

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.17371 OF 2014

ORDER:

The petitioner prays for Mandamus declaring the action of 4th respondent in not receiving and registering the deed of sale presented by petitioner for property in an extent of Ac.5-04 cents and Ac.5-25 cents in Survey Nos.407/3 and 408/2 respectively of Akkayyapalem Village, Kothapeta Revenue Village, Vetapalem Mandal, Prakasam District on the ground that the petition lands are included in the list of assigned lands furnished by the 3rd respondent for the purpose of Section 22-A of the Registration Act (for short 'the Act'), as illegal and unauthorised

The petitioner claims to be the absolute owner of petition lands. The petitioner's vendor purchased the petition lands through registered sale deed dated 10.10.1994 from Rajanala Ganapathi Rao. The petitioner purchased the petition lands through sale deed dated 05.01.2006 and claims to be in actual and physical possession of the property. The case of the petitioner is that as per RSR entries, the petition lands were assigned in favour of Rajanala Tayaramma through proceedings Ds.8/D.K.of 33 dated 31.09.1923 and in favour of Rajanala Ganapathi Rao (minor) represented by mother and guardian Tayaramma through order No.Ds.829/D.K. of 35 dated 24.05.1926. The petition lands are admittedly in possession and enjoyment of assignees from 1923/1925 till sale deed was executed in the year 1994 in favour of petitioner. The inclusion of petition lands in the list of assigned land is illegal, unauthorised and amounts to deprivation of proprietary right of petitioner in the petition lands without recourse to law.

The Tahsildar, Vetapalem Mandal, 3rd respondent filed counter affidavit for himself and on behalf of the 2nd respondent. The reply of 3rd respondent is required to be excerpted for understanding the arbitrary manner of including the petition lands in the list of assigned lands sent to

4th respondent for the purpose of Section 22-A of the Act.

"It is submitted that the land in Sy.No.407/3 and 408/2 of measuring an extent of Ac.5.04 and 5.25 respectively of Kothapeta Revenue Village of Vetapalem Mandal were originally classified as "BANJARU" at the time of

initial survey as per the entries recorded in R.S.R. of Kothapeta Village. The following entries were made in R.S.R. of Kothapeta village against Sy.No.407/3 and 408/2 in the last column which are submitted hereunder in chronological order.

Sy.No.407/3 Ac.5.04.

1. Assigned to Smt. Rajanala Tayaramma on Dharakast vide Ds.8/D.K. of 33 dated 31-9-23.
2. This Sy.No. was changed from patta to Assessed Waste by the order of the Deputy Tahsildar, Chirala Sub-Division in Rc.653/H of 24 dated 10-2-1925 as per the order of the Ongole Deputy Collector in Rc.1813/24 dated 16-12-24.
3. Assigned to Sri Rajanala Ganapathi Rao Minor Guardian mother Tayaramma under project conditions of Dharakast vide order of the Tahsildar, Chirala Ds/829/DK of 35 of 24-5-26.

Sy.No.408/2 Ac.5.25.

1. Assigned to Sri Rajanala Ganapathi Rao on Dharakast vide Ds.11/D.K. of 33 dated 10-9-23.
2. This Sy.No. was changed from patta to Assessed Waste by the order of the Deputy Tahsildar, Chirala Sub-Division in Rc.653/H of 24 dated 10-2-1925 as per the order of the Ongole Deputy Collector in Rc.1813/24 dated 16-12-24.
3. Assigned to Sri Rajanala Ganapathi Rao Minor Guardian mother Tayaramma under project conditions on Dharakast vide order of the Tahsildar, Chirala Ds/829/DK of 35 of 24-5-26.

Both the survey numbers were recorded in the name of Rajanala Ganapathi Rao Minor Guardian Mother Tayaramma under Patta No.656 in R.S.R. of Kothapeta Village.”

Thus the petitioner has no right to claim title in the schedule property. It is submitted that the original D.K. files/orders mentioned in the R.S.R. are not available in this office.

These lands were changed from Patta to Assessed Waste as per the orders of the Deputy Collector, Ongole in Rc.1813/24 dated 16-12-1924 and orders of the Deputy Tahsildar, Chirala Division Rc.653/H of 34 dated 10-1-1925.”

The objections are that it is an assigned land and alienation attracts the prohibition contained under Act IX of 1977 and the respondents are justified in including the petition lands in the prohibitory list.

This Court directed the 3rd respondent to produce the assignment file in favour of Tayaramma and Ganapathi Rao. The Tahsildar is present in the Court and through learned Government Pleader, it is stated that the files relating to assignment in favour of Tayarramma and Ganapathi Rao are not available.

The A.P. Assigned Lands (Prohibition of Transfer) Act 1977 obligates the 3rd respondent to prepare list of assigned lands and communicate the list to Sub Registrar for prohibiting registration under Section 22-A of the Act. The jurisdictional fact in a situation like this that the land which is included in the prohibitory list must satisfy the requirement viz., the assignment is a conditional grant and secondly, the non-alienability is one of the conditions. The assignment does not enjoy any of the other exemptions granted in favour of a few privileged assignments, namely, to freedom fighters, ex-army personnel etc. The inclusion of assigned lands does not present a problem. The persistent problem is inclusion of every assignment in prohibitory list without proper examination of grant and the conditions attached to such grant. Therefore the burden is on the 2nd and 3rd respondents to show that the petition lands are as a matter of fact, attract one or the other circumstances referred in Section 22-A of the Act or Act 9 of 1977. Keeping in view the stand taken in the counter affidavit and perusal of R.S.R., clearly disclose that the inclusion of petition lands in prohibitory list is unauthorised and without jurisdiction. Consequently the refusal to register the petition lands is not in accordance with the scheme of the Act.

The writ petition is ordered. The petitioner is given liberty to present document for registration before the 4th respondent and the 4th respondent is directed to receive and register the same if the document is complaint with other requirement of law and without reference to the communication sent by the 3rd respondent. No order as to costs.

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

S.V.BHATT, J

Date:01.04.2015

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