

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition no.33025 of 2010

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ORDER:

This writ petition under Article 226 of the Constitution of India is filed by the writ petitioner seeking the following relief/s:

“To issue an appropriate writ, order or direction, more particularly one in the nature of writ of *Mandamus* directing the respondents not to change the petitioner’s name in house property tax and water tax bearing No.9-4-183 to 185 situated at Aziz Street, Khammam of the petitioner with out issuing any notice or without following due process of legal procedure is being illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India and pass such other further order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case”.

(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioner and the learned Standing Counsel for Khammam Municipal Corporation. I have perused the material record.

3. The case of the writ petitioner, as set out in the affidavit filed in support of the writ petition and as per the submissions made at the hearing, in brief, is as follows:

The petitioner and his family members are the owners and enjoyers of the house property bearing nos.9-4-183 to 185 situated in Aziz Street, Khammam. The said property was purchased by the father of the writ petitioner jointly with Shaik Shazahan, vide Document no.1081 of 1978. Later, in a partition, the said property was equally partitioned between the father of the petitioner and the said joint owner. The father of the petitioner and the other owner of the remaining half had individually constructed dwelling houses in their respective portions of house sites after obtaining necessary approvals of the building plans. Later, the father of the petitioner had purchased the share of the other sharer in the year 1992 under a registered sale deed. On the death of the father of the petitioner on 01.04.1999, the entire property had devolved upon the writ petitioner, who is

the sole legal heir and successor of his late father. Having thus become the absolute owner of the property by way of succession, the petitioner is continuing in peaceful possession and enjoyment of the subject house property with absolute rights. The property was mutated in the name of the petitioner and his name was incorporated in the municipal records. The said fact in regard to the mutation of the said house property in the name of the petitioner was informed to him on 02.08.1999. The petitioner is paying the municipal taxes and the electricity and water consumption charges to the departments concerned. When the petitioner went to the municipal office to pay the house and the water taxes, the municipal authority had refused to receive the said taxes in his name by stating that the earlier mutation was cancelled and that the property was again mutated in the name of his late father, as per the Rules. The petitioner is unable to understand as to how the property was again mutated in the name of his late father even without issuing a notice to him and without following the due process of law. The petitioner has been paying property taxes since 1999 till the date of the refusal to receive the taxes by the municipal authority recently. Some persons had filed an original suit for partition against the petitioner and are trying to enter into his house. Therefore, he had filed a suit for perpetual injunction. The said suit O.S.no.189 of 2008 is pending on the file of the Court of the learned Principal Junior Civil Judge, Kandukur of Prakasam District. The Municipal Commissioner for no valid reasons had cancelled the earlier mutation proceedings mutating the subject house property in the name of the petitioner and had re-entered the name of the late father of the petitioner in the municipal records, though the father of the petitioner had died on 01.04.1999. While doing so, neither a notice was issued nor was the due process of law followed. Hence, the present writ petition is filed questioning the said action of the respondent.

4. Before proceeding further, it is pertinent to note that since Khammam Municipality is upgraded as a Municipal Corporation, and as the respondent had inadvertently described the respondent as 'Khammam Municipality' instead of describing it as Municipal Corporation, the petitioner had filed

WPMP no.1229 of 2016 for amendment of the cause title and to permit to amend the description of the respondent as 'The Municipal Commissioner, Khammam Municipal Corporation, Khammam, Khammam District'. The said petition is not resisted and hence, the petition is ordered today accordingly.

5. The then Commissioner, Khammam Municipal Corporation had filed a counter *inter alia* contending as follows:

The material allegations in the writ petition are false. The house bearing nos.9-4-183 to 185 situated at Azeez Street, Khammam Town within the municipal limits of Khammam Municipal Corporation originally stood in the name of the father of the writ petitioner. The allegation that the respondent had denied to receive the house tax and water tax that were offered to be paid by the petitioner is false. Except the house number and the acquisition of the house by the father of the writ petitioner, all the other allegations in the writ petition are false and baseless. The exclusive acquisition of the house property with absolute rights by the petitioner on the death of his father is not known to the respondent. The predecessor of the present Commissioner i.e., the predecessor of the Deponent of the counter affidavit had issued a certificate on 02.08.1999 stating that house bearing no. 9-4-183 to 185 stands in the name of the writ petitioner; and the said certificate was intended to collect property tax only; merely on the basis of the said certificate, the petitioner cannot claim any rights over the property; under the said certificate, no rights are accrued to the writ petitioner. For what purpose, the said certificate was issued to the petitioner was not stated in the writ petition. The various cases, which are mentioned in the writ petition and which are said to have been filed in respect of the subject house, are not within the knowledge of this respondent. Basing on the objections received earlier from the public at large, the name of the father of the petitioner was re-entered in the municipal records in respect of the subject house property. Merely because the name of the father of the petitioner was changed and the name of the petitioner was incorporated in the records of the Municipality, no title to the property would accrue to the writ petitioner. If the petitioner is aggrieved, he ought to have approached a Court of law for declaration of his

title. The writ petition is not maintainable, as by mere making of an entry in respect of the subject house in the name of his father, no infringement has been caused to the rights of the petitioner, if any. The entries in the municipal records are intended for collection of property tax and they do not affect the legal rights over the property. Whenever claims are being made for mutation and entering the names of the parties by producing supporting documents, a general practice is being adopted by this respondent in regard to entering the names and the change of names of the parties in respect of the properties. This respondent is under an obligation to enter the name or change the name in the municipal records based on records and that too, only for the purpose of collection of property tax from the concerned. The writ petitioner had approached this Court with unclean hands. Hence, the writ petition may be dismissed with costs.

6. At the time of hearing, the learned counsel for the writ petitioner and the learned Standing Counsel for the Khammam Municipal Corporation made submissions in line with the respective pleadings of the respective parties. The case of the writ petitioner is that the entire property originally belonged to his father and another joint owner by name Shaik Shazahan and that they have together purchased the entire property under a registered sale deed bearing Document no.1081 of 1978 and that later, the property was equally partitioned between his father and the other joint owner and that after such partition, the father and the other separated sharer had constructed respective houses after obtaining approvals of the respective building plans and that subsequently, the father of the writ petitioner had purchased the share of the other erstwhile joint owner and that therefore, his father had become the absolute owner of the entire house property bearing house nos.9-4-183 to 185 situated at Aziz Street of Khammam and that on the death of his father, the petitioner had alone succeeded to the subject house property, he being the only legal heir of his father and that accordingly, he became the absolute owner of the entire property and that his name was also entered in the municipal records after the mutation of the property in his name and that on such mutation of the property in his name and incorporation of his name in

the municipal records in respect of the subject house, he was informed on 02.08.1999 accordingly by the Municipal Commissioner and that he had paid municipal and water taxes in his name for some time and that later, the Municipal Authority without either issuing a notice to him or following the due process of law, had re-entered the name of the late father of the petitioner in the municipal records by removing the name of the petitioner from the municipal records and that he came to know about the same when his request to pay the municipal and water taxes was denied when he went and offered to pay the same at the municipal office. The respondent Corporation admits in its counter the title of the father of the petitioner in respect of the subject house property and also about the issuance of the certificate by the then Municipal Commissioner to the petitioner stating that the property stands in his name; but, denies the other allegations made by the petitioner and pleads lack of knowledge about the petitioner acquiring exclusive ownership of the property. It is *inter alia* contended in the counter that the mutation in the municipal records does not affect the right, title and interest in the property of any person and that entry in the municipal record in respect of any property in the name of any person is only for the purpose of collection of taxes and that by mere mutation proceedings, neither title accrues nor existing title is affected and that therefore, the petitioner, in case, he is aggrieved of the mutation or the change in the name in respect of the house property, has to approach a Civil Court and obtain declaration of his title in respect of the subject property. Admittedly, the petitioner had filed a suit for perpetual injunction in O.S.no.189 of 2009 and the said suit was decreed on 22.11.2014 by the learned Principal Junior Civil Judge, Kandukur, as per the submissions made at the time of hearing. Further, during the course of hearing, the copy of the judgment in the said suit was filed. No additional affidavit is filed stating as to whether or not an appeal was filed by the defendants therein and, if so, whether it is pending or not. Further, a perusal of the plaint schedule, which is produced before this Court, would show that the door number 9-4-183 was interpolated with pen in the certified copy of the plaint schedule of the above said suit. Such correction was not attested as required under law, by the officer who has furnished the certified copy and the

certified copy does not show the number of corrections at the foot of the certified copy. In the writ petition, the boundaries of the house property are not mentioned. The house number was mentioned in the writ petition as 9-4-183 to 185. Even the interpolated door number in the plaint schedule does not perfectly match with the door numbers mentioned in the writ petition. Further, though the petitioner had stated that his father had purchased the share of the original joint owner in the year 1992 under a registered sale deed, the details of the said sale deed are not mentioned in the writ petition. Thus, whether the suit for perpetual injunction was decreed in respect of the entire house, which is the subject matter of the writ petition and whether the said decree has become final or not is not established *prima facie*. Though it is averred in the affidavit filed in support of the writ petition that some persons had filed a suit for partition against the petitioner and that such persons are trying to enter the house property, the details of the said partition suit are also not mentioned in the writ petition. No additional affidavit is filed disclosing the details of the said suit for partition and also in regard to the final result of the said suit or the present stage of the said suit, in case, it is pending. From the very allegations in the writ petition, it appears that there are some rival claimants. The petitioner ought to have impleaded the rival claimants in the writ petition and ought to have sought the relief in the writ petition in a fair manner in their presence. He did not do so. No reasons are forthcoming for not impleading the rival claimants or the parties, who had filed the suit for partition. The mutation under challenge is not affected in favour of the rival claimants of the writ petitioner. The respondent-Municipal Corporation, in the facts and circumstances of the case, cannot now be directed to re-enter the name of the petitioner in the municipal records in respect of the subject house as a civil litigation in regard to the rights in respect of the subject house property is pending before competent Civil Courts. Even a direction to do so, after service of due notices on the rival claimants, cannot be given to the Municipal Corporation at this stage, as the writ petitioner did not implead the rival claimants as parties to this writ petition and had failed to furnish the details as to the result/stage of the suit for partition and the pendency or otherwise of the first appeal against the decree granted to him in the suit for

perpetual injunction and had further failed to establish, *prima facie*, that the property involved in the said suit is the entire house property, which is the subject matter of the present writ petition. Further, unless, the competent Civil Courts, which are seized of the matters, finally decide the rights of the parties in regard to the subject house property, the respondent Municipal Corporation cannot take a final decision in the matter in regard to in whose name the mutation of the property shall be affected and as to whose name amongst the rival parties to the Civil litigation shall be entered in the municipal record in respect of the subject house property. Viewed thus, this Court finds that the writ petition is not maintainable and is liable to be dismissed.

7. In the result, the writ petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SEETHARAMA MURTI, J

28th March, 2016
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