

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.655 OF 2018

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned Government Pleader (Stamps and Registration) for appellants and Mrs.Hemalatha for respondent.

Respondents in writ petition are the appellants. Through the order under appeal, the learned Single Judge allowed the writ petition with costs and issued the following directions:

“Therefore, the Writ Petition is allowed with costs of Rs.3,000/- (Rupees Three Thousand Only) to be paid by the first respondent to the petitioner; if any document is presented by the petitioner before the second respondent, he shall register the same in accordance with the provisions of the Registration Act, 1908 and Stamp Act, 1908 without reference to any prohibitory list communicated to the second respondent by the District Collector, Chittoor. If the State has any claim of the said property, it is open to the State to obtain declaration of its title in a proper forum and recover the possession thereof”.

Mr.Korrapati Subba Rao contends that the order under appeal ought not to have been passed without affording reasonable opportunity to the appellants herein to file counter affidavit and contest the writ prayer. He further contends that the writ prayer does not challenge notification issued under Section 22-A of the Registration Act, 1908 and that according to the order passed by this Court in W.P.No.23598 of 2017 to which one of us (SVBJ) is a Member clearly discloses that the subject land is

classified as Government land and, therefore, this Court preserved to the petitioner therein the remedy under Section 9 of the A.P. Rights in Land and Pattadar Passbooks Act, 1971. On the other hand, in the case on hand, without there being adjudication of primary facts in issue between the parties, the writ petition is allowed and direction is issued to receive the document as and when presented by sole respondent for registration. He further points out that by reference to Section 22-A of the Registration Act and Section 4 of the A.P. Rights in Land and Pattadar Passbooks Act in all the writ petitions filed with a grievance under Section 22-A of the Registration Act, the proper and necessary parties are the District Collector and Tahsildar of subject matter in the writ petition, for according to him, the Sub-Registrar even while acting under Section 22-A of the Registration Act, acts only on the inputs given by the Revenue, Endowment, Wakf etc., Therefore, the registration or refusal of registration of such document must be in the presence of Revenue, Endowment, Wakf etc., as the case may be. The practical or procedural difficulty is that filing a writ petition without proper and necessary party results only in another round of litigation and at that time, the objection under Order II Rule 2 CPC is available to respondents. Therefore, he prays for setting aside the order under appeal and fairly states that the respondent, if has a grievance on any of the aspects viz., resumption order which the appellants are relying on and/or inclusion of subject land as Government land, can work out the remedies under the ROR Act before the Joint Collector.

Mr. Subba Rao by drawing our attention to a few annexures filed along with the appeal contends that the respondent does not have title inasmuch as the documents through which semblance of right is claimed are not valid and tenable.

On the other hand, the counsel for respondent contends that the respondent is the absolute owner and possessor and according to her, there is no proceeding on resumption and the appellants are unilaterally treating the land in R.S.No.2/7 situated at No.4, Kothapalem, Renigunta Mandal in an extent of Acs. 02-81 Cts as Government land and it is impermissible and the contention is contrary to Article 300-A of the Constitution of India.

We have perused the record and noted the rival submissions.

Without reiterating the circumstances already adverted to, we are *prima facie* of the view that disposing of the writ petition without affording appellants to file counter affidavit is untenable and on the said ground alone, the writ order is liable to be set aside.

We have perused the subject matter in W.P.No.23598 of 2017 and the subject matter in the present writ petition. This Court, keeping in view the nature of controversy between the parties in W.P.No.23598 of 2017, has given liberty to the petitioner therein to work out the remedy under the ROR Act. The direction in the order under appeal runs contrary to the view taken in W.P.No.23598 of 2017. The further submission of Mr. Subba Rao is that in all these cases, the District Collector is not made a party respondent and orders are obtained without the department or office at whose

instance the list under Section 22-A of the Registration Act is finalized. As already noted, he refers to Section 22-A of the Registration Act and also Section 4 of the A.P. Rights in Land and Pattadar Passbooks Act to contend that the registration of a document of agricultural land cannot be treated as completing the issues between the parties or giving quietus to the assertion of claim of Revenue Department. The party who obtains a sale deed is required to get his name updated in revenue records under the ROR Act. At that time, the Revenue Department, if raises objection on recording the name of transferee, such reference leads to another round of litigation. The order now passed against the State showing the Sub-Registrar as respondent will be relied on to contend that the refusal to register document or including a particular survey number of land under Section 22-A of the Registration Act has already attained finality. In our considered view, the presence of District Collector, Mandal Revenue Officer or Assistant Commissioner, Endowments etc., is proper and necessary in writ petitions filed complaining the action of registration department in not entertaining a document for registration etc. The non-impleadment of District Collector and the jurisdictional Tahsildar or the department at whose instance a land is covered under Section 22-A of the Registration Act could be treated as a ground for dismissing the writ petition as non-joinder of necessary or proper parties.

For the above reasons, the order under appeal is set aside. Liberty is granted to respondent to invoke the jurisdiction of the Joint

Collector under Section 9 of the ROR Act or any other enactment under which the respondent can, at the first instance, get his claim considered and decided.

The writ appeal is, accordingly, allowed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

10th December, 2018

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