



W.P. No.1188 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM:

THE HON'BLE MR. JUSTICE G.K. ILANTHIRAIYAN

W.P. No.1188 of 2018 and
W.M.P.No.1491 of 2018

P.Shanmugam

... Petitioner

vs.

1. The District Revenue Officer,
Erode District,
Erode.

2. The Revenue Divisional Officer,
Erode.

3. The Tahsildar,
Perundurai.

4. P.Kandasami

.... Respondents

Prayer : Writ Petition is filed under Article 226 of Constitution of India to issue a writ of Certioari calling for the records of the 1st respondent in Na.Ka.No.6451/2017/அ9 (நி,அ) dated 29.12.2017 and quash the same.

For Petitioner : M/s.G.Jeremiah

For Respondents 1 to 3 : Mr.S.J.Mohammed Sathik
Government Advocate

For Respondent 4 : Mr.V.S.Kesavan



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for
M/s.R.Rebecca Vasanthini Percy
Advocate Commissioner

ORDER

This writ petition has been filed challenging the order passed by the first respondent dated 29.12.2017 thereby allowed the revision filed by the fourth respondent as against the order passed by the second respondent and remitted back before the third respondent for fresh disposal.

2. The petitioner had applied to Bharat Petroleum Corporation Ltd. for Distributorship of Bharat Gas at 15 K.M. Radius of Perundurai. In order to fulfill the conditions of the Bharath Petroleum Corporation the petitioner had taken building bearing D.No.110, 111, Erode Road, Perundurai on lease for the showroom. However, the petitioner could not fix a suitable godown and as such he had purchased one acre of land in Old SF.No.313, RS.No.190/1 of Karumandiselliplayam Village vide registered sale deed dated 12.08.2004. Immediately, he had constructed godown after obtaining permission from the Town Panchayat. After issuance of completion certificate and also No Objection Certificate from the authorities concerned, the petitioner was granted Distributorship of Bharat Gas and he has carried the Gas agency in the name and style of



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M/s.Bharani Bharat Gas Agency. The 4th respondent is being a brother of the petitioner, the petitioner requested him to assistance for carrying of Gas Agency business. The 4th respondent insisted to assign some of the property to maintain his status on the locality.

2.1. Therefore, the petitioner being a brother had executed sale deed in favour of the 4th respondent to an extent of 40 cents out of 1 Acre by registered sale deed 13.12.2004. Thereafter, the 4th respondent also insisted the petitioner inducted him as partner in the business for which the petitioner refused to induct him as partner. In fact, the corporation rules does not permit to induct the 4th respondent as partner in the business, run by the petitioner. Therefore, there is enmity between the petitioner and the 4th respondent. In fact, the petitioner also filed police complaint before the Inspector of Police, Perundurai Police Station. Since the 4th respondent prevented for loading and unloading of the Gas in the godown. Therefore, the petitioner was constrained to file a suit as against the 4th respondent. After executing sale deed in favour of the 4th respondent joint patta was issued in favour of the petitioner and the 4th respondent in respect of the subject property ad-measuring one acre. Therefore, the petitioner had applied for separate patta for his land ad-



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measuring 60 cents before the third respondent. After due enquiry, the petitioner was issued with separate patta. Aggrieved by the same, the 4th respondent filed appeal before the 2nd respondent, the said appeal was dismissed by an order dated 09.05.2015. Once again, aggrieved by the same, the 4th respondent filed revision before the 1st respondent to set aside the order of 3rd respondent and remitted back the order of 3rd respondent. The 4th respondent filed appeal for the only ground that, he was not heard at the time of enquiry. Therefore, this Court appointed Advocate Commissioner to inspect the subject property and find out as to whether any Gas Bunk exists or not in the 40 cent land belonged to the 4th respondent and directed to file report.

3. Accordingly, the Advocate Commissioner M/s.R.Rebecca Vasanthini Percy inspected the property owned by the 4th respondent with the help of Taluk Surveyor and Village Administrative Officer to measure the subject property. On the basis of all documents produced by the petitioner as well as the 4th respondent, the survey was conducted and found that the Gas godown run by the petitioner situated at Old SF.No.313, RS.No.190/1 at Karumandisellipalayam Village. Therefore, the godown was not encroached upon in the 4th respondent's 40 cents of



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land and the godown was constructed much before the sale of 40 cents of vacant land to the 4th respondent by the petitioner. That apart, the total extent of one acre land was originally purchased by the petitioner. Subsequently, 40 cents out of one acre of land sold in favour of the 4th respondent. Therefore, both the petitioner as well as the 4th respondent were issued joint patta. The petitioner rightly applied for separate patta in respect of the 60 cents of his land. The only objection raised by the 4th respondent is that he was not issuing any notice while issuance of separate patta in favour of the petitioner. Therefore, the 3rd respondent rightly issued separate patta in favour of the petitioner and this Court finds infirmity and illegality in the order passed by the first respondent dated 29.12.2017. Accordingly, the order passed by the first respondent dated 29.12.2017 is quashed and this Court confirmed the order passed by the 3rd respondent. Further, the 4th respondent is directed to restore the sub-division as ordered by the 3rd respondent forthwith.

4. Initially, the remuneration for the Advocate Commissioner is



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fixed at Rs.20,000/- payable by the petitioner as well as the 4th respondent each Rs.10,000/-. Now, the Advocate Commissioner completed her entire process and submit her report. Therefore, this Court is inclined to order Additional remuneration of Rs.20,000/- payable by the petitioner and the 4th respondent each Rs.10,000/- within a period of two weeks from the date of receipt of copy of this order.

5. With the above direction, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

06.06.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
gvn



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To

1. The District Revenue Officer,
Erode District,
Erode.
2. The Revenue Divisional Officer,
Erode.
3. The Tahsildar,
Perundurai.



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G.K. ILANTHIRAIYAN, J.

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