

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.12.2016
CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 215 of 2012
and
M.P. Nos. 1 & 2 of 2012

R. Sivaprakasam

.. Petitioner

Vs.

1. The Commissioner
Tiruvallur Municipality
Tiruvallur.

2. R. Soundarajan

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records of the first respondent in No.Pa.Kho.51/Pe/Ma.51/2011/A1 dated 24.06.2011 and quash the same.

For Petitioner : Mr.G. Jeremiah

For Respondents : Mr. P. Srinivas for R1

Mr. M. Balasubramaniam for R2

ORDER

Challenge in this writ petition is the order of the first respondent passed in No.Pa.Ko.51/Pe/Ma.51/2011/A1 dated 24.06.2011.

2. This writ petition relates to property dispute between two brothers, namely, the petitioner and the second respondent, on the schedule mentioned property. In this regard a suit in O.S. No.102 of 1999 was also filed by the petitioner and was withdrawn on 19.07.2011, after amending the same as injunction suit. Learned counsel for the petitioner submitted that the petitioner is in possession of patta and the property assessment and the tax are being paid by the petitioner. Whiles, the second respondent filed O.S. No.101 of 2011 before

the Sub Court, Tiruvallur and summons were issued to the petitioner. Learned counsel further submitted that the first respondent in his proceedings No.Pa.Ko.51/Pe/Ma.51/2011/A1 dated 24.06.2011 has transferred the name of the petitioner in the tax register to that of the second respondent. Learned counsel further submitted that the aforesaid order has been passed by the first respondent, namely, the Commissioner of Tiruvallur Municipality, without any notice to the petitioner. Therefore, the first respondent has violated the principles of natural justice and hence the petitioner is before this Court seeking to set aside the same.

3. Relying upon the counter filed by the first respondent, learned counsel for the 1st respondent would submit that when the second respondent applied for name transfer, notice was sent to the petitioner and the second respondent, on 22.06.2011 informing them to appear for enquiry on 24.06.2011 with relevant documents in support of their claim. The notice sent to the petitioner got returned with an endorsement 'door locked'. However, an authorised representative of the second respondent appeared before the first respondent on 24.06.2011 and submitted relevant documents. Based on the available documents the said order was passed by the first respondent.

4. Learned counsel for the second respondent would submit that subsequent to the impugned order passed by the first respondent, W.P. No. 18468 of 2011 was filed by the petitioner and the same was dismissed on 11.04.2012. Against the same, a Writ Appeal in No.1059 of 2012, which was also dismissed by the Division Bench of this Court on 28.11.2016.

5. Heard learned counsel for the petitioner and the learned counsel for the respondents 1 and 2 and perused the material available on record.

6. As directed by this Court, the Commissioner, Tiruvallur District is present before this Court. This Court is of the view that when the notice dated 22.06.2011 sent to the petitioner has been returned, without taking any further steps to serve notice, the first respondent ought not to have passed the impugned order dated 24.06.2011, particularly within two days. Therefore, in order to grant an opportunity of hearing to the writ petitioner, the impugned order of the first respondent is liable to be set aside.

7. In order to meet the ends of natural justice, the following order is passed :

- (1) The impugned order of the first respondent in No.Pa.Ko.51/Pe/Ma.51/2011/A1 dated 24.06.2011 is set aside.

(2) The petitioner and the second respondent is directed to appear before the first respondent on 20.01.2017. After giving reasonable opportunity to both the parties, the first respondent is directed to pass orders, on merits and in accordance with law, within a period of six months thereafter.

3) The Writ Petition is disposed of, accordingly. Consequently, the connected Miscellaneous Petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

avr

To

The Commissioner
Tiruvallur Municipality
Tiruvallur.

+1 cc to Mr.M.Balasubramanian Advocate sr 71905
+1 cc ot Mr.G.Jeremiah Advocate sr 72379
+1 cc to Mr.P.Srinivas Advocate sr 72118

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