

HON' BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal Nos.86 and 92 of 2018

COMMON JUDGMENT: (per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

These two Appeals, filed under Clause 15 of the Letters Patent, are preferred against the orders of the learned Single Judge in W.P.Nos.6371 and 6394 of 2017 respectively dated 29.11.2017.

The respondents herein filed the said Writ Petitions to declare the order dated 23.01.2017, refusing to register the document relating to the General Power of Attorney dated 03.12.2016 executed in favour of the petitioner, by one Sri Garikine Yalmaji, pertaining to the land in Sy.No.19-P, covered by D.No.7-158, admeasuring 1839.2 sq. yards and 1548.8 sq. yards respectively at Ommivaripalem H/o Rushikonda, Visakhapatnam Rural, Visakhapatnam District, on the ground that the said land, classified as village site/gramakantam, is included in the prohibited list dated 22.09.2012 issued by the 3rd respondent, as illegal and arbitrary; and to, consequently, set aside the order and direct Respondent Nos.4 to 6 to register and release the document relating to the General Power of Attorney dated 03.12.2016 in favour of the Petitioners.

Two counter-affidavits were filed in the Writ Petitions, one by the Sub Registrar, Anandapuram and the other by the Joint Sub Registrar, Madhuravada. In his counter-affidavit, the Sub Registrar,

Anandapuram stated that the subject land was classified as Government land, and the same was prohibited from registration under Section 22-A of the Registration Act, 1908 (for short 'the Act'); as per the list, circulated by the District Collector under Section 22-A, the land is classified as 'Gedda' (stream or vagu) (Government land); in view of the above notification, issued by the District Collector under Section 22-A, he could not register the document; since the very classification of the land is recorded as Government land, the petitioner has to seek deletion of the above land from the list of prohibited properties under Section 22-A; and, as long as the subject property is under the list of prohibited properties, the relief claimed by the petitioner is not maintainable.

In his counter-affidavit, the Joint Sub-Registrar, Madhurawada stated that the Sub-Registrar, Anandapuram had rejected the document as the subject property is covered under the Section 22-A list, and is classified as 'Gedda' (Government land); and it is prohibited from registration under Section 22(A) of the Act as per the letter dated 22.09.2012 of the Revenue Divisional Officer, Visakhapatnam.

In the order under appeal the learned Single Judge, relying on the earlier judgment of this Court in '*Sgadapu Vijaya vs. State of Andhra Pradesh*' [2015(4) ALD 88], has held that the subject land is gramakantam land; as it is not government land, the District Collector could not have included the said property in the

prohibited list; and since the only reason for including the subject land in the prohibited properties list is that it was gramakantam land, and as occupied gramakantam land does not belong to the Government and cannot be included in the prohibited list, the impugned order dated 23.01.2017 was liable to be set aside. The District Collector was directed to delete the subject land from the prohibited list communicated under Section 22-A of the Act; and the Joint Sub-Registrar Anandapuram was directed to register the document, without reference to the prohibited list communicated to him under Section 22-A of the Act.

In his order dated 23.01.2017, the Joint Sub Registrar, Anandapuram had stated that the document was presented for registration on 03.12.2016, and it was kept pending as the schedule property belonged to the Joint Sub Registrar, Madhurawada; the same was transmitted to the Joint Sub Registrar, Madhurawada for approval; and the Joint Sub Registrar, Madhurawada had rejected the document stating that the subject property was included in the prohibited list i.e., Sy.No.19-P was covered as 'Gedda' (Government land).

As noted hereinabove, the learned Single Judge has held that the subject land was 'gramakantam' land, and could not have been included in the list of prohibited properties under Section 22-A of the Act. As there was no material on record to show that the District Collector had forwarded the list of prohibited properties under Section 22-A of the Act, which included the subject land, we had, on 31.01.2018, directed the learned Government Pleader for

Revenue (Assignment) to produce the list, if any, issued by the District Collector. Along with the counter-affidavit of the District Collector, Visakhapatnam, filed today, is enclosed a copy of the letter addressed by the District Collector, Visakhapatnam to the Commissioner & Inspector General of Registration and Stamps, dated 19.09.2017, to which is annexed the Government Land Register notified under Section 22-A of the Act, in respect of Visakhapatnam Rural Mandal. The said list contains, at S.No.29, the land in Sy.No.19, its classification is shown as 'Gedda', the name of the owner as the State Government, and the reasons for prohibition as 'Government land'.

Sri A. Sudarshan Reddy, learned Senior Counsel appearing on behalf of the respondent-Writ Petitioner, would however contend that the impugned order of the Sub Registrar, Anandapuram is based on the report of the Joint Sub Registrar, Madhdurawada which, in turn, is based on the so called prohibited properties order list dated 22.09.2012; since this list dated 22.09.2012 shows that the subject land is a village site, and is classified as 'Gedda', it is evident that it is not Government land; and the learned Single Judge was justified in setting aside the order passed by the Sub Registrar, Anandapuram. Learned Senior Counsel would also submit that the prohibited list, forwarded by the District Collector to the Commissioner & Inspector General of Registration and Stamps on 19.09.2017, is based on the draft list allegedly placed in the District Website and published in the Tahsildar offices, Village Chavadies and the Grama Panchayat offices; no such procedure for

inclusion of government land, in the prohibited properties list under Section 22-A of the Act, is contemplated by law; the proceedings of the District Collector dated 19.09.2017 is a nullity; and, in such circumstances, the learned Single Judge was justified in directing the Sub-Registrar to register and release the subject document.

It is evident from the counter-affidavit filed by the Joint Sub Registrar, Madhurawada that the order passed by the Sub Registrar, Anandapuram dated 23.01.2017 is based on the list of prohibited properties dated 22.09.2012 which shows that the subject lands are classified as 'Gedda' / 'village site'. We cannot, therefore, agree with the submission of the Learned Government Pleader for Revenue (Assignment) that the learned Single Judge had erred in holding, based on the earlier judgment of this court in *Sigadapu Vijaya*', that, as the subject land was classified as gramakantam, it could not have been included in the prohibited list dated 22.09.2012. The order under appeal, to the limited extent the impugned order dated 23.01.2017 was set aside, does not necessitate interference.

While the learned Government Pleader for Revenue (Assignment) would contend that the list issued on 22.09.2012 was by the Tahsildar, and in the light of the judgment of the Full Bench of this court in '*Vinjamuri Rajagopala Chary vs. State of Andhra Pradesh*¹', any such list, issued by any Officer subordinate to the District Collector, is illegal; and, consequently, it is only the

¹ 2016(1) ALT 550 (FB)

prohibited properties list forwarded to the Commissioner & Inspector General of Registration and Stamps by the District Collector, Visakhapatnam dated 19.09.2017, which is the list of prohibited properties under Section 22-A of the Act, we see no reason to undertake any such examination in the present proceedings, since it is evident that the Sub Registrar, Anandapuram had passed the impugned order based on the basis of the prohibited properties list dated 22.09.2012, and not on the subsequent list dated 19.09.2017.

Without expressing any opinion on the subsequent prohibited properties list forwarded by the District Collector to the Commissioner & Inspector General of Registration and Stamps on 19.09.2017, we consider it appropriate to direct the Sub Registrar, Anandapuram and the Joint Sub Registrar, Madhurawada to examine the matter afresh, give the respondents-Writ Petitioners an opportunity of being heard, and thereafter pass an order afresh and in accordance with law. The entire exercise, culminating in an order being passed afresh shall be completed within two months from the date of receipt of a copy of this order.

The order of the learned Single Judge is modified as indicated herein above and the Writ Appeals are, accordingly, disposed of. No order as to costs. Pending miscellaneous petitions, if any, in these Writ Appeals shall stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

Date: 19.02.2018
BSS



HON' BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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Date: 19.02.2018