

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.23956 of 2009

Kothuru Gangadhar

...Petitioner

Vs.

Tuni Municipality,
represented by its Commissioner,
Tuni, East Godavari District.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 04.10.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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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 wishes to see the fair copy of the Judgment? Yes/No

CHALLA KODANDA RAM, J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**+ WRIT PETITION No.23956 of 2009**

% 04-10-2018

Kothuru Gangadhar

...Petitioner

Vs.

\$ Tuni Municipality, represented by its Commissioner,
Tuni, East Godavari District and others

... Respondents

!Counsel for the Petitioner : K. Sarvabhouma Rao

Counsel for Respondent No.1 : Sri Nimmagadda Venkateswarlu

Counsel for Respondent Nos.2 & 3 : Ms. M. Madhavi Praya

< Gist :

> Head Note:

? Cases referred:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.23956 of 2009****ORDER:**

The prayer in this Writ Petition reads as under:

“For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon’ble Court may be pleased to issue an appropriate writ, direction or order, more particularly the one in the nature of Writ of mandamus declaring the action of the 1st respondent in refusing to assess the petitioner’s property to the extent of Ac.0.1¼ cents existing on the southern side of GNT road in Tuni Town, East Godavari District, for which the ownership certificate under A.P. Homestead Act, 1974, as well as possession certificate, have already been given by the Tahsildar, Tuni, on the ground that respondents 2 and 3 obtained a decree for eviction pertaining to the property existing on the western side boundary of the petitioner property, as illegal, arbitrary, unjust, mala fide and without proper application of mind and against the principles of natural justice and to consequently direct the 1st respondent to assess the petitioner property to tax in the Assessment Books assigning door number to it.”

It is the case of the petitioner that he along with his cousin, by name, Murali Krishna, is in occupation of the land to an extent of Ac.0.1¼ cents each, situated at GNT Road, Tuni, East Godavari District, and both of them are having barber shops on it side by side; that he applied to the municipal authorities under the provisions of the Andhra Pradesh Homestead Act, 1974 (for short ‘the Act’), for grant of ownership certificate and after thorough enquiry, the Tahsildar, Tuni, issued Homestead certificate to him;

that the said Murali Krishna also applied for the same and was granted; that the Tahsildar gave possession certificate to the petitioner on 11.12.2008 and in the said certificate, the western boundary of his site is the site of the said Murali Krishna; that on 08.02.2009, he submitted an application to the first respondent – Tuni Municipality, represented by its Commissioner, Tuni, East Godavari District, seeking to assess his property to tax so that a door number would be assigned to it and thereupon, the first respondent informed him through letter, dated 12.03.2009 that respondents 2 and 3 got issued a registered legal notice stating that O.S.No.82 of 2001 was filed against his brother, Murali Krishna, with respect to the property in his occupation and the said suit was also decreed for eviction, as such, the property in his occupation cannot be mutated in his name and cannot be assessed to property tax; that thereafter, he replied to the said letter on 02.04.2009 clarifying that the property involved in O.S.No.82 of 2001 filed against the said Murali Krishna is situated by the side of his property and he was not a party to the suit, as such, there cannot be any impediment for assessing his property to tax; that the first respondent sent another letter to him on 15.04.2009 stating that when there is a dispute with respect to the title to the property, the assessment cannot be made ignoring

the rival claims unless there is a declaratory decree from the competent Civil Court; that he got issued another legal notice on 21.05.2009 reiterating that the property involved in O.S.No.82 of 2001 is different from the property, for which, he is seeking assessment to tax; that the rules do not contemplate obtaining a decree for effecting mutation or making an entry in the assessment book and at best, what is contemplated is an enquiry to be conducted; that the objection raised by respondents 2 and 3 is not at all valid as the property involved in the suit is admittedly, the western boundary of his property and that merely because his property is situated on the western side of the property, which was locked in litigation, his claim for mutation cannot be denied. Aggrieved by the same, he filed this Writ Petition.

A counter-affidavit is filed by respondent No.2 on behalf of respondents 2 and 3 specifically denying the very existence of barber shops set up by the petitioner as well as his cousin, Murali Krishna, on GNT Road, Tuni, East Godavari District, and asserting that the fathers of the petitioner and the said Murali Krishna were lessees in the land to an extent of 36 sq.yards since 1967 and after their becoming old, the petitioner and

Murali Krishna, came into possession of it and are continuing the same business; that on coming to know that their land in Survey No.268/4 of Veeravaram Village, Tuni Mandal, was wrongly notified as poramboke in Survey and Settlement Register, they approached the Joint Collector-cum-Settlement Officer, East Godavari, Kakinada, for issuance of ryotwari patta for the above land and after due enquiry, the Joint Collector-cum-Settlement Officer issued proceedings in R.C.No.F1/48637/98, dated 26.07.1999 holding that it is not a poramboke and it is a zeroithi land; that the Joint Collector further issued ryotwari patta with respect to an extent of 0.52 cents of land in favour of the answering respondent; that the said land was given to lease to one Kothuru Arjuna Rao, who is the father of the said Murali Krishna, and Kola Appa Rao; that when the said Murali Krishna applied for grant of certificate under the provisions of the Andhra Pradesh Homestead Act, 1974, to protect the interests of the respondents, they filed O.S.No.82 of 2001 against the said Murali Krishna and the said suit was decreed for eviction; that so far as the petitioner is concerned, he is running barber shop by setting up a temporary wooden box in 36 sq.yards of land, with respect to which, he is trying to create rights in the same by seeking

mutation in the municipal records for assessing it to property tax, though he is not the owner.

Learned counsel for the petitioner reiterates the averments mentioned in the writ affidavit and submits that the municipal authorities have ignored the fact that the petitioner was granted a certificate under the provisions of the Act and failed to appreciate the crucial aspect that the petitioner is not a party to O.S.No.82 of 2001.

Learned Standing Counsel for Tuni Municipality appearing for the first respondent submits that the action taken by the first respondent in refusing to consider the case of the petitioner for assessing the property in his occupation to tax cannot be found fault with particularly, in view of the fact that there is a dispute with regard to title. He prays for dismissal of the Writ Petition.

It is to be noted that there is no dispute with respect to the certificate of possession having been granted to the petitioner. However, a perusal of the said certificate does not disclose any grant having been made to the petitioner. The said certificate cannot be considered as a grant by the State or a patta document. It is the case of respondents 2 and 3 that the petitioner is in possession of the property and eking out livelihood by running a barber shop. There is no dispute about filing of O.S.No.82 of

2001 and the petitioner's cousin, Murali Krishna, suffering a judgment and decree of the Civil Court. Further, the petitioner is not disputing the specific averments mentioned in the counter-affidavit that respondents 2 and 3 were granted patta by the revenue authorities recognizing the subject land as zeroithi land. In view of the same, the petitioner would have no right to get the property assessed to tax under the Andhra Pradesh Municipalities Act, 1965. It is to be noted further that even if the property, which is alleged to be in occupation of the petitioner, is assessed to tax, that itself cannot create any right in him over the property. In the circumstances, the action of the respondent authorities in refusing the petitioner's claim to assess the subject property to tax on account of the fact that there is a title dispute with respect thereto, cannot be found fault with.

In view of the above, this Writ Petition is dismissed being no merit.

Miscellaneous Petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

4th OCTOBER, 2018.

Note: L.R.Copy be marked.

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