

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18/04/2018
Delivered on	07/06/2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.20015 of 2010 &
M.P.No.1 of 2010

Tmt.K.Sivagamasundari .. Petitioner
Vs.
1.The Commissioner,
Udagamandalam Municipality,
Udagamandalam, Nilgiris District.
2.The Mr.T.R.Ravichandran ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the first respondent to revoke the building plan issued to the second respondent in Ka.vi.No.39/2009/F1, dated 04.12.2009, Ka.voo.161/2009/F1 in B.A.No.39/2009/F1, dated 04.12.2009 to construct building in R.S.No.3912 Part and 3910 Part of Udagamandalam Town Club Road, Udagamandalam and consequently restrain the second respondent from putting up any construction in R.S.No.3910, T.S.No.E/6/110, Club Road of Udagamandalam Town.

For Petitioner : Mr.T.R.Rajagopalan
Senior Counsel
For Mr.N.Sampath

For Respondents : Mr.K.Sasindran for R1
Mr.K.Premkumar for R2

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O R D E R

The prayer in the Writ Petition is to issue a Writ of Mandamus directing the first respondent to revoke the building plan issued to the second respondent in his proceedings in Ka.vi.No.39/2009/F1, dated 04.12.2009, Ka.voo.161/2009/F1 in B.A.No.39/2009/F1, dated 04.12.2009 to construct building in R.S.No.3912 Part and 3910 Part of Udagamandalam Town Club Road, Udagamandalam and consequently restrain the second respondent

from putting up any construction in R.S.No.3910, T.S.No.E/6/110, Club Road of Udagamandalam Town.

2. The petitioner would state that she is the owner of the land comprised in R.S.No.3909 and R.S.No.3910 of Udhamandalam Town which correlate in T.S.No.E6/100, to an extent of 0.04 6/16 acres and E6/110, to an extent of 0.04 6/16 acres by virtue of the registered Will dated 09.03.2001 registered as Document No.113 of 2001. She has been in possession and enjoyment of the property.

3. The further case of the petitioner is that the second respondent being her neighbour has submitted building plan to the first respondent for approval by including the land of the petitioner in Survey Nos.3912 Part and 3910 Part referred above. The second respondent without verifying the title deeds granted building plan approval dated 04.12.2009. Based on the approved plan, the second respondent started to put up construction by encroaching the land of the petitioner and hence, she submitted a complaint to the first respondent / Commissioner, Udhamandalam Municipality, dated 12.02.2010 and a representation dated 18.08.2010 to revoke the building plan issued in favour of the second respondent. Since no favourable reply was forthcoming, the present Writ Petition.

4. The second respondent has filed a detailed counter denying the allegations and averments made by the petitioner. The specific case of the second respondent is that the petitioner traces title through one Abibabai, who did not have any right over the property. According to the second respondent, he is the absolute owner of the property in dispute by virtue of a registered sale deed executed in favour of his grandfather dated 31.05.1944 and registered partition deed dated 04.03.1970.

5. Heard Mr.T.R.Rajagopalan, learned Senior Counsel, representing Mr.N.Sampath, learned counsel for the petitioner; Mr.K.Sasindran, learned counsel for the first respondent; Mr.K.Premkumar, learned counsel for the second respondent and perused the records.

6. Though elaborate submissions have been made by the learned counsel on either side, however taking note of the limited scope of prayer sought for in the Writ Petition and the facts of the case, this Court without expressing opinion on merits of the case, directs the first respondent to consider the representation of the petitioner dated 18.08.2010 and pass orders on merits and in accordance with law after providing opportunity to all necessary parties within a period of twelve weeks from the date of receipt of a copy of this order.

7. With the above direction, the Writ Petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

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To

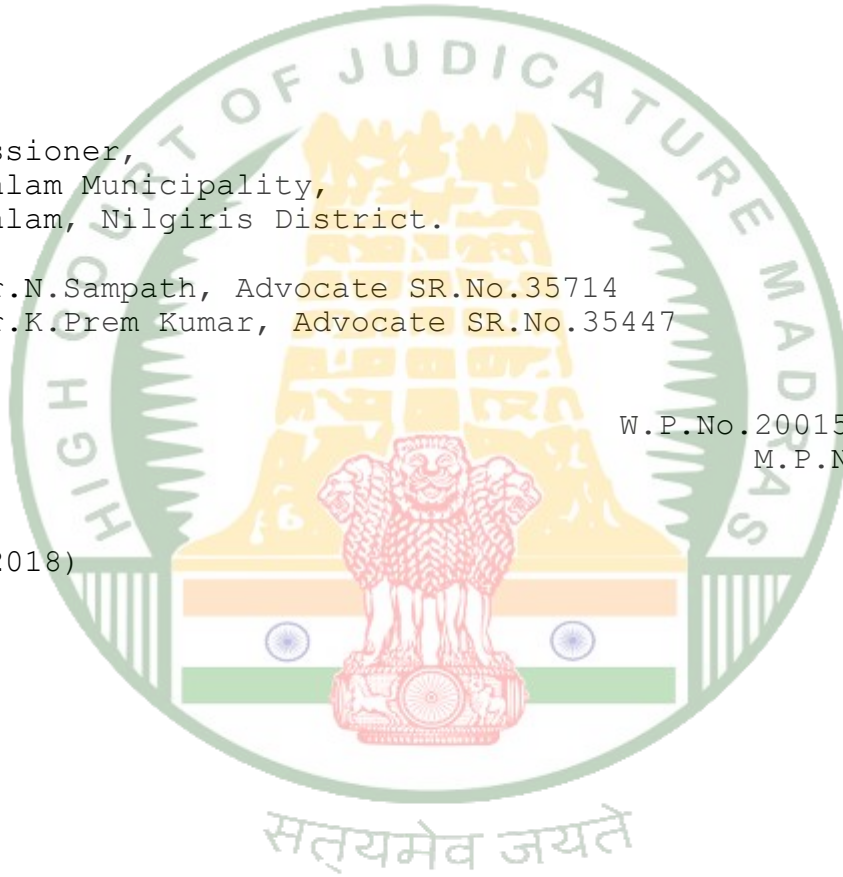
The Commissioner,
Udagamandalam Municipality,
Udagamandalam, Nilgiris District.

+1cc to Mr.N.Sampath, Advocate SR.No.35714

+1cc to Mr.K.Prem Kumar, Advocate SR.No.35447

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GN(13/06/2018)



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