



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.13281 of 2016

U.A.Uthuman

... Petitioner

-Vs-

1.The Deputy Commissioner,
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R.Line Road, Palayamkottai,
Tirunelveli District-627 002..

2.The Assistant Commissioner(Palayamkottai Zone),
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R.Line Road, Palayamkottai,
Tirunelveli District-627 002.

3.A.Zinna

4.A.Ayub Khan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents 1 and 2 to cancel the R.C.(Registration Certification) bearing No.33835567629 dated 15.08.2015 issued by the second respondent relating to the Annapoorna Hotel, Door No.9/16, 9/16A, Tiruchendur Road, Palayamkottai by considering the petitioner's representation dated 27.04.2016.

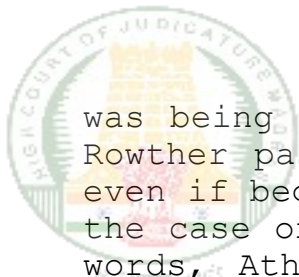
For Petitioner	: Mr.V.Meenakshisundaram for Mr.D.Nallathambi
For R1 & R2	: Mr.G.Arjunan Government Advocate

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for R1 and R2.

2.Though the private respondents have been served and their names are also printed in the cause list, they have not chosen to enter appearance. In the writ petition, a larger relief for cancelling the petition mentioned registration has been sought for. However, the petitioner's counsel fairly submitted that since R3 & R4 are not represented before this Court, he would limit his prayer.

3.It is seen from the records that the petition mentioned business was originally started only by late U.Atham Rowther, the father of the petitioner and the private respondents. The business



was being run in the building belonging to the local body. Atham Rowther passed away on 11.01.2013. Since the parties are muslims, even if bequest is made, they can only cover 1/3rd of the estate. In the case on hand, it is stated that no will was executed. In other words, Atham Rowther died intestate. Therefore, the business in question will devolve on the petitioner and the private respondents and the other legal heirs. However, based on the document said to have been signed by the mother of the parties herein, the authority has effected mutation in favour of the third respondent. The Writ Petition was filed way back in July 2016. Till date, no counter affidavit has been filed by the official respondents. The private respondents, particularly, the third respondent has also not chosen to enter appearance. On the face of it, the mutation appears to be of doubtful validity.

4.However, the second respondent is directed to put all the legal heirs of late Atham Rowther on notice and pass orders on the petition mentioned representation dated 27.04.2016 read with remainder dated 23.06.2018. I make it clear that the second respondent has to apply the principles of Muslim Law of inheritance and on that basis, take a call in the matter. If the third respondent is not able to establish his case, obviously, the registration will have to be mutated. But then, all the names of the legal heirs of the deceased assessee will have to be reflected in the new registration certificate. The authority will also not be justified in acting on the statement of the wife of U.Atham Rowther alone. The second respondent shall conclude the exercise within a period of twelve weeks from the date of receipt of a copy of this order. This Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CO)

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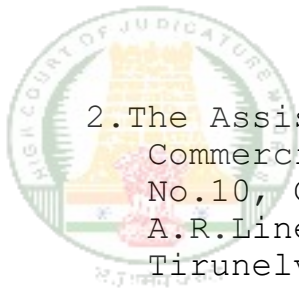
/ /2021

Sub Assistant Registrar(CS)

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-627 002..



2.The Assistant Commissioner(Palayamkottai Zone),
Commercial Tax Department,
No.10, Commercial Tax Department Campus,
A.R.Line Road, Palayamkottai,
Tirunelveli District-627 002.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-11259[F] dated
16/03/2021)

+1 CC to M/s.SPL GP (SR-11559[F] dated 16/03/2021)

W.P. (MD) No.13281 of 2016
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ES (CO)
KB (26.04.2021) 3P 5C