

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.40045 of 2017

%22.12.2017

Thatisetty Kusuma Kumari and others

...Petitioners

VERSUS

\$ The Sub-Registrar, Anandapuram Visakhapatnam District and 3 others.

...Respondents

< GIST:

> HEAD NOTE:

!Counsel for Petitioner: M/s Bharadwaj Associates

^Counsel for Respondents: G.P. for Assignment(R.1 to R.3)

? Cases referred

1. 2016 (1) ALT 550



HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**W.P.No.40045 of 2017****ORDER:**

Heard the learned counsel for the petitioners and the learned Government Pleader for Assignment appearing for the respondents.

2. Petitioners contend that the subject land had been assigned to 1st petitioner's husband, who is the father of petitioner Nos.2 to 5, on 17-04-1989 on the ground that he was an ex-serviceman; that under G.O.Ms.No.743 Revenue Department dt.30-04-1963, ex-servicemen were entitled to assignment of land and as per G.O.Ms.No.1117 dt.11-11-1993, they were also entitled to sell the land after enjoying the said land for ten years; but however when the petitioners approached 1st respondent for alienating the subject land, 1st respondent refused to receive the sale deeds presented by the petitioners on the ground that the land has been included in the list of prohibited properties communicated under Section 22A of the Registration Act, 1908 (for short 'the Act') by 4th respondent to 1st respondent.

3. Learned Government Pleader for Assignment, on instructions, states that 1st petitioner's husband had applied for deletion of the land from the prohibitory list communicated under Section 22A of the Act and that the 4th respondent had passed an order refusing to do so on 23-08-2017. He has placed a copy of the order before this Court.

4. No doubt sub Section (4) of Section 22A empowers the State Government to denotify either in full or part Notification under Section 22A (1). Under the statute, 4th respondent has no jurisdiction to take such decision. No doubt a Full Bench of this Court in **Vinjamuri Rajagopala Chary and Others Vs. Principal Secretary, Revenue Department, Hyderabad and Others**¹, has taken a view that a redressal mechanism under Section 22A (4) shall be before the Committee constituted by the State Government by way of forming a committee of which the District Collector is said to be the head.

5. Be that as it may, the decision of the Full Bench has been challenged in the Supreme Court of India in Special Leave to Appeal (C) C.C.No.8917 of 2016 and batch, and on 12-05-2016, the Supreme Court directed that the registrations can be done expressly making it subject to the final outcome of the Special Leave Petitions pending before it against the order of the Full Bench.

6. That apart in the proceedings dt.23-08-2017 of 4th respondent, he does not specifically dispute that the 1st petitioner's husband was ex-serviceman but only states that in most of the cases, the facts of assignment on the ground of ex-servicemen could not be proved indisputably. He also states that the DR file under which 1st petitioner's husband claimed to have been assigned Government land is not forthcoming.

¹ 2016 (1) ALT 550

7. It is not in dispute that 1st petitioner's husband has not only been issued a patta on 17-04-1989 but a pattadar pass book also apart from his name being entered in I-B Form (ROR) by the revenue authorities. The genuineness of these documents cannot be disputed by 4th respondent.

8. It is no doubt true that in the patta granted to the petitioners, there was a condition prohibiting alienation. However, such condition, in my considered opinion, cannot prevail over G.O.Ms.No.743 Revenue Department dt.30-04-1963 and G.O.Ms.No.1117 dt.11-11-1993. When the 1st petitioner's husband is entitled assignment under G.O.Ms.No.743 issued on 30-04-1963, which entitled ex-serviceman for assignment of land.

9. However, instead of assigning the same to them under G.O.Ms.No.743 Revenue Department dt.30.04.1963 which entitled ex-servicemen to assignment of land, without application of mind, the 4th respondent had assigned the land invoking G.O.Ms.No.1142 Revenue Department dt.18.06.1954.

10. Under the latter G.O., there is a prohibition to alienate the assigned land, whereas if the land had been assigned to petitioners' predecessors-in-title under G.O.Ms.No.743 Revenue Department dt.30.04.1963, such ex-servicemen were permitted to sell the land assigned to them vide G.O.Ms.No.1117 dt.11.11.1993 after ten years of enjoying the same.

11. Under G.O.Ms.No.307 dt.06.06.2013 'No Objection Certificate' had to be given by the District Collectors for such alienation. But under G.O.Ms.No.279 dt.04.07.2016, the requirement of obtaining 'No Objection Certificate' for selling the land has also been dispensed with, and it was specifically directed that there is no need to obtain 'No Objection Certificate' in cases of assignment to ex-servicemen where the ten year period from the date of assignment had expired, and all such cases should be deleted from the prohibitory list under Section 22-A of the Registration Act, 1908 communicated by the District Collector concerned to the Registration Department.

12. Therefore, petitioners cannot be denied permission to sell the land on the pretext that the land was previously assigned under G.O.Ms.No.1142 Revenue Department dt.18.06.1954. For the mistake of the respondents in assigning the land to ex-servicemen under the said G.O. instead of G.O.Ms.No.743 Revenue Department dt.30.04.1963, the petitioners cannot be made to suffer. Also, the respondents cannot be allowed to discriminate between ex-servicemen who obtained assignment under G.O.Ms.No.743 Revenue Department dt.30.04.1963 and G.O.Ms.No.1142 Revenue Department dt.18.06.1954, since all ex-servicemen form part of the same class and there would be no intelligible differentia to distinguish one category of ex-servicemen from the other category, and it would be arbitrary and violative of Article 14 of the Constitution of India if there were to be such discrimination.

13. Accordingly, the Writ Petition is allowed and the action of the respondents in treating the subject land as an alienable and including the same in the list prohibited properties communicated by 4th respondent to 1st respondent is declared as illegal, arbitrary and violative of Articles 14 and 300A of the Constitution of India and 4th respondent is directed to remove the subject property forthwith from the list of properties prohibited from the registration, communicated by him to 1st respondent; and 1st respondent is directed to receive the document presented by the petitioners for the purpose of registration without reference to the list under Section 22A and communicated to him by 4th respondent; he shall then register the same under the provisions of the Registration Act, 1908 and the Indian Stamp Act, 1899, within six weeks from the date of presentation of the documents by the petitioners. The 3rd respondent shall also pay costs of Rs.2,000/- (Rupees Two Thousand only) to the petitioners.

14. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-12-2017

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