

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.549 OF 2015

ORDER:

Heard Sri A.Ravinder, learned counsel for the petitioner.

This Court issued notice to learned Advocate General having regard to the importance of legal question considered for decision.

The petitioner prays for Mandamus declaring letter No.N1/10871/2014-1 dated 06.05.2014 prohibiting registration of agricultural land in an extent of Ac.5-60 cents in Sy.No.75 and Ac.2-57 cents in Sy.No.79 of Chennakkapally Village, Gudivemula Mandal, Kurnool District, as illegal, without authority and arbitrary. The petitioner prays for a further direction to receive documents for registration for survey numbers referred to above.

The issue arises under Section 22-A(1) of the Registration Act, 1908 (for short 'the Act').

The impugned communication reads as follows:

"I invite to the clarification issued in the reference 1st cited for point No.5 raised by this office.

In this regard, I am to inform that the Assistant Commissioner, Endowments Department, Kurnool has furnished the revised lists of properties owned by as many as (3191) Charitable and Hindu Religious Institutions and Endowments containing 2231 pages in Annexure-III for the purpose of prohibition of registration under Section 22A(1)(c) of the Registration Act (A.P. Amendment) Act – 19/2007.

However, the list furnished the enclosed to this is not exhaustive and there are certain items of the property which need to be verified by the Deputy Commissioners and Assistant Commissioners before they are sent at their jurisdiction level.

I would appreciate for your kind instructions to upload the above properties in the central server and arrange to prohibit registration of documents over the said properties u/Sec.22A(1)(c) of the Registration (A.P. Amendment) Act – 19/2007.

The case of petitioner is that the petitioner a company incorporated under the Companies Act, 1956. The petitioner manufactures and does business in inorganic

chemicals. The petitioner intended to purchase an extent of Ac.5-60 cents in Sy.No.75 and Ac.2-57 cents in Sy.No.79 of Chennakkapally Village, Gudivemula Mandal, Kurnool District (for short 'subject matter') from M/s Arya Lakshmi Steel Private Limited. The case of petitioner is that through registered document dated 20.11.2008 M/s Arya Lakshmi Steel Private Limited purchased the subject matter from Mulla Mohd. Hanif. The subject matter is stated to be in the long and continuous possession of M/s Arya Lakshmi Steel Private Limited and its predecessors-in-title Mulla Mohd. Hanif. The subject matter of the writ petition is a private patta land and does not belong to temple or a religious institution. The Commissioner, Endowments Department/2nd respondent does not have jurisdiction to address communication to 3rd respondent to issue further instructions to his subordinates to prohibit registration of document covering the subject lands. The 2nd respondent cannot under the provisions of the Act direct the 3rd and 5th respondents to prohibit registration of transaction in respect of the lands alleged to have been identified by them. The definite case of petitioner is that the impugned communication and the refusal by 5th respondent are illegal and unauthorized, more particularly for want of a notification issued under Section 22-A(2) of the Act. There is no procedure for furnishing list of lands which are claimed as properties belonging to religious endowment. The letter dated 06.05.2014 issued by 2nd respondent to 3rd respondent is liable to be set aside and the 5th respondent be directed to receive and register the documents for the subject property.

The petitioner relies upon the order in W.P.No.27230 of 2012 dated 07.09.2012 of this Court on the requirement of publishing a notification under Section 22-A(2) of the Act as mandatory for prohibiting registration of a document.

The 4th respondent/Assistant Commissioner filed counter affidavit opposing the writ prayer with the following objections:

"It is denied that Mullah Mohd. Hanif is the owner and possessor of subject matter. The registered document dated 20.11.2008 is not legal and binding and the parties to these documents do not have semblance of right or title over the subject matter. The 4th respondent further avers that Sri Muniranga Swamy Temple is situated at Chennakkapalli Village. The subject matter (Sy.No.79) is owned by the deity as

absolute owner. The record of rights reflects the name of institution as owner. The latest adangal for Fasli 1424 reflects the temple as pattadar and in possession of the subject matter. Sri Sunkalamma Devatha Temple is located in Chennakkapalli Village. Sy.No.75 of subject matter is held by the temple. The names of temple as pattadar etc., are recorded in record of rights, adangal etc. The details of properties held by the institution are reflected in the record of holdings prepared several decades ago. The verification and reconciliation of revenue record confirmed the holding of subject matter by these institutions”.

The 4th respondent further avers that under Section 22-A(1C) of the Act, the endowments department communicates the list of properties held by the religious charitable institutions. The

3rd respondent makes available the information received from the Commissioner to the Sub-Registrars to prohibit registration of documents held or owned by religious/charitable institutions. It is the case of 4th respondent that for the purpose of sending the list

for prohibiting registration by the Registration Department, no notification under Section 22-A(2) of the Act is required. By placing reliance upon the documents appended to counter affidavit, respondent No.4 contends that the subject matter is the property belonging to religious endowment. The sale or purchase of such land is primarily prohibited under the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 and is void.

The 4th respondent contends that the writ prayer, both in law and fact, is not maintainable.

The issue in prohibiting registration is tenable in fact or law. *Prima facie*, from the material available on record it appears that the institution has right on the subject matter. Be that as it may, whether total prohibition to register under Section 22-A(2) of the Act is legal.

This Court in W.P.No.24587 of 2014 and batch considered the following issues:

- 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?
- 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?

The issues in the batch of cases as well as the present writ petition are one and the same.

However, having regard to the conclusion and directions issued in the above batch of writ petitions, the present writ petition is disposed of as follows:

“If the petitioner so desires, it is at liberty to present the document for registration before the Sub-Registrar/ respondent No.5 for the subject matter of the writ petition and the Sub-Registrar is directed to receive the document and process the same for registration in accordance with conclusions and directions of order in W.P.No.24587 of 2014 and batch. The Sub-Registrar includes the details received from the Mandal Revenue Officer concerned, in the event the document is taken up for registration”.

There shall be no order as to costs.

S.V.BHATT, J

1st June, 2015

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