RajaMohamed, Advocate, SR.no.44070
+2ccs to Mr.R.Prabhu Ramachandran, Advocate, SR.Nos.43807&43577
+One cc to Mr.C.Mayil Vahan Rajendran, Advocate, SR.No.44546
+One cc to Mr.T.S.Md.Mohideen,Advocate, SR.No.43806

ssm

RL/14c - 19/8/2015

W.P. (MD) Nos.6333 of 2015
and 11461 of 2013