

The Hon'ble Sri Justice M.S.Ramachandra Rao

Writ Petition No.10045 of 2017

Dated 27.11.2017

Order:

1. Heard the learned Counsel for the petitioners and the learned Government Pleader for Assignments (AP) appearing for the respondents.

2. The petitioners' case is that the subject land was assigned prior to 1954; that the clause prohibiting alienation does not exist in the assignment deed; that therefore, respondent No.3 cannot refuse to register the document presented by them in respect thereof.

3. The learned Counsel for the petitioners placed reliance on Order dated 05-12-2013 of respondent No.5 specifically holding that the subject land was assigned prior to 1954; that there is no condition of non-alienation prescribed in the assignment deed; and G.O.Ms.No.1142, dated 18-06-1954, which introduced the condition of non-alienability, has no application to the same. He submits that G.O.Ms.No.215 Revenue (Assn.I) Dept., dated 13-05-2016 issued by respondent No.1 including the subject land also cannot be sustained for the aforesaid reason.

4. The learned Government Pleader for Assignments (AP), however, relies on the counter-affidavit filed by respondent No.6 stating that the subject land is included in the lands notified *vide* G.O.Ms.No.215, dated 13-05-2016, and that the petitioner, therefore, ought to have availed the remedy of approaching the Committee of

Government Officials as directed in the full Bench Judgment, dated 23-12-2015, of this Court in WA.No.343 of 2015.

5. Once the assignment in question is held to be prior to 1954 and there is no condition prohibiting alienation in the assignment deed, G.O.Ms.No.1142, dated 18-06-1954, which, for the first time, introduced the condition of non-alienability of the assigned lands, would have no application.

6. In the Order dated 13-05-2016, respondent No.5 categorically held that there is no prohibition of alienation in respect of the subject land. Consequently, its inclusion in the list notified under Section 22-A (1) (e) of the Registration Act, 1908, *vide* G.O.Ms.No.215 dated 13-05-2016, is clearly illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India.

7. As regards the Full Bench Judgment in Writ Appeal No.343 of 2015, SLP(CC).No.8917 of 2016 has been filed before the Supreme Court, which directed registration of the lands, though, subject to the outcome of the SLP. In the present case, since, admittedly, the subject land can be alienated, the judgment of the Full Bench does not come in the way of the petitioners in any manner.

8. Accordingly, the Writ Petition is allowed with costs of Rs.5,000/- to be paid by respondent No.1 to the petitioners. Respondent No.3 is directed not only to furnish the market value of the subject land to the petitioners but also to register the documents presented by them in respect of the subject land within six weeks and without reference to G.O.Ms. 215, dated 13-05-2016.

9. As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(M.S.Ramachandra Rao, J)

Dt: 27th November, 2017
LUR

