

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.7582 of 2015

ORDER:

Heard learned counsel for the petitioner and the Government Pleader.

The petitioner prays for Mandamus declaring the action of 2nd respondent in not receiving and processing the document presented for registration in respect of land of an extent of 115.2 Sq.Yards consisting of a tiled house situated in R.S.No.122/1 of Rajavolu Village, Rajahmundry Rural Mandal, East Godavari District, as illegal and contrary to the provisions of the Registration Act, 1908 (for short 'the Act').

The petitioner claims to be owner and possessor of the subject property. The case of the petitioner is that the subject property was and is the private property of individuals. The petitioner intends to sell the property. The Sub-Registrar/2nd respondent has refused to entertain the document for registration on the ground that R.S.No.122/1 is recorded as Gramakantam. The further objection of 2nd respondent in this behalf is Gramakantam is Government property and the property is included in the prohibitory list maintained under Section 22-A of the Act. The inclusion of Gramakantam lands in prohibitory list is in terms of G.O.Ms.No.100 Revenue (Assn.I) Department dated 22.02.2014. Through G.O.Ms.No.56 Revenue (Assn.I) Department dated 16.02.2015, the orders issued in G.O.Ms.No.100 Revenue (Assn.I) dated 22.02.2014 are cancelled. The effect of cancellation is that either the Tahsildar or the Sub-Registrar, on the ground that a particular survey number is classified as Gramakantam, shall not refuse to receive a document for registration.

Further the meaning and the rights of Gramakantam lands are well settled by authoritative pronouncements.

In **Palani Ammal v. L. Sethurama Aiyangar**, it is held as under:

"Gramanatham is not a communal property in the sense in which thrashing floor or burning grounds or other property is communal that is property reserved for the use of the community. Grama Natham a land in the occupation of the individual in possession of the gramanatham cannot be interfered and it could very well resist ejectment and also institute a suit in ejectment against the trespasser."

In **A.K.Thillaivanam v. The District Collector, Chengai Anna District**, it is held as under:

“..The Village Natham is a land which never vested with the respondents and they have no right to it. Admittedly, when the land has been classified as village Natham, it is obvious that no portion of the land vests with the respondents. The admitted classification is village Natham and merely because the petitioners have converted the same into agricultural lands, no right could accrue to the respondents even after conversion.”

In **The Executive Officer, kadathur Town Panchayat v. V.Swaminathan and others**, it is held as under:

“Further ‘Grama Natham’ is defined in the Law Lexicon as “ground set apart on which the house of village may be built”. Similarly, Natham land is described in Tamil lexicon published under the authority of University of Madras to the effect that it is a residential portion of a village; or portion of a village inhabited by the non-Brahmins; or land reserved as house sites; etc.

The properties once understood as classified as Gramanatham, the Government cannot claim right over the said property. This concept has been elaborately discussed in the decision reported in **S.Rengaraja Iyengar v., Achikannu Ammal and another**. The relevant portion reads as follows:

“In order that a land may properly be described as house-site within the meaning of that expression in section 2 of Madras Act III of 1905, it is not necessary that there should be a residential building actually constructed and standing on that site. A person may in a village habitation own a house in a street and a site on the outskirts of the habitation but within the limits of the gramanatham, which he uses for the purpose of storing his hay and manure, if he is an agriculturist, or as a smithy, if he is a smith, or as a brick-kiln if he is a brick-maker or as a place for weaving if he is a weaver. On such sites, buildings or sheds may when necessary be constructed. But whether such buildings or sheds are constructed or not, such sites, are in my opinion, house-sites within the meaning of that expression in section 2 of the Madras Act III of 1905. Madras Act III of 1905 is made applicable to an estate when it is notified under Madras Act III of 1905 is made applicable to an estate when it is notified under Madras Act XXVI of 1948. The provision as to vesting under section 3(b) of Madras Act XXVI of 1948 should be read so as to be in consonance with the provisions regarding the applicability of the enactments relating to ryotwari areas which are expressly made applicable to estates notified under the Act.

It is contended that, in relation to buildings, specific provision is made under section 18 of Act XXVI of 1948 and that, consequently, unless a house-site can be brought within the ambit of section 18, such house-site should be held to be property as to which title gets transferred to the Government under section 3(b). Section 18 deals, in my opinion, with building wherever they may be situate, whether in the gramanathams, or in ryoti lands or pannai lands or waste lands. Section 18 has no particular application to buildings or house-sites in a gramanatham. A building in a gramanatham (or village habitation) is protected from transfer of title to the Government both under section 18(1) of Madras Act XXVI of 1948 and under the Madras Land Encroachment Act (III of 1905). The title to a house site in a gramanatham is protected from transfer to Government by the operation of Madras Act III of 1905.”

Gramakantam by its nature or classification does not belong to the Government to include the Gramakantam in the prohibitory list. Either under the Madras Estates Land Act or in the Estates (Abolition and Conversion into Ryotwari) Act exceptions have been carved out and Gramakantam is one of the categories of land, which is not included in the Government lands. This Court is of the opinion that refusing to entertain document for registration on the ground that the schedule property is classified as Gramakantam amounts to illegal refusal and consequently the writ petition is ordered by directing the 2nd respondent to receive the document presented by the petitioner for registration of subject property without reference to the classification of petition land as Gramakantam, consider the same and pass orders for registration, if the document is otherwise compliant. There shall be no order as to costs.

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

S.V. BHATT, J

Date: 23.03.2015

KLP