

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

Writ Appeal No.536 OF 2018

JUDGMENT: {Per the 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.15358 of 2017 dated 22.12.2017. The 1st respondent herein filed the said Writ Petition seeking a mandamus to declare the order of the District Registrar, Stamps and Registration Department, Vizianagaram, dismissing the appeal preferred by him against the order passed by the Sub-Registrar, Parvathipuram dated 26.02.2016 basing on the letters of the Assistant Commissioner of Endowments dated 08.06.2007 and 16.06.2007, as illegal and arbitrary.

The Sub-Registrar, Parvathipuram, by his proceedings dated 26.02.2016, rejected the 1st respondent-writ petitioner's application for registration on the ground that the subject properties were included in the list of prohibited properties, and the subject land is endowment property prohibited from registration. The 1st respondent-writ petitioner preferred an appeal there against to the District Registrar who, by his order dated 24.01.2017, held that the subject lands were endowment lands as per the list furnished by the endowments authorities under Section 22-A(1)(c) of the Registration Act, 1908 (for short "the Act")

In the order under appeal, the Learned Single Judge took note of the order of the Subordinate Judge, Parvathipuram in LOP.No.43 of 1980, to which the subject temple was a party, wherein it was held that a portion of the land in Survey No.180/1A, which had been acquired under Award No.7/80 dated 25.06.1980 under the Land Acquisition Act,1894, did not belong to respondents 5 and 6-temple; and the 5th respondent-temple had no interest or title much less possession of the

property. The Learned Single Judge noted that, in the said order, it was mentioned that the predecessor of the 1st respondent-writ petitioner was under an obligation to perform certain religious functions in respondents 5 and 6-temple, and he had given an unconditional undertaking to perform such functions; and it was recorded therein that the predecessor of the 1st respondent-writ petitioner had got several properties from which he would perform the functions.

The Learned Single Judge took note of the submission, urged on behalf of the Temples, that the 1st respondent-writ petitioner was required to perform his functions only from the income of the land in Survey No.180/1A; and then observed that, in the light of the order passed by the Civil Court, respondents 5 and 6 could not compel the 1st respondent-writ petitioner not to sell the property, since the obligation to perform the functions can be discharged by the 1st respondent-writ petitioner from the income of his other properties; and, in any event, the 2nd respondent had no jurisdiction to declare that the subject land is endowment land, in the light of the findings given in the said judgment that the land did not belong to respondents 5 and 6. The orders impugned therein were set aside, and the Sub-Registrar was directed to entertain the document and register the same in accordance with the Act.

As noted hereinabove, in the orders impugned in the Writ Petition, both the Sub-Registrar and the District Registrar had categorically held that the subject lands were included in the list of prohibited properties under Section 22-A(1)(c) of the Act. By her letter dated 07.05.2016 (a copy of which is enclosed along with the writ appeal), the Commissioner of Endowments informed the Commissioner and Inspector General of Stamps and Registration that she was forwarding the list of properties which would fall under Section

22-A(1)(c) of the Act; and the said list included lands in Survey No.180/1 of an extent of Ac.6.09 cents belonging to the 5th respondent-temple, and in Survey No.180/2 of an extent of Ac.6.09 cents belonging to the 6th respondent-temple.

Section 22-A of the Act prohibits registration of certain documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease exceeding 10 years in respect of immovable property, owned by religious and charitable endowments falling under the purview of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 or by wakfs falling under the Wakfs Act, 1995 executed by persons other than those statutorily empowered to do.

In the light of the letter addressed by the Commissioner of Endowments to the Commissioner and Inspector General of Registration and Stamps on 07.05.2016, including the subject lands in the list of prohibited properties under Section 22-A(1)(c) of the Act, the Sub-Registrar, Parvathipuram was disabled by law from registering documents relating to the subject properties. The said proceedings has not been subjected to challenge in the writ petition and the direction issued in the order under appeal, despite the specific averment in the counter-affidavit filed by the Executive Officer of the 5th respondent-temple that these lands have been included in the list of prohibited properties under Section 22-A(1)(c) of the Act, suffers from a patent error necessitating interference under Clause 15 of the Letters Patent.

Whiles several other contentions are urged, by the learned Government Pleader on merits, to submit that the Learned Single Judge had misunderstood the order passed by the Learned Subordinate Judge, wherein the dispute arose under Sections 30 and 31 of the Land Acquisition Act, 1894, with regards apportionment of the compensation

paid in terms of an award, as also on the rights of the 1st respondent-writ petitioner's predecessor in title in terms of the will executed by the testator, it is wholly unnecessary for us to dwell on these issues, as the order under appeal must be set aside on the short ground that inclusion of the subject lands, in the list of prohibited properties by the Commissioner of Endowments vide letter dated 07.05.2016, has not even been subjected to challenge; and, till inclusion of these lands in the list of prohibited properties is set aside, the direction to the Sub-Registrar, to receive and register the document, would fall foul of Section 22-A(1)(c) of the Act.

The order under appeal is set aside on this short ground. Suffice it to make it clear that this order shall not disable the 1st respondent-writ petitioner from questioning inclusion of the subject lands, in the list of prohibited properties, in appropriate legal proceedings; and, in case the 1st respondent-writ petitioner avails any such remedy, it is open to the appellants herein to raise all such contentions as are available to them in law including those urged before us.

The Writ Appeal is allowed subject to the observations hereinabove mentioned. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

02nd April, 2018
JSU

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Date: 02.04.2018

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