

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.17629 of 2015

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the Respondent No.3/Sub Registrar in withholding the registration of sale-deeds vide bearing Nos.P111/2013 dated 15.07.2013 and P103/2013 dated 13.06.2013 by endorsing that they are in the list of prohibited properties and Section 5 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, prohibits registration of the said lands, is illegal, arbitrary and opposed to the provisions of the Registration Act and consequently direct the 3rd respondent to release registered documents.

2) The petitioner herein, claims to have purchased land to an extent of Ac.1.50 cents in Survey No.187/4 situated at Desapatrunipalem village, Parvada Mandal, Visakhapatnam District from Rebaka Appanna vide registered sale deed dated 11.11.2005. He also claims to have purchased a house plot to an extent of 122 sq. yards in Survey No.80/4 in the same village from Nadupuru Appayamma vide sale deed dated 14.12.2011 for a valuable sale consideration. Prior to the purchase, the petitioner got the proceedings issued by the Tahasildar, Parvada Mandal, Paravada, Visakhapatnam District, informing the Sub-Registrar, Sabbavaram dated 13.07.2004, certifying that both the properties purchased by

the petitioner are private patta lands. It is averred in the affidavit that when the petitioner approached the Sub-Registrar of Lankalapalem for further sale transaction of the lands to an extent of 50.66 and 50.11 sq. yards in favour of Mohammed Basheer, the Sub-Registrar is said to have rejected the same on 13.06.2013 in pursuance of the letter dated 04.07.2013 issued by the Tahasildar, Parawada, on the ground that the said properties were in the prohibitory list, which was communicated to him by the Revenue Divisional Officer, Visakhapatnam. Aggrieved by the said endorsement dated 13.06.2013, the petitioner preferred appeals No.11 and 12 of 2013 before the District Registrar under Section 72 of the Act. Both the appeals were dismissed on 27.11.2013. Challenging the same, the petitioner filed W.P.Nos.4271 and 4293 of 2014 before this Hon'ble Court. By a common order dated 25.04.2014, both the Writ Petitions were disposed of holding as under :-

"6. Having regard to the submissions made by both counsels, the Writ Petitions are disposed of directing the Mandal Revenue Officer, parvada Mandal, Parvada, Visakhapatnam District (5th respondent), to verify the genuineness of the earlier certificates issued and if the certificates issued are genuine, then he should communicate his decision to the Sub-Registrar, Lankalapalem, Visakhapatnam District (3rd respondent) and also to the petitioner. If, according to the Mandal Revenue Officer, the status of the land as per the revenue records is not a private patta land, then the same information be furnished to the petitioner. Such exercise shall be completed within a period of four (4) weeks. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition, shall stand closed."

3) It is stated that inspite of the orders passed by this Court, no orders are passed by 5th respondent. As such, Contempt Case No.1450 of 2014 came to be filed. But, however, the same was closed due to death of the Tahasildar. Later the successor to the said post passed the impugned endorsement dated 28.01.2015 stating that no Registration Officer shall accept for registration any document relating to transfer of or the creation of any interest therein. Having regard to the above no registration has been taken up on the ground that the land is an assigned land. It is further said that the pattadars have violated Section 3(1) of the Act by selling away the land assigned to them under landless poor category. Challenging the same, the present Writ Petition came to be filed.

4) The main ground urged by the learned counsel for the petitioner is that though there is enough evidence on record to show that it is a patta land, the Sub-Registrar erred in rejecting the document for registration. It is his case that the petitioner's vendor's father got the said land under patta No.946 in the year 1960 and since then the family has been in possession and enjoyment over the same. It is stated that mere entry in the prohibited list would not constitute proof of title in favour of the Government without any documentary evidence. It is also urged that enlisting a property under prohibitory list, by the 4th respondent, does not by itself deny the Sub-Registrar from proceeding further with the

registration. He relies upon letters dated 13.07.2004 and 25.06.2004 written by the Tahasildar to show that there is no clarity as to whether it is a Government land or a private land.

5) A counter came to be filed by R-5/Tahasildar, Paravada Mandal, disputing the averments made in the affidavit filed in support of the Writ Petition. It is said that the land admeasuring Ac.3.90 cts., in Sy.No.80/4 is classified as Banjar and D-patta was issued in favour of Nadupuri Appayamma W/o. Gurayya who got the same incorporated in V.A.No.10(1) vide patta No.887. In respect of the land admeasuring Ac.4.35 in S.No.187/4, the same was also classified as Banjar and D-patta was issued in favour of Rebaka Appanna who got the same incorporated in V.A. No.10(1) vide patta No.946. It is stated that as per Section 5(1) of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the District Collector or any other officer not below the rank of Mandal Revenue Officer can authorize him in this behalf, to 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. It is urged that in consideration to the above rule position and in accordance with the instructions issued by the District Collector, Visakhapatnam, the list of lands assigned were furnished to the Sub-Registrar, Lankelapalem. It is also stated that the allegations of purchase of

land by the petitioner by way of registered sale deed is contrary to law since Section 3(2) of the Act restricts transfer of any assigned land and no person shall acquire any assigned land either by purchase, gift, lease, mortgage, exchange or otherwise. In view of Section 3(3) of the Act he submits that any transfer or acquisition made in contravention of the provisions of sub section (1) or sub section (2) shall be deemed to be null and void. Since the entire transaction is contrary to the provisions of the Act he submits that the Sub-Registrar was right in refusing to register.

6) A reply came to be filed by the Writ Petitioner reiterating the averments made in the affidavit filed in support of the Writ Petition with regard to purchase of the property by way of registered sale deeds and entries made in the records. It is further submitted in the reply that the Sy.No.187/4 of Desapatrunipalem village is classified as Zeroity land and not assigned/Government land. In view of the fact that number of transactions took place in respect of the said land, it is presumed that the land does not vest with the Government.

7) To proceed further, it would be useful to refer to the endorsement dated 28.01.2015, which is the subject matter of challenge in the Writ Petition. The relevant portion of the endorsement dated 28.01.2015 issued by the office of Tahasildar, Paravada, reads as under:-

"It is to inform you that the Hon'ble High Court, A.P., High Court, Hyderabad has passed common order in Writ Petition Nos.4271 & 4293 of 2014 on 25.04.2014 duly disposed and directed the Mandal Revenue Officer, Parawada Mandal to verify the genuineness of the earlier certificates issued and if the certificates issued are genuine, then should communicate the decision to the Sub Registrar, Lankelapalem and also to the petitioner. If the status of the land as per the revenue records is not a private patta land, then the same information should be furnished to the petitioner.

As per the records available in this office, the land measuring an extent of Ac.3-90 in S.No.80/4 is classified as Banjar and D-patta was issued in favodur of Nadupuri Appayamma W/o.Gurayya and incorporated the same in V.A.No.10(1) vide patta No.887 and the land measuring an extent of Ac.4035 in S.No.187/4 is classified as Banjar and D-patta was issued in favour of Rebaka Appanna and incorporated the same in V.A.No.10(1) vide patta No.946.

The following are the terms and conditions of Assignment Act.

1. Lands assigned shall be heritable but not alienable.
2. Lands assigned shall be brought under cultivation within three years.
3. No land tax shall be collected for the first three years except for the extent, if any, which has already been brought under cultivation. Water rate shall, however be charged if the lands are irrigated with Government water; and
4. Cultivation should be by the assignee or the members of his family or with hired labour under the supervision of himself or a member of his family.
5. Sec3(1) of the Act prohibits transfer of any land assigned to a landless poor person by way of sale, gift, mortgage, exchange, lease or otherwise and no right or title in such assigned land shall vest in any person acquiring the land by such transfer which transaction shall be deemed never to have taken place.

As per Section 5 of the A.P. Assigned Lands (Prohibiton of Trasnfers) Act, 1977 (Act No.9 of 1977), notwithstanding anything in the Registration Act on or after commencement of this Act, no regisdtering officer shall accept for registration of any document relating to the transfer of or the creation of any interest in. Hence the registration has not taken up as the land is Assignment land.

The pattadars have also violated the Sec.3(1) of the Act by selling away the assignment land which was assignment to them under Landless poor category."

8) On 18.06.2015, while issuing notice, this Court observed that the Tahasildar, Parawada Mandal has merely paid lip service to the order passed by this Court in W.P.Nos.4271 and 4293 of 2014 and there is no mention of the earlier certificate which was directed to be verified. The orders passed by this Court in W.P.No.4271 and 4293 of 2014 show that this Court directed the Mandal Revenue Officer, Parawada to verify the genuineness of the earlier certificates issued and if the certificates are genuine then he should communicate his decision to the Sub-Registrar, Lankelapalem, Visakhapatnam District and also to the petitioner. It has been held that if according to the M.R.O., the status of the land as per revenue records is not a private patta land, then the said information shall be furnished to the petitioner. The said two certificates which are sought to be verified were issued in proceedings Rc.No.16204 SA dt:13.07.2004 and Rc.No.144/04/SA dated 25.06.2004 in respect of two properties, which are subject matter of dispute in the Writ Petition. But the impugned endorsement does not anywhere indicate verification of these two documents except extracting the provisions of the A.P. Assigned Lands (Prohibition of Transfers) Act and then holding that the pattadars have violated Section 3(1) of the Act.

9) Insofar as the document No.16204 SA dated 13.07.2004 is concerned, the M.R.O., Paravada has categorically held that the lands

in Sy.No.187/4 measuring Ac.4.35 cents of Desapatrunipalem village of Paravada Mandal stands registered as Ryotwari dry in the name of Sri Rebaka Appanna under Patta No.946. It was stated in the said letter that it is neither an assigned land nor a Government land and that it would not attract the provisions of A.P. Agricultural Land Ceiling Act, 1973. Insofar as the letter dated 25.06.2004 is concerned, the Mandal Revenue Officer, Paravada informed the Sub-Registrar, Sabbavaram that the lands in Sy.No.80/4 admeasuring Ac.3.90 cents of Desapatrunipalem village, Paravada Mandal were registered as Ryotwari dry land in village records in the name of Nadupuru Appayamma under Patta No.887 and that they are neither assigned lands nor Government lands and that they will not attract the provisions of the A.P. Land Ceiling Act, 1973.

10) From the above two letters, which were addressed to the Sub-Registrar, Sabbavaram, it is clear that the lands are neither Government lands nor assigned lands. Since there was an objection in registering the same, this Court directed the Tahasildar, Parawada, to verify the genuineness of these two certificates and then communicate the same to the Sub-Registrar. But the endorsement is silent as to the genuineness of the said certificates. On the other hand, the endorsement states that the lands covered under these two certificate numbers are Banjar lands and D-form pattas were issued in favour of Nadupuri Appayamma and Rebaka Appanna, which

clearly indicate that the Tahasildar, Paravada has not strictly complied with the order passed by this Court. Even in the counter filed by the 5th respondent there is no reference to the verification of genuineness of these two certificates. Except reiterating the contents of the endorsement dated 28.01.2015, nothing relevant has been referred to.

11) It is to be noted that the petitioner claims to have purchased land basing on the letters issued by the Tahasildar, Paravada dated 25.06.2004 and 13.07.2004, which fact is not specifically denied in the counter. It is also to be noted that the impugned endorsements, which is subject matter of challenge in the present Writ Petition, does not fulfill the requirement laid down by this Court in W.P.Nos.4271 of 2014 and 4293 of 2014, wherein this Court directed the Tahasildar, Paravada to verify the genuineness of the two certificates. That being the position the impugned endorsement has to go.

12) However, in the affidavit filed in support of the additional counter, it has been stated that the property has already been declared in the prohibitory list. Hence, it is urged that the petitioner has to avail the remedy available under the Act in terms of the Judgment of the Full Bench of this Court.

13) It is to be noted that there is no dispute with regard to proposition of law laid down in **Suraj Lamp and Industries Private Limited v. State of Haryana**¹. In fact the said judgment was also referred to by the Full Bench of this Court in **Vinjamuri Rajagopalachari and others v. State of Andhra Pradesh, represented by Principal Secretary, Revenue Department, Hyderabad and others**². While referring to the said judgment, the Full Bench has laid down that if there is any dispute with regard to property, which is mentioned in the prohibitory list, the proper course for them is to approach the District Collector by making a representation for deletion of the same from the list or to file an appeal against such proposal or make a representation to the Committee to be constituted. Since the Committee is not constituted till date, the petitioner can also make representation either to the District Collector or file an appeal for deletion of the said property from the prohibited list.

14) In view of the above circumstances, the Writ Petition is allowed by setting aside the impugned endorsement dated 28.01.2015. The petitioner shall present or represent the document for registration before the Sub-Registrar, Sabbavaram for registration in which event the authority shall process them in accordance with the earlier order of this Court in W.P.Nos.4271 of 2014 and 4293 of

¹ 2012(1) ALD 92 Supreme court

² 2016(1) ALT 550

2014, after hearing the petitioner. Incase if the document is not to be registered, a reasoned order shall be passed communicating a copy of the same to the writ petitioner. Thereafter the Writ Petitioner shall pursue the legal remedies available under law. No costs. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:16.12.2016
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