

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.38121 of 2015

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Between:

Shyamsundar Agarwal and others

.. Petitioners

and

The State of Telangana,
represented by its Principal Secretary,
Municipal Administration and Urban Development Department,
Hyderabad and another

.. Respondents

JUDGMENT PRONOUNCED ON: 19th January, 2016

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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| 1. Whether Reporters of local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? | Yes/No |

CVNR,J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

+ WRIT PETITION No.38121 of 2015

% 19.01.2016

Shyamsundar Agarwal and others

.. Petitioners

Vs.

\$ The State of Telangana,
represented by its Principal Secretary,
Municipal Administration and Urban Development Department,
Hyderabad and another

.. Respondents

! Counsel for the petitioners: Mr.P.Lakshma Reddy

Counsel for respondent No.1: Assistant Government Pleader for
Municipal Administration and Urban Development (TS)

Counsel for respondent No.2: --

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>Head Note:

? Cases referred:

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Counsel for the petitioners: Mr.P.Lakshma Reddy

Counsel for respondent No.1: Assistant Government Pleader for
Municipal Administration and Urban Development (TS)

Counsel for respondent No.2: --

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to set aside notice in File No.A1/728/2015, dated 22.09.2015, of respondent No.2.

The petitioners pleaded that petitioner No.1 and his brothers and sisters along with their parents have acquired various properties with the joint family funds in the name of different members of the joint family.

That on 08.06.1995, the father of petitioner No.1 died intestate and on 09.10.2011, his mother also died intestate, that on 11.05.2015, the petitioners along with other family members have partitioned the joint family properties under a registered partition deed, bearing document No.5590 of 2015, and that on 15.07.2015, the petitioners have made applications to respondent No.2 seeking mutation of their names in the property register in respect of the properties, which have fallen to their respective shares. That under the impugned notice, dated 22.09.2015, the Commissioner of respondent No.2 has returned the said applications by informing that if the petitioners pay fee in respect of each of the items of the properties, for which mutation is sought, totalling Rs.15,49,078/-, their request will be reconsidered. Feeling aggrieved by this action on the part of respondent No.2, the petitioners filed this writ petition.

Mr.P.Lakshma Reddy, learned counsel for the petitioners, submitted that none of the provisions of the Andhra Pradesh Municipalities Act, 1965 (for short 'the Act'), authorizes respondent No.2 to collect any fee for mutation of the names of the owners of the properties based on the deed of partition and that therefore, the action of respondent No.2 in returning the applications of the petitioners for nonpayment of fee and demanding the aforesaid sum as purported fee for

mutation is wholly illegal and arbitrary.

This Court has adjourned the case on 24.11.2015 for filing counter-affidavit. Today, at the hearing, Mr.N.Praveen Kumar, learned standing counsel for the Municipalities (TS) appearing for respondent No.2, submitted that as respondent No.2 has not furnished instructions, counter-affidavit is not prepared.

I have carefully examined the case with reference to the pleadings and the provisions of the Act. The relevant provision, which deals with levy of duty by way of surcharge on transfer of property, is Section 120 of the Act. The said provision envisages description of instrument and the amount on which duty shall be levied. Clause (b) of Section 120 of the Act, which is relevant in this context, reads as under: --

120. Method of assessments of duty on transfers of property:- The duty on transfers of property shall be levied:
(a) ...
(b) at such rate as may be fixed by the Government, not exceeding five per centum on the amount specified below against such instrument;

Description of instrument	Amount on which duty shall be levied
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(i) Sale of immovable property	T h e amount or value of the consideration for the sale, as set forth in the instrument or the market value of the property which is the subject matter of the sale whichever is higher.
(ii) Exchange of immovable property	The market value of the property of greater value, which is the subject matter of exchange.
(i i i) Gift of immovable property	The market value of the property which is the subject matter of the gift.
(i v) Mortgage with possession of immovable property	T h e amount secured by the mortgage, as set forth in the instrument.
(v) Lease for a term exceeding one hundred years or in perpetuity of immovable property	A n amount equal to one-sixth of the whole amount or value of the rents which would be paid or delivered in respect of the first fifty years of the lease as set forth in the instrument.

A careful perusal of the above reproduced provision would reveal that as many as five kinds of documents have been envisaged for collection of duty/surcharge. These documents do not include partition deeds. The learned standing counsel for the Municipalities (TS) appearing for respondent No.2 has fairly conceded that no provision other than Section 120 of the Act deals with levy of duty/surcharge on the instruments pertaining to immovable property. As the partition deed is not included in Section 120 of the Act, respondent No.2 has no power or authority to demand any duty or surcharge. Therefore, it follows that the impugned notice, by which the petitioners' applications were returned for nonpayment of fee of Rs.15,48,078/- is liable to be declared as illegal and arbitrary and accordingly, it is declared as such. The petitioners are permitted to re-submit their applications for mutation. On receipt thereof, respondent No.2 shall consider the same, without insisting on payment of any fee, take an appropriate decision, in accordance with law, and communicate the same to the petitioners, within a period of one month from the date of receipt of a copy of this order.

The Writ Petition is accordingly allowed.

As a sequel to allowing the writ petition, W.P.M.P.No.49065 of 2015 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

19th January, 2016

Note: L.R. copies to be marked.

(B/o)

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