HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

WRIT PETITION No.18501 of 2017

ORDER:

This Writ Petition is filed by the petitioner declaring the action of the second respondent in including his property admeasuring Ac. 4.56 cents in R.S.No. 32/8 of Teegalavancha Village, Chintalapudi Mandal, West Godavari District, A.P., in the prohibitory list communicated by the second respondent to the 4th respondent under Section 22-A of the Registration Act, 1908.

2. Petitioner contends that he purchased the said land in an open auction conducted by the Deputy Registrar/Officer on special Duty, the District Cooperative Central Bank Limited, Eluru in Execution Petition No. 8758/1999-2000 and when he approached the Sub-Registrar/4th respondent herein, to find out the mortgage value of the stamp duty, as he intended to sell the property, he was informed by the Sub-Registrar/4th respondent that the subject land has been included in the prohibitory list communicated by the second respondent to the 4th respondent.

3. Counsel for petitioner relies upon the Division Bench decision of this Court reported in **Sub-Registrar, Srikalahasti, Chittoor District vs.**

K. Guravaiah[1] wherein this Court categorically held that assigned land can be mortgaged to banks and if there is a default in payment of loan by the borrower, the said mortgaged property can be sold by the bank or financial institutions and that title would pass to the purchaser. The Court held that the land can no longer be treated as assigned land in such an event that Section 5 of the said Act would not come in its way. It observed as under:

> "17. Thus, when the property is mortgaged, interest in the property is transferred by the mortgagor to the mortgagee. If the mortgage money is not repaid, the consequences provided in the Transfer of Property Act would naturally follow. We need not go in detail about the same because it is not in dispute that the mortgage money was not paid by the original assignee of the assigned lands to the bank and, therefore, the bank had initiated proceedings under the provisions of the Co-operative Societies Act. The bank ultimately obtained recovery certificate under the provisions of Section 71 of the aforestated Act and after following legal procedure, the lands in question were put to auction and it is not in dispute that the petitioner was the highest bidder and ultimately, the assigned lands were sold to him. The sale executed in favour of the petitioner was confirmed and a sale-deed had been executed. If the property in the assigned land had been transferred to the petitioner, the revenue record must be completed accordingly by showing the fact that the petitioner is the owner of the land in question.
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> 18. Section 5 of the Act has been enacted with an intention to see that one who wants to transfer the assigned land in contravention of the provisions of the Assigned Lands Act cannot transfer the land further. Normally, a purchaser of the immovable property would look into the revenue record and after having necessary search, if he finds that the seller is the lawful owner, he would purchase the property, but if he comes to know that the property to be purchased is not in the name of the seller or if there is any charge or burden on the land in

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[1] 2009 (2) ALD 250

question, he would be careful before purchasing the property. The facts with regard to any encumbrance created on the land can be known from the revenue record. So as to see that an assignee of the assigned land, in contravention of the provisions of the Assigned Lands Act, cannot enter into any transaction in relation to the assigned land, so as to dupe someone, Section 5 has been enacted by the Legislature. Thus, Section 5 has been incorporated with an intention to see that the illegality committed by the assignee or the seller of the assigned land is not further perpetuated and to warn the probable purchaser to the effect that the property he is planning to purchase cannot be lawfully purchased by him.

19. Let us consider the provisions of Section 5 of the Assigned Lands Act in the light of the facts of the present case. In the present case, as stated hereinabove, it was open to the original assignees of the land to mortgage the land to the bank by virtue of the definition of Section 2 (1). If the mortgage in favour of the bank was not alienation, there was no restriction with regard to mortgaging the assigned land in favour of the bank. Thus, the mortgage was valid. As the mortgage money was not repaid to the bank, the bank sold the land after following due process of law and thereby the petitioner became a lawful owner of the land in question. In view of the above fact, in our opinion, provisions of Section 5 would not operate because the prohibition is on registration of any document relating to transfer or creation of any interest in assigned land. In the instant case, the transaction in pursuance of which the land had been purchased by the petitioner was valid and not contrary to the provisions of the Assigned Lands Act. In such a case, in our opinion, if the concerned party had approached the District Collector for obtaining prior permission, the District Collector was bound to accord necessary permission in favour of the person seeking such permission. At the most, the authorities could have approached the District Collector for seeking permission under Section 5 and in that event, the District Collector was bound to give permission in view of the fact that the bank, admittedly a co-operative society registered under the provisions of the Co-operative Societies Act, could have become a mortgagee in respect of the assigned land."

4. This legal position is not disputed by the learned Government Pleader.

5. Therefore, it is clear that the inclusion of subject land by the second respondent in the prohibitory list communicated by the 2nd respondent to the 4th respondent is not *bonafide* and that the 4th respondent cannot refuse to register any transaction or document in relation to the said land on the basis of any such communication received by him from the second respondent.

6. Accordingly, the Writ Petition is allowed with costs of Rs. 3,000/- (Rupees Three Thousand Only) to be paid by the second respondent to the petitioner; the second respondent is directed to forthwith delete the subject property from the prohibitory list communicated to him by the 4th respondent under Section 22-A of the Registration Act, 1908; and if the petitioner presents any document for deleting the said property before the 4th respondent, the 4th respondent shall register the same in accordance with the provisions of the Registration Act, 1908 and Stamp Act, 1989, within four weeks from the submission of the document without reference to any prohibitory list communicated to him by the second respondent. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 11.12.2017
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