HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.24587 OF 2014, 31074 OF 2014, 24629 OF 2014, 24989 OF 2014, 27046 OF 2014, 27140 OF 2014, 27279 OF 2014,27301 OF 2014, 18835 OF 2014, 11858 OF 2014, 4917 OF 2014, 20039 OF 2014, 35090 OF 2014, 36290 OF 2014, 36573 OF 2014, 36584 OF 2014,36693 OF 2014, 36701 OF 2014, 36711 OF 2014, 35792 OF 2014 39183 OF 2014 AND 41141OF 2014.

COMMON ORDER:

The petitioners in these writ petitions are different individuals and the respondents are common. The pleadings set out by parties in W.P.No.24587 of 2014 are referred to and would suffice for the disposal of this batch of writ petitions. The grievance of the petitioners is against letter Rc.No.N1/27520/2009 dated 19.04.2010 forwarded by the Commissioner Endowments/2nd respondent to the 4th respondent under Section 22-A of the Registration Act, 1908 (for short 'the Act') prohibiting registration of documents of properties covered by the list appended to the letter dated 19.04.2010. The subject matter of the writ petitions is house plots covered by Patta No.130, Paimash No.10, Survey No.242 of Tiruchanur Village Accounts, Tirupathi Revenue Division, Chittoor District.

The petitioners pray for Mandamus declaring the action of 4th respondent in refusing registration of the sale deed(s) for house plot Nos.156, 322, 323, 157 part and 158 part and plot Nos.156 (part) and 157 (part) covered by Patta No.30 located in Paimash No.10 (Survey No.242) of Tiruchanur Village Accounts presented by petitioners by reference to letter Rc.No.N1/27520/2009 dated 19.04.2010 without notification under Section 22-A of the Act, as illegal, arbitrary and contrary to the Act. The petitioners pray for a direction to 4th respondent to receive and register the documents covered by Survey No.242 of Tiruchanur Village Accounts in accordance with law and without reference to letter Rc.No.N1/27520/2009 dated 19.04.2010.

The issue of law arises under Section 22-A of the Act.

The case of petitioners is that Survey No.242 is a private patta land. One Sannadhi Muni Reddy filed O.S. No.8 of 1934 in the Court of District Judge, Chittoor against one M.K.Ramaswamy Ayyangar and others for recovery of amount due under a mortgage deed. The suit was decreed and the property was put to execution in O.E.P.No.6 of 1943. In O.E.P. No.6 of 1943, the decree holder purchased the E.P.

schedule property. On 27.04.1946, sale certificate was issued in favour of Sannadhi Muni Reddy. The E.P. schedule property is as follows:

> "(1)Chittoor-Kadapa District- Chiruthanur Old Agraharam Chitteti Gunta Patteda- lands-bounded on
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> East by - the road leading to Tirupati and the lands cultivated under Oburaju Kalva:
>
> West by - Avilala Village boundary;
>
> North by - the lands of Venkatapuram Agraharam Revenue village (Valleru gunta Patteda lands)
>
> South by - the lands of Tiruchanur and Old Agraharam called as Chitteti lands:
>
> Within the said boundaries, an extent of Ac.21.25 cents and an extent of Ac.11.25 cents- totaling Ac.32.50 cents- with all irrigation rights in water channels and water rights in tank along with trees therein-

1. Chittoor- Kadapa District-Chiruthanur Old Agraharam Chitterti Gunta Patteda- lands- bounded on

> East by : Bandi Baata leading to Tanapalle;
>
> West by : the lands of Tiruchanur Agraharam Revenue village;
>
> North by : Daaminedu Kalva (Channel); and
>
> South by :.....
>
> Within the said boundaries, an extent of Ac.6.00 cents with all trees such as Neem, Tati, Eetha etc., Wells therein, sheds etc.,"

The petitioners contend that the property referred to above is identifiable with Paimash No.10 and correlated to Survey No.242 of Tiruchanur Village Accounts. From the year 1957 onwards, Survey No.242 has been subjected to a series of registered transactions of sale and purchase as private patta land. Survey No.242 was and is private property or patta land of Muni Reddy. In due course, Survey No.242 was developed into a residential layout and sold to several persons as house plots. The details of house plots purchased by the petitioners in W.P.No.24587 of 2014 are as follows:

Sl. No.	Name of the petitioner	Sy.No.& Plot No.	Extent	Link documents (sale deeds)
1	Sri Radhakrishna Naidu	242/156 part	370 sq.yards	2389/1997 and 2390/97
2	Sriramaneni Krishnamurthy	242/322 & 323	800 sq.yards	2389/1997 and 2390/97

3	K.Prabhakar Naidu	242/157 Part & 158 Part	365 sq.yards	2389/1997 and 2390/97
4	G.Uttaradu	242/156 Part & 157 Part	635 sq.yards	2389/1997 and 2390/97

In the year 2006, the petitioners claim to have presented documents covering the above plots for registration before the 4th respondent. The 4th respondent received the documents, but refused to register the sale deeds on the ground that the Administrative Officer of Sri Hatiramjee Mutt and Manager of Bugga Mutt informed the 4th respondent that the Commissioner of Endowments, Government of Andhra Pradesh/2nd respondent intimated the details of various immovable properties held by religious or charitable institutions within the jurisdiction of 4th respondent and requested 4th respondent not to register documents covering the properties appended in the list to the letter dated 19.04.2010. The operative portion of communication reads as follows:

> "Hence, I am hereby forwarding the revised particulars of immovable properties relating to Sri Swamy Hati Ramji Math, Tirupati and Bugga Math, Tirupathi in 6 Registration Sub-Divisions in Chittoor District viz., (1) Tirupathi Urban, (2) Tirupathi Rural,(3) Chandragiri, (4) Renigunta,(5) Srikalahasthi, (6) Thottambedu in proforma U/s.22-A (1) (c) of the Registration Act in suppression of the previous lists of properties furnished in the reference 2nd cited by this authority and the list of properties furnished by the Mahanth Varu of Sri Hathiramji Math, Tirupathi and other institutions containing six Registration –Sub Division for taking necessary action of prohibiting of illegal registrations as the said properties are required for the maintenance of the Charitable and Religious Institutions. These annexed immovable properties cannot be registered without the specific permission of the Commissioner, Endowments Department, Andhra Pradesh."

The petitioners complain against inclusion of Survey No.242 as property belonging to the Mutts/ Institutions, as illegal and without factual or legal basis. The petitioners alternatively canvass that unless a notification under Section 22-A of the Act is issued for any property, registration of document for such property cannot be prohibited or refused by the 4th respondent. In short, the legal objection stated is that unless a notification under Section 22-A (2) of the Act is issued, prohibition or refusal to register property is illegal and unauthorized.

The petitioners, in support of re-grant of petition land, incidentally refer to

ryotwari patta granted in the year 1979 by the Inam Deputy Tahsildar, Chandragiri in favour of one of the predecessors- in -interest to a portion of land in Survey No.242. The relevancy of said allegation is that the petitioners admit that tenures in Survey No.242 of Tiruchanur Village were regularized under the provisions of the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act 1956 and with the grant of a ryotwari patta, the petition lands cannot be concluded as held or belonging to Institution. The petitioners place reliance on orders in W.P.No.13565 of 2013 for a direction to 4th respondent to receive and register documents presented for the property covered by Survey No.242 of Tiruchanur Village Accounts. The petitioners state that the petition lands have been in continuous possession of petitioners and their predecessors -in -title since ten (10) decades. It is alleged that the legality of communication dated 19.04.2010 is already considered by this Court and the communication was set aside through order dated 03.06.2013 in W.P.No.10068 of 2013 and pray for a similar direction.

The legal grounds urged against the alleged refusal to receive or register the document by 4th respondent are that Section 22-A of the Act prescribes prohibition from registration of certain categories of land and to attract prohibition from registration of document, the properties should be notified in the gazette under Section 22-A (2) of the Act. As Survey No.242 is not notified in the gazette under Section 22-A (2) of the Act, the 4th respondent cannot rely upon the details submitted by Revenue and Endowments Departments and refuse to receive or register documents covering properties in the list forwarded by these departments. Such refusal to receive or register is illegal, arbitrary, contrary to the Act and violative of Article 300-A of the Constitution of India. Hence, the writ petitions.

The petitioners filed the registered documents in evidence of their right etc., in house plots in Survey No.242 of Tiruchanur Village.

The 5th respondent filed counter affidavit opposing the writ prayer on all fours. At the instance of 5th respondent and by reference to the details furnished by 5th respondent, the list of properties is communicated through Commissioner, Endowment

to 4th respondent. The case of 5th respondent is that the Great Vaishnav Saint Sri Hatiramjee Bavaji established 5th respondent/Mutt at Tirupathi and Tirumala. The

objectives of Mutt are to provide free of cost shelter and food to pilgrims, Sadhus, Sanyasis and Bairagees on pilgrimage to Tirumala. For the administration or discharge of avowed obligations undertaken by the Mutt and upkeep of the Mutt, the succeeding Mahants or the disciples of Mahants received gifts of movable and immovable properties from the devotees of Lord Balaji. The Mutt received donations of agricultural land in Tiruchanur Village as well and claims to be in possession of various properties acquired by the Mutt.

Nawab of Arcot made a grant of Village Tiruchanur as Shotriyam Village in favour of Havildar Srinivasa Charyulu to restore the channels and tanks in Tiruchanur Village. The grant was enfranchised by the Inam Commissioner, Madras in title deed No.464 dated 26.11.1862. The successive Mahants of 5th respondent Mutt at various points of time through sale deeds claim to have purchased total extent of Ac.139.50 cents from Inamdars of Tiruchanur. The details of these sale deeds etc., are not considered in this order, for this Court is not adjudicating the issue of title or entitlement between the parties vis-à-vis Survey No.242 (Paimash No.10) of Tiruchanur Village.

It is further averred that one Sri Mangaldas Bavaji, disciple of Mahant Bhagwandasji of respondent Mutt, purchased from Smt.Janakamma w/o Tirumalakumara Arasingara Tata Charyulu, who is one of the Inamdars of Tiruchanur Village the land bounded on:

East: Tiruchanur Kotha Agraharam Cheruvu Lothattu lands i.e.

offshore lands,

West: Mutt lands of Avilala Village boundary,

North: Tirupathi Village boundary, and

South: Tiruchanur Kotha Agraham Cheruvu Orava Kalva

(inlet) measuring an extent of 29-13-8 Kandlu (Ac.52.00) under registered sale deed dated 20.04.1913 bearing Paimash Nos.1, 2, 3, 5A, 6 and 10 correlate to Survey Nos.14, 229, 230, 240, 241 and 242 of Tiruchanur Village.

It is further averred that through registered lease deed dated 30.04.1913, the Mutt leased the said property in favour of Murthy Reddy of Tiruchanur. Through registered lease deed dated 15.06.1914, the term of lease was renewed for further 3 years. The Mutt claims right, title, possession and enjoyment of the property referred

to above through the registered sale deeds and lease deeds. It is the case of 5th respondent that subject matter forms part of schedule property referred to above.

The Inam Settlement Officer No.3, Chittoor had taken up *suo motu* enquiry under Section 9(1) of the Andhra Pradesh (Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948. The Settlement Officer decided that Tiruchanur Village was "estate village" within the meaning of Estates Abolition Act and tenures were directed to be regularized under Act 17 of 1948. The

5th respondent/Mutt aggrieved by the order of Inams Settlement Officer filed Appeal No.94 of 1953 before the Estate Abolition Tribunal, Chittoor. On 11.04.1954, the Estate Abolition Tribunal allowed the appeal by holding that Tiruchanur Village is not an estate village within the meaning of the Estates Abolition Act. The decision of Estates Tribunal exempted Tiruchanur Village from the provisions of Act 17 of 1948. The Mutt refers to civil litigation against implementation of The Andhra Pradesh (Andhra Area) Estates Land (Reduction of Rent) Act, 1947 in O.S. No.4 of 1955 in the Court of Senior Civil Judge, Chittoor in support of its actual enjoyment of the paimash numbers referred to above. The 5th respondent/Mutt relies upon the sale deed executed by Smt. Janakamma wife of Tirumalakumara Arasingara Tata Charyulu vide document No.654/1913 in favour of Mutt to claim right and title to the subject matter.

It is further stated that consequent upon the decision of Estates Abolition Tribunal in Appeal No.94 of 1953, the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 was implemented in Tiruchanur Village. The Inam Deputy Tahsildar conducted enquiry under Section 3(3) of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 and decided that the land in Survey No.242 is held by an institution vide order dated 15.09.1983. Against the order dated 15.09.1983, one R. Raghunatha Reddy filed appeal before the R.D.O., Tirupathi. On 21.02.1984, the appeal filed by R.Raghunatha Reddy was allowed setting aside the order dated 15.09.1983 holding Survey No.242 as held by institution. The 5th respondent carried the matter in revision before the Commissioner, Survey and Settlement and Land Records, Hyderabad. The revision in case No.P3/1688/84 was allowed on 20.11.1985 setting aside the order dated 21.02.1984 of R.D.O., Tirupathi and the matter was remanded for enquiry and disposal by R.D.O. Tirupathi. The purpose of reference to above circumstances is to contend that the order dated 15.09.1983 holding the property as

held by institution is subsisting and the petitioners and their predecessors- in-interest etc, do not have right or title or claim ryotwari patta for Survey No.242 of Tiruchanur Village. It is further stated that the communication dated 19.04.2010 is intended to inform that the properties are held by an endowment/institution, and prohibited from registration under Section 22-A(1)(c) of the Act. The Mutt is not under obligation to get the property notified under Section 22-A (2) of the Act, as the protection is complete in the scheme of Section 22-A of the Act to a class of properties. The letter dated 19.04.2010 is an intimation to 4th respondent for prohibiting registration of documents of properties covered by the list. The response to legal objections against non-compliance of Section 22-A is that firstly publication of notification is not required under Section 22-A of the Act and secondly notification is required only in respect of exigencies or circumstances covered by 22-A (1)(e) of the Act. The refusal by

4th respondent is justified and the petitioners having regard to the right and title claimed by the institutions under Section 3(3) of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 and the fact that the petitioners are admitting that Tiruchanur Village is an Inam Village, have failed to produce re-grant in their favour and therefore, cannot pray for Mandamus for registration of properties belonging to institutions, contrary to the scope, purpose and object of Section 22-A of the Act.

The petitioners filed reply affidavit and placed on record objections on the claim of 5th respondent on Survey No.242 of Tiruchanur Village. Incidentally, it is stated that the enquiry/hearing under the Inams Abolition Act is pending before the R.D.O. Tirupathi and finality cannot be presumed against the order dated 15.09.1983 of Inam Settlement Officer, Tirupathi to claim that subject matter is held by an institution. It is reiterated that the case on hand is covered by Section 22-A (1) (e) of the Act and notification under sub-Section (2) of Section 22-A is a condition precedent for prohibition or for refusing registration.

The learned counsel appearing for the petitioners have forcefully contended that (1) refusal to receive or register a document prima facie is illegal and amounts to abdication of jurisdiction and duty under the Act; and (ii) mere act of registration of a document by itself does not alter or affect the claim of 5th respondent. *De hors* this

contention, it is further urged that the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act protects the alleged rights of 5th respondent and that inclusion of subject matter in prohibitory list is unilateral, amounts to self declaration of right and title by the claimant and unconstitutional. It is contended that the power to prohibit a document from registration is dependant on issuance of a notification under Section 22-A(2) of Act and admittedly no notification is published in the Gazette. The refusal to receive or register on the basis of letter Rc.No.N1/27520/2009 dated 19.04.2010 is arbitrary, illegal and amounts to abdication of duty/function under the Act.

Learned counsel appearing for the petitioners, on the legal requirement of a notification under sub-Section (2) of Section 22-A have relied upon the following decisions of this Court:

D.Bharathamma Vs. State of Andhra Pradesh, **T.Edukondalu v. The Principal Secretary to Government, Department of Revenue, Stamps and Registration, Hyderabad** and **Dr. Dinakar Mogili v. State of A.P.**

In **T.Edukondalu**'s case (supra 2), the relevant portion reads as follow:

> "The argument of the learned Government Pleader is that there is no necessity to publish a notification in respect of the subject land under Section 22-A (2) of the Registration Act, 1908 as Section 22-A(1)(b) would have application and not Section 22-A(1)(e). However, this contention, if accepted, would mean that all lands claimed to be Government lands which are sold by any private party can be brought within the ambit of Section 22-A(1)(b) . Such a construction would render superfluous Section 22-A(1)(e) to the extent it speaks of prohibition of registration of documents pertaining to lands in which the State Government may have avowed or accrued interests.
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> That, obviously, could not have been the intention of the Legislature. Further clause (b) of Section 22-A(1), on a plain reading, indicates that it relates to prohibition of registration of documents in the context of the executants thereof nor being statutorily empowered to execute them. Thus the said clause would not have application in a case where the Government claims a particular land to be its own on the basis of revenue records or otherwise. Had that been so, there would have been no necessity for clause (e) of Section 22-A (1) of the Act of 1908, which states that there shall be a prohibition of registration in respect of documents pertaining to properties in which the Stage Government has avowed or accrued interests, which would be adversely affected by such registration. Thus, where the State Government stakes a claim that a particular land belongs to it and seeks to put in place a prohibition with regard to registration of documents in respect thereof, the same would invariably fall within Section 22-

A(1)(e) of the Act of 1908 alone and the Government must necessarily publish a notification under Section 22-A(2) of the Act of 1908 giving full description of the property concerned. The sanctity of such a notification is spelt out by Section 22-A(3) of the Act of 1908 which places an embargo upon the Registering Officers from registering any document falling within the ambit of the notification. In the present case, there is no dispute that no such notification has been published under Section 22-A (2) of the Act of 1908 in respect of the subject land."

In **Dr. Dinakar Mogili**'s case (Supra 3), the relevant portion reads as follows:

"The only provision which prohibits the Registering Authority, from registering the document presented for registration, is under Section 22-A of the Registration Act. Under Section 22-A(1)(b) documents relating to the sale of property, in respect of immovable property owned by the State or Central Government if executed by persons other than those statutorily empowered, cannot be registered. On being asked whether it is the case of the respondents that registration of the sale deed by the District Collector on 30.10.2006, falls within the ambit of clause (b) of Section 22-A(1), learned Government Pleader for Revenue would fairly state that it is not. He would submit that it is only the sale deed sought to be registered by the President of the Society on 22.7.2010, in favour of the petitioners herein, which falls within the ambit of the said provision. Section 22-A(1)(b) applies only to immovable property owned by the State Government and, since the Government had itself alienated the said land by way of a sale deed in the year 2006, it ceased to be the owner of the said land and, consequently Section 22-A(1)(b) of the Act has no application thereafter.

It is necessary to note that Section 22-A (1)(e) prohibits registration of documents pertaining to the properties in which, among others, the State Government has an avowed or accrued interest and which the State Government has, by notification, prohibited registration of. If, as contended by the respondents, the State Government has implicit interest in the said property, the only manner in which registration of documents can be prohibited is by issuing a notification under Section 22-A(1)(e) of the Act. No reference is made in the counter affidavit to any notification having been issued by the State Act. In the absence of a notification being issued by the State Government in exercise of its powers under Section 22-A(I)(e) of the Registration Act, the question whether the State Government has an avowed or accrued interest does not necessitate examination."

In opposition, the learned Government Pleader and K.R.Prabhakar appearing for respondents have vehemently contended that (i) the construction placed on Section 22-A (1) of the Act by the petitioners is incorrect and untenable. In view of decision of Apex Court in **State of Rajasthan and others v. Basant Nahata**, Section 22-A is introduced through Amendment Act 19 of 2007 and the statement of objects and reasons read with the language of Section 22-A would sufficiently disclose that the

prohibition of registration of documents is in respect of distinct classes or cases and the pre-existing right of these classes of cases is recognized by record or special enactment and the prohibition of registration of a document is in furtherance of a prohibited transaction by the special enactment and, therefore, it does not require notification under Section 22-A(2) of the Act; (ii) the object of prohibition is to protect the properties of State, Endowment, Institutions etc., from frivolous or bogus claims through illegal documents/ transactions and the prohibition of registration can be compelled through communication of details of properties covered by Section 22-A(1) (a) to (d). It is the definite case of respondents that a notification is required only for the circumstances or instances covered by Section 22-A (1) (e) read with Section 22-A(2) of the Act. (iii) the communication of list under Section 22-A (1) (a) to (d) is sufficient to prohibit registration of document and a person who intends to obtain registration of a property covered by Section 22-A (1) (a) to (d) must get his right in property adjudicated in a competent Court. It is finally contended that having regard to the object desired through prohibition from registration, the principle of *"nemo dat quod non habet"* means "no person can transfer a better title than what he possesses", and mere registration of a document does not affect the right, have no application.

The learned counsel appearing for respondents rely upon **Guntur City House Construction Cooperative Society Limited, Guntur v. Tahsildar, Guntur Mandal**, **Taluka Office,Guntur District** and **P.Srinivasulu and others v. Sub Registrar, Renigunta, Chittoor District.**

In **Guntur City House Construction Cooperative Society**'s case, (supra 4) the relevant portions reads as follows:

> "From a perusal of this, it becomes clear that the prohibition gets attracted straight away in respect of lands that fall into sub-clauses (a) to (d) of sub section (1). It is only in respect of lands falling into sub-clause (e) that publication of a notification becomes necessary for the prohibition to operate.
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> The reason underlying clause (e) of sub-section (1) and sub-section (2) is manifest. The prohibition against registration of documents pertaining to (a) the lands, whose transfer is prohibited under law (b) lands owned by State or Central Government (c) lands owned by religious institutions or surplus lands and, (d) the lands that are rendered surplus, gets attracted straight away. A totally different purpose is sought to be achieved in respect of lands mentioned in clause (e). This category does not include lands not owned by State or Central Government or Religious or Educational Institutions. It is in respect of properties,

vis-à-vis which accrued or existing interest of the Government or its agencies are involved. In other words, even though a particular land or property may not be owned by the Government or institutions mentioned in that clause, the prohibition can be made to operate, in case such properties are under lease or other use by the said institutions or establishments. It is only in such cases, that issuance of notification is necessary, for the prohibition, to operate. It is a different matter that the aggrieved party may challenge the notification, if issued. As regards the properties covered under clause (a) to (d) of sub section (1), no such notification is necessary."

In **P.Srinivasulu**'s case (supra 6), the relevant portion reads as follow:

"A perusal of the aforesaid provisions would show that for class of documents relating to the properties covered by Section 22-A(1)(a),(b),(c), and (d) of the Registration Act, there is prohibition for registration, even without issuing any notification. But for the class of documents covered by Section 22-A(1)(e), the State Government is empowered to issue notification prohibiting registration of the documents relating to the properties in which avowed or accrued interests of Central and State Governments, Local Bodies, Educational, Cultural, Religious and Charitable Institutions is likely to adversely affect."

The decisions relied upon by the parties are expressing divergent views on the requirement of issuing notification under Section 22-A (2) of the Act for prohibiting registration of a document. Having regard to spate of litigation against threshold refusal to register or receive documents for registration under Section 22-A of the Act, I propose to consider from different perspectives the origin, source and object of Section 22-A of the Act and its operation vis-à-vis other enactments..

Now the points for consideration are:

i. Whether publication of notification under Section 22–A (2) of the Act is mandatory or condition precedent to prohibit registration of documents under the Act? and

ii. What is the scope and meaning of the words "Prohibition of registration of certain documents" and "following classes of documents shall be prohibited from registration under Section 22-A of the Act and whether the total prohibition of registration of documents for the properties included in the prohibitory list under Section 22-A results in conflict with Transfer of Property Act, Section 17 of the Act and Article 300-A of the Constitution of India?

iii. To what relief?

POINT No.i:

Registration Act:-

It is axiomatic that a statute must be construed having regard to the purpose and object of the statute. The Act makes a few documents compulsorily registerable under Section 17(1) of Act. Section 22-A of the Act prohibits registration of a few documents. Through Amendment Act 19/2007, Section 22-A of the Act is introduced. Section 17(1) of Act on one hand makes registration compulsory of a few documents and Section 22-A of the Act prohibits registration of documents compulsorily registerable, as hit by Section 22-A and the transactions are treated as illegal transactions of transfer of property held by Government Institutions etc. The counsel appearing for both parties persuaded the Court to follow the decision that supports their prayer and decide accordingly. Having regard to the importance of the issue and catena of decided cases on the point and perpetual litigation under Section 22-A of the Act, this Court undertakes further examination of section in the Act and also a few special statutes before expressing view on the reported decisions.

The Act secures or maintains records of documents registered under the Act. Part III of the Act deals with registerable documents. Section 17 of the Act is an important provision or is the heart of the Act. Section 17 (1) (a) to (e) reads as follows:

> "17. Documents of which registration is compulsory.—(l) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—
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> (a) instruments of gift of immovable property;
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> (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
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> (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
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> (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
>
> (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property"

Sub-section (2) of Section 17 grants exemption from clauses (b) and (c) of sub-Section (1) of Section 17 to a few deeds/ documents referred therein. Section 17 (1) of the Act deals with a document which requires registration, but the Section does not deal with the transaction covered by such document. The Section enjoins registration of document *which purports and not which intends* to create right in immovable property or declare a right in immovable property. The effect of non-registration of compulsorily registerable document under Section 17(1) of Act is covered by Section 49 of Act. A document which creates, declares, assigns, limits or extinguishes, whether in present or future, any right, title or interest, whether vested or contingent, of the value of Rs.100/- or upwards in any immovable property is compulsorily registerable under Section 17(1) of Act. The documents falling within the ambit of Section 17(1) of the Act must be registered and it is a mandatory provision. The Registration Department for all purposes endorses the document as registered and maintains the registered document in the records/books. The official act of registration even if carried out in accordance with law the question still falls for consideration is the effect of registration on the property.

The scope/object of registration is considered in **Lakshman Das V. Ramlal and another,** which is as follows:

> **"A real purpose of registration is to secure that every person dealing with the property, where such document requires registration, may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected.** Section 17 of the said Act being a disabling section, must be construed strictly. Therefore, unless a document is clearly brought within the provisions of section, its non-registration is no bar to its being admitted in evidence." (Emphasis added)

In **State of Rajasthan v. Basanth Nahata** (supra 4)**,** it is held that:

> The Act was enacted to consolidate the enactments relating to the registration of documents. Prior to enactment of the said Act, the provisions relating to registration of documents were scattered in seven enactments. The Act was enacted in terms of Entry 18, List II and Entry 6, List III of the Seventh Schedule of the Constitution. It mainly deals with the necessity of getting a document registered in India so as to make them valid and even if they are executed outside India to provide for registration thereof after their first arrival in India.
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> Section 17 of the Act enumerates the instruments registration of which is compulsory under the Act whereas Section 49 encompasses the effect of a failure to register. Registration of documents, however, is not confined only to documents relating to immovable property but also for the documents dealing

with other matters as for example adoption. Section 17 of the Act has been amended inter alia by the State of Rajasthan. The State of Rajasthan, however, inserted Section 17(1)(f) and 17(1)(g) with effect from 18.9.1989 and made the registration of agreement to sale and irrevocable power to attorney relating to transfer of immovable property in any way a compulsorily registerable document. Section 18 provides for optional registration of documents specified therein. Section 22 provides for description of houses and land by reference to Government maps or surveys. Several States, however, as noticed hereinbefore, inserted Section 22-A. In terms of Sub-Section (1) thereof, the State Governments have been authorized to issue a notification declaring that the registration of any document or class of documents would be opposed to public policy. Sub- section (2) of Section 22-A starts with a non-obstante clause stating that notwithstanding anything contained in the Act, the registering officer shall refuse to register any document for which a notification issued under Sub-section (1) is applicable.

Section 32 occurring in Part VI provides for presentation of documents for registration. Section 33 deals with power of attorney recognizable for the said purpose. Part XI of the Act deals with the duties and powers of registering officers. Part XII deals with documents which a Sub-Registrar may refuse to register which, inter alia, refers to a document relating to property, which was not situated within the district of the Registrar or which ought to be registered in the office of Sub-Registrar or on the ground of denial of execution. An appeal from such orders of the Sub- Registrar is provided for under Sub-section (2) of Section 72. Even as against the order of Registrar a suit is maintainable. However, if and when a document is refused to be registered by the Sub-Registrar in terms of Sub- section (2) of Section 22-A of the Act, evidently no appeal would lie.

“Finality cannot be attached to decisions of executive when such things are in exclusive domain of judiciary as stated in State of Kerala and Others vs. Travancore Chemicals and Manufacturing Co. observing (SCC p.193 para 13)

"13. Section 59-A enables the Government to pass an administrative order which has the effect of negating the statutory provisions of appeal, revision etc. contained in Chapter VII of the Act which would have enabled the appellate or revisional authority to decide upon questions in relation to which an order under Section 59-A is passed. Quasi-judicial or judicial determination stands replaced by the power to take an administrative decision. There is nothing in Section 59-A which debars the Government from exercising the power even after a dealer has succeeded on a question relating to the rate of tax before an appellate authority. The power under Section 59-A is so wide and unbridled that it can be exercised at any time and the decision so rendered shall be final. It may well be that the effect of this would be that such a decision may even attempt to override the appellate or the revisional power exercised by the High Court under Section 40 of the Act as the case may be. The section enables passing of an executive order which has the effect of subverting the scheme of a quasi-judicial and judicial resolution of the lis between the State and the dealer."

We are not oblivious of the decisions of this Court laying down the proposition of law that the statute dealing with fiscal matters and / or laying down a provision or enforcing the doctrine of social justice adumbrated in the Directive Principles of State Policy as contained in Part IV of the Constitution of India ordinarily would not be interfered with by the superior courts in exercise of their power of judicial review. The Act is neither a fiscal statute nor deals with any matter falling under Part IV of the Constitution of India.”

In **Suraj Lamp and Industries Private Limited (2) v. State of Haryana**, the Apex Court held as follows:

"Advantages of Registration

In the earlier order dated 15.5.2009, the objects and benefits of registration were explained and we extract them for ready reference :

The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing for consequences of non-registration.

Section 17 of the Registration Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs. 100 and upwards to or in immovable property.

Section 49 of the said Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed.

Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified."

Registration of documents makes the process of verification and

certification of title easier and simpler. It reduces disputes and litigations to a large extent."

The Apex Court held in **Suraj Lamp and Industries Private Limited (2) v. State of Haryana** (supra 8) that registration of document makes the process of verification and certification of title easier and simpler. The registration of document reduces disputes and litigation to a large extent.

Effect of Registration on the right/title to property:

The Registration of a document does not by itself confer or create title in favour of the vendee/transferee under the registered document. The registration of a document by itself would not create or transfer title to the transferee. The registration simplicitor is well appreciated by the legal maxim "*nemo dat quod non habet*" meaning "no person can transfer a better title than what he possess in the property transferred."

I n **K.Panchapagesa Ayyar and another v. K.Kalyanasundaram Ayyar and others,** it is held as follows:

"The Registration Act, unlike the Transfer of Property Act, strikes only at documents and not at transactions. In the same way the Act does not require that a transaction affecting immovable properties should be carried out by a registered instrument. All that it enacts is that where a document is employed to effectuate any of the transactions specified in S.17 of the Act, such document must be registered, notwithstanding that the transaction is one which the law does not require to be put into writing."

In **Jogi Das and others v. Fakir Panda**, it was held that:

"The object and purpose of the Registration Act, amongst other things, is to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising out of or effecting a particular property, and to perpetuate documents, which may afterwards be of legal importance and also prevent fraud."

In **Chander Singh v. Jamuna Prasad Singh** the Hon'ble Court held that:

"On a Proper construction of Section 54 of the Transfer of Property Act, it appears that a transfer of ownership takes place immediately on the sale. A registration is inly a statutory mode of making the sale and it does not affect the creation of title by the sale. Section 47 of the Indian Registration Act provides that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. It will be observed that

Section 47 of the Indian Registration Act does not purport to create a new title, but only affirms the title which, was created by the sale deed."

In **Suraj Lamp and Industries Private Limited v. State of Haryana**, the Hon'ble Court held that:

"The Registration Act, 1908, was enacted with the intention of providing orderliness, discipline and public notice in regard to transactions relating to immovable property and protection from fraud and forgery of documents of transfer. This is achieved by requiring compulsory registration of certain types of documents and providing fdor consequences of non-registration. Section 17 of the Registration Act clearly provides that any document (other than testamentary Act clearly provides that any document (other than testamentary instruments) which purports or operates to create, declare, assign, limit or extinguish whether in present or in future "any right, title or interest" whether vested or contingent of the value of Rs.100 and upwards to or in immovable property.

Section 49 of the Registration Act provides that no document required by Section 17 to be registered shall, affect any immovable property comprised therein or received as evidence of any transaction affected such property, unless it has been registered. Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In order words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person/s presently having right, title and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them.

The view of this Court on effect of registration is considered.

In **Dr.Dinakar Mogili v. State of Andhra Pradesh and others** (supra 3), it is held as under:

"The only provision which prohibits the Registering Authority, from registering the document presented for registration, is under Section 22-A of the Registration Act. Under Section 22-A(1) (b) documents relating to the sale of property, in respect of immovable property owned by the State or Central Government if executed by persons other than those statutorily

empowered, cannot be registered. On being asked whether it is the case of the respondents that registration of the sale deed by the District Collector on 30.10.2006, fails within the ambit of clause (b) of Section 22-A(1), learned Government Pleader for Revenue would fairly state that it is not. He would submit that it is only the sale deed sought to be registered by the President of the Society on 22.7.2010, in favour of the petitioners herein, which falls within the ambit of the said provision. Section 22-A(1)(b) applies only to immovable property owned by the State Government and, since the Government had itself alienated the said land by way of a sale deed in the year 2006, it ceased to be the owner of the said land and, consequently Section 22-A(1)(b) of the Act has no application thereafter."

In **Pasupuleti Bala Gangadhar v. State of Andhra Pradesh and others ,** it is held as under:

"As held in Raavi satish's case (supra), mere registration of the property will not create title in the purchaser and that if the vendor has no title in the property, the purchaser will not derive any title only on account of registration and that registration of a document will not absolve the vendor and the purchaser from the legal proceedings that may be initiated by the State for recovery of possession of the land, if the same is proved to belong to the Government."

Summarized Section 17 (1) of Act makes a few documents compulsorily registerable which create or declare right, title interest etc., in immovable property of the value of Rs.100/- and upwards and is strictly construed and is a mandatory provision.

As noted in the statement of objects of amending acts, Section 17 has been misused through registration of immovable properties of value of Rs.100/- and upwards of properties held by Endowment, Wakf, Central and State Government Undertakings and the Government. The documents are registered with intent to gain or claim right and title to the properties of Endowment/Wakf /Government etc., as the case may be, and consequently deprive to these institutions the rights in properties claimed by it. It is the concomitant grievance that the registration is resulting in litigation to these institutions.

Therefore, mere registration of document is not conclusive on the right or title of the property covered by the deed. The right or title is dependant on the fact situation of each case or dispute and the substantive law applicable to the lis.

Notwithstanding the legal effect of registration on the property, the Legislature felt it necessary to provide for measures at the formalization of transactions by prohibiting these documents from registration. The amendment through Act 4/1999 did not stand to judicial scrutiny in view of ratio laid down in **Basant Nahata**'s case (supra 4).

The Legislature has taken steps to address the mischief of illegal transactions through unauthorised registration of properties held by Government/Endowment/Wakf and Section 22-A of Act was introduced through Amendment Act 4 of 1999.

The reasons and objects of the A.P. Amendment Act 19 of 2007 are as follows:

"Section 22-A of the Registration Act, 1908 in its application to the State of Andhra Pradesh has been incorporated by Act 4 of 1999 to empower the Government to notify the registration of such documents or class of documents as opposed to public policy and to reject their registration.

The High Court of Andhra Pradesh in W.P. No.14099/2003 & batch cases issued orders declaring the provisions of Section 22-A of the Registration Act,1908 inserted by the Registration (Andhra Pradesh Amendment)Act,1999 (Act 4 of 1999) as unconstitutional and struck down the said Section 22-A on the ground that the public policy is not defined precisely, following the judgment of the Supreme Court of India in case of the State of Rajasthan v. Basant Nahata (2005(7) Scale 164) wherein Section 22-a of the Registration Act,1908 in its application to the State of Rajasthan was struck down.

While striking down the said provision, the Hon'ble Supreme Court observed as follows:-

"The legislature of a State, however, may lay down as to which acts would be immoral being injuries to the society. Such a legislation being substantive in nature must receive the legislative sanction specifically and not through a subordinate legislation or executive instructions.

The phraseology 'opposed to public policy' may embrace within its fold such acts which are likely to deprive, corrupt or injurious to the public morality and thus, essentially should be a matter of legislative policy".

In order to overcome the deficiencies as observed by the Hon'ble High Court keeping in view of the observations of Supreme Court and to avoid the illegal transactions of transfer of property relating to Government, Religious and Charitable Institutions etc., it has been decided to amend the Registration Act, 1908 suitably by specifying the classes of documents prohibiting them from

registration.

It has also been decided to validate the notification declaring a class of documents as opposed to public policy and consequently refusal of the same for registration during the period from 01.04.1999 to the date of the commencement of the present Amendment Act by inserting a validation provision."

Section 22-A reads as follows:

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

(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;

(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;

(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;

(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;

(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 interest.

(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)."

The presumption is that the State Legislature has knowledge of existing provisions in the Act, rigour of Section 17(1) of Act and the law declared by the Hon'ble Supreme Court and this Court. Through the amendment, the Legislature prescribes prohibition on registration of a few classes of documents of properties held by

institutions referred to therein. The prohibition from registration as per the scheme of Section 22-A is preceded by inclusion
and preparation of list of properties for prohibition from registration and communicate the list to the Registration Department.
The registration of a document covered by property in the list
is prohibited on the ground that the property covered by
document belongs to Government/Endowment/Wakf etc., and the transaction covered by the document is illegal.

Now, let me first examine the scope and meaning of Section 22-A (1) (a) to (d) of the Act and whether to prohibit registration, a notification under Section 22-A(2) is required. The courts of law while interpreting a statute, on the legal maxim *ut res magis valeat quam perea,* expression of Legislature is constructed in such a manner so as to make expression effective and literal meaning is ascertained and effect given to. The first principle of construction of a statute is to literally construe the section and give meaning to all the words used in the sections. By such construction of Section 22-A, the prohibition contemplated under Section 22-A of Act has the following facets.

Sub-section (1) of Section 22-A: prohibits registration of documents refer in clauses 'a' to 'e' of Sub Section (1) of Section 22-A of Act.

(a) Prohibits registration of a document the alienation of which is prohibited under any statute of State or Central Government.

(b) Prohibits registration of documents relating to transfer/lease of immovable property owned by State or Central Government, except by persons statutorily empowered to do so.

(c) Prohibits registration of documents relating to transfer of immovable property owned by Religious/Charitable Endowments or by Wakf falling under the Wakf Act, 1995, except by persons statutorily empowered do so do.

(d) Prohibits registration of document of surplus agricultural/urban ceiling lands.

(e) Prohibits registration of documents where the State/Central Government or Religious/Charitable Institutions have avowed /accrued interest.

Section 22-A of the Act provides for two types of situations viz. section 22-A sub-Section (1) clauses (a) to (d) and Section 22-A(1)(e) r/w sub-Section (2). Section 22-

A(1)(e) is intended to deal with or cover the cases not included in clauses (a) to (d) of Section 22-A (1) of the Act. It is in this context the prohibition of registration under Section 22-A(1)(e) is made dependent on issuance of notification by the Government. Sub section (2) of Section 22-A begins with the words "for the purpose of clause (e) of sub-Section (1) the State Government shall publish notification…….". In interpreting or construing a statute, the obvious and safe tool would be to ascertain the literal meaning of the words in Section. The first principle of interpretation is applied to interpret the plain meaning of Section 22-A(1)(e) r/w sub-Section(2) and the requirement of a notification is a pre-condition for the cases covered by clause (e) of Section 22-A (1) of the Act but not for the cases covered by Section 22-A (1) (a) to (d) of the Act. Further, the difference of language and meaning in these two distinct situations can be explained as follows:

Section 22-A (1)(a) prohibits registration of such document, the alienation or transfer of which is prohibited under any statute of the State or Central Government. The basis for prohibition from registration is that the transfer of such property is prohibited by a Statute of the State or Central Government. The registering authority is brought under the obligation to prohibit registration of a document, the transfer of such property is already prohibited under a statute of the State or the Central Government. In other words, 22-A(1)(a) prohibits registration of a document, the transfer of such property is prohibited by the statute. Illustration can be taken from the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977. Sections 3, 4 and 5 of Act 9/1977 reads as follows:

"Section 3: Prohibition of transfer assigned lands:-

1. Where before or after the commencement of this Act any land has been assigned by the Government to a landless poor person for purpose of cultivation or as a house site then, notwithstanding to the contrary in any other law for the time being in force or in the deed to transfer or other document relating to such land, it shall not be transferred and shall be deemed never to have been transferred; and accordingly no right or title in such assigned land shall vest in any person acquiring the land by such transfer.

2. No landless poor person shall transfer any assigned land, and no person shall acquire any assigned land, either by purchase, gift, lease, mortgage exchange or otherwise,

3. Any transfer or acquisition made in contravention of the provision of sub-

section (1) or sub-section (2) shall be deemed to be null and void.

4. The Provisions of this section shall apply to any transaction of the nature referred to in sub-section (2) in execution of a decree or order of a civil court of any award or order of any other authority.

Nothing in this section shall apply to an assigned land which was purchased by a landless poor person in good faith and for valuable consideration from the original assignee or his transferee prior to the commencement of this Act and which is in the possession of such person for purposes of cultivation or as a house site on the date of such commencement.

Section 4: Consequences of breach provisions of Section 3:-

1. If in any case, the District Collector or any other officer not below the rank of a (Mandal Revenue Officer) authorized by him in this behalf, is satisfied that the provisions of sub-section (1) of Section 3, have been contravened in respect of any assigned land, he may, by order-

b. take possession of the assigned land, after evicting the person in possession in such manner as may be prescribed; and

a. restore the assigned land, other than those lands/areas as may be notified by the Government from time to time in public interest and for public purpose-

i. to the original assignee if he or she is eligible as per the norms fixed in this behalf, as on the date of restoration for one time; or

ii. assign to other eligible landless poor person:

Provided that where the original assignee or his legal heir, after the first restoration transfers the assigned land, the land shall be resumed for assignment to the other eligible landless poor;

Provided further that if no eligible landless poor persons are available in the village/area, the resumed land will be utilized for public purpose.

Section 5: Prohibition of Registration of Assigned Lands:-

1. The District Collector or any other officer, not below the rank of a Mandal Revenue Officer authorized by him in this behalf, shall within 45 (forty five) days from the date of commencement of the Andhra Pradesh Assigned Lands (Prohibition of Tranters) (Amendment) Act, (2007) furnish to the Registering Officer having jurisdiction over the area a list of lands assigned to the landless poor persons with all particulars of assignment and further furnish such particulars of new assignment forthwith.

2. Notwithstanding anything in the Registration Act, 1908, no Registering Officer shall accept for registration of any document relating to the transfer of or creation of any interest in any assigned lands as furnished in the list under sub section (1).”

Section 22-A(1)(b) contemplates prohibition of registration of document transferring property by way of sale etc. of immovable property owned by the State or Central Government, except when the document is executed by persons statutorily empowered to register on behalf of the State. The prohibition of registration of such documents is attracted because the document is presented by unauthorized person. The immovable property belonging to the State or Central Government at times is required to be transferred by way of sale, lease etc. to individuals/Institutions and if absolute prohibition on registration of transfer of this class is prescribed, then an anomalous situation arises in dealing with the property of State or Central Government. In these types of cases, the State and Central Governments are merely required to inform the properties owned by the State or Central Government and the details of persons empowered to transfer on case to case basis or by designation of office. The interpretation or understanding of this clause presents no difficulty.

Likewise, Section 22-A (1)(c) deals with the properties of religious charitable, endowments covered by the A.P.Charitable and Hindu Religious Institutions and Endowments Act 1987, or by the Wakfs falling under the Wakf Act 1995. The section prohibits registration of documents relating to transfer of property of the institutions, except by persons statutorily empowered to do so. Under these enactments, the properties belonging to religious endowment or charitable endowment and/or wakf properties are defined. As is explained while interpreting Section 22-A(1)(b), the properties held by these institutions are transferred by way of sale, lease etc., in the interest of administrating the respective institutions by persons authorized in this behalf. If absolute prohibition of very registration of properties belonging to the institutions is provided for, then the remedy through amendment causes more complication than the mischief sought to be remedied through amendment. Therefore, the prohibition in Section 22-A (1) (c) is restricted to execution of sale, agreement of sale etc. by unauthorized persons of properties belonging to the institutions. The list of properties maintained in respect of each one of the institutions and persons authorized to transfer are to be communicated to the
Sub-Registrar for the purpose of Section 22-A (1)(c). In such cases, communication of list of properties held by an institution or persons authorized is sufficient and as and when a document concerning the property included in the list is presented for registration, the registering officer will have to examine whether the document is executed and presented by a person authorized in this behalf or not and proceed

accordingly in the matter.

Similarly, Section 22-A (1) (d), in view of the vesting of ceiling surplus lands in State prohibits registration of documents of properties so vested in State under the ceiling laws. The Government is required to communicate the list of ceiling surplus lands stood vested in State under the respective enactments to the Sub-Registrar for the purpose of Section 22-A (1) (d) of the Act.

On the contrary, Section 22-A(1)(e) of the Act envisages different contingency for consideration. The distinction between Section 22-A (1) (a) to (d) and Section 22-A (1) (e) read with 2 of the Act is clear and discernable. Section 22-A (1)(e) provides for prohibition of registration of documents covered by clause (e) of Section 22-A(1), however prohibition is subject to publication of a notification by the State Government. Therefore, to understand the meaning of prohibition under Section 22-A(1)(e), one has to read clause (e) together with Section 22-A(2) of the Act. A plain reading of Section 22-A (1)(e) provides prohibition of registration of documents or class of documents pertaining to the properties for which the State Government published notification. In these properties, the Central or State Governments, local bodies etc. should have avowed or accrued interests. Therefore, Section 22-A(1)(e) covers prohibition of registration of document of notified property in which the Central or State Government etc., have avowed or accrued interest and to that effect a notification is published by the State Government, according to the details furnished by the District Collector. The words “avowed” or “accrued” mean as follows:

Avowed: That has been asserted, admitted or stated publicly.

Openly declared or publicly acknowledged.

Accrued: If something accumulates over a period of time.

Section 22-A(1)(2) prescribes the procedure for issuing a notification viz., after obtaining reasons and full description of properties furnished by the District Collectors concerned in the manner as may be prescribed. A notification in common English means and implies a formal announcement of a legally relevant fact and in the event of a statute speaking of a notification being published in the official gazette the same cannot but mean a notification published by the authority of law in the official gazette. It is on formal declaration and publication of an order and shall have to be in accordance with the declaration polices of the statute.

Under Section 22-A(1) (e), the prohibition of registration is attracted to cases where the State/Central Government etc., are stated to have 'avowed' or 'accrued' interests and a notification is issued. On the other hand, if the requirement of Section 22-A(2) is extended to sub-Section (1)(a) to (d) of 22-A, then the effect would be that the Sub-Registrar prohibits from registering document not by reference to prohibition on transfer of property in a in statute of State or Central Government etc., but a notification with reasons and full description of property is published under sub-Section (2). In the same manner, the State or Central Government, being the owners, are required to furnish the list to the Sub-Registrar to prohibit registration of documents, except by persons authorized to transfer in this behalf. When the requirement of Section 22-A (2) is extended to Section 22-A (1)(b), then though being the owner the State or Central Governments still requires notification under the Act to prohibit registration. By further extending this illustration to religious, endowment or charitable Institutions, the property of these entities is taken care by the provisions of the A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987 as well as the Wakf Act, 1995. The list of properties held by the institutions is communicated to Sub-Registrar to apply Section 22-A(1)(c) of the Act. The properties prohibited by Section 22-A (1) (a) to (d) are not properties where these entities claim avowed or accrued interest, but claim proprietary rights in law and by record. For prohibiting registration of documents for the properties already held by an institution, a notification for any purpose is a surplusage. A particular immovable property is treated as a property belonging to an institution under an act, grant etc. The insistence upon notification to prohibit registration of properties belonging to religious endowment or wakf property negates the plain meaning of Section 22-A (1) (c) of the Act. Likewise, ceiling surplus (agriculture/urban) stood vested in the Government and by communicating the list of such properties, the Government informs details of surplus ceiling land to the Registration Department. By insisting upon notification for all the instances covered by 22-A(1)(a) to (d), this Court would be firstly defeating the very purpose of A.P. Amendment Act 19 of 2007 and the mischief is sought to be prevented by the Legislature.

For the situations covered by Section 22-A (1)(a) to (d), in my considered view, no notification under sub-Section (2) of Section

22-A is required for prohibiting registration of documents covered by these sub

sections. Therefore, for the reasons stated supra, I am in agreement with the conclusion or ratio laid down in **Guntur City Housing Construction Cooperative Society**'s (supra 5) and **P.Srinivasulu**'s case (supra 6). Point No.i is answered accordingly)

Point No.ii:

The answer to this point does not obviate the tiring situations presented in adjudication by the writs filed complaining inaction under Section 22-A of the Act. The sweeping effect of prohibition under Section 22-A of the Act is required to be examined by first adverting to special enactments viz., the A.P. Charitable and Hindu Religious Institutions and the Endowments Act, 1987 (for short 'the Endowments Act') and the Wakf Act, 1995 to interpret and construe the relevant words under Section 22-A of the Act.

In this batch of cases challenge to Section 22-A of the Act is not laid, but complaint centers round by manner of operating Section 22-A of the Act. Bearing in mind the prayer and pleadings of parties, the other legal issue is taken up for consideration.

The Endowment Act:

Under Section 2(3), charitable endowment, means – all property given or endowed for any charitable purpose. Explanations I and II to the said section reads as follows:

> Explanation I: - Any property which belonged to or was given or endowed for the support or maintenance of a charitable institution or which was given, endowed or used as of a right for any charitable purpose shall be deemed to be a charitable endowment within the meaning of this definition, notwithstanding that before or after the commencement of this Act, the charitable institution has ceased to exist or ceased to be used for any charitable purpose or the charity has ceased to be performed.
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> Explanation II: - Any Inam granted to a service holder or to an employee of a Charitable Institution for the performance of any charity or service in connection with a charitable institution shall not be deemed to be a personal gift to the service holder or to the employees notwithstanding the grant of ryotwari patta to such service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a charitable endowment."

Section 2(22) defines religious endowment reads as follows:

> "*Religious endowments*' means property (including movable property) and religious offerings whether in cash or kind, given or endowed for the support of a religious institution or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof."
>
> **Explanation I:**- All property which belonged to or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a religious endowment within the meaning of this definition, notwithstanding that, whether before or after the commencement of this Act, the religious institution has ceased to exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed.
>
> **Explanation II**:- Any Inam granted to an archaka, service holder or other employee of a religious Institution for the performance of any service or charity in connection with a religious institution shall not be deemed to be a personal gift to the archaka, service holder or employee, notwithstanding the grant or ryotwari patta to an archaka, service holder or employee under the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956, but shall be deemed to be a religious endowment."

Section 2(25) deals with specific endowment and reads as follows:

> *Specific Endowment* means any property or money endowed for the performance of any specific service or charity in a charitable or religious institution or for the performance of any other charity, religious or otherwise.
>
> **Explanation I**:- Two or more endowments of the nature specific in this clause the administration of which is vested in a common trustee or which are managed under a common scheme settled shall be construed as a single specific endowment for the purpose of this Act.
>
> **Explanation II:**- Where a specific endowment attached to charitable or religious institution is situated partly within the State and partly outside the State, control shall be exercised in accordance with the provisions of this Act over the whole of the specific endowment provided the charitable or religious institution is situated within the State."

Chapter III of the Endowments Act deals with administration and management of Charitable and Hindu Religious Institutions and Endowments.

Section 14 refers to vesting of all properties in the institution or endowment – "all properties belonging to, or given or endowed to a charitable or religious institution or endowment shall vest in the charitable or religious institution or endowment, as the case may be."

Chapter X deals with alienation of immovable property and resumption of inam lands. Reference to Sections 80 and 81 would be sufficient for understanding of the scheme of the Endowments Act, which reads as follows:

> Section 80:
>
> **Alienation of immovable property**: 1(a) Any gift, sale, exchange or mortgage of any immovable property belonging to or given or endowed for the purpose of any charitable or religious institution or endowment shall be null and void unless any such transaction, not being a gift, is effected with the prior sanction of the Commissioner.
>
> (b) The Commissioner, may, after publishing in the Andhra Pradesh Gazette the particulars relating to the proposed transaction and inviting any objections and suggestions with the respect thereto and considering all objections and suggestions, if any received from the trustee or other person having interest, accord such sanction where he considers that the transaction is—
>
> > i) prudent and necessary or beneficial to the institution, or endowment;
> >
> > ii) in respect of immovable property which is uneconomical for the institution or endowment to own and maintain; and
> >
> > iii) the consideration therefor is adequate and proper.
>
> (c) Every sale of any such immovable property sanctioned by the Commissioner under clause (b) shall be effected by tender-cum-public auction in the prescribed manner subject to the confirmation by the Commissioner within a period prescribed:
>
> Provided that the Government may, in the interest of the institution or endowment and for reasons to be recorded therefor in writing, permit the sale of such immovable property, otherwise than by public auction.
>
> Provided further that the Government may purchase the lands situated in Scheduled Areas belonging to institutions or endowments,

wherever necessary, otherwise than by public auction and assign such lands to the members of the Scheduled Tribes.

Section 81:

"Invalidation of unuthorised sale:- where before the commencement of this Act, any sale exchange, or mortgage of any immoveable property belonging to any charitable or religious institution or endowment is effected, without the prior sanction of the Commissioner or Government such transaction shall be null and void and shall be deemed never to have been effected and accordingly no right or title in such property shall vest in any person acquiring the property by such transaction and any such property shall be deemed to the property of the institution or endowment concerned and any person in possession of such property shall be deemed to be an encroacher and thereafter the provisions of Sections 84 and 85 shall apply."

Section 143 deals with application of limitation of the Endowments Act to the property held by a charitable religious institution or endowment and the same reads as follows:

"Section 143: Property of charitable or religious institution or endowment not to vest under the law of limitation after commencement of this Act:-

Nothing in any law of limitation for the time being in force shall be deemed to vest in any person the property or funds of any charitable or religious institution or endowment which have not vested in such person or his predecessor in title before the 30th September, 1951, in the Andhra Area of the State and the 26th January, 1967 in the remaining area of the State."

Section 151 provides for bar of jurisdiction as follows:

"No suit or other legal proceeding in respect of administration of management of an institution or endowment or any other matters of dispute for determining or deciding for which provision is made in this Act shall be instituted in any Court of Law except under and in conformity with the provisions of this Act".

Chapter XI deals with encroachments and removal of encroachments before the

Tribunal constituted under the Act.

The Wakf Act, 1995 provides comprehensive and self-contained provisions as regards wakf or Administration and Protection of Wakf property.

Section 3(r) deals with wakf and is defined as follows:

> Waqf means the permanent dedication by any person, of any moveable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes –
>
> i. a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;
>
> ii. a Shamlat Patti, Shamlat Deh, Jumla Malkkan or by any other name entered in a revenue record;
>
> (iii) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable; and
>
> (ivi) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, provided when the line of succession fails, the income of the waqf shall be spent for education, development, welfare and such other purposes as recognized by Muslim law; and "*waqif*" means any person making such dedication;

Chapter II provides for Survey of Auqaf and sections thereof deals with preliminary survey of Auqaf, publication of list of Auqaf, disputes regarding Auqaf, power of tribunal to determine dispute regarding Auqaf etc.

Chapter VIII deals with judicial proceedings and Section 107 of the Wakf Act exempts application of the Limitation Act (Act 36/1983) from application to any suit for possession of immoveable property from a third party.

Section 104 A deals with prohibition of sale, gift, exchange, mortgage or transfer of waqf property and the same reads as follows:

1. Notwithstanding anything contained in this Act or any other law for

the time being in force or any waqf deed, no person shall sell, gift exchange, mortgage or transfer any moveable or immoveable property which is a waqf property to any other person.

2. Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void ab initio.

In addition to the above enactments intended to protect the properties of Government/Institutions, a few enactments are in force providing for sufficient safeguard to protect the property viz.,

1. The A.P. Land Encroachment Act, 1905
2. The Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973
3. The Urban Land (Ceiling and Regulation) Act, 1976
4. The A.P. Land Grabbing (Prohibition) Act, 1982

From the conspectus of the Endowments Act/Wakf Act, it is abundantly clear that the Legislature has stepped in and made legislation for administration /protection of properties belonging to charitable or religious institutions, endowment, wakf etc., granted exemption from application of the provisions of the Limitation Act for recovery of possession of immoveable property or any interest from a person in possession of the properties belonging to Endowment/Wakf, as the case may be. Even assuming registration of a document is completed by strangers, the institution/wakf being a third party/stranger to the registered deed can either challenge such deed or defend its right *de hors* registration. It is in such lis the dispute on title or entitlement is decided according to law. The same principle applies to State/Central Government vis-à-vis the properties claimed by it. But by construing Section 22-A of the Act as conferring authority for prohibition of registration of documents on the details furnished by State/Authorities the Registration Department is refusing to receive much less register a document coming under Section 22-A of the Act. Section 22-A is inserted through the Amendment Act and the principle application for registration are well established.

In **M.K.Ranganathan and another Vs. Government of Madras and others**, it is held that:

"The statement of objects and reasons is certainly not admissible as an aid to the construction of a statute. But it can be referred to for the limited purpose of ascertaining the condition prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the mischief which he sought to remedy".

The statement of objects and reasons of Amendment Act,19 of 2007 mentioning the effect of **Basant Nahata**'s case(supra 4) and to overcome the illegalities pointed therein and with a view to avoiding illegal transactions of transfer of property relating to Government, Religious Charitable Institutions etc, provided for prohibition for registration of classes of documents specified therein, section 22-A of the Act is introduced. This Court is conscious that while interpreting or construing a statute/section, the Court should not perform the job of legislation. But if the statute or section presents difficulties which could not be smoothened through first principles, then the Court interprets to preserve the statute or section, by giving appropriate meaning to the words presenting difficulties.

Learned author Vepa P.Sarathi in his Interpretation of Statutes (Fifth Edition) at page 7, writes as under:

> "I am the Parliamentary Draftsman.
>
> I am undoubtedly the cause.
>
> And of half the country's litigation.
>
> I compose the country's laws."

It is further observed that:

> "But sometimes, there is obvious ambiguity in the meaning of a statute either because of the poverty of the language of draftsman or want or imagination in not providing for conceivable situations or due to an inept use of language. " Lack of legislative simplicity or clarity leads to interpretative complexity and confusion"

In ***Hilder v Dexter*, Lord Halsbury** as Lord Chancellor said:

> "I have more than once had occasion to say that in construing a statute I believe the worst person to construe is the person who is responsible for its drafting. He is very much disposed to confuse what he intended to do with the effect of the language which in fact has been employed. At the time he drafted the statute, at all events, he may have been under this impression that he had given full effect to what was intended, but he may be mistaken in construing it afterwards just because what was in his mind was what was intended, through, perhaps it was not done."

The elucidating and candid observations of Lord Halsbury aptly apply to interpretation/construction of Section 22-A of the Act. No attempt is made to discern what the draftsman of Section 22-A would have interpreted/construed the Section, but the authorities viz., Revenue, Registration, Endowment, Wakf etc., have expanded the horizons of the application of Section 22-A of the Act due to incorrect or erroneous interpretation or construction of Section 22-A of the Act. Through Amendment Act 19 of 2007, the Legislature would have never intended that to confer on any of the authorities the power of declaration of a right or claim, much less adjudication of dispute for the purpose of refusing registration to a document. Likewise, no judicial review is undertaken to conclude whether Section 22-A of the Act is a bane or boon in addressing the mischief of preventing illegal transactions or alternatively opened up flood gates for premature litigation, adjudication of rights of institutions etc. under Article 226 of the Constitution of India etc., in the writ petitions filed complaining refusal to receive or to register a document. The construction of Section 22-A by the department is not envisaged by the parent or the amending Act.

The implementation of Section 22-A of the Act and refusal to register a document from registration on concluded assumption that the properties included in the prohibitory list belong to Government etc., resulted in a spate of writ petitions.

The following refusals from registration are challenged under Article 226 of Constitution of India and found to be illegal and arbitrary by this Court.

i. Refusal to register land assigned to Ex-Serviceman though ten years period prohibiting transfer expired. (2007 (5) ALT 466)

ii. Refusal to register on the ground that there is a Government claim in Revenue records. (2010 (1) ALT 32)

iii. Refusal to register on the ground that the land is classified as AWD/DKT as per the Tahsildar's communication. (2011 (1) ALT 474)

iv. Refusal to register on the ground that the land is shown as assigned land/cart track in the revenue records and the petitioner has to obtain clearance from revenue authorities.(2011 (4) ALT 78)

v. Refusal to register on the ground that there is a claim by the Government that the land belongs to it, in the absence of notification. (2011 (4) ALT 82)

vi. Refusal to register on the ground that there is a communication by

Tahsildar showing the land in the list of Endowed Lands. (2012 (2) 647)

vii. Refusal to register on the ground that the land is shown as AWD and that there is a Notification under old Section 22-A. (2012 (3) ALT 292)

viii. Refusal to register on the ground that intimation was received form the Inspector of Wakfs that the land is owned by a Wakf. (2012(3) ALT 789)

ix. Refusal to register on the ground that the land classified as "Pagullasthalam". (2012 (4) ALT 3)

x. Refusal to register on the ground that there is a communication to the Tahsildar that the land is assigned land, within the meaning of Act 9 of 1977. (2012 (4) ALT 169)

xi. Refusal to register on the ground that the land is included in the list of Government properties, though the Pahanies of the year 1951 and the Khasra Pahani of the year 1954-55 shows the same to be patta land.(2012 (4) ALT 534)

xii. Refusal to register the land originally allotted on payment of market value in favour of Cooperative House Building Society on the ground that the same is Government land, merely on the basis of information furnished by Revenue authorities.
(2012 (4) ALT 743)

xiii. Refusal to register on the ground communication sent by the Commissioner, Endowments and Executive Officer of a Trust.
(2013(1) ALT 345)

xiv. Refusal to register on grounds such as land being assigned land/non-production of NOC from revenue authorities in relation to land assigned to Ex-servicemen and Freedom Fighters/land shown as AWD/land assigned on payment of market value being treated as prohibited non-alienable/lands claimed to be religious endowments/lands in relation to which there are dots in the RSR etc.
(2013 (1) ALT 774)

xv. Refusal to register on the ground that communication was issued by Tahsildar stating that the property belongs to Zilla Parishad-local body. (2013(2) ALT 237)

xvi. Refusal to register on the ground that the land is classified as AWD and included in the list of Governments lands furnished by the Tahsildar.

(2013 (3) ALT 168)

xvii. Refusal to register on the ground that Wakf Board (which already lost a suit) issued a communication basing on which Tahsidlar addressed a letter to the Sub-Registrar.(2013 (3) ALT 443)

xviii. Gram Panchayat seeking issuance of Section 22-A Notification on the ground that the plots are in unapproved layout.(2013(4) ALT 305)

xix. Refusal to register on the ground that there was a communication by the Commissioner, Endowments, showing the land to be pertaining to a Mutt. (2013(4) ALT 541)

xx. Refusal to register on the ground that there is a communication by the Tahsildar and that there was a notification under the old Section 22-A (2012 (4) ALT 671)

xxi. Refusal to register document on the ground of communication by Tahsildar- Land originally assigned in 1933 – prior to introduction of Non-alienation Clause on 18.06.1954. (2013 (5) ALT 202).

xxii. Refusal to register on the ground that the lands relate to Wakf-Khairathi Inam. (2013 (5) ALT 770)

xxiii. Refusal to register on the ground that the land is classified as "Gramakantak" (village site)(2014(4) ALT 238)

From the reported and unreported decisions in this behalf, this Court is constrained to take judicial notice of growing inconvenience to citizens in the registration of documents, the permeating visible and invisible corruption, suffered in silence by the citizens arbitrary and unauthorized preparation of details by the departments concerned. The net effect of these acts is failure of the rule of law and Article 300-A of the Constitution. From the statement of objects and reasons or the literal meaning or purposive meaning of Section 22-A, it can be concluded that Legislature never intended to derail the procedure or rule of law on proprietary rights of citizens vis-à-vis Government/Endowment/Wakf etc.

In **G.Satyanarayana v. Government of Andhra Pradesh** and **Raavi Satish and others v. State of Andhra Pradesh,** my learned brother Justice C.V.Nargarjuna Reddy considered all legal issues or claims of right, title etc. in land and immovable property vis-à-vis the application of Section 22-A of the Act. The

conclusions and directions in these decisions are comprehensive enough to put an end to premature writ petitions etc. However, nothing appears to have happened in mitigating the hardship to litigant public and refusal to register on assumption of illegality of transaction or property held by Government etc., is unabated. Such refusal from registration cannot be justified to mere reference to Act or Special Act. Refusal to register preceded by unilateral assumption of right and title is contrary to Article 300-A of the Constitution of India.

Article 300-A of Constitution of India reads as follows:

> Article 300-A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law**.**

Article 300-A of Constitution, not being a fundamental right, does not enable a party to challenge the validity of a law under Article 32 on the ground of contravention of Article 300-A of Constitution of India, nevertheless, the Court should so interpret a statute, if possible that the statute or a section shall not have the effect of depriving a person of his property without authority of law.

The Hon'ble Supreme Court in **DLF *Qutab Enclave Complex Educational Charitable Trust* v. State of Haryana** held that:

> "Ownership of land, jurisprudentially involves a bundle of rights one such right is the right to transfer. Such a right of ownership, having regard to Article 300-A of the Constitution cannot be taken away same by authority of law."

Before conclusion on the primacy of Article 300-A of Constitution, the observations of Apex Court in **Basant Nahata** (supra 4) are excerpted:

> "The question can be considered from another angle. A person may not have any near relative or is otherwise unable to attend the office of the Sub-Registrar or Registrar within whose jurisdictions the property is situated. He may even be out of the country. In the absence of any substantive provisions contained in a parliamentary or legislative act, he cannot be refrained from dealing with his property in any manner he likes. Such statutory interdict would be opposed to one's right of property as envisaged under Article 300-A of the Constitution."

On the touchstone of Article 300-A of the Constitution of India, it is examined whether through Section 22-A of the Act, the authorities are subverting adjudication and prohibiting registration of a class of documents on assumption that the transaction is illegal. The nature of right or a holding is firstly a fact in issue and on a

finding on this, issue of law is applied.

The words “prohibit from registration’ or “prohibited from registration” under Section 22-A of the Act are interpreted/ construed.

It is an established rule in interpretation/construction of a statute that the intention and the meaning of law are to be ascertained by viewing the whole and every part of the Statute. (See **J.C.Colquhoun v. Henry Brooks)**.

In **Vinod Kumar v. Narain Devi,** the Court, while upholding the High Court’s power to entertain a revision against an order refusing eviction under the Delhi Rent Control Act, on the ground that an “order for recovery of possession” in Section 14-A means an “order on an application for recovery of possession”, observed:

> That of two constructions that one must be preferred which would uphold the legal and constitutional validity of a provision.

In **State of Gujarat v. Raman Lal,** the Court, while holding that a Panchayat service could be a State service observed:

> A court ought not to interpret statutory provisions unless compelled by their language, in such a manner as would involve their unconstitutionality because the legislature is presumed to enact a law which does not contravene the Constitution.

In **State of Karnataka v. Hansa Corpn.,** the Karnataka Tax on entry into local areas for consumption, use or sale therein was upheld under Articles 301 and 304(a) on this principle:

> The court should, as far as possible, avoid any decision or interpretation of a statutory provision, rule or bye-law which would bring about the result of rendering the system unworkable in practice.

One part of a statute must be so construed by another, that the whole may, if possible stand and that, if it can be prevented, no clause, sentence or word shall be superfluous, void or insignificant. It is a sound general principle, in the exposition of statutes regard is paid to the policy which dictated the Act as well as to the words used in the Statute.

If any section be intricate, obscure or doubtful, the proper mode of discovering its true meaning is by comparing it with the other section(s) and finding out the sense of

one clause by the words or obvious intention of another. Interpretation of Section should ensure that every string or word ought to have its sound or meaning .

In **Maharaja Sris Chandra Nandy v. Rakhlananda Thakur**, it is held that if there are two possible interpretations, it is the duty of Court to accept the one which is more reasonable, more consistent with ordinary practice and less likely to produce impracticable results.

Further, while interpreting a section introduced through the Amendment Act, the integrity of Principal Act is preserved by the Courts. The scheme of the Act, effect of registration, reasons for striking down Section 22-A as introduced through Act 4 /1999, the provisions in Special enactments, tribunals for redressal etc., are already stated in the preceding paras and not stated again, except to refer that through special enactments, Legislature provided remedies against illegal transfer of properties and their effect on the true owner. Through special enactment, these illegal or transactions are taken care and the transactions, if are not conforming to the scheme of Act, are held as void.

The Act is concerned with registration of documents. Through the Amendment Act, 19 of 2007, Section 22-A is introduced to stem the difficulty from illegal transactions of property of State, etc through prohibition from registration.

The prohibition from registration of classes of documents as stated by Section 22-A of the Act is accepted then the prohibition is preceded by finality to the view of executive on the ownership of property and such approach is contrary to the view of the Apex Court in **Basanth Nahata**'s case (supra 4). For immediate reference, the relevant paras are excerpted:

> "Finality cannot be attached to decisions of executive when such things are in exclusive domain of judiciary as stated in State of Kerala and Others vs. Travancore Chemicals and Manufacturing Co. and Another [(1998) 8 SCC 188] observing:
>
> "13. Section 59-A enables the Government to pass an administrative order which has the effect of negating the statutory provisions of appeal, revision etc. contained in Chapter VII of the Act which would have enabled the appellate or revisional authority to decide upon questions in relation to which an order under Section 59-A is passed. Quasi-judicial or judicial determination stands replaced by the power to take an administrative decision. There is nothing in Section 59-A which debars the Government from exercising the power even after a dealer has succeeded on a question relating to the rate of tax before an appellate authority. The power under Section 59-A is so wide and unbridled that it can be exercised at any time and the decision so rendered shall be final. It may well be that the effect of this would be that such a decision may even attempt to override the

> appellate or the revisional power exercised by the High Court under Section 40 of the Act as the case may be. The section enables passing of an executive order which has the effect of subverting the scheme of a quasi-judicial and judicial resolution of the lis between the State and the dealer."
>
> We are not oblivious of the decisions of this Court laying down the proposition of law that the statute dealing with fiscal matters and / or laying down a provision or enforcing the doctrine of social justice adumbrated in the Directive Principles of State Policy as contained in Part IV of the Constitution of India ordinarily would not be interfered with by the superior courts in exercise of their power of judicial review. The Act is neither a fiscal statute nor deals with any matter falling under Part IV of the Constitution of India."

Section 22-A if interpreted as permitting prohibition of registration by reference to the details furnished by the State/ Endowment/Wakf etc., then the prohibition results in a unilateral decision by the executive or the authority, as the case may be, and amounts to assumption of ownership in favour of State/Endowment/ Wakf etc., by registration department. Further, the claim or alleged right of a citizen is denied without recourse to law. The authorities in the name of prohibiting illegal transactions cannot infringe one of the rights of ownership viz., right to transfer the property.

The interpretation/construction of the words prohibited from registration if given literal meaning, then such construction violates rule of law, for a fact is assumed in favour of Government/ Department etc., on the claim or right covered by the document. In **S.G.Jaisinghani v. Union of India,** the Hon'ble Supreme Court on the rule of law held as follows:

> "In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is,. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey- "Law of the Constitution" - Tenth Edition., Introduction ex.). "Law has reached its finest moments", stated Douglas, J. in United States v. Wunderlick 342 U.S.98, "when it has freed man from the unlimited discretion of some ruler….. Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes (1770) 4 Burr. 2528, "means sound discretion guided by law. It must be governed by rule, not by humour : it must not be arbitrary, vague and fanciful".

The Act at the stage of registration does not consider rival claims on right, title etc., of parties. Further, under the Act, the refusal from registration of a document can

be for reasons relating to registration viz., due executions, presence of parties, presentation of document within the period and other relevant and connected reasons therewith.

Effect of registration is authoritatively held by the Courts of law as confining to registration but not the transfer of property. The adjudication shall be an issue before a Court of law or Tribunal under Special Acts as, the case may be as and when a *lis* is presented.

While implementing Section 22-A of the Act, registration of document is prohibited by presuming firstly that the document attracts one circumstance or the other under Section 22-A (1) (a) to (d) and secondly it is an illegal transfer of property. The *ipse dixit* refusal for all purposes amounts to unilateral declaration of right or title by these departments in themselves.

The Legislature would not have intended to in effectuate the Principal Act viz., the Act through the Amendment Act 19 of 2007 or desired to confer on the executive to assume the role of adjudication while providing the details of properties for prohibition from registration. The Amendment Act ought not to be a source of adjudicatory power or for corrupt practices by the departments against the citizen. The incorrect assumption of authority would certainly lead to anomalous situation in operating the provisions of Principal Act (Registration Act).

The registration department/revenue department in preparing the list of property details for prohibition of registration under Section 22-A of the Act as noticed in the reported/unreported decisions, are including the details of properties without proper basis, much less without properly removing the foundation of an adjudication in respect of the same matter by an authority or Court or much less removing the claims of third parties. Such inclusion of properties in prohibition is resulting in refusal of registration of a document and proceedings under Article 226 of the Constitutional India and a finding on the entitlement or otherwise is decided in these summary proceedings.

The scheme under Section 22-A or other provisions in the Act are not comprehensive to provide for resolution of disputes under the Act, inasmuch as the remedy of appeal under the Act can at best consider various circumstances covered by Parts IV, V and VI of the Act. Certainly the appellate authority under the Act cannot take up the basis for inclusion of a property in the prohibitory list, much less

adjudicate the claims of parties. If Section 22-A is treated as an absolute prohibition for registration of documents covered by the list submitted by Endowment/Wakf/ Government, then in the considered view of this Court, the lists communicated by the departments are denying alleged proprietary right of a claimant of the property without adjudication by a competent Court/Tribunal and contrary to the procedure stipulated by law.

Act 19 of 2007 should not whittle down or render nugatory Section 17 of the Act. The mandatory nature of registration of documents covered under Section 17 and the consequence of non-registration under Section 49 go to the very fundamental purposes of the Act. Without enquiry, adjudication, it is now understood by the respondents that the Sub-Registrar is given power to refuse registration of a document basing on the list submitted by the above authorities. For the weighty reasons and illustration given above, such refusal can be termed as unconstitutional.

Apart from the hardship or inconvenience noticed in total prohibition to registration of documents of classes of cases stated under Section 22-A of the Act, the Court is required to ensure every word in Constitution of India, other Sections of the Principal Act, different statutes on transfer of property, special acts are operated.

In the considered view of this Court, the information received from State Government/Endowments/Wakf etc., under Section 22-A of the Act is in the nature of caveat of interest of State/Endowment/ Wakf in the property covered by a document presented for registration. Caveat as defined in Random House Webster's Dictionary of the law is as follows:

1. A warning or caution: admonition.
2. In certain legal contexts, a formal notice of interest in a matter or property for example, a notice to a Court of Public Officer to suspend a certain proceeding until the notifier is given a hearing.

In situations like this, in the considered view of this Court, meaningful interpretation of words "prohibited from registration" and legal requirement of Sections 17 and 49 should be attempted. By such interpretation of Amendment Act, the integrity or wholesomeness of principal Act is preserved by the Court. This Court having regard to the mandatory nature of Section 17 of the Act and give life to the prohibition contemplated under Section

22-A of the Act considers the case on hand to interpret the relevant provisions on the principle of conflation of Sections 17 and 22-A of the Act.

> **"Conflation means: the process or result of fusing items into one entity; fusion; amalgamation".**

The registration of a document is an endorsement by the department under the Act and the registration of document serves as a notice to the concerned under the Transfer of Property Act.

Section 22-A of the Act has to be interpreted in a way to adhere to Rule of law and the scope of principal Act read with Special Acts. Through special statutes, the prohibition of very transfer of property belonging to State/Endowment/Wakf is already provided and protected and the mere registration neither creates nor takes away from these entities the proprietary rights it holds or claims.

Therefore, Section 22-A shall be interpreted and operated by bringing a cordant note of Section 17(1) between Section 22-A of the Act. The registration endorsement of document covered by Section 22-A is completed by including the details received by the registration department on the subject property covered by such document from State/Endowment/Wakf etc. The inclusion of these details in registration endorsement puts the purchaser on notice of such claims and the principle 'purchaser beware' is attracted. Through such interpretation/construction, harmonious result is attained of the Act, Special Acts, Rule of Law and Article 300-A of the Constitution of India. To wit the details of property received under Section 22-A of the Act, they are made part of registration. Such interpretation in my view puts end to several anomalies in registration of documents and controls summary enquiry into issues at the stage of registration. Finally, it is needless to observe that it is for the party concerned or institution if need be to work out legal remedies in accordance with law. Point No.ii is answered accordingly.

<u>Conclusions and directions</u>:

1. For the reasons stated supra, this Court is in agreement with the ratio laid down in **Guntur City Housing Construction Cooperative Society'**s (supra 5) and **P.Srinivasulu'**s case (supra 6) that a notification is not required for the prohibition contemplated under Section 22-A(1) (a) to (d) of the Act and a notification under Section 22-A (2) is required for the purposes of Section 22-A(1) (e) of the Act.

2. Refusal to receive or take up a document presented for registration amounts to abdication of functions assigned to the Registration Department under the Act.

3. The Act strikes at the documents, but not at the transactions. Mere act of registration on legal maxim "*nemo dat quod non habet*" does not transfer or create a right in favour of a party than what the vendor or executant possesses.

4. Total prohibition from registration of a document results in anomalous situation or in the working of the Registration Act. Without adjudication of an alleged fact-in-issue contrary to other applicable enactments on Transfer of Property amounts to adjudication of disputed claims through executive fiat and would be contrary to Article 300-A of Constitution of India. Therefore, the words 'prohibition for registration' or 'prohibited from registration' are interpreted or construed to mean that the registration and the caveat of interest or claim for prohibition received by the Registration Department from Government/ Endowment/Wakf etc. under Section 22-A (1) and (2) of the Act are endorsed on the document by the Registration Department, as the case may be. To wit for giving effect to Section 17(1) and Section 22-A of the Act, the Registration Department while considering a document attracting Section 22-A of the Act, registers and endorses the details or caveat of interest on the property, received from Government/Endowment/Wakf etc. The registration along with such endorsement on the document achieves the object of Prohibition of Registration of a document under Section 22-A of the Act and puts the purchaser or beneficiary on notice of such claims.

5. The notification, even if published and forwarded to Registration Department, has the same meaning and purpose as interpreted for Section 22-A (1) (a) to ((d) of the Act and the details are taken note in the same manner by including the details of notification in the registration.

6. The Government/Endowment/Wakf, as the case may be, is under legal

obligation to furnish comprehensive details of properties held by these entities for all the purposes of Section 22-A (1) of the Act. The State/Departments shall follow the procedure prescribed in G.O.Ms.No.1248 Revenue (Reg.I) Department dated 26.09.2007 and furnish full details of properties to Registration Department within a period of eight (8) weeks from the date of receipt of
copy of this order to the Registration Department.

The communication impugned can be treated as an illustrative form of sufficient communication of details of property and the respondents are directed to further develop and implement a uniform procedure for forwarding details by the State/Departments under Section 22-A of the Act to Registration Department.

7. The authorities under the Endowment Act/Wakf Act are Trustees/Custodians of properties held by the institutions, and unfortunately feel satisfied with literal performance of functions by communicating bare minimum details to the registration department. The lack of effort in protecting the properties held by institutions is matter of introspection and necessary steps are taken in accordance with law on case to case basis. The recourse to Section 22-A by the Department is not an effective step in protecting the properties held by institutions under the Endowment Act/ Wakf .

The Endowment and Wakf Departments are further directed to make available the details of various properties claimed or held by the institutions on the websites operated by the Department within a period of two months from receipt of a copy of this order.

POINT No.iii:

Admittedly as on date the notification dated 15.09.1983 under the Inams (Abolition and Conversion into Ryotwari) Act, 1956 of the Inam Deputy Tahsildar, the interest of Mutt is *prima facie* established and in spite of order dated 15.09.1983 of Inams Deputy Tahsildar,

if the petitioners so desire, they are at liberty to present the documents for registration before the Joint Registrar/Sub Registrar/ respondents 3, 4, 5 respectively, for the subject matter of the writ petitions and the Joint Registrar/Sub-

Registrar is directed to receive the documents and process the same for registration in accordance with conclusions and directions of instant order. The Joint Registrar/Sub-Registrar includes the details received from the 5th respondent in the event of the documents taken up for registration.

Writ petitions are ordered accordingly. No order as to costs.

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

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S.V.BHATT,J

Date: 01.06.2015.

L.R. copy to be marked.

B/o.

Stp