



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A. (MD) No.517 of 2017
and
C.M.P. (MD) No.4438 of 2017

M.Y.Sadiq Ali ... Appellant

-vs-

1.S.Charles

2.The Assistant Director of Town Panchayat
New Collectorate Building
Trichy

3.The Executive Officer
Kallakudi Town Panchayat
Kallakudi, Trichy District

... Respondents

Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order dated 07.11.2016 in W.P.(MD).No.21233 of 2016, on the file of this Court.

Prayer in WP(MD). 21233/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for all records relating to the order of the 2nd respondent made in MU.MU.No. 121/2015 dated 25.05.2016 and quash the same in so far as the petitioners property in SF.No. 273/2010 extent 11.5 cents situated in Kallakudi Village, Lalgudi Taluk, Tiruchy District is concerned.

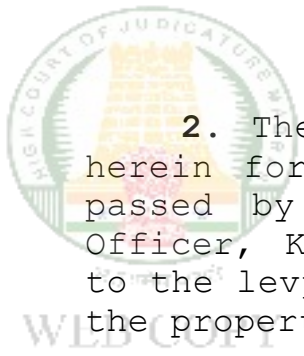
For Appellant : Mr.J.M.Abdul Rahman

For Respondents : Mr.Joesh Thakus Jerome for R1
Mr.V.R.Shunmuganathan
Special Government Pleader for R2 & R3

J U D G M E N T

[Judgment of the Court by T.S.SIVAGNANAM, J.]

This writ appeal is by the third respondent in W.P.(MD)



2. The said writ petition was filed by the first respondent herein for issuance of a writ of certiotari to quash the order passed by the third respondent herein, namely, the Executive Officer, Kallakudi Town Panchayat, dated 25.05.2016, with regard to the levy of water tax in respect of a water connection given to the property situated at Door No.46/66, Dalmia Main Road.

3. The grievance of the first respondent / writ petitioner was that the said order, dated 25.05.2016, was passed in favour of the appellant herein without notice to him. The Writ Court disposed of the writ petition at the admission stage without notice to the appellant, who was impleaded as third respondent, set aside the order, dated 25.05.2016, as it was against the principles of natural justice and directed the Executive Officer / third respondent herein to conduct an enquiry and pass orders in accordance with law within a stipulated period.

4. The appellant is aggrieved by the order passed by the Writ Court, firstly, on the ground that it was passed without hearing the appellant and secondly, the order, dated 25.05.2016, which was passed by the Executive Officer is perfectly legal and valid and the same could not have been set aside that too without notice to the appellant.

5. From the records of the proceedings, we find that the writ petition was disposed of at the admission stage without notice to the appellant, though he was impleaded as third respondent and the order impugned in the writ petition was passed in favour of the appellant / third respondent. Therefore, to that extent, we are in agreement with the submissions made by the appellant.

6. The learned counsel appearing for the first respondent / writ petitioner contended that the Executive Officer could not have passed the order, dated 25.05.2016, without notice to the first respondent / writ petitioner.

7. Thus, we find that the parties did not have adequate opportunity to put forth their submissions before the Executive Officer i.e., prior to passing of the order dated 25.05.2016. The proper procedure would be to conduct an enquiry and to pass orders thereafter.

8. We may point out at this juncture that the Revenue Authority and the Executive Authority are not entitled to decide the question of tittle and the same can be done only by the Civil Court and in the instant case, we find that already a suit is pending in O.S.No.601 of 2015, on the file of the learned Additional Sub Judge No.II, Trichirapalli.

9. In the light of the above, we dispose of this appeal with the following directions:

(i) The *status quo*, which was prevailing prior to the passing of order, dated 25.05.2016, shall continue and the water connection shall not be disconnected.

(ii) The third respondent, namely, Executive Officer is directed to issue notice to the parties, namely, appellant as well as first respondent herein, direct them to appear for enquiry and produce all relevant documents before him and after affording opportunity of personal hearing, take a decision in accordance with law.

(iii) The third respondent is directed to comply with the above directions within a period of six weeks from the date of receipt of a copy of this order.

(iv) Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(co)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

1.The Assistant Director of Town Panchayat,
New Collectorate Building, Trichy.

2.The Executive Officer,
Kallakudi Town Panchayat, Kallakudi, Trichy District.

+1cc to M/S.J.M.ABDUL RAHMAN, Advocate SR.No.58152

+1cc to Special Government Pleader, SR.No. 58323

ia/krk

MAS/JC/SAR 2/21.06.2017/3P/5C

W.A.(MD) No.517 of 2017
and

C.M.P.(MD) No.4438 of 2017
01.06.2017