

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.2310 of 2012

ORDER:

This Writ Petition has been filed by the petitioner challenging refusal of the 4th respondent to issue pattadar passbook and title deed to him in respect of the land admeasuring Ac.4.94 cents in Survey No.423/1 of Sadasivapuram Village, K.V.B.Puram Mandal, Chittoor District, vide Endorsement dt. 30.08.2011.

2. It is not in dispute that this land was originally assigned by the State in the name of one P.Govinda Rajulu. He obtained loan from the District Co-operative Central Bank Ltd, Srikalahasthi, by mortgaging the said land. The assignee failed to repay the said loan amount and so the bank put the land for public auction on 03.04.2001 and the petitioner's vendor became the successful bidder by paying the entire auction amount and Sale Certificate was issued in her favour on 31.12.2001.

3. When the Sale Certificate was presented by the District Co-operative Central Bank, Chittoor and the petitioner's vendor before the Sub-Registrar, Srikalahasthi, he refused to register it.

4. The petitioner's vendor then filed W.P.No.32773 of 2010 before this Court challenging the said inaction of the Sub-Registrar, Srikalahasthi in registering it and for a direction to him to register the same.

5. By order dt. 27.12.2010, this Court allowed the said writ petition and held that in view of the decision in **Sub-Registrar, Srikalahati v K.Guravaiah**¹, the respondents are directed to register the document to be presented by the petitioner therein with regard to the land without raising the objection that the said land is originally assigned land.

6. Subsequently, the petitioner purchased the said land from his vendor under registered sale deed dt. 02.02.2011.

7. After purchase, the petitioner approached the 4th respondent for issuance of pattadar passbook and title deeds for the said land.

8. By endorsement dt. 30.08.2011, the 4th respondent refused to issue pattadar passbook and title deed stating that the land purchased by the petitioner was Government land (AWD) and that the Government lands could not have been purchased.

9. Counsel for the petitioner contends that the endorsement dt 30.08.2011 of the 4th respondent cannot be sustained, since the fact that the land was originally assigned land became irrelevant once the land had been mortgaged to the bank for loan and the bank was permitted to sell it in the event of default in repayment of loan by the borrower, K.Govinda Rajulu. He also contended that the Division Bench of this Court in **K.Guravaiah**'s case (1 supra) has held that once the property, even if it is an assigned land, is mortgaged in

¹ 2009(2) ALD 250

favour of a Bank and is put to auction and on failure to pay the mortgage money, the purchaser became lawful owner of the land. He further contended that the 4th respondent cannot now refuse to issue pattadar passbook on the ground that the said land was Government land (AWD), because by virtue of the sale in the public auction, his vendor acquired title to the land and as such the land ceased to be a Government land.

10. The Government Pleader for Assignment appearing for the respondents contended that the land assignment of land in favour of P.Govinda Rajulu had been cancelled in the year 1980 and the land was resumed to the Government and therefore, it could not have been purchased by the petitioner's vendor in the auction held on 03.04.2001 and the petitioner's vendor could not have sold the same to the petitioner under registered sale deed dt 02.02.2011.

11. Firstly, the fact that the Government had resumed the land from P.Gonvinda Rajulu in the year 1980 was not raised in W.P.No.32773 of 2010 by the respondents even though respondents 1, 2 and 4 herein were parties in W.P.No.32773 of 2010. Therefore, the said plea is barred by principle of *constructive resjudicata*.

12. Moreover, this is not the reason assigned in the impugned endorsement by the 4th respondent. It is settled law that that the validity of an order passed by a quasi judicial authority is to be adjudged on its contents and it cannot be supported by giving new

reasons in the counter affidavit or during the course of arguments by respondents (**Mohinder Singh v Chief Gill v Chief Election Commissioner, New Delhi and others**²) Therefore, the impugned endorsement dt 30.08.2011 of the 4th respondent cannot be sustained and it is accordingly set aside.

13. The Writ Petition is therefore, allowed and a direction is given to the 4th respondent to issue pattadar passbook and title deed to the petitioner in respect of the subject land within (8) weeks from the date of receipt of a copy of this order. No costs.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 17.04.2017
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² AIR 1978 SC 851