



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.13041 of 2017

and

W.M.P(MD)Nos.10101, 10102 & 12585 of 2017

G.Ravi

... Petitioner

Vs.

1.The Tamil Nadu Local Bodies Ombudsmen
No.100, Mount Road,
Guindy, Chennai.

2.The District Collector,
Sivagangai District,
Sivagangai.

3.The Revenue Divisional Officer
Sivagangai, Sivagangai District.

4.The Executive Officer,
Thirupuvanam Town Panchayat,
Thirupuvanam,
Sivagangai District.

5.NSVPV.Palanivelrajan

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the impugned order of the third respondent dated 15.04.2016 in Na.Ka.No.A2/8/2015 and the order of the first respondent dated 08.05.2017 in order No.102/2017 and quash the same.

For Petitioner : Mr.M.Vallinayagam, Senior Counsel
For J.Anandkumar

For R1 : Mr.D.Shanmugarajasethupathi

For R2 & R3 : Mr.J.Gunaseelan Muthiah,
Government Advocate

For R4 : Mr.G.Muthukannan,
Government Advocate

For R5 : Mr.D.Anbarasu

O R D E R

This writ petition has been filed, seeking to quash the impugned order in Na.Ka.No.A2/8/2015, dated 15.04.2016 issued by the third respondent and order No.102/2017, dated 08.05.2017 issued by the first respondent.

2. Heard the learned counsel appearing on either side.

3. It is the case of the petitioner that the petitioner is a registered contractor with the fourth respondent and the licence is still in force. The 4th respondent conducted a public auction in 2015, for various licences and he was awarded a licence to maintain pay and use toilet and market, which was periodically extended on receipt of enhanced licence fee. While so, based on the complaint lodged by the fifth respondent alleging that the solvency submitted by the petitioner at the time of tender is invalid since the said property was already under mortgage, an enquiry was conducted on 16.02.2016, however, it was postponed. In the meanwhile, based on the subsequent order passed by the second respondent, dated 30.03.2016, the fourth respondent cancelled his licence. Aggrieved by the same, he filed W.P(MD) No.6801 of 2016 and this Court passed a conditional order, wherein, the licence was renewed upto 30.06.2016. In the meantime, a show cause notice was issued by the fourth respondent calling upon the petitioner to submit his explanation, failing which, the licence would be cancelled. Aggrieved thereby, he filed W.P(MD) No.8916 of 2016 and this Court granted liberty to the petitioner to approach the Revenue Divisional Officer, Sivagangai, before whom, the subject matter was pending, to submit proper explanation. In the given circumstances, the fifth respondent filed W.P(MD) No.5226 of 2016 for initiating action against the petitioner, which was dismissed on 28.03.2016. Pending enquiry, the fourth respondent issued a fresh auction notice dated 13.06.2016. Aggrieved over the same, since the matter is already pending before this Court, interim conditional order was also complied with by him, the petitioner was constrained to file W.P (MD) No.11576 of 2016, by impugning the said auction notice and this Court granted an interim order on 29.06.2016. Despite the same, based on the order dated 15.04.2016, passed by the third respondent, the fifth respondent passed the impugned order dated 08.05.2017. Therefore, the petitioner has come before this Court with the above said prayer.

4. Though several points have been urged by the petitioner in the affidavit filed in support of this petition to challenge the impugned order, the main ground canvassed by the petitioner is that the impugned order has been passed without giving any opportunity of hearing to the petitioner, thereby there is violation of principles of natural justice and therefore, on that sole ground, the impugned order is liable to be set aside.



The respondents are not in a position to refute the aforesaid submission.

5. The main attack on the impugned order is that the 3rd respondent had unilaterally arrived at a conclusion that the solvency certificate given by the petitioner is a bogus one, without providing any opportunity of hearing to the petitioner to prove the said conclusion to be wrong. This itself is sufficient to hold that the impugned order is liable to be set aside. It is needless to state here that before passing an order, the principle of *audi alteram partem* should be applied, even though there are no positive words in the Statute, requiring that the party should be heard, as the principles of natural justice are in-built in quasi judicial proceedings. It is also not the case of the respondents 1 & 3 that the petitioner has been given due notice before issuance of the impugned orders. The pendency of the writ petitions and interim order granted by this Court have also not been taken into consideration.

6. In view of the above, this petition is allowed. The impugned orders dated 15.04.2016 and 08.05.2017 are set aside and the matter is remitted to the first respondent for proper consideration. The petitioner is directed to file his objections along with necessary documentary evidences to the 1st respondent, within a period of two weeks from the date of receipt of a copy of this order and upon filing the same, the 1st respondent is directed to consider all the required documents to be produced by the respective parties, conduct necessary enquiry and pass appropriate orders on its own merits and in accordance with law, within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (ADII)

/True Copy/

Sub-Assistant Registrar

To:

1. The Tamil Nadu Local Bodies Ombudsmen, No.100, Mount Road, Guindy, Chennai.
 2. The District Collector, Sivagangai District, Sivagangai.
 3. The Revenue Divisional Officer, Sivagangai, Sivagangai District.
 4. The Executive Officer, Thirupuvanam Town Panchayat, Thirupuvanam, Sivagangai District.
- +One cc to Mr.J.Anandkumar, Advocate, SR.No.79577
+One cc to Mr.D.Shanmugaraja Sethupathi, Advocate, SR.No.79784
+One cc to The Special Government Pleader, SR.No.79838

rm

RL/8C/3P/SKN/RSK/SAR1/9/10/2017

W.P (MD) No.13041 of 2017

19.09.2017(1/3)