THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL NO.639 OF 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard the learned Government Pleader for Revenue (Assignment) and Sri Vedula Venkata Ramana, learned Senior Counsel appearing on behalf of the respondent-writ petitioners and, with their consent, the Writ Appeal is disposed of at the stage of admission.

Respondents 1 and 2 herein filed WP.No.38674 of 2017 seeking a mandamus to declare inclusion of the petitioners' lands in Survey Nos.387 and 401 of Tirumalayapalem, Gokavaram Mandal, East Godavari District, in an extent of Acs.23.17 cents in the list of lands prohibited from registration under Section 22-A of the Registration Act, and conveyed through the endorsement of refusal of the fourth respondent dated 14.07.2017, as arbitrary and illegal. By way of interim relief, the respondent-writ petitioners sought a direction to the fourth respondent-Sub Registrar to forthwith accept the document presented by them for registration of the subject lands.

In the order under appeal, the learned Single Judge relied on the earlier order in WP.No.26064 of 2015 dated 21.04.2016, wherein the official respondents were directed to mutate the names of the respondent-writ petitioners' vendors in the revenue records, and then held that, since the mutation was directed to be caused on the specific averment of the Tahsildar that the subject lands were private patta lands, it could not be treated as Government lands and included in the list of properties prohibited from registration, as communicated by the District Collector to the Sub-Registrar. The Writ Petition was allowed, and the Sub-Registrar was directed to forthwith receive the document presented by the petitioners for the purpose of registration, and register the same strictly in accordance with the provisions of the Registration Act, 1908 ("the Act" for brevity), and the Indian Stamp Act, 1899, without reference to the list communicated under Section 22-A of the Act, within six weeks from the date of presentation of the document.

Learned Government Pleader for Revenue (Assignment) would submit that, while the writ affidavit is dated 15.11.2017 and the Writ Petition could only have been filed thereafter, the order under appeal came to be passed on 23.11.2017 (just a week after the Writ Petition was filed) without giving the appellant a reasonable opportunity of filing their counter affidavit. With reference to the order passed by the learned Single Judge, in WP.No.26064 of 2015 dated 21.04.2016, the learned Government Pleader would submit that the Tahsildar had, in his counter affidavit filed in WP.No.26064 of 2015, made a deliberate false statement that the petitioners' vendors (petitioners in WP.No.26064 of 2015) were in possession of an extent of Acs.50.47 cents, they had title over an extent of Acs.23.17 cents in Survey Nos.387 and 401, and they were only cultivating tenants in respect of the remaining extent of Acs.27.28 cents. Based on this false assertion in the counter affidavit, WP.No.26064 of 2015 was disposed of by order dated 21.04.2016 directing the respondents therein to effect mutation of the petitioners' names in the revenue records in respect of Acs.23.17 cents in Survey Nos.387 and 401 within eight weeks; and liberty was given to the petitioners therein to approach the appropriate forum with regards the remaining extent of Acs.27.28 cents claimed by them as owners.

Learned Government Pleader would draw our attention to the order passed by the Land Reforms Tribunal on 21.04.1993 to contend that the said order would show that the petitioners' vendors (petitioners in WP.No.26064 of 2015) were merely cultivating tenants of the entire extent of Acs.50.42 cents; no where does the order of the Land Reforms Tribunal dated 21.04.1993 reflect that they are owners of an extent of Acs.23.17 cents; the then Tahsildar had, just on the eve of his retirement, filed a false affidavit resulting in the order in WP.No.26064 of 2015 dated 21.04.2016 being passed; and since the said order is vitiated by fraud, which came to light only on the records being subsequently verified by the District Collector, the order under appeal necessitates being set aside.

On the other hand, Sri Vedula Venkata Ramana, learned Senior counsel appearing on behalf of the respondent-writ petitioners, would submit that the order under appeal was passed on the concession of the learned Government Pleader for Revenue that possibly, under a mistaken impression, the subject properties were included under Section 22-A of the Act, though they were private patta lands. The order under appeal does not reflect any concession on the part of the learned Government Pleader that the Writ Petition be disposed of solely on the basis of the oral instructions received by him. While the learned Single Judge may well have been justified in passing the interim order, as the earlier order in WP.No.26064 of 2015 dated 21.04.2016 has attained finality, the appellants should also have been afforded a reasonable opportunity of being heard, and to file a counter affidavit. The writ Petition could not have been disposed of within one week of its being filed before this Court.

We consider it appropriate, therefore, to set aside the order under appeal, and direct that the order under appeal shall be treated as an interim order in WP.No.38674 of 2017. It is open to the appellants herein to file their counter affidavit raising all such contentions as are available to them in law, including that the earlier order in WP.No.26064 of 2015 dated 21.04.2016 is vitiated by fraud. Suffice it to make it clear that it is open to the Sub-Registrar, in compliance with the interim order, to direct that a specific clause be inserted in the document sought to be registered that the alienation shall be subject to the result of WP.No.38674 of 2017.

The Writ Petition is restored to file, and the Writ Appeal is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

25th April 2018
RRB