

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.36575 OF 2014

ORDER:

Heard learned counsel for the petitioners and the Government Pleader.

The subject matter of the writ petition is agricultural land of Ac.4-01½ gts. in Survey Nos.2418/3, 2418/4 and 2418/7 at Huzurabad Village and Mandal, Karimnagar District.

The petitioners pray for Mandamus declaring the action of respondents 2 to 4 in including the petition land in prohibitory list of properties maintained for the purpose of Section 22-A of the Registration Act,1908 (for short 'the Act') more particularly, without notification, as illegal, unconstitutional and amounts to refusing to exercise the statutory obligation cast on respondent No.5

The petitioners are the legal heirs and successors - in - interest of one Rontala Komaraiah. Through proceeding No.B8/1859/55 dated 29.02.1956, the District Collector/respondent No.2 granted Laoni assignment in favour of R.Komaraiah. After the demise of the assignee, the petitioners claim to have succeeded to the petition land and are enjoying the same. The 4th respondent issued pattadar passbooks and title deeds to petitioners and that the petitioners assert that the petition land cannot be classified as assignment made under Darkasth Rules and thereby include in prohibitory list maintained under Section 22-A of the Act. The consequential action of respondent No.5 in not receiving documents for registration is equally fallacious.

The 4th respondent filed counter affidavit. By way of reply, it is stated that Survey No.2418 of Huzurabad Village and Mandal of Karimnagar District was classified as Shikam Talab/Poramboke as per Sethwar and the classification of land was shown as Shikam Talab. Later on, classification has been changed from

Shikam Talab to Poramboke and through assignment Proceeding No.B8/1859/55 dated 29.02.1956, the District Collector granted Laoni patta in favour of R. Komaraiah. The counter refers to sub division of Survey No.2418/3, 4 and 7. The explanation offered for including the petition land in prohibitory list is that Shikam lands, Bancharai lands, Poramboke lands, Gairan lands including assigned lands are covered by the prohibition under Act IX of 1977 and consequently the inclusion of petition land in prohibitory list is justified. The basis for including in prohibitory list as is evident from the counter affidavit is the entry or classification as Shikam prior to grant of Laoni patta. The 4th respondent prays for dismissal of the writ petition.

From the reply of 4th respondent, it is clear that not many issues in fact are pleaded. The 4th respondent even after accepting that Laoni assignment was as early as 29.02.1956 and without satisfactorily discharging the burden cast upon the State to treat the petition land as assigned land, by taking shelter under the destruction of records, contends that inclusion of petition land in prohibitory list is justified. The reasons assigned by the 4th respondent for including the petition land in the prohibitory list are completely untenable. Stated briefly, the grant of Laoni patta was on 29.02.1956. The original assignee sold a portion of assigned land to 3rd parties. Recognizing the grant in favour of assignee or his successors – in - interest, pattadar passbook/title deed has been issued for the petition land. The action of 4th respondent must conform to one contingency or the other covered by Section 22-A (1) of the Act. The reason that prior to change of classification, the petition land was shown as Shikam Talab is definitely not a ground at this point of time to include petition land in prohibitory list. With the grant of Laoni patta in favour of the predecessor- in- interest of petitioners, a grant has been created. Unless and until it is shown that there were other conditions restricting the enjoyment, right or title of the grantee, the 4th respondent cannot include the petition land in the prohibitory list. The inclusion of petition land in prohibitory list and the consequential inaction in registering the petition land are untenable. The writ petition is ordered by giving liberty to petitioners to present document for registration, and if the document is presented for registration, the same shall be considered in accordance with the provisions of the Act without reference to inclusion of petition land in the prohibitory list communicated by the 4th respondent and registration is completed by

respondent No.5.

The writ petition is ordered as indicated above. No order as to costs.

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

S.V.BHATT, J

Date:24.03.2015

Stp