



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 12455 of 2010 & 2548 of 2011 and

M.P. (MD) Nos. 1 of 2010 & 1 of 2011

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W.P. (MD) No. 12455 of 2010

P.Sekar

... Petitioner

Vs.

1. The Commissioner,
Madurai Corporation,
Madurai.

2. The Assistant Commissioner (Revenue),
Madurai Corporation,
Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the first respondent in Mava3/20364/09 dated 30.08.2010 quash the same and consequently directing the respondents to allot the shop to the petitioner in Mattuthavani Central Market.

For Petitioner

: Mr.K.Mahendran

For Respondents

: Mr.R.Murali

W.P. (MD) No. 2548 of 2011

J.Natarajan

... Petitioner

Vs.

1. The Commissioner,
Madurai Corporation,
Madurai.

2. The Assistant Commissioner,
Madurai Corporation,
Madurai.

3. P.Sekar

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to allot the shop to the petitioner in the new central market situated in K.K.Nagar, Madurai in terms of the order passed by the first respondent in his proceedings Mava3/20364/09 dated 13.09.2010 within the period that may be stipulated by this Court.



For Petitioner : Mr.Mohamed Imran,
for M/s.Ajmal Associates.
For R-1 & R-2 : Mr.R.Murali
For R-3 : Mr.K.Mahendran

COMMON ORDER

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Heard the learned counsel on either side.

2. Thiru.P.Sekar, petitioner in W.P.(MD)No.12455 of 2010 was granted license to run a vegetable shop in Shop No.935 at Central Market from the year 1993. The Central Market was subsequently shifted and it is presently functioning near Mattuthavani bus stand. Those who were having licenses already in the said Central Market were allotted shops in the newly constructed Central Market. In the case of Thiru.P.Sekar, it was not done. That was because one J.Natarajan raised a claim that Thiru.Sekar had entered into an agreement with him on 02.07.1993 and that on 20.11.1996, he executed a release deed in favour of Natarajan. Therefore, according to Natarajan, he had stepped into the shoes of Thiru.Sekar and that the shop in the newly constructed Central Market should be allotted in his favour. In this regard, he had sent a representation dated 25.06.2010. Since the same was not considered, he filed W.P.(MD)No.8655 of 2010. The writ petition was dismissed vide order dated 08.07.2010. Questioning the same, Thiru.Natarajan filed W.A.(MD)No.434 of 2010. The Hon'ble Division Bench vide Judgment dated 09.08.2010, allowed the writ appeal and called upon the Commissioner of Madurai Corporation to hold an enquiry in this regard to consider the claim of Thiru.Natarajan. Pursuant to the said direction, the Commissioner of Madurai Corporation held an enquiry. Thiru.Sekar was asked to appear before the Commissioner on 30.08.2010 at 4.00 p.m. On the said date, Thiru.Sekar appeared before the Commissioner and asked for adjournment. His request was rejected and the license granted in his favour was also cancelled vide order dated 30.08.2010. Challenging the same, W.P.(MD)No.12455 of 2010 came to be filed. On the same date, the Commissioner of Madurai Corporation also passed another order effecting name transfer in favour of Thiru.Natarajan. Since such proceedings were not implemented, Thiru.Natarajan filed W.P.(MD)No.2548 of 2011 for enforcing the said proceedings and for consequential allotment of a shop in the newly constructed Central Market in his favour.

3. The case of Thiru.Sekar was that Thiru.Natarajan was employed under him and that at no point of time, he entered into any agreement with Thiru.Natarajan. The case of Thiru.Natarajan is that on 02.07.1993, Thiru.Sekar entered into a partnership agreement and that on 20.11.1996, Thiru.Sekar exited from the said arrangement. In this regard, certain documents are placed for my perusal.

<https://hcservices.ecourts.gov.in/hcservices/>



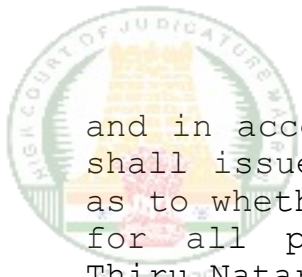
4. A mere look at the said documents would indicate that something is fishy. They do not inspire my confidence. This is for more than one reason. Page No.1 in both the documents do not bear the signatures of both the parties. Page No.1 alone is typed on a stamp paper. Page No.2 is not typed on a stamp paper. Of course in page No.2, the signatures of both Thiru.Natarajan and Thiru.Sekar are found. Interestingly, the witnesses in both the documents which are separated by a gap of three years are one and the same. In the both the documents, the signatures of the attesting witnesses even on a comparison with naked eye are identical. One's signature would definitely undergo some change over a period of few years. That apart, Thiru.Sekar would strongly contend that the signatures attributed to him are forged. When an allegation of forgery is made, it would definitely not be open to the Commissioner of Madurai Corporation to decide on their genuineness. That would be a matter for adjudication by the competent Court. Therefore, the said two documents relied on by Thiru.Natarajan cannot be acted upon by the Corporation.

5. The case of the Corporation as well as Thiru.Natarajan is that the shop in question was run only by Thiru.Natarajan, though the license stood in the name of Thiru.Sekar. The Corporation official is said to have conducted a field enquiry and a report was submitted to that effect. Though this report is referred to in the order passed by the Commissioner, it was not served on Thiru.Sekar. When a report that is adverse to the interest of Thiru.Sekar is relied upon, Thiru.Sekar ought to have been served with a copy of the same and his explanation ought to have been obtained thereon. This approach was not adopted. This is also a clear violation of the principles of natural justice.

6. More than anything else, on the enquiry date, Thiru.Sekar made a request for adjournment. If the Commissioner was not inclined to grant the said request, he should have independently disposed of the said request and called upon Thiru.Sekar to get along with the main matter. That was not done. Instead while deciding the issue on merits, the request for adjournment was also rejected. Such a composite order could not have been passed.

7. Thus the order passed by the Commissioner of Madurai Corporation suffers from more than one defect. It is violative of principles of natural justice for not having supplied the relied upon documents. The request for adjournment was rejected, even while passing the main order. More than anything else, the documents alleged to have been forged were the basis for passing the impugned order.

8. Therefore, the order that is impugned in W.P.(MD)No.12455 of 2010 is set aside. The matters are remitted to the file of the Commissioner of Madurai Corporation for deciding the issue afresh



and in accordance with law. The Commissioner of Madurai Corporation shall issue fresh notice to Thiru.Sekar for the purpose of deciding as to whether he was actually running the business or whether he had for all practical purposes left the business in the hands of Thiru.Natarajan.

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9. If the Commissioner of Madurai Corporation arrives at a finding in favour of Thiru.Sekar, then Thiru.Sekar will have to be necessarily allotted a new shop in the newly constructed Central Market. If the finding is adverse to Thiru.Sekar, the corollary cannot be that Thiru.Natarajan can be allotted. This is because the license granted in favour Thiru.Sekar was exclusive to him which could not have been transferred in favour of Thiru.Natarajan, even if the claim of Thiru.Natarajan is found to be true. When the Corporation or the Municipal authorities issued licenses, it can only be for the benefit of the licensee. Of course if the licensee dies, it can be transferred in favour of the Class-I legal heirs provided the license terms and conditions, permits the same. Otherwise the Municipal authorities ought not to recognize any private arrangement that may take place between licensee and third parties. A license of this sort is in the nature of largesse. It would be beyond the power of the Commissioner or the local body to recognize such illegal transfers from the licensees to third parties. That would be a clear violation of Article 14 of the Constitution of India.

10. In the proposed enquiry, the Commissioner of Madurai Corporation shall examine Thiru.Natarajan so as to enable him to place all the relevant materials for consideration.

11. W.P.(MD)No.12455 of 2010 is allowed with the aforesaid terms. No costs. Since W.P.(MD)No.12455 of 2010 has been allowed, Thiru.Natarajan does not have any cause of action to pursue in W.P.(MD)No.2548 of 2011. It stands dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: 1. Registry to mark a copy of this order to the Secretary/Municipal Corporation of Chennai for issuing appropriate direction to all the local bodies in the State of Tamil Nadu.

2. In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To:

1. The Commissioner,
Madurai Corporation,
Madurai.
2. The Assistant Commissioner (Revenue),
Madurai Corporation,
Madurai.
3. The Commissioner,
Madurai Corporation,
Madurai.
4. The Secretary/Municipal Corporation,
Chennai.

+1CC to M/s.Ajmal Associates, SR.No.3902 dated 09/02/2021
+1CC to Mr.R.Murali, Advocate, SR.No.4063 dated 09/02/2021

W.P. (MD)Nos.12455 of 2010 & 2548 of 2011
08.02.2021

PK (CO)
KB (18.03.2021) 5P 7C