

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.9870 OF 2013

ORDER:

The petitioner prays for Mandamus declaring the action of 3rd respondent in including the land of the petitioner an extent of Ac.3-96 cents in sy.No.116/2 of Gopavaram Village fields, Gopavaram Mandal, YSR District in the list of Assigned/Government lands basing on dots in re-survey and re-settlement register, as illegal and unconstitutional.

The petitioner complains against the consequential refusal of 4th respondent to entertain sale deed presented for registration for the petition land as illegal and also direct the 4th respondent to receive the document for registration and complete the registration without reference to the details furnished by the 3rd respondent.

The case of petitioner is that an extent of Ac.3-96 cents in Sy.No.116/2 of Gopavaram Village fields, Gopavaram Mandal, YSR District, is private patta land. The petitioner through registered sale deed dated 09.04.1980 purchased the petition land from one Pedda Obul Reddy, s/o Obaiah. The vendor of petitioner purchased the petition land through registered sale deed dated 03.08.1950 from one Madaka Obul Reddy. Basing on the above two documents, the case of petitioner is that the petition land was and is a private patta land. The petition land is not an assigned land or held by an institution under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 or the Wakf Act. The description of dots in RSR cannot be treated as right or title of Government for the petition land. The description of dots against the petition land by itself cannot be treated as title of Government. The petitioner relies upon the order of this Court in W.P.No.22071 of 2011. Hence, the writ petition.

The 1st respondent filed counter affidavit and the case stated by the 1st respondent is that the petition land is classified as "tope poramboke" in RSR register. Admittedly, the RSR was prepared during the year 1911. The 1st respondent admits the sale and purchase through registered document No.972/1950 dated 07.08.1950. It is further averred that the register of holdings maintained by the Sub-Registrar,

Budwel/4th respondent evidences an entry with regard to Sy.No.116/2 of an extent of Ac.3-96 cents of Gopavaram Village in the name of Munikoli Kondaiah and others and Angadi Peeraiah as executant. The said entry is made on the strength of document No.101 dated 12.09.1916. The 1st respondent, however, justifies inclusion of petition land in prohibitory list by contending that RSR was prepared in the year 1911 wherein the petition land is described as "tope poramboke". The subsequent entries either in register of holdings, registration of document etc., are without proper verification of classification of the petition

land. The 1st respondent has given the details of petition land as contained in pahani and 1B register. The issuance of pattadar passbook/title deeds does not confer right or title on the petitioner. The 1st respondent refers to acquisition of a portion of land by the Special Deputy Collector, Telugu Ganga Project, Unit-I, Kadapa for excavation of canal under PVBR left to right canal. The award made in this behalf refers to Sy.No.116/2 as RSR and the acquired land is a DKT land.

The fact that no compensation is claimed militates against the claim of petitioner of right and title to the petition land. The 1st respondent refers to DKT No.59/1419 dated 09.04.2010 and DKT 61/1419 dated 09.04.2010 in favour of petitioner. On the strength of instant assignment under Darkast Rules, the 1st respondent justifies inclusion of petition land in the prohibitory list.

The petitioner filed reply affidavit dated 30.07.2013 and explained the stand taken by the 1st respondent in the counter affidavit. The petitioner reiterates that the petitioner claims right and title to the petition land through registered sale deed dated 09.04.1980. The reasonings or conclusions, if any, in the award dated 26.03.2007 are not binding on the petitioner. The assignment dated 09.04.2010 is contested as without basis and created only for the purpose of a proprietary right of petitioner.

Heard learned counsel for the petitioner and the learned Government Pleader.

As directed by this Court, the original record of petition land is made available for inspection.

From the pleadings and contentions, the short point that arises for consideration is whether the inclusion of petition land in prohibitory list under Section 22-A of the Registration Act is legal and sustainable.

The facts and circumstances on which the petitioner claims right and title are narrated above and for brevity, the same is not reiterated. The admitted circumstances of the case are that the RSR was prepared in the year 1911 classifying the petition land as “tope poramboke” on 12.09.1916. Through registered document No.101, one Angadi Peeraiah sold the property in favour of Munikoli Kondaiah and others. The instant sale deed finds place in the register of holdings. From the earliest document executed and recorded in register of holdings, it is *prima facie* evident that as

early as 1916, the petition land was treated as private patta land. The other sale deed which is admitted by the 1st respondent was executed on 07.08.1950. The petitioner purchased the petition land from the vendees under document dated 07.08.1950. The burden is very heavy on the 1st respondent to plead and prove that the petition land firstly comes within the category of cases covered by Section 22-A of the Registration Act.

Having perused the stand taken in the counter affidavit and also annexures appended therewith, I have no hesitation to conclude that the 1st respondent has failed to discharge the burden cast on the State to prove that the petition land can be prohibited under Section 22-A of the Registration Act. Admittedly, there is no assignment, much less assignment under Darkast Rules with the condition of non-alienability. Consequently, the petition land does not come within the prohibition contained in the A.P. Assigned Lands (Prohibition of Transfer) Act, 1977. The justification offered is classification of petition land as “tope poramboke” in RSR. The entries in RSR as held by this Court in a series of decisions by itself do not confer right or title on the Government. Further, RSR records the state of affairs during the preparation of re-survey operations.

It is for the respondents to show that the claim of Angadi Peeraiah as owner as early as 1916 still clothes the State with right and title on the petition land. The respondents in the considered opinion of this Court have failed to discharge the burden cast on them. If the plea of respondents is accepted, the same amounts to depriving right of citizen in property without recourse to law.

The other submission of the 1st respondent is that in the acquisition for excavation of canal under PVBR left to right canal, an extent of Ac.1-00 was acquired and no compensation was paid to the petitioner on the ground that the petition land is assigned land. Payment of compensation or non-payment of compensation gives a different cause of action but does not disturb the title of petitioner which is traced through registered sale deed dated 09.04.1980. It is improbable to conceive that the petitioner, having purchased the property in the year 1980, would accept darkast assignment in the year 2010. To grant assignment under Darkast Rules, the 1st respondent has to *prima facie* show that the assigned land was available for assignment and by following the procedure stipulated under the Board Standing Order, the assignment was made. The other objections raised by the 1st respondent are not tenable and legal and they are accordingly rejected.

The writ petition is, accordingly, ordered by giving liberty to the petitioner to present the document for registration before the

4th respondent and the 4th respondent is directed to consider for registration without reference to the inclusion of petition land in prohibitory list on the details furnished by 3rd respondent. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

S.V.BHATT, J

31st March, 2015

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