

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.06.2018
CORAM
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.26894 of 2008
and
MP.Nos.2 and 3 of 2008

V.Radhakrishnan

... Petitioner

Vs

1.The Municipal Commissioner,
Udhagamandalam Municipality,
Udhagamandalam,
The Nilgiris District.

2.Mr.Vijayakumar

3.Mrs.Shoba Vijayakumar

... Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling upon the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.A7/2700/2008, dated 15.10.2008 and quash the same.

For Petitioner : Mr.A.Ramalingam

For Respondents : Mr.P.Srinivas for R1

Mr.J.Franklin for R3
R2-Died

O R D E R

Heard Mr.A.Ramalingam, learned counsel for the petitioner, Mr.P.Srinivas, learned counsel for the first respondent and Mr.J.Franklin, learned counsel for the third respondent. It is represented by the learned counsel for the third respondent that the second respondent, who is the husband of the third respondent has passed away during the pendency of the writ petition.

2. The prayer sought for in this writ petition is to quash the impugned order passed by the first respondent in his proceedings in Na.Ka.No.A7/2700/2008, dated 15.10.2008.

3. The case of the petitioner is that in the auction conducted on 30.06.1982, he became the successful bidder for shop No.3 at Bharathiyar Centenary Buildings, Udhagamandalam and the first respondent, by his proceedings dated 02.07.1982

allotted a shop to the petitioner. The further case of the petitioner is that the respondents 2 and 3 are his employees, while so, the first respondent without issuing any notice to the petitioner cancelled the allotment and transferred the licence in favour of the third respondent.

4. The learned counsel for the petitioner submitted that the petitioner having entertained suspicion that the first respondent may transfer the licence in favour of the third respondent, sent his objections on 6.10.2008. It is further contended that the impugned order states that the notice for hearing was issued to the petitioner on 10.10.2008, but, no intimation was given to the petitioner and the impugned order came to be passed, without affording an opportunity to the petitioner.

5. The learned counsel for the first respondent would contend that notice of hearing was served on the petitioner, but, he failed to appear for hearing on 15.10.2008. Therefore, the petitioner cannot now allege any violation of principles of natural justice.

6. The learned counsel for the third respondent submitted that the third respondent is a sub lessee of the petitioner and the first respondent has rightly transferred the licence in favour of the third respondent.

7. In the instant case, it is not in dispute that the original allottee is the petitioner in the auction held on 30.06.1982 and an allotment order was issued infavour of the petitioner. According to the petitioner, the respondents 2 and 3 are his servants and the allotment made in favour of the petitioner was cancelled without any enquiry. Though, it is contended by the first respondent that the petitioner failed to appear for hearing on 15.10.2008, but no material has been produced to show that the notice was served on the petitioner and he did not appear for hearing on 15.10.2008. But, on a perusal of the records revealed that the impugned order was passed without affording an opportunity to the petitioner.

8. In the light of the above findings, the order impugned in this writ petition is quashed and the matter is remitted back to the first respondent, who shall pass orders afresh, after providing an opportunity of personal hearing to the petitioner and the third respondent, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

9. With the above direction, this writ petition is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

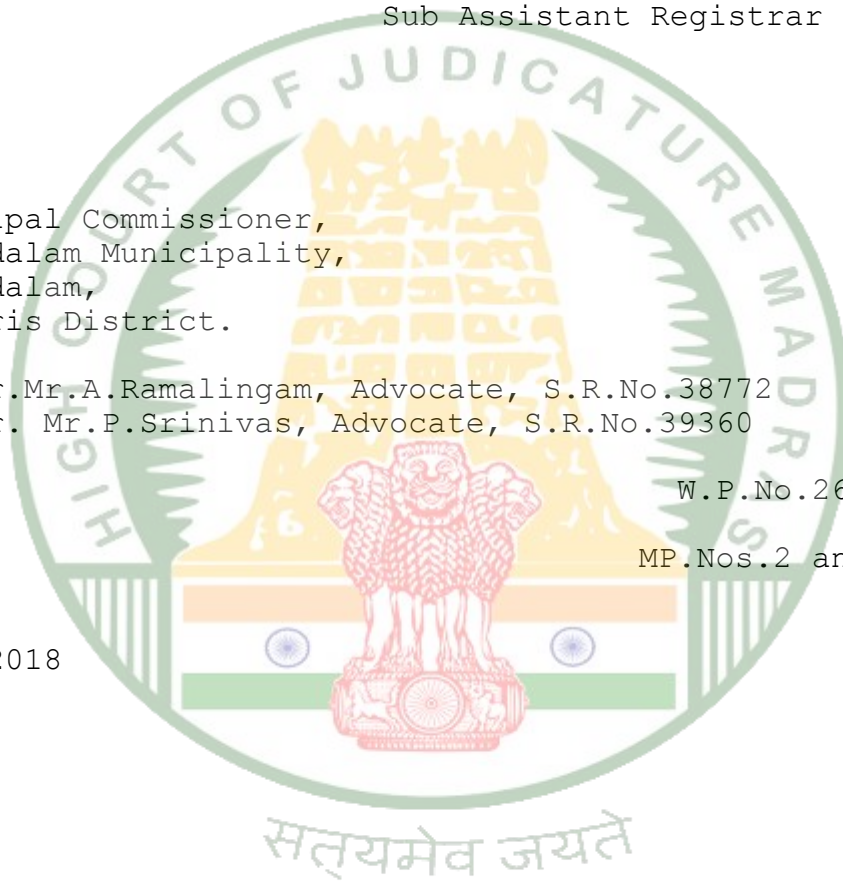
The Municipal Commissioner,
Udhagamandalam Municipality,
Udhagamandalam,
The Nilgiris District.

+1cc to Mr.Mr.A.Ramalingam, Advocate, S.R.No.38772

+1cc to Mr. Mr.P.Srinivas, Advocate, S.R.No.39360

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