



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.07.2021

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE S.ANANTHI**

**W.A.[MD]No.1418 of 2021
and
C.M.P.[MD]No.5852 of 2021**

A.Jinna ... Appellant/3rd Respondent
Vs.

1.Mr.U.A.Uthuman

2.The Deputy Commissioner,
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R. Line Road,
Palayamkottai,
Tirunelveli District.

3.The Assistant Commissioner (Palayamkottai Zone),
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R. Line Road,
Palayamkottai,
Tirunelveli District.

4. A.Ayub Khan ... Respondents/Petitioners/
Respondents 1,2 & 4

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act, praying to set aside the order in W.P.[MD]No.13281 of 2016 dated 15.03.2021.

Prayer in WP(MD). 13281/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondent 1 and 2 to cancel the R.C (Registration Certificate) bearing No. 33835567629 dated 15.08.2015 issued by the 2nd respondent relating to the Annapoorna Hotel, Door No, 9/16, 9/16A, tiruchendur road, Palayamkottai by considering Petitioners representation dated 27.04.2016.



For Appellant : Mr.T.Lajapathi Roy
For Respondent No.1 : Mr.D.Nallathambi
For Respondents 2 & 3 : Mr.A.K.Manickam,
Standing Counsel for Govt.,
R4 : Notice dispense with vide order
dated 22/07/2021 in
WA(MD).No. 1418/2021

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JUDGMENT

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

Heard Mr.T.Lajapathi Roy, learned Counsel appearing for the appellant, Mr.D.Nallathambi, learned Counsel appearing for the first respondent and Mr.A.K.Manickam, learned Standing Counsel for the Government appearing for the respondents 2 and 3.

2.This Writ Appeal is directed against the order in W.P.[MD] No.13281 of 2016 dated 15.03.2021.

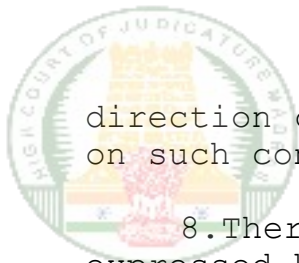
3.In the light of the judgment we propose to pass, notice to the fourth respondent is dispensed with.

4.The first respondent filed the writ petition praying for a Writ of Mandamus, to direct the second and third respondents to cancel the registration certificate issued in the name of Annapoorna Hotel, Palayamkottai, by taking note of his representation.

5.The learned Single Bench, by the impugned order dated 15.03.2020, directed an enquiry to be conducted after notice to all the legal heirs.

6.The learned Counsel for the appellant rightly submitted that the appellant is not aggrieved by such a direction and he is willing to participate in the enquiry which is to be called for conducted. But, what hurts the appellant is the passing reference which has been made by the learned Single Bench in paragraph No.3 of the order, wherein the learned Single Bench has observed that on the face of it, the mutation appears to be a doubtful validity.

7.In our considered view, when matters are remanded to the authorities for fresh consideration, it will be better that all issues are left open without the Court making any observations. Otherwise, it would reduce the enquiry to be a mere empty formality. Moreover, the respondents 2 and 3, namely, the Deputy Commissioner and the Assistant Commissioner, will be bound by the observations made by the High Court, which is the jurisdiction High Court which can test the correctness of the orders passed. Therefore, such observations should be avoided and unless and until the Court adjudicates the controversy and arrives at a conclusion, this



direction can be issued for the authorities to proceed further based on such conclusions and not otherwise.

8. Therefore, the Writ Appeal is partly allowed and the opinion expressed by the learned Single Bench with regard to the validity of the mutation stands deleted and we leave all issues open and we direct the Assistant Commissioner, Commercial Tax Department, the third respondent herein to issue notice of enquiry to all the legal heirs of U.Atham Rowther, and after conducting an enquiry in accordance with law, a speaking order be passed on merits and in accordance with law. Since, it appears that there are two hotels and the legal heirs are three in number, it would be advisable if amicable settlement is arrived at, for which, the learned Counsel appearing for the appellants and the first respondent may use their good offices. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

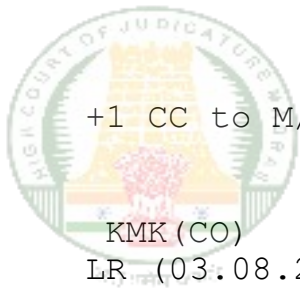
MR

Note: *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.*

To

1. The Deputy Commissioner,
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R. Line Road, Palayamkottai,
Tirunelveli District.
3. The Assistant Commissioner (Palayamkottai Zone),
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R. Line Road, Palayamkottai,
Tirunelveli District.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-23686[F] dated 23/07/2021)



W.A.[MD]No.1418 of 2021

+1 CC to M/s.GP (SR-23730[F] dated 23/07/2021)

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22.07.2021

KMK (CO)

LR (03.08.2021) 4P 6C

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