HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.38422 of 2014

ORDER:

Heard Sri M. Prasad Rao, Sri M. A. Mujeeb and Sri A. Veeraswamy, learned Government Pleader.

With the consent of leaned counsel appearing for the parties, the writ petition is taken up for final disposal.

The petitioner prays for Mandamus declaring the action of 4th respondent in not releasing the document P.No.275/2013 dated 22.05.2013 pending registration for the lands in Survey No.400-1 an extent of Ac.21.15 cents in Kotnur Village, Melapuram, Hindupur Mandal, Ananthapur District by referring to letter dated 18.11.2009 of the 2nd respondent issued at the instance of 5th respondent till a clearance is obtained from 5th respondent, as illegal, arbitrary and unconstitutional. The petitioner prays for consequential direction to 4th respondent to register and release the pending document P.No.275/2013 dated 22.05.2013 in favour of petitioner forthwith.

The case of the petitioner is that Khadi Grameena Parisramala Sangham is a body registered under the Societies Registration Act, XXI of 1860 with registration No.282/1990. The 6th respondent is affiliated to 5th respondent. On 18.03.1990, a resolution was passed by Grama Swarajya Sangham, Gooty for fragmentation of assets and liabilities of parent society. The subject matter is allotted to 6th respondent society. The 6th respondent resolved to sell one of the properties situated in Melapuram, Hindupur Mandal, Ananthapur District, more particularly, covered by the Schedule in Document P.No.275/2013 dated 22.05.2013. On 21.07.2010, the 6th respondent executed agreement of sale for the subject property in favour of petitioner. It is the case of petitioner that the schedule of property covered by pending document P.No.275/2013 was purchased by 6th respondent through registered document No.2492/1971. On 19.07.2010, the Society/6th respondent authorized the petitioner to enjoy the property. Through endorsement D.Dis.E2/3120/2009 dated 06.11.2009, the respondents informed the petitioner that the subject land is not Government land and is purely private patta land.

It is the further case of the petitioner that according to the business rules of the society, the 6th respondent can authorize, sell, mortgage or transfer the property through its authorized nominee. A resolution is passed as per rules of 6th respondent/society. The petitioner agreed to purchase the schedule property for a sum of Rs.65,56,500/-. When the transaction is finalized on 06.09.2010, 5th respondent addressed a letter to 6th respondent intimating the outstanding due under a mortgage debt as Rs.34,98, 318/-. On 16.11.2009, 5th respondent requested the District Collector/2nd respondent to protect the society lands under mortgage with Khadi and Village Industries Commission. The 2nd respondent in turn through letter dated 18.11.2009 directed the Sub-Registrar to insist upon producing clearance from 5th respondent for registration of the schedule property in document P.No.275/2013. The grievance of petitioner in this background is that in all, 6th respondent through demand draft dated 20.10.2010 and 04.04.2013 paid a sum of Rs.35 lakhs to 5th respondent. The 5th respondent firstly is not informing the payments made by the 6th respondent and secondly not releasing the title deeds under mortgage with the 5th respondent. The objection in law is that insistence upon clearance from 5th respondent is illegal. The society being the owner and possessor of property is free to sell even the property is covered by a mortgage. Section 22-A has no application to the present transaction.

The prohibition of registration is covered by Section 22-A of the Registration Act, Which reads as follows:

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

and it is contended that none of the contingencies referred to under the scheme of 22-A is attracted. A simple mortgagor or mortgagee dispute resulted in the communication dated 18.11.2009. The petitioner prays for registration and release of document without reference to the letters dated 16.11.2009 or 18.11.2009.

The 3rd and 5th respondents filed counter affidavits.

In spite of service of notice on 6th respondent, there is no representation much less opposition to the writ prayers.

The 3rd respondent filed counter affidavit and substantially reiterated the averments in the writ affidavit and justify the letter dated 18.11.2009 by referring to the mortgage by 6th respondent in favour of Khadi and Village Industries Commission/5th respondent an MSME. Therefore, by reference to the request received from the 5th respondent, the 2nd respondent issued instructions to 3rd and 4th respondents not to register till clearance is obtained from 5th respondent. It is admitted that the State Director, Khadi and Village Industries Commission, Hyderabad, through letter No.AP/SOH/KH/KGP/APUR/09-10 dated 16.11.2009 requested the 2nd respondent to issue necessary instructions to the Sub Registrar, Hindupur. The 2nd respondent on the request of 5th respondent issued instructions dated 18.11.2009. Excepting the above, the 2nd respondent has not offered a reasonable reply or source of authority for issuing appropriate directions to the Sub Registrar/4th respondent to insist upon NOC *prima facie* the letter dated 18.11.2009 appears to be without authority.

Be that as it may, the 5th respondent filed counter affidavit contending that the borrowers from 5th respondent are required to create mortgage of all properties of Society for the loans and grants received from the Commission. The title deeds are deposited by the mortgagor with 5th respondent. The Commission issued guidelines and purposes for which, KVIC institutions are allowed to sell the surplus land available with the institutions. The aim of KVIC and enlisting institutions is to create or generate employment in rural areas. The financial assistance is provided to these institutions at

0% rate of interest up to 1995 and 4% per annum from 1995 onwards. The institutions enjoy exemptions under Income Tax Act and Central Excise Act etc. From the totality of circumstances, the relationship between the 5th and 6th respondents cannot be considered as a mere lender and borrower. The management committee members are in trust and cannot dispose of the properties for their alleged personal gains. KVIC is the recognized patron of KVI institutions. The existence of the patron and its institutions, it is stated, is mutually dependent. The release of equitable mortgage by 5th respondent encourages dishonesty, may lead to ruining the institutions as well. The counter affidavit further goes on to refer to opening of Pandora box by the dishonest persons managing committee affairs. The broad purpose for which the 5th and 6th respondents work is defeated by these alienations.

Adverting to the financial dealing between the 5th respondent and 6th respondent, it is stated, that 6th respondent availed financial assistance of Rs.82,48,047/- to undertake Khadi production in Anantapur District and the amount is outstanding as on date.

The decentralization of District Units is as per the policy decision and the 6th respondent cannot pass resolution to sell the property which is not legally owned by it and the same is not at all binding on the commission/5th respondent. It is admitted that the schedule property in pending document P.No. 275/2013 is not the Government land but it is under the mortgage with Khadi and Village Industries Commission. A charge is created on the mortgage property in favour of 5th respondent. The object of providing financial assistance, creation of charge etc. is to ensure Khadi continuity or Khadi activities. It is therefore stated that 6th respondent is an instrumentality and 6th respondent cannot deal the subject property *dehors* 5th respondent. The transaction between the petitioner and the 6th respondent is fraudulent. The petitioner and the 6th respondent are colluding and the sale deed dated 22.05.2013 is the product of such collusion. The Commission has initiated criminal proceedings against G.Ramanjaneyulu in Crime No.146/2012, P.S. Begum Bazar, Hyderabad and the matter is under investigation. For all the above reasons, the 5th respondent prays for dismissal of the writ petition.

This Court would refer to averments which are relevant for disposal of an issue of fact or law. In the case on hand, either the 3rd respondent or 5th respondent have justified the issuance of latter dated 18.11.2009 in spite of detailed pleadings. The admitted circumstances are that the schedule property is the property of 6th respondent. The endorsement dated 06.11.2011 issued by the 2nd respondent reads as follows:

> " With reference to the report of the Tahsildar, Hindupur wherein he has reported that the land measuring to an extent of 32x32 yards (29.261 Meter) in Sy.No.400-1 of Kotnur Village Hindupur Mandal, belongs to Khadi Grameena Parisramala Sangham, Anantapur, it is informed that as seen from the attested copy of the Diglot extract pertaining to the Sy.No.400-1 of Kotnur Village, Hindupur and the copy of the registered document bearing No.2492 of 1971, enclosed therein, the land in Sy.No.400-1 of Kotnur Village, Hindupur (M) is private patta land and does not have any connection to the Government"

The 6th respondent has created equitable mortgage of the subject payment by deposit of title deeds with the 5th respondent. The dispute is about the outstanding amount under the subject equitable mortgage. This Court need not and is not going into the amount due and payable by the 6th respondent to 5th respondent. The short question that arises for consideration is whether at the instance of equitable mortgagee/5th respondent, is 2nd respondent is justified in issuing the letter dated 18.11.2009 to 3rd and 4th respondents to direct production of clearance from the 5th respondent. Admittedly, the pending document is not released on account of the instructions issued by the 2nd respondent.

The 6th respondent is a Society registered under the Societies Act. The objects of the Society are to promote Khadi and Village Industries in its area of operation. It is admitted that the 6th respondent as a Society is the owner of schedule property covered by pending document No.275/2013 having purchased the property through registered document No.2492/1971. The business rules or bye-laws of the society provide for purchase, sale or creation of interest in the properties belonging to the societies in favour of 3rd parties. It is the case of the petitioner that the 6th respondent executed the sale deed dated 22.05.2013 as per resolutions of Society. The learned counsel at the time of hearing contends that the execution of sale deed or registration of schedule property in Document No.275/2013 by 6th respondent does not in any manner affect the rights of mortgagee/5th respondent. To prohibit registration, a case should strictly fall under one or the other circumstances stated in Section 22-A of the Registration Act. It is not in dispute that either in fact or law that none of the circumstances stated in Section 22-A is attracted to the case on hand. The fact that the 5th respondent is an MSME and there is an equitable mortgage would not suffice issue of instructions to the registering authorities. The 4th respondent discharges the obligations and duties under the Registration Act.

Section 22-A is an exception prohibiting registration of a few classes of properties/documents covered by the said section. The 2nd respondent through communication dated 18.11.2009 cannot enhance the scope or operation of Section 22-A of Registration Act. The 4th respondent cannot again refer to the communication received from 2nd respondent and keep the document pending registration. For the above reasons and for the limited extent of deciding whether the letter dated 18.11.2009 is legal and binding on the 4th respondent, upon consideration of the totality of circumstances, I am of the view that the communication dated 18.11.2009 is illegal, without authority and contrary to the provisions of the Registration Act.

From the material available on record, a few serious infirmities in the resolution alleged to have been passed by the 6th respondent or allegation of forgery by the then Secretary of 6th respondent is averred and this allegation is pending investigation in Criminal Case No146/12 or these allegations are stated to alternatively contend that the property since belongs to a legal entity and the sale or purchase should be in accordance with the bye laws of the Society and only by the persons who are entitled to register the same. In this writ petition, these aspects cannot be gone into by this Court. These aspects are well within the jurisdiction of 4th respondent to consider at the time of registration. The writ petition is disposed of by directing the 4th respondent to consider pending document P.No.275/2013 for registration without reference to the communication dated 18.11.2009, and (b) the execution, authorization etc. in the pending document No.P.No.275/2013 are taken up as issue by the 5th respondent, therefore, this Court leaves it open to respondents 2, 3 and 5 to file appropriate objections before the 4th respondent or take up appropriate steps in this behalf in the document pending for registration. If objections are filed either on the ground of forgery or authorization etc., the 4th respondent is under obligation to enquire into such accusations within the four corners of law and pass appropriate orders while considering the document for registration. The respondents are given two weeks from today to file objections or initiate appropriate steps.

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

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

S.V.BHATT,J

DATE: 06 -03-2015.

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