

**HON'BLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION No.9053 of 2005**

Date: 30.01.2015

Between:

Smt. N.Sakuntala Syama Kumari,  
w/o.Satyanarayana Raju, Aged about 45 years,  
R/o.Dr.No.1-104/2, MVP Colony, Visakhapatnam.

.. Petitioner

AND

The District Collector, Visakhapatnam,  
Visakhapatnam District and two others.

.. Respondents

The Court made the following:

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**ORDER:**

Petitioner claims to have purchased the land to an extent of Ac.5.00 in Sy.No.335/3, which is corresponding to the old Sy.Nos.374 and 375, of Madhurawada village from its owner Smt. Akkaraboina Appayamma under a possessory agreement of sale dated 30.12.1987. The vendor of the petitioner died on 14.10.1989, by which time the sale deed was not executed. In the above compelling circumstances, petitioner instituted O.S.No.320 of 2004 on the file of IX Additional District and Sessions Judge (Fast Track Court), Visakhapatnam, against the legal representatives of the vendor of petitioner seeking specific performance of the agreement of sale dated 30.12.1987 by executing a regular sale deed in favour of the petitioner. The said suit was decreed on 09.02.2005. As the decree and judgment was not complied with, petitioner filed E.P.No.5 of 2005 seeking execution of the decree of specific performance. Petitioner deposited stamp duty and penalty of Rs.1,34,934/- before the Execution Court and a sale deed was duly drafted by the Execution Court and sent to the Sub-Registrar, Madhurawada, Visakhapatnam. The Sub-Registrar by his letter dated 24.03.2005 sent back the sale deed to the Execution Court informing that as per letter written by the Mandal Revenue Officer, Visakhapatnam in his letter No.961/91/A, dated 11.04.2002, the land in Sy.No.335/3 is a Government land and not to entertain any deed of sale. In view of the said letter of the registering authority, the Execution Court dismissed the above E.P., by order dated 29.03.2005. Having secured copies of the letter of the Sub-Registrar, dated 24.03.2005 and the letter of the Mandal Revenue Officer dated 11.04.2002, this writ petition is instituted.

2. Learned counsel for the petitioner contends that the Sub-Registrar has no competence or authority to refuse registration of sale deed sent to him by the Execution Court in accordance with the decree passed in the suit between parties to an agreement of sale. Therefore, the action of the Sub-Registrar is *ex facie* illegal and arbitrary.

3. Learned counsel further contends that the Sub-Registrar ought not to have relied upon a letter written by the Mandal Revenue Officer in not entertaining the deed of conveyance on the said survey number.

4. In support of his contention, learned counsel placed reliance on the decision of this Court in **Nagineni Venkata Subba Naidu v. Sub-Registrar, Tirupathi, Stamps and Registration Department, Tirupathi mandal, Chittoor District and another**<sup>[1]</sup>.

5. Learned Assistant Government Pleader submits that Government issued orders in G.O.Ms.No.583 dated 04.05.2005 declaring the land in Sy.No.335/3 of Madhurawada village as Government land. He further submits that according to the revenue records, land in Sy.No.335/3 to an extent of Ac.4.78 cents is classified as assigned waste dry (A.W.D), which is a Government land and, therefore, the question of undertaking deeds of conveyance on the said property does not arise.

6. Identical issue has fallen for consideration in **Nagineni Venkata Subba Naidu**.

This Court held as under:

“6. The decree in a suit for specific performance filed by the purchaser against the vendor can be executed even if the vendor has no title to the land agreed to be sold by him because vendor cannot take a defence that he has no title to the land agreed to be sold by him. If really the vendor has no title to the land agreed to be sold by him, registration of the document *per se* would not convey title to the land covered by the sale deed to the purchaser in view of the rule *Nemo dat Quid non habet* (No one can convey a better title than what he has). Section 22-A of the Registration Act, introduced by virtue of A.P. Amendment Act 4 of 1999 lays down that when the State Government declares that registration of any document or class of document is opposed to public policy only can the registering officials can refuse to register the document presented for registration. In respect of documents presented for registration prior to the introduction of Section 22-A of the Registration Act, no registering officer can refuse to registration of a document on the ground that the vendor has no title to the land covered by the sale deed or on the ground that the land covered thereby belongs to a third party. The contention that registration of the document can be refused in view of the provisions of 1977 Act cannot be accepted because that Act applies only to assigned lands. It is nobody's case that the land covered by the sale deed executed in favour of the petitioner is an assigned land. Even assuming that it is assigned land, if it is transferred in breach of the conditions relating to alienation, 2<sup>nd</sup> respondent can always invoke the provisions of the said Act and take possession of the property under the said Act. But he cannot object to registration of the document executed in pursuance of a decree obtained by the petitioner in a civil Court in a suit for specific performance. If the Government feels that it, but not the petitioner or his vendor that are the owners of the property, they can by taking recourse to due process of law obtain possession thereof.

7. In the instant case also, the civil litigation was between the plaintiff and the defendants therein. The petitioner claimed that late Akkaraboina Appayamma was the sole and absolute owner of the said property and executed possessory agreement of sale dated 30.12.1987, but before her death she did not execute sale deed. The legal heirs of the vendor have not complied with the terms of the agreement of sale, compelling petitioner to institute the suit. Thus, litigation is between the petitioner herein and legal heirs of her vendor. As observed by this Court in the above decision, whatever the title that vested in the vendor would pass on to the petitioner by virtue of decree granted in her favour by the IX Additional District and Sessions Judge (Fast Track Court), Visakhapatnam. The registration of the said document only settles the issue between the plaintiff and the defendants in the said suit. Insofar as the assertion of the State that the land is classified as Government land and no alienation can be made does not get affected on account of carrying out registration of the deed presented before the Sub-Registrar in accordance with the decree secured by the petitioner. Thus, the Sub-Registrar erred in returning the sale deed presented before him and the same is declared as illegal.

8. Writ petition is allowed accordingly. Liberty is given to the petitioner to take further steps to pray the Execution Court to send the sale deed for registration to the third

respondent and as and when such sale deed is presented before him, 3<sup>rd</sup> respondent shall consider the same in accordance with the Indian Registration At, 1908 and Stamps Act, 1899 without raising objection that land in Sy.No.335/3 of Madhurawada village is classified as Government land. It is needless to observe that merely because the document is registered, petitioner cannot be said to have acquired better title to the property than what was vested in the vendor of the petitioner and it is always open to the State to take appropriate course of action as warranted by law, if according to the State the land belongs to the State or there is a prohibition against alienation of the land or for any other valid reason.

Miscellaneous petitions if any pending in the writ petition shall stand closed. No costs.

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Date : 30.01.2015  
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[\[1\]](#) 2006 (1) ALD 679