

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

**MONDAY THE THIRTEENTH DAY OF APRIL
TWO THOUSAND AND FIFTEEN**

HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION NO. 5178 OF 2015

Between:

B. Kumari ... Petitioner

V/s.

State of Andhra Pradesh

Represented by its Prl.Secretary

Revenue Department,

AP Secretariat,

Hyderabad & Ors. ... Respondents

Counsel for the Petitioner : Sri K.S. Murthy

Counsel for the Respondents : GP for Revenue [AP]

The court made the following : [order follows]

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ORDER:

The petitioner prays for mandamus, declaring the action of respondents 2 and 3 in including land in survey No. 192/1, Kothapet village, Vetapalem Mandal, Prakasam district in prohibitory list as illegal and constitutional and consequently direct the authorities to delete survey No.192/1, Kothapet village, Vetapalem Mandal, Prakasam district from prohibitory list and enable the petitioner through appropriate declaration to present the document for registration before third respondent and third respondent considers such document for registration without reference to inclusion in the prohibitory list.

2. The petitioner claims right and title to petition land through registered sale deed dated 20/06/1980. The petitioner purchased the property from Beeraka Venkata Subbayya, the original owner of the property. The petitioner improved the property by constructing a small house in a portion of the property and the house is let out to third parties. For the purpose of present writ petition the ancillary details as to the enjoyment etc. are not necessary and accordingly not referred to in the order though stated in great deal in the affidavit.

3. The case of petitioner is that the petition land was and is not assigned land particularly with the condition of non-alienability. On the other hand, the petitioner relies upon registered document No. 2590/1942 and 504/1946 wherein reference to transactions taking place as early as 1932 are made and these transactions prima facie show that the petitioner's land is patta land. The third respondent cannot include the petition land in the prohibitory list and the petition land does not attract any of the contingencies stated in Section 22-A of the Registration Act.

4. Section 22-A of the Registration Act, which 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)."

5. This Court on 30/03/2014 ordered notice before admission and the third respondent filed counter-affidavit for himself and on behalf of second respondent. According to third respondent, fair land register of Kothapet village contains grant of an extent of Ac:2-54 cents in survey No. 192/1 in favour Palepu Ramanjaneylu, Vadiseti Raghuvulu and Daggubati Ramaiah. However, it is stated that the deed of assignment is not available in the office records. The third respondent admits sale transactions stated in the writ affidavit still justifies inclusion of petition land in prohibitory list on the ground that the

classification in RSR is shown as 'assessed waste' and accordingly the petition land is included in prohibitory list. The third respondent reiterates that the original record is not available and the R.S.R. is brittle for production.

6. From the above reply of third respondent narrows down the controversy and the short question for consideration is whether the third respondent is justified in including petition land in the prohibitory list and the fourth respondent refusing to receive and register the document presented for the petition land is valid and tenable.

7. Section 22-A of the Registration Act confers power on the fourth respondent to prohibit registration of a few types of documents. The prohibitory lists though operated by the fourth respondent, the details are furnished by second and third respondents. The burden is on the second and third respondents to firstly show that particular property attracts one or the other circumstances stated in Section 22-A of the Registration Act. In the case on hand, admittedly the second and third respondents by reference to available record are not in a position to substantiate inclusion of petition land in the prohibitory list. On the other hand, the reply filed by the third respondent goes to show that the petition land has been treated as 'private patta land' as early as 1942-43 and classification of petition as 'assessed waste' in R.S.R. is the basis for inclusion of petition land in the prohibitory list. In the considered view of this Court, the inclusion of petition land in the prohibitory list is arbitrary, illegal and unconstitutional. The second and third respondent failed to bring the case on hand within the four corners of Section 22-A of Registration Act to sustain

inclusion in prohibitory list.

8. The writ petition is ordered by giving liberty to the petitioner to present the document for registration for the property in survey No. 192/1, Kothapet, Vetapalem Mandal, Prakasam district before the fourth respondent and the fourth respondent is directed to receive and consider the document so presented for registration without reference to inclusion of petition land in the prohibitory list. It is needless to observe that mere registration does not confer title on the petitioner or infringes the right of respondents if any. But refusal to receive and register the document certainly amounts to refusal to exercise jurisdiction conferred on the authority by the Registration Act.

9. The writ petition is ordered. No order as to costs.

10. As a sequel, Miscellaneous Petitions if any, pending in this writ petition shall stand closed.

JUSTICE S.V. BHATT.

13/04/2015

I s L

HONOURABLE SRI JUSTICE S.V. BHATT

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