

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18146 OF 2011

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ORDER:

This petition is filed for a writ of *Certiorari* calling for records of the 1st respondent pertaining to his orders in endorsement Roc.No.391/2004/A1, dated 02.08.2010 and consequently mutating the said assessment in the name of the 2nd respondent vide his proceedings in Rc.No.391/2004/A1/GWK Zone-V, dated 15.03.2011 pertaining to the petitioner's property bearing D.No.27.01.246 with Assessment No.1088030848 and to quash the same, and for a consequential direction to the 1st respondent to continue the said assessment in the name of the petitioner.

The case of the petitioner is that he is having five brothers and all of them are sons of late Sri Pilla Ramu Naidu. The 2nd respondent is the son of petitioner's second elder brother Sri Apparao. Petitioner's father died in the year 1979 intestate. After his death, petitioner and his brothers orally partitioned the properties left by their father. In such partition, the property covered by the D.No.27-1-246 equivalent to old D.No.15-131/3 with assessment No.52389/7, which is an extent of 1144 sq.ys. fell to the share of the petitioner and petitioner established an automobile water servicing station in it by name Jai Hanuman Servicing Station. Subsequently, the petitioner constructed four shops in the said site and thus he is in actual possession and enjoyment of the same by paying electricity bills, water taxes and also house taxes to the municipality. When the petitioner was under threat of dispossession by the 2nd respondent, he filed OS.No.276/2005 on the file of Senior Civil Judge, Gajuwaka seeking permanent injunction against the 2nd respondent and the said suit was decreed. Meanwhile, the 2nd respondent filed another suit OS.No.38 of 2006 on the file of the I Addl. District Judge, Visakhapatnam, basing on a registered partition deed said to have been executed by himself and his father, wherein the H.No.27-1-246 was not covered

by such partition deed, seeking declaration of his title and recovery of possession of the above said property and the same is still pending. While so, during the year 2006, the 2nd respondent filed a WP.No.2277 of 2006 seeking cancellation of assessment pertaining to D.No.27-1-246 which stands in the name of the petitioner and the said writ petition was disposed of on 11.06.2008, granting liberty to the 2nd respondent herein to move a fresh application before the Commissioner, Greater Visakhapatnam Municipal Corporation, ventilating his grievance and requesting to cancel the assessment, and on such fresh application the claim shall be disposed of within a period of four weeks. In pursuance of the same, without issuing any notice to the petitioner, the 1st respondent issued proceedings vide Rc.No.391/2004/A7/Zone-V/Revenue, dated 26.07.2008 wherein the assessment in the name of the petitioner was cancelled. Challenging the same, the petitioner filed WP.No.25833 of 2009 and the same was allowed quashing the proceedings dated 26.07.2008 and also directing the 2nd respondent to file a fresh representation. After disposal of the said writ petition, the petitioner has not received any notice or any order passed by the respondent Corporation. But, the petitioner came to know after receiving a copy of caveat filed by the 2nd respondent that the assessment in the name of the petitioner was cancelled once again by the respondent Corporation. As such, the petitioner made an application to the respondent Corporation under Right to Information Act seeking information regarding the alleged cancellation of the assessment in the name of the petitioner. In response to the same, the 1st respondent Corporation issued a copy of the proceedings in Rc.No.391/2004/A1/GWK Zone-V, dated 15.03.2011, wherein an order was made directing mutation of the property pertaining to the petitioner's house No.27-1-246 with assessment no.1088030848 in the name of the 2nd respondent in the records of the Corporation for house tax purpose. In the said proceedings a reference was made to an office endorsement of the 1st respondent in Rc.No.391/2004/A1, dated 02.08.2010 wherein the assessment in the name of the petitioner was cancelled. Thereafter, with great difficulty the petitioner obtained a copy of the proceedings dated 02.08.2010 which shows that notices have been issued on the petitioner and the 2nd respondent and the 2nd respondent submitted his representations. But, in fact the petitioner did not

receive any such notices. Aggrieved by the endorsement dated 02.08.2010 and consequential proceedings dated 15.03.2011, present writ petition is filed.

The 1st respondent filed counter affidavit stating that the Assessment No.1088030848 for property bearing D.No.27-1-246 assessed in the name of the petitioner was cancelled as the property fell to the share of the 2nd respondent as per the registered document No.1261/2004; that in pursuance to the order passed by this Court in WP.No.25833 of 2009, the petitioner and the 2nd respondent were called upon to provide material evidence as regards to the property in question vide endorsement dated 16.07.2010 and since petitioner failed to produce any valid evidence, an endorsement dated 02.08.2010 was issued canceling the assessment in the name of the petitioner in municipal records; that the 2nd respondent filed WP.No.23519 of 2010 praying the property bearing D.No.27-1-246 be mutated in his name and this Court by order dated 02.11.2009, directed the respondent Corporation to assess the said premises in the name of the 2nd respondent herein within four weeks. Basing on the said direction the property was mutated in the name of the 2nd respondent; that notices were served on the petitioner as well as 2nd respondent and the same were also acknowledged by the petitioner; that basing upon the material evidence the said assessment was cancelled vide office endorsement dated 02.08.2010. It is admitted that there are disputes between the family members of the petitioner with regard to the property in question.

The 2nd respondent filed counter stating that his grandfather Sri Pilla Ramu Naidu acquired vast properties in and around Gajuwaka and he died intestate on 30.06.1979 leaving his six sons as legal heirs to succeed all his properties. Thereafter, the sons of Pilla Ramu Naidu have partitioned the joint family properties among them equally in the year 2003 and the property covered in Sy.No.119/1 of China Gantyada Village and the sheds constructed thereon with an extent of 2600 sq.ys. covered by D.Nos.27-1-248 and 27-1-245/4 fell to the share of 2nd respondent's father Appa Rao including other properties. On 17.03.2004, the 2nd respondent and his father have effected the

partition through a registered partition deed, whereby the above two door numbers fell to the share of the 2nd respondent. The writ petitioner and his other brothers were also allotted properties and each coparcener is having separate and distinct properties and since then they have been in possession and enjoyment of the same. In pursuance to the partition between him and his father Appa Rao, the 2nd respondent made an application to the then Gajuwaka Municipality with a request to mutate his name in the municipal records but in vain. Therefore, the 2nd respondent filed WP.No.19510 of 2005. During the pendency of the above writ petition the Gajuwaka Municipality issued proceedings in Rc.No.391/2004/A7, dated 18.10.2005, mutating the 2nd respondent's name in D.Nos.27-1-248 and 27-1-245/4, admeasuring 2600 sq.ys. and the same has become final. It is also submitted that the writ petitioner has been in illegal and un-authorised possession of part of the 2nd respondent's property in an extent of 500 sq.ys., and that the petitioner in active collusion with the municipal authorities, has created a fabricated door No.27-1-246 and assessed the property tax in his name for the 500 Sq.ys., and taking advantage of the same the writ petitioner filed OS.No.276 of 2005 before the Senior Civil Judge, Gajuwaka for injunction and the same was decreed and confirmed in the appeal. Thereafter, aggrieved by the inaction of the Gajuwaka Municipality in canceling assessment of the property covered by 24-1-246, the 2nd respondent filed WP.No.2277 of 2006 and the said writ petition was disposed of on 11.06.2008 with a direction to the 2nd respondent to make representation to the Greater Visakhapatnam Municipal Corporation, ventilating his grievance and also for cancellation of the assessment made in favour of the writ petitioner herein and further directed the municipal authorities to dispose of the said representation within a period of four weeks. In pursuance of the same, the 2nd respondent made a representation along with relevant documents and after considering the same, the 1st respondent cancelled the assessment made in favour of the writ petitioner for the property bearing D.No.27-1-246 vide endorsement dated 26.07.2008. Aggrieved by the same, the writ petitioner filed WP.No.25833 of 2009 and the same was disposed of on 21.01.2010 quashing the endorsement dated 26.07.2008 by giving liberty to the 2nd respondent and to the writ petitioner herein to make a fresh representation within four weeks

and further directed the GVMC to consider the same on its own merits and pass final orders. In pursuance to the same, the 2nd respondent made a representation afresh on 15.02.2010 and subsequently the 1st respondent cancelled the assessment in favour of the petitioner through endorsement dated 02.08.2010 and also issued consequential proceedings dated 15.03.2011. In pursuance of the same, the 2nd respondent made representations dated 13.06.2011 and 28.06.2011 to the 1st respondent and also to the Zonal Commissioner, Gajuwaka Zone, for implementing the orders dated 02.08.2010. The writ petitioner also addressed a letter dated 06.08.2010 to the 1st respondent with a request to cancel the D.No.27-1-248 in the name of the 2nd respondent. It is further alleged that the writ petitioner suppressing the above stated facts filed the present writ petition with false and frivolous allegations. As such, the 2nd respondent prayed to vacate the interim order made in WP.MP.No.21860/11 on 30.06.2011 by dismissing the writ petition with costs.

Learned counsel for the petitioner submits that petitioner's name in respect of house No.27-1-246, Srinagar, Gajuwaka, Visakhapatnam District, is registered in the municipal records which continued till 2008. But, all of a sudden, proceedings in Rc.No.391/2004/A7/Zone-V (Revenue), dated 26.07.2008 were issued deleting the name of the petitioner in the municipal records basing on the representation of the 2nd respondent. However, the same was set aside by this Court in WP.No.25833 of 2009 by order dated 21.11.2010. In pursuance of the same, both the petitioner as well as the 2nd respondent filed applications and the 1st respondent after verifying the representations as per existing rules, cancelled the name of the petitioner with regard to property assessment No.1088030848 bearing D.No.27-1-246 for tax purpose by issuing impugned proceedings dated 02.08.2010 stating that notices were issued to both the parties in pursuance of the orders passed by this Court on 21.11.2010. Thereafter, consequential proceedings dated 15.03.2011 were issued. He also submits that the impugned proceedings dated 02.08.2010 does not indicate what are the documents the 2nd respondent produced basing on which mutation

was ordered in favour of the 2nd respondent. He further submits that petitioner's name is in existence till 2008 as registered owner and when the registered owner objects the change in the mutation, no change shall be made unless the person, who claims mutation, produces the evidence to the satisfaction of the Commissioner or any officer duly authorised by him. Even as per respondent No.2, who relies on the partition deed dated 17.03.2004 said to have been executed between the 2nd respondent and his father the petitioner is not a party to the same. As such, the registered partition deed is not binding on the petitioner and the said document cannot be a basis for deleting the name of the petitioner and entering the name of the 2nd respondent in the municipal records. He also submits that the order is bereft of reasons and no notice is issued before passing the order dated 02.08.2010, as such, the order is in violation of principles of natural justice. He also submits that though the consequential proceedings dated 15.03.2011 refers to the proceedings dated 18.10.2005 and 18.11.2005, they do not pertain to the property bearing No.27-1-246. As such, the same cannot be a basis for ordering mutation.

On the other hand learned Standing Counsel for the 1st respondent submits that in pursuance to the orders passed by this Court in WP.No.25833/2009, both parties were asked to produce evidence. Since the petitioner failed to produce any valid evidence, and since the 2nd respondent produced registered partition deed dated 17.03.2004, basing on the partition deed, mutation was effected in the municipal records in favour of the 2nd respondent.

Learned counsel for the 2nd respondent submits that the proceedings dated 18.10.2005 and 18.11.2005 became final and the impugned proceedings dated 02.08.2010 and 15.03.2011 are consequential proceedings, as such, the same cannot be challenged. He submits that the petitioner has not produced any documents whereas the 2nd respondent produced partition deed dated 17.03.2004 before the 1st respondent. He also submits that petitioner was issued notices and enquiry was conducted. But, suppressing the same

petitioner filed the present writ petition. He submits that in the proceedings dated 18.11.2005 which is a clarification of 18.10.2005, a mention is made about house No.27-1-246. He also submits that in WP.No.23519 of 2009, which is filed by the 2nd respondent, this Court has directed the respondent authorities to effect the mutation in favour of the 2nd respondent herein with regard to the property assessment No.1088030848 bearing D.No.27-1-246 in case mutation is still intact.

In this case, the admitted fact is that petitioner's name is registered as owner in the municipal records and only for the first time on the representation of the 2nd respondent, the same was cancelled vide proceedings dated 26.07.2008, without notice to the petitioner. In pursuance to the same, the petitioner filed WP.No.25833 of 2009 wherein this Court granted liberty to the 2nd respondent herein to file fresh representation and in pursuance of the same, notices were issued to the petitioner and respondent No.2. Stating that petitioner has not produced any documents, proceedings dated 20.08.2010 and consequently proceedings dated 15.03.2011 were issued canceling the mutation in favour of the petitioner by directing the mutation in favour of the 2nd respondent. Though the impugned proceedings does not contain any reasons for mutating the name of the 2nd respondent in place of the petitioner, in the counter of 1st respondent it is stated that since the 2nd respondent has produced partition deed dated 17.03.2004, basing on the same mutation was effected in favour of the 2nd respondent. A copy of the registered partition deed dated 17.03.2004 which was produced at the time of arguments by the learned counsel for the 2nd respondent shows that it pertains to house No.27-1-248 and 27-1-245/4. It does not reflect the H.No.27-1-246, which shows non application of mind by the 1st respondent in issuing the impugned proceedings dated 20.08.2010, wherein the assessment with regard to H.No.27-1-246 was cancelled in the name of the petitioner. Only on that sole ground itself the impugned proceedings are liable to be set aside.

Admittedly, petitioner is the registered owner of D.No.27-1-246 bearing

assessment No.1088030848 which was cancelled earlier by the 1st respondent vide endorsement dated 26.07.2008.

“Rule 3(1) of the Hyderabad Municipal Corporation (Registry of the Transfer of Ownership of Properties in the Assessment Book) Rules, 1965 reads as follows;

(1) Transfer by voluntary action of owners:- In all cases of absolute transfer of title, the registry of properties may be altered to correspond with the transfer of ownership of such properties on a notice given to the Commissioner or any officer duly authorized by him in Form I prescribed in Schedule ‘F’ to the Act by both the parties to the transfer to either of them:

Provided that the notice for registry of the transfer it, and given of ownership shall be in writing and signed by the party or parties giving within three months from the date of execution of the instrument of transfer or where the instrument is registered, within three months from the date of such registration.

Such notice maybe sent by post or presented in person or by a duly authorized agent. Where such notice is given by both the parties and one of them is the registered owner, the registry of the transfer of ownership may be ordered at once. But where only one of the parties to transfer gives notice, a notice stating that one of the parties to the transfer has given notice for the registry of the transfer of ownership shall be served on the other party. Where the registered owner is not a party to the transaction, notice shall be served on the registered owner also where the transfer of registry is presented by both the parties or either of them. **If the registered owner objects to the proposed registry of the transfer of ownership, no change shall be made unless the person who claims to be the owner produces evidence to the satisfaction of the Commissioner or any officer duly authorized by him.....”**

As per the Rule-3(1) of the Rules, if the registered owner objects to the mutation, the person who claims to be the owner shall produce evidence to the satisfaction of the Commissioner or any officer duly authorized by him. In the present case, the impugned proceedings does not show on what basis mutation in favour of the petitioner was cancelled and effected in favour of the 2nd respondent. In the counter of 1st respondent as well as 2nd respondent it is stated that basing on the partition deed dated 17.03.2004, mutation was effected in favour of the 2nd respondent. But, the said partition deed does not reflect H.No.27.01.246. In the clarification order dated 18.11.2005, passed by

the 1st respondent a mention is made about H.No.27-1-246, but it is not known on what basis the 2nd respondent is claiming H.No.27-1-246 and how the said clarification order is issued. In the writ petition filed by the 2nd respondent in WP.No.23519 of 2009, the petitioner is not made as party, though the litigation is going on between the petitioner and 2nd respondent and that in the first instance the 2nd respondent claimed D.No.27-1-245/4, but later the same was amended incorporating D.No.27-1-246. Even in the said writ petition this Court directed mutation in the name of the 2nd respondent herein only in case the mutation in his favour is still intact and also directed that if any reasons exist for non-assessment of the same, the same shall be communicated to the 2nd respondent. But, the respondent authorities, without reading the order in whole, issued the impugned proceedings stating that the petitioner has not produced any documents to show his title in respect of D.No.27-1-246. Even on that ground also, the impugned proceedings are liable to be set aside.

Now, since the very basis on which the 2nd respondent is claiming mutation does not exist, question whether notices were served on the petitioner is not much of consequence and that issue need not be gone into the present case. Viewed from any angle, the impugned orders are liable to be set aside. In any way order dated 02.08.2010 is not a consequential order. This is passed after issuing notices to both parties in pursuance to the orders passed by this Court in the writ petition. Only the proceedings issued on 15.03.2011 are consequential proceedings. Proceedings dated 18.10.2005 and 18.11.2005 cannot be of any consequence for ordering mutation in favour of the 2nd respondent.

In view of above facts and circumstances, the writ petition is allowed setting aside the impugned proceedings dated 02.08.2010 and consequential proceedings dated 15.03.2011. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

01.07.2015

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