

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 11365 of 2015

DATED 21st APRIL, 2015.

BETWEEN

G.Gangulaiah

...Petitioner

And

State of Andhra Pradesh,

Rep. by its Principal Secretary,

Revenue Department, Secretariat,

Hyderabad and ors.

...Respondents.

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 11365 of 2015

ORDER:

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Assailing the action of third respondent in not mutating the land belonging to the petitioner to an extent of Ac.4.30 cents comprised in Sy.No.134 of Chenchugaripalle village, Vontimitta Mandal, YSR Kadapa District in the revenue records and not issuing the pattadar pass book and title deed, the present Writ Petition is filed.

It is the case of the petitioner that initially the subject land was assigned to one P.Ghouse Khan, who subsequently mortgaged the said land to the Primary Agricultural Cooperative Society and obtained loan. As the said assignee failed to repay the loan amount, the then Special Cadre Deputy Registrar after following the due procedure stipulated under the A.P. Cooperative Societies Act passed an Award for recovery of the loan amount, pursuant to which, the society conducted public auction for sale of the mortgaged land. In the public auction conducted by the Society, the father of the petitioner stood higher bidder in respect of the subject land and on payment of the bid amount, the auction was confirmed in his favour. Thereafter, the Special Cadre Deputy Registrar of Kadapa District Cooperative Central Bank issued Certificate of sale in Form-10 under Rules 14(iii) and 52 of the A.P. Cooperative Societies Rules, 1964. After the demise of his father, the petitioner succeeded to the subject land and is in peaceful possession and enjoyment of the same. The petitioner made a representation to the third respondent to mutate the subject land in his name in the revenue records and issue pattadar pass book and title deed as per the provisions of Section 6-A of the A.P. Record of Rights in Lands and Pattadar Pass Books Act, 1971 (for short 'the ROR Act'). When no action was taken by the third respondent, the petitioner invoked the writ jurisdiction of this Court.

The principal contention of the learned Counsel for the petitioner is that once the original assignee lawfully mortgaged the assigned land in favour of a Cooperative Society/Bank/Financial Institution, the natural consequences which followed was that said land stood exempted from the provisions of Section 6 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short 'the Act of 1977'), He therefore submits that once the assigned lands were put to auction by an Institution for recovery of loan amount, the said land

will lose its characteristic of 'assigned land' and thereby exemption under Section 6 of the Act of 1977 will be available to the purchaser. In support of his contention, he placed reliance on the judgment of the learned single Judge in N.Raja Reddy Vs. The Sub Registrar, Srikalahasti, Chittoor District {2007 (5) ALD 845} which was confirmed by a Division Bench of this Court in The Sub Registrar, Srikalahasti, Chittoor Vs. K.Guravaiah {2009(2)ALD 250(DB)}.

Section 6 of the Act of 1977 exempts assigned lands held on mortgage by the State/Central Government/Local Body/Cooperative Society/Scheduled Bank/Financial Institutions owned, controlled or managed by a State Government/Central Government from the purview of provisions of the Act of 1977. In view thereof, the mortgaged assigned lands held and thereafter sold by the institutions named in Section 6 of the Act of 1977 ceased to be 'assigned lands' for the purpose of the Act of 1977. The same was the view expressed by the learned single Judge in the case of N. Raja Reddy (supra), which was confirmed in appeal by a Division Bench of this Court in K.Gurvaiah (supra). The Division Bench while dealing with the issue as to whether the mortgage of the assigned land is proper and valid, held that when mortgage in favour of a co-operative society registered or deemed to have been registered under the provisions of Cooperative Societies Act is not treated as alienation, mortgage executed in favour of the bank by the original assignee would be absolutely just and legal. It was further held therein that if the mortgage in favour of the bank was not alienation, there was no restriction with regard to mortgaging the assigned land in favour of the bank and therefore the mortgage of assigned land was valid. Adverting to Section 6 of the Act 1977, the Bench further held that once the original assignee of the land lawfully mortgaged it in favour of a cooperative society/bank, the said lands would cease to be assigned lands within the meaning of Section 2(1) of Act 1977 and consequently the said land stood exempted from the provisions of the Act of 1977. The said legal position is not disputed by the learned Government Pleader appearing for the respondents.

In the case on hand , it is not in dispute that the father of the petitioner purchased the subject assigned land in the public auction conducted by the Primary Agricultural Cooperative Society. As held supra, since the subject assigned lands were mortgaged with PACS, which sold in the public auction, the said land stood exempted from the provisions of the Act of 1977. In view thereof, the action of the third respondent in not mutating the subject land of the petitioner in revenue records and issuing pattadar pass book and title deed therefor certainly held to be illegal.

For the foregoing discussion, the Writ Petition is disposed of directing the third respondent to consider the request of the petitioner for mutating the subject land of the petitioner in revenue records in his name, if the subject land is otherwise not prohibited by any other law in force and thereafter issue title deed and pattadar pass book in his favour as per the provisions of the ROR Act.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

Dated 21st April, 2015

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