

*** HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Writ Petition No.9443 of 2021

% Dated 04-05-2021.

Garugubelli Raveendra.

..... Petitioner

Versus

\$ 1. The State of Andhra Pradesh, Municipal Administration
Department, rep. by its Principal Secretary, Secretariat,
Amaravati & Others.

..Respondents

! Counsel for the petitioner : Sri Taddi Nageswara Rao

^ Counsel for respondent No.1: Learned Govt. Pleader for MA&UD

^ Counsel for respondent No.2: Sri M. Manohar Reddy,
Learned Standing Counsel
for Nagarpanchayats.

^ Counsel for respondent No.3: Learned Govt. Pleader for Stamps
and Registration.

<GIST:

> HEAD NOTE:

? Cases referred:

¹ (1998) 8 SCC 1

² 2005 (2) ALT 786

³ AIR 2003 SC 2120

⁴ (2003) 3 SCR 75

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Writ Petition No.9443 of 2021

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..... Petitioner

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1. The State of Andhra Pradesh, Municipal Administration
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JUDGMENT PRONOUNCED ON: 04-05-2021

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? ---
2. Whether the copies of judgment may be
marked to Law Reporters/Journals -Yes-
3. Whether His Lordship wish to see the fair
copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY
WRIT PETITION No.9443 of 2021

ORDER:-

This Writ Petition has been filed for writ of mandamus declaring action of the 2nd respondent in issuing the proceedings dated 25.03.2021 in MC/1134012660 and MC/1134012661 for mutation of the name relating to the houses bearing D.Nos.1697 and 1646 of Palakonda Nagarpanchayat, Srikakulam District, in favour of the 4th respondent without considering the objections of the petitioner as illegal, arbitrary and violative of principles of natural justice and contrary to the rules framed under the A.P. Municipalities Act, 1965. The petitioner also challenges the notice dated 19.04.2021 issued under Section 231 of the A.P. Municipalities Act to the 4th respondent directing to remove the ground floor tiled house and prayed to set aside the proceedings dated 25.03.2021 in MC/1134012660 and MC/1134012661 and also the notice dated 19.04.2021.

2. Heard learned counsel for the petitioner and learned Assistant Government Pleader for Municipal Administration and Sri M. Manohar Reddy, learned Standing Counsel for the 2nd respondent – Nagarpanchayat.

3. As per the case pleaded by the petitioner, the petitioner is the owner of the houses bearing D.Nos.1646 and 1697 which is in Palakonda Nagarpanchayat of Srikakulam

District. He states that he has inherited the said property through his father as originally the said two houses are in the name of his father G. Sanyasi Rao and registered in his name in the records of the Nagarpanchayat. His father died in the month of November, 2015 and after his demise, he has been in possession and enjoyment of the said two houses. The petitioner has been now paying taxes relating to the said two houses.

4. According to the petitioner, his paternal grandfather G. Raja Rao originally purchased the said two houses in the year 1975 in the name of the 4th respondent. After the death of his grandfather G. Raja Rao, all his sons and wife got the family property orally partitioned. However, the two houses in question, which was not subject matter of the said partition, was settled in favour of the father of the petitioner as per the advice of his grandmother and an unregistered settlement deed was executed to that effect by his grandmother and her three sons and as such his father got the said property by way of the said settlement. Thereafter the petitioner became owner of the house after the demise of his father.

5. While so, the 2nd respondent - Commissioner issued notice dated 19.03.2021 stating that the 4th respondent filed objections on 18.03.2021 for change of name in respect of the said two houses and directed the petitioner to appear before him within three days. Accordingly, the petitioner appeared

before him and submitted his documents in proof of his ownership over the said property. However, the 2nd respondent passed the impugned orders dated 25.03.2021 effecting transfer of the said property in the name of the 4th respondent on the basis of a registered document dated 01.03.2021, which do not relate to the said two houses. The petitioner states that thereafter, the 2nd respondent, by invoking Section 93 of the A.P. Municipalities Act, 1965 read with Rule 8(2) of the Taxation and Finance Rules, on the request of the 4th respondent, effected transfer of title in respect of the said property instead of directing the 4th respondent to approach civil Court for establishing his right. It is stated that the 2nd respondent also issued notice dated 19.04.2021 to 4th respondent to demolish the two houses stating that they are in dilapidated condition. Thus, two proceedings dated 25.03.2021 relating mutation of name and the proceedings dated 19.04.2021 issued to demolish the house are questioned in this Writ Petition.

6. The petitioner questions the impugned proceedings dated 25.03.2021 relating mutation of name mainly on the ground that Rule 3 of the Andhra Pradesh Municipalities (Alteration of ownership of property in Assessment Book) Rules, 1966 and G.O.Ms.No.1059, Municipal Administration, dated 15.12.1966, as amended by G.O.Ms.No.517, dated 04.10.1974, contemplates that one month time has to be

given for filing objections and contrary to it, only three days time has been given in the impugned notice for filing objections and even though the petitioner has submitted his documents within the said three days time that the same are not considered in the final orders that were passed in this regard and as such the impugned orders are bad in law for not considering the documents produced by the petitioner. Therefore, he has filed the present Writ Petition seeking the aforesaid reliefs.

7. Sri M. Manohar Reddy, learned Standing Counsel for Nagarpanchayat would submit that even though only three days time has been given for filing objections, as the petitioner availed the said opportunity and filed his documents as stated by him in Para No.6 of the affidavit, it is no more open to the petitioner to question the impugned orders on the ground that 30 days time for filing objections is not given, as he himself, according to his admission in the affidavit, has appeared before the concerned authority and filed his documents. He would then contend that as appeal lies under Section 345 of the Municipalities Act against the order passed for demolition under Section 231 of the Municipalities Act that the present Writ Petition is not maintainable and the petitioner has to exhaust the remedy of appeal provided under the Act. He would also submit that the Writ Petition is not maintainable for mis-joinder of various

causes of action relating to mutation of name in respect of his house property and relating to demolition of the house ordered under Section 231 of the Municipalities Act.

8. The controversy involved in the Writ Petition pertains to mutation of the name of the 4th respondent in respect of the said two houses which are referred supra. Therefore, the rights and liabilities of the parties are squarely governed by "Alteration of ownership of property in Assessment Book Rules, 1966 and G.O.Ms.No.1059, Municipal Administration, dated 15.12.1966, as amended by G.O.Ms.No.517, dated 04.10.1974". Rule 3 thereof prescribes the procedure to be followed regarding mutation of names in respect of immovable property. Therefore, presumably, the impugned order, mutating the name of the 4th respondent in respect of the said two houses is concerned, is passed under the aforesaid rules. The petitioner also questioned the validity of the impugned order on the ground that the procedure contemplated under Section 3 of the aforesaid rules, is not followed and complied with. Now, it is relevant to note here that Rule 7 of the aforesaid Rules provide a remedy of appeal to the aggrieved person. It reads thus:-

"Rule 7:

An appeal shall lie to the council against the order of the Commissioner making or refusing to make alterations in the entries in the assessment books. Such appeal shall be presented within thirty days after the note of receipt of the order appealed against."

9. Therefore, when an efficacious alternative remedy by way of an appeal is provided to the petitioner, who is aggrieved by the said mutation of name of the 4th respondent in respect of the said two houses, the petitioner has to exhaust the said remedy of appeal. He cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India without exhausting the said remedy.

10. Learned counsel for the petitioner would submit that even though alternative remedy is available that in all cases, it is not a bar to entertain the Writ Petition. He would contend that even though the petitioner got right of appeal that this Court still got unfettered power to entertain the Writ Petition.

11. No doubt, the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature vested with the High Court and the said power is not limited by any provisions of the Constitution. The said power of High Court can be exercised not only for enforcing the fundamental rights of the parties as contained in Part III of the Constitution of India but also for any other purpose i.e., for enforcement of legal right of a citizen of the country etc. The High Court, having regard to facts of the case has discretion to entertain or not to entertain a Writ Petition. Mandamus is an important public law remedy and does not generally supersede legal remedies. Therefore, when statutory right of appeal is provided, High Court normally will not entertain the

Writ Petition. Alternative remedy is considered as a bar to entertain the Writ Petition in view of the self-restraint imposed by the High Courts to prevent heavy inflow of Writ Petitions without exhausting the other efficacious alternative remedies. However, Writ Petition can be entertained despite the fact that petitioner got alternative remedy only on limited grounds in exceptional cases. The Apex Court in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai***¹, held that the alternative remedy will not operate as a bar at least in three contingencies and the Writ Petition is maintainable despite the fact that there is an alternative remedy provided to the parties. They are –

- 1) For enforcement of any of the fundamental rights of the citizen.
- 2) Where there has been violation of principles of natural justice
- 3) Where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

12. The said judgment of ***Whirlpool Corporation*** (1 supra) was relied on by the five Judges Bench of this Court in the case of ***Bhamidipati Annapoorna Bhavani vs Land Acquisition Officer, Yeleru***². In ***Harbanslal Sahnia Vs***

¹ (1998) 8 SCC 1

² 2005 (2) ALT 786

Indian Oil Corpn. Ltd³, the Supreme Court held that in appropriate cases, in spite of availability of alternative remedy, the High Court may still exercise its writ jurisdiction at least in three contingencies as noticed above in **Whirlpool Corporation's** case (1 supra). Therefore, the legal position is now very clear that only in the aforesaid three contingencies, despite the fact that an alternative remedy is available either by way of statutory appeal or in any other mode that the Courts can entertain the Writ Petitions filed under Article 226 of the Constitution of India. As can be seen from the facts of the present case, the case of the petitioner is not coming within the purview of any of the aforesaid three grounds. It is not a case of enforcement of any fundamental right of the petitioner as enshrined in Part III of the Constitution of India. It is not a case of violation of principles of natural justice, as notice has been given to the petitioner and it is not a case that the authority, who passed the order, has no jurisdiction to pass the same and it is not a case of challenging the vires of the Act. Therefore, when a statutory appeal is provided against the impugned order which is an effective efficacious remedy available to the petitioner, the petitioner, without exhausting the same, cannot invoke the writ jurisdiction of this Court.

³ AIR 2003 SC 2120

13. In this context, it is apt to consider the judgment of the Apex Court rendered in the case of **Seth Chand Ratan Vs Pandit Durga Prasad**⁴, wherein it is held as follows: -

“When right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy. This rule of exhaustion of statutory remedies is no doubt a rule of policy, convenience and discretion and the Court may in exceptional cases issue a discretionary writ of certiorari.”

14. Therefore, if the case on hand is considered in the light of the above legal position, the same is not found to be an exceptional case to entertain this Writ Petition.

15. As regards the notice issued under Section 231 of the A.P. Municipalities Act for demolition of the said two houses on the ground that they are in dilapidated condition is concerned also, this Court finds considerable force in the contention of Sri M. Manohar Reddy, learned Standing Counsel appearing for Nagarpanchayat that as appeal lies against the said order passed under Section 231 of the A.P. Municipalities Act that the Writ Petition is not maintainable. A reading of Section 345 of the Municipality Act, which deals with the appeals, makes it manifest that under Section 345(1)(a)(i), an appeal against an order passed under Section 231 lies to the council. Therefore, without exhausting the said remedy of appeal provided under Section 345 of the A.P. Municipalities Act, the present Writ Petition is not

⁴ (2003) 3 SCR 75

maintainable. Learned counsel for the petitioner would submit that as the said notices were issued to the 4th respondent under Section 231 of the Act that the petitioner could not prefer any appeal. As the petitioner claims to be the owner of the two houses and also claims to be in possession of the houses in his own right, as the impugned notice affects his right in respect of the said property, he can prefer an appeal under Section 345 of the Act, being aggrieved by the same. It is settled law that even a person, who is not a party to the impugned proceedings, if feels aggrieved by the said proceedings, can question the same in an appeal with the leave of the appellate authority as a person affected by the said order. Therefore, as the petitioner now feels aggrieved by the said order passed under Section 231 of the Act, as he claims to be in possession of the said property, as it affects his right in respect of the said houses in question, he can prefer an appeal with the leave of the appellate authority. If the appeal is rejected on any such technical ground, he can invoke writ jurisdiction.

16. Therefore, the Writ Petition is disposed of with a direction to the petitioner to exhaust the remedy of appeals provided under Rule 7 of the above referred Rules and Section 345 of the A.P. Municipalities Act against both the impugned orders, within a period of 30 days from the date of this order. As the time that is spent during the pendency of this Writ

Petition shall be excluded from consideration while computing the period of limitation in preferring the appeals, the appellate authority shall entertain the said two appeals that may be preferred by the petitioner. Till the said appeals are filed and the same are disposed of according to law, there shall be a direction to the respondents not to take any steps to demolish the houses in question pursuant to the notice given under Section 231 of the A.P. Municipalities Act. There shall be no order as to costs.

Miscellaneous petitions, if any pending, in the Writ Petition, shall stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date: 04.05.2021

Note:

- 1) Issue CC by 06.05.2021.
- 2) LR Copy to be marked.

B/o
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THE HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

WRIT PETITION No.9443 of 2021

Date: 04-05-2021

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