

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.16230 of 2011

ORDER:

Petitioners have filed this Writ Petition questioning the proceedings dt.07-03-2011 of 1st respondent (Sub-Registrar of Assurances, Satyavedu, Chittoor District).

2. Petitioners purchased an extent of Ac.456.46 cts in Sy. Nos.75 and 84 of Padiri Kuppam village of Satyavedu Mandal, Chittoor District from the 4th respondent pursuant to a decision rendered in T.A.No.24 of 2007 dt.09-08-2010 and in D.R.C.No.329 of 2010 dt.10-01-2011 of the Debt Recovery Tribunal-II, Chennai in favour of Indian Overseas Bank, wherein 4th respondent, by way of deed of assignment was assigned the said decretal debt by the said bank. The purchase was in a public auction process for a valid consideration of Rs.1,08,35,510/- under Sale Certificate dt.10-02-2011. The property was owned and possessed by the predecessor in title of the predecessors under various registered sale deeds from 1987-89 registered on the file of 1st respondent.

3. Petitioners contends that the land is a private patta land and was not subject matter of any case under A.P. Land Reforms (Ceiling and Agricultural Holdings) Act, 1973 and was jointly owned and possessed by 16 persons who are named in Ex.A-56 in O.S.No.19 of 1971 on the file of the Subordinate Judge, Tirupathi. After obtaining the Sale Certificate, 1st petitioner and another sought

information from 1st respondent under the Right to Information Act, 2005 seeking market value of the said lands for the purpose of registration under the provisions of the Registration Act, 2008.

4. The 1st respondent then issued the impugned proceedings dt.07-03-2011 stating that the land in Sy. Nos.75 and 84 of Padiri Kuppa revenue village “belongs to forest area”, that there is no market value for this land and that they are not doing any registration for Government lands, Endowment land, D.K.T. land as per G.O.Ms.No.786 Revenue Department dt.09-11-1999 and letter No.G1/28081/02 dt.25-02-2003 given by the Inspector General for Registration and Stamps, Andhra Pradesh, vide Memo No.12151/Regn (1) dt.25-07-2003.

5. Petitioners contend that the respondents are under the wrong notion that the land “belongs to forest” even though it is private patta land and the 1st respondent cannot be allowed to refuse registration on the above pretext. It is also stated that the action of the 1st respondent is *mala fide* and that there is no substantial proof that the land is forest land.

6. The 1st respondent filed a counter stating that the Tahsildar, Varayyapalem addressed a letter No.Toc.A/299/1989 dt.18-05-2011 enclosing a list of Government lands including Sy. Nos.75 and 84 showing them a ‘adavi poramboke’ and asking 1st respondent not to entertain any sale/mortgage transactions in respect

of the said land. It was denied that the subject land is private patta land as alleged by the petitioners. Reference is also made to Section 22-A introduced by Section 22-A of the Registration Act, 1908 introduced by A.P.Act 19/2007 w.e.f. 20-06-2007 and in particular, clause (b) of sub Section (1) of Section 22-A. It is further stated that the petitioners did not submit any Sale Certificate before 1st respondent and without doing so, they filed the Writ Petition.

7. On 29-07-2011, this Court felt that the District Collector-cum-Magistrate, Chittoor as well as the Divisional Forest Officer, Chittoor were necessary parties and suo motu impleaded them.

8. Thereafter, the Divisional Forest Officer, Chittoor East (WL) Division, issued instructions to the Forest Range Officer, Satyavedu and Sub Divisional Forest Officer, Tirupati for verifying the existing notifications under different Sections of the Forest Conservation Act, 1980 and to certify the legal status of the Sy. Nos.75 and 84 of Padiri Kuppam village by proceedings Rc.No.Court Case/2013/D dt.10-09-2013.

9. A joint inspection was then conducted on 19-06-2014 by the Forest Range Officer, Satyavedu and Sub Divisional Forest Officer, Tirupati. After looking into the gazette Notification issued under Section 15 of the AP (Forest) Act, 1967 vide G.O.Ms.No.1386 Food and Agriculture (Forest-III), dt.29-09-1972 as well as the village map, village accounts and adangal of the Padiri Kuppam village

produced by the revenue officials, survey was done and it was concluded that Sy. Nos.75 and 84 of Padiri Kuppam village were situated outside the Vanellore reserve forest of Satyavedu range.

10. Thus, it is clear that the land in Sy. Nos.75 and 84 is not part of the Vanellore reserve forest of Satyavedu range. It is also not the case of the forest department that it is “forest land” of any other category.

11. However, the District Collector filed a counter affidavit stating that the land in Sy.Nos.75 and 84 is ‘*adavi poramboke*’, the word ‘*adavi*’ denoting ‘forest’ and the word ‘*poramboke*’ denoting ‘communal land’. How this classification could have been done though the forest department asserts that it is not a “forest” is beyond comprehension. A further statement is made that the land was classified as assessed waste land (AWD).

12. Learned counsel for the petitioner has seriously refuted the statements of the District Collector, Chittoor and contended that when 1st respondent has declined registration on the ground that the subject land is “forest land” and when the forest department has clarified that it is not a forest land, it is not open to the District Collector to take a new plea that it is assessed waste land and say that the land cannot be registered.

13. The learned Government Pleader for Assignment and Registration however contended that the subject land falls in Section 22-A (1) (a) of the Registration Act, 1908 which states as under:

“22A.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) to (e).....”

He also placed reliance on the judgment of the Full Bench of this Court in **Vinjamuri Rajagopala Chary and others Vs. State of Andhra Pradesh rep. by Principal Secretary, Revenue Department, Hyderabad and others¹**, wherein a Full Bench of this Court interpreted and laid down certain guidelines apart from issuing directions to authorities under the Registration Act, 1908.

14. Sub Section (1) of Section 22-A consists of five clauses. While the argument of the learned Government Pleader for Assignment is that the subject land is prohibited from registration under clause (a) of sub Section (1) of Section 22-A, in the counter affidavit filed by 1st respondent clause (b) of sub Section (1) of 22-A has been referred to.

15. Be that as it may, when 1st respondent had taken a view that the said land is a forest land and when the forest department has

¹ 2016 (1) ALT 550 (F.B.)

filed a counter affidavit stating that it is not forest land, it is not open to the 1st respondent or 5th respondent to furnish a new reason for not registering the document.

16. The Full Bench had laid down the following guidelines in para-36 of its judgment.

“36. We, thus, summarize our conclusions and issue directions as follows:-

"(i) The authorities mentioned in the guidelines, which are obliged to prepare lists of properties covered by clauses (a) to (d), to be sent to the registering authorities under the provisions of Registration Act, shall clearly indicate the relevant clause under which each property is classified.

(ii) Insofar as clause (a) is concerned, the concerned District Collectors shall also indicate the statute under which a transaction and its registration is prohibited. Further in respect of the properties covered under clause (b), they shall clearly indicate which of the Governments own the property.

(iii) Insofar as paragraphs (3) and (4) in the Guidelines, covering properties under clause (c) and (d) are concerned, the authorities contemplated therein shall also forward to the registering authorities, along with lists, the extracts of registers/gazette if the property is covered by either endowment or wakf, and declarations/orders made under the provisions of Ceiling Acts if the property is covered under clause (d).

(iv) The authorities forwarding the lists of properties/lands to the registering authority shall also upload the same to the website of both the Governments, namely igrs.ap.gov.in of the State of Andhra Pradesh and registration.telangana.gov.in of the State of Telangana. If there is any change in the website, the State Governments shall indicate the same to all

concerned, may be by issuing a press note or an advertisement in prominent daily news papers.

(v) No notification, contemplated by sub-section (2) of Section 22A, is necessary with respect to the properties falling under clauses (a) to (d) of sub-section (1) of Section 22-A.

(vi) The properties covered under clause (e) of Section 22-A shall be notified in the official gazette of the State Governments and shall be forwarded, along with the list of properties, and a copy of the relevant notification/gazette, to the concerned registering authorities under the provisions of Registration Act and shall also place the said notification/gazette on the aforementioned websites of both the State Governments. The Registering authorities shall make available a copy of the Notification/Gazette on an application made by an aggrieved party.

(vii) The registering authorities would be justified in refusing registration of documents in respect of the properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A provided the authorities contemplated under the guidelines, as aforementioned, have communicated the lists of properties prohibited under these clauses.

(viii) The concerned authorities, which are obliged to furnish the lists of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, and the concerned Registering Officers shall follow the guidelines scrupulously.

(ix) It is open to the parties to a document, if the relevant property/land finds place in the list of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, to apply for its deletion from the list or modification thereof, to the concerned authorities as provided for in the guidelines. The concerned authorities are obliged to consider the request in proper perspective and pass appropriate order within six weeks from the date of receipt of the application and make its copy available to the concerned party.

(x) The redressal mechanism under Section 22-A(4) shall be before the Committees to be constituted by respective State Governments as directed in paragraph-35.1 above. The State Governments shall constitute such committees within eight weeks from the date of pronouncement of this judgment.

(xi) Apart from the redressal mechanism, it is also open to an aggrieved person to approach appropriate forum including Civil Court for either seeking appropriate declaration or deletion of his property/land from the list of prohibited properties or for any other appropriate relief.

(xii) The directions issued by learned single Judges in six judgments referred to above or any other judgments dealing with the provisions of Section 22-A, if are inconsistent with the observations made or directions issued in this judgment, it is made clear that the observations made and directions issued in this judgment shall prevail and would be binding on the parties including the registering authorities under the Registration Act or Government officials or the officials under the Endowments Act, Wakf Act and Ceiling Acts.

(xiii) If the party concerned seeks extracts of the list/register/gazette of properties covered by clauses (a) to (e) of Section 22-A(1), received by the registering officer on the basis of which he refused registration, it shall be furnished within 10 days from the date of an application made by the aggrieved party.

(xiv) Registering officer shall not act and refuse registration of a document in respect of any property furnished to him directly by any authority/officer other than the officers/authorities mentioned in the Guidelines.

(xv) Mere registration of a document shall not confer title on the vendee/alienee, if the property is otherwise covered by clauses (a) to (e), but did not find place in the lists furnished by the concerned authorities to the registering officers. In such cases, the only remedy available to the authorities under

clauses (a) to (e) of subsection (1) of Section 22-A is to approach appropriate forums for appropriate relief."

17. But is not in dispute that the judgment of the Full Bench has been carried to Supreme Court and Special Leave has been granted by the Court by its order dt.12-05-2016 in Special Leave to Appeal (c) C.C.No.8917 of 2016 and batch and that the Supreme Court had observed as under:

"Permission to file Special Leave Petitions is granted.

Delay condoned.

Issue notice.

We make it clear that the registration can be done expressly making it subject to the final outcome of these Special Leave Petitions."

18. Learned counsel for the petitioner contends that the Supreme Court itself has permitted registration of documents subject to the final outcome of the Special Leave Petitions and therefore the 1st respondent cannot refuse to register the documents by saying that it is forest land when the forest department has said that it is not a forest land.

19. The learned Government Pleader for Assignment contends that the above order of the Supreme Court would apply only to the parties therein and not to others and also relied on the decision in **Government of Andhra Pradesh Vs. P.Gautam Kumar, IPS and others**² as to the effect of grant of stay orders by the Supreme Court. Drawing inspiration from the said Division Bench judgment,

² 2012 (6) ALD 458 (DB)

he contended that the interim order granted by the Supreme Court cannot be treated as precedent.

20. Firstly, there is no stay of the Full Bench decision by the Supreme Court in the present case. Though the Supreme Court had admitted the Special Leave Petitions, it permitted the registration subject to the result of the Special Leave Petitions, I am of the considered opinion, it cannot be said that the interim order passed by the Supreme Court is confined only to the petitioners therein, because the order did not specifically confine it to the parties therein.

21. In my opinion, it has to be construed as if in other cases also registration can be done subject to the verdict of the Supreme Court on the correctness or otherwise of the Full Bench decision. In any event, since the reason why the 1st respondent had declined registration for the land claimed by the petitioners was that it was a forest land, once the forest department has certified that it is not a forest land, there can be no impediment to registration of the land at the instance of the petitioners.

22. The learned Government Pleader does not dispute the proposition as laid down in the above Full Bench decision that mere registration of a document would not confer any title of any party. In fact, once the forest department has stated that the subject land is not forest land, the said Registrar as well as the Revenue Department is bound by the same, since the said finding was given by the forest

department after joint survey with the revenue officials and the revenue officials ought to delete the subject land from the prohibitory list, if any under Section 22-A of the Act.

23. Accordingly, the Writ Petition is allowed, the impugned order dt.07-03-2011 of 1st respondent is set aside and the 1st respondent is directed to register the subject land without raising any objection to the same other than the objections as to adequacy of stamp duty and registration fee as and when offered for registration by the petitioners. It shall however be open to the respondents, if they so desire, to prove their title in appropriate civil forum for adjudication of their rights. No costs.

24. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-02-2017

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