

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.16719 of 2013

ORDER:

Heard learned counsel for the petitioner and Government Pleader for Revenue.

Petitioner prays for Mandamus declaring the action of 4th respondent in refusing to receive and register the deed of sale presented by him for the property covered by Sy.No.147-1B in an extent of 243 square yards of Kothapeta Grampanchayat, Vetapalem Mandal, Prakasam District as illegal, arbitrary and unconstitutional.

The petitioner further complains that inclusion of the schedule property in the prohibitory list is totally without jurisdiction and unconstitutional.

The subject matter of the present writ petition is in an extent of 243 square yards of land in Sy.No.147-1B of Kothapeta Grampanchayat, Vetapalem Mandal, Prakasam District. The admitted circumstances of the case are that one Gaddam Kotaiah was given a grant of land covered by patta No.822. The said Kotaiah, on 5.5.1961, gifted a portion of the land in favour of his brother-in-law. The case of petitioner is that Sy.No.147-1B firstly, is not an assignment under Dharakasth Rules and secondly, the grant admitted by the respondents is not with the condition of non-alienability. The legal objection taken by the petitioner is that to include Sy.No.147-1B in prohibitory list, the respondents must *prima facie* show that Sy.No.147-1B is an assigned land and alternatively it is also the responsibility of respondents to show that the admitted grant in favour of Gaddam Kotaiah is with the condition of non-alienability. Merely because it is shown as a conditional grant in re-settlement register of Kothapeta Village, the Tahsildar/3rd respondent cannot include Sy.No.147-1B in prohibitory list from registration.

The respondents filed counter affidavit and the respondents admit grant in favour of Gaddam Kotaiah and enjoyment either by him or his successors in interest. The counter affidavit filed by the 3rd respondent does not refer to the alleged conditions with which the grant in favour of Gaddam Kotaiah was made. The 3rd respondent was given an opportunity to file additional counter affidavit justifying the

inclusion of Sy.No.147-1B of Kothapeta Village in prohibitory list.

The 3rd respondent filed additional counter affidavit dated 08.02.2014. The additional counter affidavit reads as follows:

“It is submitted that the Resettlement Register of Kothapeta village is in dilapidated condition and the page containing the Sy.No.147-1B with total extent of Ac.1.83 was torn into pieces and it cannot be readable. As per Xerox copy of Fair Land Register of Kothapeta village available in this office, the land in Sy.No.147-1B with total extent of Ac.1.83 was granted to Sri Gaddam Kotaiah under patta No.822 and also noted as conditional grant without date and Dharakast No. The details of date of grant of land and Dharakast No. are not available in the office records. Basing on the remark “Conditional Grant” mentioned in the F.L.R., Sy.No.147-1B of Kothapeta village was communicated to the Sub-registrar, Chirala as prohibited property for registration vide Tahsildar, Vetapalem letter No.Rc.B/63/2007 dated 06.08.2007 under Section 5(1) of A.P.Assigned Lands (P.O.T) Act, 1977 and again furnished the same list under Section 22-A (i) (a) of Indian Stamps and Registration Act, 1908 on 06.06.2012. Alienation of Assigned lands is prohibited under the provisions contained in Section 3 of A.P.A.L.(P.O.T) Act, 1977 as amended in the year 2007.”

Now the only point for consideration is whether the respondents could justify the inclusion of Sy.No.147-1B in prohibitory list or not for the purpose of Section 22-A of the A.P. Assigned Land (Prohibition of Transfers) Act, 1977 (for short ‘the Act’).

The grant was governed by the Crown Grants Act, 1895. The respondents to include the said survey number in prohibitory list presumed that the condition of non-alienability is also included in conditional grant. The condition in the grant certainly cannot be a matter of inference or conjecture, but matter of record. For the enjoyment of assigned land, grantee or person claiming through him cannot be restricted from enjoying as full owner, at this point of time by referring to unsupported inferences drawn by the respondents.

Had it been a case where the assignment is after 1954, it is for the petitioner to *prime facie* show that the assignment does not attract the provisions of A.P. Assigned Land (Prohibition of Transfers) Act, 1977. In the case on hand, the assignment is prior to 1954 and secondly, the respondents have failed to discharge the burden that the grant was with the condition of non-alienability. The inclusion of Sy.No.147-1B in prohibitory list, therefore, is unsustainable and illegal. The further

action of 4th respondent in refusing to receive and register property covered by Sy.No.147-1B is illegal and cannot be covered by any of the circumstances in section 22-A of the Registration Act.

For the above reasons, the writ petition is ordered by giving liberty to petitioners to present document for registration before the 4th respondent and on such presentation, the 4th respondent is directed to receive the document and process the document for registration without reference to the communication received from the 3rd respondent. No order as to costs.

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

S.V. BHATT, J

Date: 24.03.2015

KLP ☐