

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT APPEAL No.99 OF 2018

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P. No.40830 of 2017 dated 08.12.2017. The respondents herein filed the said Writ Petition seeking a mandamus to declare the action of the Joint Sub-Registrar, in not entertaining registrations in respect of the petitioners' house plots in different extents in Sy. Nos. 36/A and 36/E, of Gopanpally village, Serilingampally Mandal, Ranga Reddy District to the prospective purchasers, as arbitrary, illegal and contrary to the provisions of the Registration Act as well as the order of the Supreme Court; and, consequently, to direct the Joint Sub-Registrar to receive and register the sale deed documents.

The case of the respondent-writ petitioners, before the Learned Single Judge, was that they had purchased the subject property from Sri D. Narsing Rao under a registered sale deed dated 19.12.1983; the State sought to dispossess their vendors from the subject land invoking Section 166-B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, which empowered the Joint Collector to exercise *suo moto* powers of revision; W.P. Nos.21719 of 1997 and 1731 of 2005, filed by the petitioners' vendors, was allowed holding that the *suo moto* power of revision could not be exercised by the Joint Collector after a long lapse of time; this order was confirmed in Writ Appeal Nos.273 and

323 of 2010 on 08.06.2010, and by the Supreme Court in **Joint Collector, Ranga Reddy District v. D. Narsing Rao**¹; and, inspite of the same, the District Registrar and the Joint Sub-Registrar were refusing to register the documents, presented for registration, on the ground that the subject land was included in the list of prohibited properties notified under Section 22-A of the Registration Act, 1908 by the District Collector and could not, therefore, be registered.

In the order under appeal, the Learned Single Judge recorded the submission of the Learned Government Pleader for Revenue that the Supreme Court, in **D. Narsing Rao**¹, had left it open to the Government to take steps in accordance with law regarding the land in question; and, therefore, the Joint Sub-Registrar was justified in not receiving the sale deeds. The Learned Single Judge, thereafter, observed that, having chosen to take notice of the judgment of the Supreme Court, the appellants herein had not initiated proceedings in any forum for recovery of the land, and were attempting to stall sale of the property by the petitioners without any valid reason; the appellants had no respect for orders passed by this Court, as well as the Supreme Court; and, though the Learned Government Pleader for Revenue wanted to file a counter-affidavit, he did not see any useful purpose being served by granting any further time to the respondents, since these facts were not in dispute.

On the ground that the appellants had acted illegally in refusing to receive the documents, presented by the respondent-writ petitioners for registration, and they had practically committed

¹ 2015 (3) SCC 695

contempt of the orders passed by this Court and the Supreme Court, the Learned Single Judge directed the Joint Sub-Registrar to receive the documents presented by the respondent-writ petitioners for registration, without reference to any prohibitory list under Section 22-A of the Registration Act communicated to him by the District Collector, Ranga Reddy; and to proceed to register the same strictly in accordance with the provisions of the Indian Stamp Act and the Registration Act, within four weeks from the date of presentation of the documents.

It is not in dispute that the proceedings initiated by the appellants, under Section 166B of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli, was interdicted by a Learned Single Judge of this Court by order in W.P. No.21719 of 1997 and 1731 of 2005 dated 15.09.2009; and, while setting aside the notice dated 31.12.2004 as well as G.O.Ms. No.850 dated 24.09.1991 in so far as the lands held by the petitioners therein were concerned, the Learned Single Judge had made it clear that the Government was at liberty to work out its remedies by way of filing a civil suit, claiming title etc., in accordance with law.

It is also not in dispute that this order of the Learned Single Judge was confirmed in W.A. No.273 and 323 of 2010 dated 08.06.2010 wherein the Division bench, while dismissing the appeal, noted that the Learned Single Judge had made it clear that the State was at liberty to work out its remedies in accordance with law; the appeal preferred by the State thereagainst, before the Supreme Court in Civil Appeal Nos.325-326 of 2015, was also dismissed by order dated 13.01.2015; and the subject lands, registration of which is now sought, forms part of the very same

lands which were the subject matter of aforesaid proceedings both before this Court and the Supreme Court.

The compliant of the Learned Government Pleader, regarding the Writ Petition having been allowed at the stage of admission itself without giving the appellants herein (respondents in the Writ Petition) a reasonable opportunity of filing their counter-affidavit, cannot however be brushed aside. While the affidavit filed in support of the Writ Petition is dated 29.11.2017, and could only have been filed thereafter, the Writ Petition came to be allowed just around a week thereafter on 08.12.2017. The Learned Single Judge has, in the order under appeal, recorded his having rejected the request of the Learned Government Pleader to file a counter-affidavit.

However stark the facts may be, the respondents in a Writ Petition should be afforded a reasonable opportunity, of rebutting the allegations in the Writ affidavit, by way of a counter-affidavit. Despite a request being made in this regard by the Learned Government Pleader, the Learned Single Judge rejected the request, in the order under appeal, observing that no useful purpose would be served in granting them time.

Sri A. Sudershan Reddy, Learned Senior Counsel appearing on behalf of the respondent-writ petitioner, would submit that interference in an intra Court Appeal would be justified only if the appellants were able to show that the Learned Single Judge was not justified in passing the order. Accepting this submission of the Learned Senior Counsel would render the Division bench - the Court of first instance; require it, in effect, to hear the dispute raised in the Writ Petition on merits even without the benefit of a

counter-affidavit; or, in the alternative, permit the appellants to file their counter-affidavit at the appellate state directly, and thereby shift the initial onus which lies on the petitioner, (who has invoked the jurisdiction of this Court), to make out a case for grant of relief, on to the State and place on it the onus of sustaining the order impugned in the Writ Petition, and justify its action or inaction, for the first time in an intra-court appeal, even though they had been denied an opportunity, of filing a counter-affidavit in the Writ Petition, by the Learned Single Judge. Such a course of action would also fall foul of Rule 12(1)(a) of the Writ proceedings Rules, 1977 which prescribes an outer limit, save in cases where otherwise directed by the Court, of a period of six months for the respondents to file their counter-affidavit. We may not be understood to have held that this Court should, in each and every case, grant the respondents six months time to file their counter-affidavit. All that we have held is that disposal of the Writ Petition, within a week of its being filed, even without the counter-affidavit of the respondents, undoubtedly results in denial of a reasonable opportunity, to the respondents in the Writ Petition, of filing their counter-affidavit.

We also find considerable force in the submission of the Learned Government Pleader for Revenue that, since the subject lands are included in the list of prohibited properties under Section 22-A of the Registration Act, it is only on a challenge thereto in the Writ Petition, and on its being set aside, can the Joint Sub-Registrar be directed to receive and register the documents. We find it difficult to agree with the submission of Sri A. Sudershan Reddy, Learned Senior Counsel, that, even if there be any such

list, it is, in view of the earlier proceedings inter-parties which culminated in an order passed by the Supreme Court, a nullity and is liable to be ignored. This submission of the Learned Senior Counsel ignores the fact that the list, forwarded by the District Collector, does not carry the brand of invalidity on its forehead, and an order/proceedings would only be rendered void on its being declared as such by a competent Court.

The fact, however, remains that the material placed before us do not disclose that the said list of prohibited properties was forwarded to the District Registrar by the District Collector. A copy of the said document, allegedly signed by the Tahsildar, has been attested by the Sub-Registrar on 05.12.2017. The letter dated 09.09.2011 to the Sub-Registrar, to which the statement is said to be annexed, is also addressed by the Tahsildar, and not the District Collector. The questions whether such a list can be construed as a list under Section 22-A and whether the District Collector had, in fact, forwarded such a list, are all matters to be examined in the Writ Petition after the appellants herein (respondents in the Writ Petition) file their counter-affidavit. Suffice it to observe that no material has been placed before us to show that the list of prohibited properties, forwarded to the District Registrar and the Sub-Registrars concerned, justifying invoking Section 22-A of the Registration Act, was by the District Collector.

The interim relief sought for in the Writ Petition is to direct the Joint Sub-Registrar to receive and register the sale deed document presented by the petitioner for the purpose of registration. It is no doubt true that the interim relief sought for is also the main relief sought for in the Writ Petition and would,

ordinarily, not be granted save for just and valid reasons. As it is not in dispute that these lands are the very same lands, which were the subject matter of the earlier proceedings which culminated in an order being passed by the Supreme Court, the Learned Single Judge would have been justified in granting the interim relief sought for in the Writ Petition, instead of allowing the Writ Petition at the stage of admission without giving the appellants herein an opportunity to file their counter-affidavit.

We are satisfied that, in the facts and circumstances of the present case where the very same lands were the subject matter of proceedings which culminated in an order being passed by the Supreme Court, the interim relief sought for should be granted. If, as is now contended before us, a list of prohibited properties has been forwarded by the District Collector to the District Registrar, it is always open to the appellants herein to file a counter-affidavit in the Writ Petition, and seek vacation of the interim order

The order under appeal is set aside, and the Writ Petition is restored to file. There shall be an interim order, as sought for in WPMP No.50692 of 2017, pending further orders in the Writ Petition. The Writ Appeal is disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

M.S.K. JAISWAL, J

Date: 30.01.2018

MRKR