

**HON'BLE SRI JUSTICE S.V. BHATT**

**WRIT PETITION Nos.6329 OF 2012 AND 23031 OF 2012**

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**COMMON ORDER:**

Heard Sri N.Subba Rao, learned counsel for petitioners and Sri A. Veera Swamy, learned Government pleader for Revenue.

The petitioners pray for Mandamus declaring the action of respondents in not entertaining documents for registration of property in Survey No.118 in an extent of Ac.36-11 cents and Ac.20-00 respectively in C.K.Dinne Mandal, Pabbapuram Village, Kadapa District, as illegal, arbitrary and contrary to Section 22-A of the Registration Act,1908 (for short 'the Act'). The petitioners pray for consequential direction to 3<sup>rd</sup> respondent to receive and process the documents presented for registration for Survey No.118 without reference to details furnished by respondent No.2 or inclusion in prohibitory list under Section 22-A of the Act.

The pleadings in writ petition No.6329 of 2012 are referred to for convenience and having regard to the similarity of case pleaded in the other writ petition the reference to pleadings in W.P. No.6329 of 2012 would suffice for the disposal of both the writ petitions.

The averments in brief are that the petitioners are the owners of an extent of Ac.36-11 cents in Survey No.118 (Paimash No.18) of Pabbapuram Village, C.K. Dinne Mandal, Kadapa District. The petitioners aver that as early as 1931 a transaction in respect of subject matter of writ petition had taken place. Through the instant deed, Mullabagulu Gande Rao and others sold subject matter to G. Ram Chandra Rao and others. A deed of mortgage was registered vide document No.1563/1933 by the owners. The transfers of subject matter prior to 1954 are registered document Nos.421/1946 and 360/1947. The case of petitioners from the above narration is that the subject matter of writ petition was treated as private patta land by Shrotriyamdars and the Shrotriyamdars sold the properties to various individuals referred to above under registered documents and the subject matter is patta and agriculture land used as such by the owners for several decades. The petitioners approached the 3<sup>rd</sup> respondent to present the document for registration

for subject matter and the 3<sup>rd</sup> respondent is not complying with the request of registration of the petitioners. The 3<sup>rd</sup> respondent is not intimating the basic value of subject matter of the writ petition on the ground that the subject matter is included in the list of lands sent by 1<sup>st</sup> and 2<sup>nd</sup> respondents for prohibition from registration under Section 22-A of the Act. There is no notification under Section 22-A(2) of the Act. The refusal to receive or register much less provide the basic value details as registered by the 3<sup>rd</sup> respondent amount to illegal exercise of jurisdiction or refusing to discharge the statutory duty cast on the 3<sup>rd</sup> respondent. Hence, the writ petition.

The 2<sup>nd</sup> respondent filed counter affidavit for himself and on behalf of 1<sup>st</sup> respondent. The reply of 1<sup>st</sup> and 2<sup>nd</sup> respondents is that Pabbapuram is an Inam Village. The petitioners admittedly purchased Shrotriyam land in an extent of Ac.18-00 in Survey No.118 (Paimash No.18) from Shrotriyamdar P.Murali Rao and others. As per FLR of Pabbaapuram Village, Paimash No.18 is mentioned as 'tank'. By operation of Section 2-A of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short 'Act 1956'), the petition land stood transferred to Government and vested free from all encumbrances in Government. The Shrotriyamdars/purchasers are not having re-grant under Act 1956 which is mandatory requirement for recognition of right and title in a Inam village. The sale details given by the petitioners are admitted. Petitioners' ignorance on exact extent of land covered by Survey No.118 is pointed out. The deponent's predecessor, it is averred, had conducted enquiry into the physical condition of subject matter of the writ petition and forwarded report dated 27.10.2011 stating that the subject matter of the writ petition is an extent of Ac.42-58 cents and the tank bund existing on the northern side was breached. The Revenue Divisional Officer independently enquired into the physical condition of subject matter and found that nearly Ac.60-00 of land is being irrigated under the tank covered by subject matter of Writ Petition and requested to protect tank and the crops. The persons having vested interest are causing breaches to subject tank. The Inam Fair Register corroborates existence of tank in the subject matter of writ petition. The subject matter of the writ petition is included in prohibitory list according to the directives contained in Circular Memo No.G1/19131/05 dated 14.09.2002 read with instructions from 1<sup>st</sup> respondent in reference No.POT/1392/2008 dated 29.04.2008. According to 1<sup>st</sup> and 2<sup>nd</sup> respondents by operation of Section 2-A of Act, 1956, the subject matter being a

tank Poramboke stood vested in the Government. The deponent refers to the need to preserve the water bodies as directed by the Apex Court.

The petitioners filed additional affidavit with the leave of the Court explaining the circumstances to show that the subject matter was and is agricultural land and Section 2-A of Act,1956 has no application.

From the above averments and the material relied upon by the parties, the point for consideration is whether the respondents are justified in including Survey No.118 in prohibitory list under Section 22-A of the Act and thereby refuse to receive or register the document presented by the petitioners for registration of subject matter is legal and tenable?

The respondents are not joining issue on the material facts stated by the petitioners. Thus it is not necessary for this Court to refer in detail the case of respective parties, but it is suffice to note that the subject matter of the writ petition has been transacted by way of sale, mortgage etc. The details of transaction are as follows:

| Year | Regd.Doc.No. & date    | Name of Purchaser                                     | Name of the Seller                                                                |
|------|------------------------|-------------------------------------------------------|-----------------------------------------------------------------------------------|
| 1931 | 270/1931Dt.09-03-1931  | 1.Gajarampalli Rama Chandra Rao                       | 1.M.Gande Rao2.Beema Rao                                                          |
| 1933 | 1563/1933Dt.14-09-1933 | 1.Gajarampalli Rama Chandra Rao                       | 1.Padakandla Gandi Acharlu2.Padakandla Appanacharlu3.Padakandla Ramachandracharlu |
| 1938 | 385/1938Dt.26-02-138   | 1.Gajarampalli Rama Chandra Rao                       | 1.Padakandla Subbanacharlu2.Padakandla Krishnacharlu                              |
| 1947 | 360/1947Dt.25-02-1947  | 1.Padakandla Seshagiri Acharlu<br>S/o.Subbaranacharlu | 1.Tappata Narasimha Reddys/o.Obul Reddy and 12 others                             |

The learned counsel for the petitioners relies upon the decision of this Court in **Raavi Satish v. State of Andhra Pradesh and others** for the proposition that the refusal to receive or register document for a property on which the claim of

Government is inchoate is unsustainable. The relevant portion reads as follows:

“In order to see that the litigation of this nature is curbed once and for all, I feel it not only appropriate, but also imperative to issue the following directions, which shall be of general application throughout the State of Andhra Pradesh and govern all transactions of registration, to take place in future:

(A)The Registering Officers shall not insist on production of NOCs as a condition for receiving the documents for registration.

(B)The Registering Officers shall not refuse to receive the documents for registration only on the ground that the properties were included in the prohibitory lists sent by the revenue authorities, for reasons such as that the ownership column of the RSR contains dots, or that the lands are shown as AWD lands in the Revenue Records or that the lands are assigned lands.

(C) In cases of entries in RSRs containing dots or describing the lands as AWD, unless a notification has been issued under Section 22-A(2) of the Act, the Registering Officers shall not refuse to receive and register the documents. The registration of such documents, however, shall be without prejudice to the right of the Government and its functionaries to initiate appropriate proceedings for recovery of possession of the properties covered by such documents, if in their opinion they belong to the Government.

(D) In cases of assigned lands, if there is clear proof to the effect that such assignments were made prior to the issuance of G.O.Ms.No.1142, dated 18.6.1954 in the Andhra Area and G.O.Ms.No.1406, dated 25.7.1958 in the Telangana Area, the Registering Officers shall receive and register the documents, notwithstanding the fact that the properties were included in the prohibitory lists sent by the revenue authorities. In respect of the documents involving properties assigned subsequent to the issuance of the above mentioned G.Os., in view of the embargo contained in Section 5(2) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the Registering Officers shall make an endorsement while refusing to receive the document specifying the reason. If the parties feel aggrieved by such orders, they are entitled to avail appropriate remedy as available in law.

(E) Wherever there is no specific evidence that assignments of lands were made subsequent to the issuance of G.O.Ms.No.1142, dated 18.6.1954 in the Andhra Area and G.O.Ms.No.1406, dated 25.7.1958 in the Telangana

Area, benefit of doubt should be extended in favour of the parties who intend to transfer the lands. In such cases, the Registering Officers shall write to the revenue authorities to produce proof of the fact that the assignments were made subsequent to 18.6.1954 or 25.7.1958, as the case may be, within a stipulated time. If within such time, the revenue authority concerned fails to send such proof, the Registering Officers shall register the documents.

(F) In cases of documents pertaining to assignments made to Ex-servicemen and Freedom Fighters, the Registering Officers must consider whether ten years period has expired from the date of assignment and shall register the documents if the said period has expired. In other cases, the Registering Officers shall pass an order under Section 71 of the Act and communicate the same to the parties concerned.

(G) In case pertaining to assignments made to Political Sufferers, the assignees or the persons claiming through them are entitled to transfer the lands by sale or otherwise without any restrictions and the Registering Officers shall receive and register the documents whenever they are presented.

(H) Where assignments are made on payment of market value, the Registering Officers shall not refuse to register unless the assignment deed stipulated any period during which the land shall not be sold and the stipulated time has not expired.

(I) In cases of alienation of properties which are claimed to belong to Religious and Charitable Endowments falling under the A.P.Hindu Religious Institutions and Endowments Act, 1987, or Wakfs falling under the Wakfs Act, 1995, unless relevant material is available before the Registering Officers to show that they are owned by such Institutions, registration of the documents shall not be refused. Even if evidence is available to show that the properties sought to be alienated belong to the Institutions referred to above, the Registering Officers shall receive and documents, pass orders assigning reasons for rejection and communicate the same to the parties concerned, who shall be free to assail such orders by availing the remedy of appeal under Section 72 of the Act.

(J) In cases where notifications are issued under sub-section (2) of Section 22-A(1) of the Act prohibiting registration of the documents pertaining to the properties falling under clause (e) of sub-section (1) of Section 22-A of the Act, the Registering Officers shall make an endorsement while refusing to

receive the document specifying the reason for such refusal. Needless to observe that if the parties feel aggrieved by such rejection orders, they can avail appropriate remedies as available in law.

The above directions shall bind all the revenue authorities and the Registering Officers in the State of Andhra Pradesh, irrespective of whether they are parties to this batch of writ petitions or not. Violation of the above directions by the officers concerned will be viewed as contempt of Court. If such instances come to the notice of this Court, it may exercise the option of initiating contempt proceedings *suo motu* against such officers even though they are not parties to these cases.

The Principal Secretaries of the Department of Revenue and Revenue (Registration & Stamps), Government of Andhra Pradesh, shall circulate this judgment to the officers under their respective jurisdictions under separate circulars to be issued in this regard.”

From the admitted circumstances, what emerges is that prior to 1954 the petitioners or their predecessors-in-interest have purchased the subject matter of the writ petition from Inamdars/Shrotriyamdars of Pabbapuram Village. The Act, 1956 is effective from 14.12.1956. Section 2-A was introduced through Amendment Act 20 of 1975. Section 2-A of Act, 1956 reads as follows:

“Section-2A Notwithstanding any thing contained in this Act all Communal lands and porambokes, grazing lands, waste lands, forest lands, mines and quarries, tanks, tank-beds and irrigation works, streams and rivers, fisheries and ferries in the inam lands shall stand transferred to the Government and vest in them free of all encumbrances. ”

A Division bench of this Court has considered the applicability of Section 2-A of Act, 1956 to land which ceased to be communal or Poramboke lands as on the date of amending Act coming into force.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents do not place on record whether tenures in Pabbapuram Village are regularized under the provisions of Act, 1956 and whether any enquiry was conducted in respect of the subject matter of the writ petition, if so, what is the outcome of such enquiry. At the time of hearing, the learned Government Pleader on instructions submits that there is no record to suggest that tenures of

Pabbapuram Village have been either enquired into or regularized under Act, 1956. Therefore, from the description of subject matter as tank Poramboke in FLR, which was dry land long ago, the respondents cannot treat the subject matter of the writ petition as land vesting in Government under Section 2-A of Act, 1956 and refuse to register under Section 22-A of the Act. The registration of a document does not by itself confer or create title in favour of the vendee under the registered document. The registration of a document by itself would not create or transfer title. The registration simpliciter is well defined by the legal maxim "*nemo dat quod non habet*", means no person can transfer a better title than what he possess in the property so transferred. This Court in **Dr.Dinakar Mogili v. State of Andhra Pradesh and others** and **Pasupuleti Bala Gangadhar v. State of Andhra Pradesh and others** held as follows:

**In Dr.Dinakar Mogili's case:**

"The only provision which prohibits the Registering Authority, from registering the document presented for registration, is under Section 22-A of the Registration Act. Under Section 22-A(1) (b) documents relating to the sale of property, in respect of immovable property owned by the State or Central Government if executed by persons other than those statutorily empowered, cannot be registered. On being asked whether it is the case of the respondents that registration of the sale deed by the District Collector on 30.10.2006, falls within the ambit of clause (b) of Section 22-A(1), learned Government Pleader for Revenue would fairly state that it is not. He would submit that it is only the sale deed sought to be registered by the President of the Society on 22.7.2010, in favour of the petitioners herein, which falls within the ambit of the said provision. Section 22-A(1)(b) applies only to immovable property owned by the State Government and, since the Government had itself alienated the said land by way of a sale deed in the year 2006, it ceased to be the owner of the said land and, consequently Section 22-A(1)(b) of the Act has no application thereafter."

**In Pasupuleti Bala Gangadhar's case:**

"As held in Raavi satish's case (supra), mere registration of the property will not create title in the purchaser and that if the vendor has no title in the property, the purchaser will not derive any title only on account of registration and that registration of a document will not absolve the vendor and the purchaser from the legal proceedings that may be initiated by the State for recovery of possession of the land, if the same is proved to belong to the Government."

In the case on hand, the burden of proof lies on the respondents to show that the inclusion of subject matter of the writ petition in prohibitory list attracts one or the other circumstances covered by Section 22-A of the Act and prohibition of registration is prima facie tenable. As already noted, the basis for inclusion is classification of subject matter in FLR as 'tank'. No other record is either relied upon or produced by the respondents to show that the subject matter was and is a tank in revenue records. On the other hand, the registered deeds relied upon by petitioners demonstrate the subject matter was treated as ryoti land and land kist was determined.

From the above consideration of the averments and the material available on record, this Court is of considered view that refusal to receive or register the document presented for the subject matter of the writ petition is illegal, arbitrary and amounts to refusal to exercise the jurisdiction conferred on the 3<sup>rd</sup> respondent by the Act. The issue whether the subject matter of the writ petition stood vested in Government under Section 2-A of Act, 1956, firstly is not considered while disposing of the present writ petition and secondly, it is made clear that it is for the competent authority under Act, 1956 to consider the issue whether the subject matter is a tank as on the date of introduction of Section 2-A to Act 1956 or not and appropriate findings are recorded in a proper enquiry taken up under Act, 1956. In the enquiry so initiated the State if proves that the subject matter was and is a tank, it can refuse grant of ryotwari patta and claim that the subject matter of the writ petition stood vested in the Government. On the contrary, if the petitioners are in a position to establish that the subject matter of the writ petition has been cultivated and ceased to be a tank Poramboke earlier to introduction of Section 2-A of Act, 1956, the petitioners can press for re-grant in their favour.

With the above observations, the writ petitions are ordered giving liberty to petitioners to present documents for registration for the subject matter of writ petitions before the 3<sup>rd</sup> respondent and the 3<sup>rd</sup> respondent is directed to receive and register the documents without reference to inclusion of subject matter of writ petitions in the prohibitory list and if the documents are otherwise compliant.

The writ petitions are ordered as indicted above. No order as to costs.

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

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**S.V.BHATT, J**

Date: 01.06.2015

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