HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT APPEAL No. 1920 of 2017
And
WRIT PETITION No.37796 of 2017

Common Judgment: **(Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)**

This appeal, under Clause 15 of the Letters Patent, is preferred against the interlocutory order passed by the learned Single Judge in W.P.M.P.No.46941 of 2017 in W.P. No. 37796 of 2017 dated 13.11.2017. The 1st respondent herein filed the Writ Petition questioning GO Ms. No. 215 dated 13.5.2016 notifying the subject lands under Section 22-A(1)(e) of the Registration Act, 1908.

The 1st respondent-writ petitioner purchased the subject lands pursuant to a sale conducted by the Deputy Registrar of Cooperative Societies, Chittoor, and on his issuing a Sale Certificate in favour of the petitioner, pursuant to the orders passed in E.P. No. 112/10-11, E.P. No. 116/10-11 and E.P. No. 113/10-11 on 27.12.2011.

The contention urged, before the learned Single Judge, by Sri A. Giridhar Rao, learned counsel for the 1st respondent-writ petitioner, was that, once the assigned lands are mortgaged in favour of a Cooperative Bank, and if the property is put to auction thereafter for failure of the assignee to repay the debt, the lands sold in the auction lose the character of assigned land; and the auction purchaser would have unfettered right and title over the said lands. Reliance is placed by the learned counsel on a Division Bench Judgment of this Court in **Sub-Registrar, Sri Kalahasti vs. K. Guravaiah**[1]**.**

The learned Single Judge not only followed the aforesaid Division Bench judgment, but also noted that, against the order passed by a Full Bench in W.A. No. 343 of 2015, the Supreme Court had granted interim stay in SLP(C) C.C. Nos. 8917 of 2016 dated 12.5.2016.

[1] 2009(3) ALT 85 (DB)(W.A. No. 950 of 2007 dated 30.12.2008)

Sri A. Giridhar Rao, learned counsel for the 1st respondent-writ petitioner, would submit that the later portion of the order of the learned Single Judge was passed not at his request, and it was wholly unnecessary for the learned Single Judge to do so, when he was satisfied that the subject matter of the Writ Petition was covered by a Division Bench judgment in W.A. No. 950 of 2007 dated 30.12.2008; the 1st respondent-writ petitioner has filed a review petition, in W.P.M.P. No.50566 of 2017, seeking deletion of the second limb of the order; the review petition is listed on the board of the learned Single Judge today; and it would suffice if this Court were to examine only the first limb of the order of the learned Single Judge whereby interim relief was granted on the basis of the Division Bench judgment in W.A. No. 950 of 2007 dated 30.12.2008.

Learned Government Pleader for Revenue would submit that assessment of lands is in the nature of a grant under the Government Grants Act, 1895; the legislative intent, in enacting the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (hereinafter called "the 1977 Act"), is to ensure that assigned lands are not alienated; while these lands are heritable, there is a prohibition against alienation in order to protect the interests of the poor and the marginalised, in whose favour these lands are assigned, to enable them to earn their livelihood; the law laid down by the Division Bench in **K. Guravaiah**[1] needs re-consideration; the observations made therein that the land loses the character of assigned land, once it is sold in a public auction, falls foul of the provisions of the 1977 Act; all that the Government has done is to permit the assignee to mortgage the property; the bank has not been permitted to alienate the land or put it to sale for recovery of the amounts due; if the law declared by the Division Bench were to continue to apply, it would defeat the very object and purport of the 1977 Act; and it would result in Government property being alienated through this devious process.

Learned Government Pleader would further submit that the 1977 Act only exempts mortgage of assigned land in favour of a Cooperative Society, and does not exempt its sale in an auction by the Cooperative Society; and if the law laid down in **K. Guravaiah**[1] were to be followed, then this devious route would be adopted by third parties interested in purchasing the land from assignees at a price far below the market value by resorting to this ruse of having assigned lands mortgaged in the first instance, then for the Cooperative Bank to put these properties to auction, and thereafter for the third parties to purchase these assigned lands in an auction conducted by the bank for recovery of its dues. Learned Government Pleader would submit that mortgage alone is exempt from the provisions of the 1977 Act, and sale of the mortgaged property by the Cooperative Society is not.

Section 5 of the 1977 Act prohibits registration and, sub-section (1) thereof, requires the District Collector to furnish the Registering Officer a list of lands assigned in favour of the landless poor. Section 5 (2) requires the Registering Officer not to accept any document relating to the transfer, or creation of any interest in any assigned land as furnished in the list forwarded under Sub-section (1). Section 6 of the 1977 Act stipulates that nothing in the said Act shall apply to assigned lands held on mortgage, among others, by a Cooperative Society or Scheduled Bank or such other financial institution owned, controlled or managed by a State Government or Central Government, as notified by the Government in this behalf.

The fact that the subject assigned lands were mortgaged by the assignee in favour of the Chittoor District Cooperative Central Bank (a Cooperative Society falling within the ambit of Section 6) is not in dispute. The very object of exempting assigned lands mortgaged in favour of, among others, a Cooperative Society from application of the Act is to enable the assignee to obtain loans to finance the agricultural operations carried on by him in the land assigned in his favour. The assigned lands, mortgaged for grant of such loans, constitute the security based on which the bank (cooperative society in the present case) extends loans to the assignees. Accepting the submission of the learned Government Pleader would mean that, while the borrower is entitled to mortgage the property and secure loans from the bank, such a mortgage is of no consequence since the bank would not be entitled to put the mortgaged property to sale for recovery of its dues. In such an event, the bank would be unable to recover its dues since land is assigned, in the first place, only to those who are landless poor, and do not have sufficient means to eke out their livelihood. Such an understanding of Section 6 of the 1977 Act would negate its very object, and would result in banks' refusing to extend loans, in favour of assignees, if they are disentitled from putting mortgaged assigned lands to sale.

The Division Bench of this Court in **K. Guravaiah**[1] has extensively examined the provisions of the 1977 Act, and has held that once the mortgaged property is put to sale, for failure of the assignee to repay the debt, these lands, in the hands of the auction purchaser, loses the character of assigned land and, consequently, the auction purchaser would have absolute right and title over the property. In this context, it is useful to note that assigned lands retain the character of Government lands even after assignment, and among the conditions of assignment is that it cannot be alienated; even when the Government resumes assigned land, for a public purpose, it is nonetheless obligated to compensate the assignee as, by such resumption, the assignee is deprived of his livelihood. A Larger bench of this Court, in **LAO-cum-Revenue Divisional Officer, Chevella Division v. Mekala Pandu**[2], held that on resumption of assigned lands by the Government, albeit for a public purpose, the assignee is entitled to be paid the market value of the land equivalent to that prescribed under the Land Acquisition Act. As noted

[2] 2004(2) ALD 451

herein above, Section 6 exempts application of the 1977 Act to mortgage of assigned lands. This Section has been introduced with the laudable intent of enabling the assignee to borrow money from Cooperative Banks to enable them to put assigned lands to use by carrying on agricultural operations thereat. Mere grant of an assignment, without providing financial support to carry on agricultural operations thereupon, would be an empty ritual and of no avail. It is only in order to enable assignees to raise loans, by mortgaging these assigned lands in favour of Cooperative banks, has the Legislature enacted Section 6 exempting such mortgages from the applicability of the 1977 Act. The judgment in **K. Guravaiah**[1] is a well considered judgment, and is binding on a coordinate Bench. While the learned Government Pleader would commend that the judgment be reconsidered, and that this question be referred for the consideration of a Full Bench, we see no reason to do so as we are satisfied that the law declared therein does not need re-consideration.

Both Sri A. Giridhar Rao, learned counsel for the 1st respondent-writ petitioner and the learned Government Pleader for Revenue, would agree that the Writ Petition itself be disposed of in terms of the aforesaid order passed by us.

Both the Writ Appeal and the Writ Petition are, accordingly, disposed of. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, ACJ

GUDISEVA SHYAM PRASAD, J

18th December, 2017.
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