

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

**WRIT PETITION No.39393 OF 2014**

**ORDER:**

Heard learned counsel for the petitioner and the Government Pleader.

The subject matter of the writ petition is an extent of Ac.1-75 cents in Survey No.488/4 at Pulivendula Village and Mandal, YSR District.

The petitioner prays for Mandamus declaring the action of 3<sup>rd</sup> respondent in not entertaining document for registration for petition land on the ground that it is shown as Government land, as illegal and arbitrary. The petitioner prays for consequential direction to 3<sup>rd</sup> respondent to receive the document sought to be presented by the petitioner for the petition land for registration and pass orders accordingly.

The case of the petitioner is that he is the absolute owner and possessor of petition land having purchased the same from one Govindu Tirupalu s/o. Panchalaiah through registered sale deed dated 27.08.1971, Document No.1472 /1971. The case of the petitioner is that in the year 1970, his vendor purchased the property through registered sale deed executed by Rayigiri Mahaboob Saheb. Rayigiri Mahaboob Saheb purchased the petition land through registered sale deed dated 19.03.1965 from M.Yesuratnam and M.Gnana Prakash. The case of the petitioner is that the petition land was the subject matter of registered mortgage deed dated 05.05.1924 executed by one D. Josaiah son of Jakeeraiah in favour of President, District Cooperative Society. According to the petitioner, the petition land was treated as a private patta land by D.Josaiah and as already stated the petition land was subjected to series of sale transactions between 1965 and 1971 and cannot be included in the list of Government lands. The petition land is not Assessed Waste much less an assigned

land granted under Darkhast rules. There is no condition of non-alienability. The action of respondent No.3 in refusing to register the document presented for registration for petition land is illegal and amounts to refusing to exercise the jurisdiction vested in the 3<sup>rd</sup> respondent. The petitioner relies upon the valuation certificate date 04.12.2014 issued by the 3<sup>rd</sup> respondent to show cause for filing the writ petition. Hence, the writ petition.

The 4<sup>th</sup> respondent filed counter affidavit. The case of 4<sup>th</sup> respondent is that in Survey No.488/4, Ac.1-75 cents is classified as..... (dots) Assessed Waste and title of the land is vested in the Government.

The claim of petitioner that her husband acquired right and title through registered sale deed is untenable inasmuch as, as per sub section (1) of Section 5 of A.P. Assigned Lands (POT) Act, 1977, the lands are included in the definition of assigned lands and the alienation is prohibited. The then Tahsildar on account of the description of petition land as..... (dots), has rightly included in the prohibitory list and sent the same to 3<sup>rd</sup> respondent and no exception for the inclusion in prohibitory list or alleged act of refusal by the 3<sup>rd</sup> respondent to register the document of petition land can be taken.

The 4<sup>th</sup> respondent places strong reliance upon Section 22-A of the Registration Act, 1908 (for short 'the Act') and also sub section 1 of Section 5 of Act IX of 1977.

Now the point for consideration is whether the inclusion of petition land in list of assigned lands maintained either for the purpose of Act IX of 1977 or under Section 22-A of the Act is tenable?

The circumstances tracing the title of petitioner is not in dispute and these admitted circumstances are not reiterated for the sake of brevity,

except to note that the earliest transaction is registered mortgage deed dated 05.05.1924 refers to independent title of predecessor-in-title.

The R.S.R. was prepared in the year 1912 or thereabouts. The petitioner relies upon registered mortgage deed dated 05.05.1924, document No.435/1924 to contend that prior to 1954, the petition land was a patta land. Admittedly the petition land has been subjected to a series of sale and purchase transactions from 1965 till 1971. The 3<sup>rd</sup> respondent to include the petition land in the prohibitory list for the purpose of Section 22-A of the Act must bring the petition land under one or the other circumstances dealt with by Section 22-A.

Section 22-A of the Act reads as follows:

"22-A. Prohibition of Registration of certain documents:-- (1) The following classes of documents shall be prohibited from registration, namely:--

(a) documents relating to transfer of immovable property, the alienation or transfer of which is prohibited under any statute of the State or Central Government;

(b) documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease in respect of immovable property owned by the State or Central Government, executed by persons other than those statutorily empowered to do so;

(c) documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease exceeding (ten) 10 years in respect of immovable property, owned by Religious and Charitable Endowments falling under the purview of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 or by Wakfs falling under the Wakfs Act, 1995 executed by persons other than those statutorily empowered to do so;

(d) Agricultural or urban lands declared as surplus under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or the Urban Land(Ceiling and Regulation) Act, 1976;

(e) Any documents or class of documents pertaining to the properties the State Government may, by notification prohibit the registration in which avowed or accrued interests of Central and State Governments, Local Bodies, Educational,Cultural, Religious and Charitable Institutions, those attached by Civil, Criminal, Revenue Courts and Direct and Indirect Tax Laws and others which are likely to adversely affect these interest.

(2) For the purpose of clause (e) of sub-section (1), the State Government shall publish a notification after obtaining reasons for

and full description of properties furnished by the District Collectors concerned in the manner as may be prescribed.

(3) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under clause (e) of sub-section (1).

(4) The State Government either suo motu or on an application by any person or for giving effect to the final orders of the High Court of Andhra Pradesh or Supreme Court of India may proceed to denotify, either in full or in part, the notification issued under sub-section (2)."

Juxtaposing the case on hand with these requirements of law, the objection of respondent No.4 cannot be brought under clauses (a) to (d) of Section 22-A(1) of the Act. The 4<sup>th</sup> respondent categorically states that for the first time now the petition land is included in prohibitory list having regard to the classification of the petition land in R.S.R. as.....(dots) and Assessed Waste. The burden is on the respondents to show that the Government continued to have right and title in the petition land to request Sub Registrar to refuse registration. This Court has already held and declared that description of .....(dots) by itself does not confer right and title in the Government. The burden on the respondents to show that the petition land is Government land is not discharged. Prohibition is a serious consequence under the Act. By refusing to register basing on a communication from the 4<sup>th</sup> respondent, the 3<sup>rd</sup> respondent has acted illegally. Alternatively, it is contended by the learned Government Pleader that the writ petition is filed without a cause of action, for according to the 3<sup>rd</sup> respondent the petitioner never approached the Sub-Registrar with a document for registration. The valuation certificate issued by the 3<sup>rd</sup> respondent is sufficient indication to conclude that even if a document is presented for registration, as long as communication sent by 4<sup>th</sup> respondent is available the 3<sup>rd</sup> respondent does not register the document covered by a property included in prohibitory list. For the above reasons, it is held that the action complained in the writ petition is illegal. The

petitioner is given liberty to present document for registration for the petition land before the 3<sup>rd</sup> respondent, on receipt of such document, the 3<sup>rd</sup> respondent is directed to register the same without reference to the information sent by the 4<sup>th</sup> respondent to include the petition land as Assessed Waste.

Finally, it is noted that with a view to bring on record the full picture on the right and title of Government on petition land, this Court on 20.03.2015 granted time to the respondents/revenue authorities to file additional counter affidavit after examining all the relevant revenue records and place records in support of the claim. The respondents/revenue authorities have not responded to the time given by this Court.

Having regard to the nature of complaint in the writ petition, the writ petition is ordered as indicated above. No order as to costs

Miscellaneous petitions pending, if any, shall stand closed.

---

**S.V.BHATT,J**

Date:02.04.2015

Stp