

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.28900 OF 2018

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioners filed this Writ Petition challenging the action of the respondents 3 and 4 in including petitioners' land admeasuring Ac.5.00 gts, situated at Sy.No.1332/5 of Chinthalpudi Village and Mandal, West Godavari District, in the list of lands which are not to be registered by way of communication addressed to 6th respondent and to delete the same from the said list.

3. Learned counsel for the petitioners contends that the petitioners are the legal heirs of their brother viz., late Chebathina Anthony, S/o. Chebathina Ananda Rao, who purchased the land admeasuring Ac.5.00 gts, situated at Sy.No.1332/2005 of Chintalpudi Village and Mandal, West Godavari District, in an auction conducted on 6.1.2003, by the Special Grade Deputy Registrar/Officer on special duty, the Cooperative Central Bank Limited, Eluru, West Godavari District for recovery of dues payable to the Chinthalapudi Primary Agricultural Cooperative Society Limited from one Bethala Pulla Rao. It is stated that late Chebathina Anthony participated in the said auction on 6.1.2003 and as he was declared as successful bidder paid the auction amount of Rs.1,55,000/-. The District Cooperative Central Bank Limited, Eluru confirmed the sale and issued a sale certificate in Form-10 to Anthony under the provisions of A.P. Cooperative Societies Act, 7 of 1964 in the execution Petition No.3474/2002-2003 dated 19.6.2003. Late Chebathina Anthony expired on 5.5.2015 leaving behind the petitioners herein as his legal heirs as Sri Chebathina Anthony was unmarried and died intestate.

4. It is further stated that the petitioners being the legal heirs of Chebathina Anthony, with an intention to dispose of the subject lands to

the prospective purchasers, approached the 6th respondent for presentation of the documents by complying with all the requirements, but the 6th respondent informed the petitioners that the subject land is included in the prohibited list for registration as per the list communicated by the respondents 3 and 4.

5. Learned counsel for the petitioners placed reliance on the judgment of the Division Bench of this Court in **Sub Registrar, Srikalahasti, Chittoor District Vs. K.Guravaiah**¹, and contends that the lands which were assigned by the State can be mortgaged in favour of Primary Agriculture Cooperative Society, and if the mortgager commits default in payment of the loan amount, the said lands can be sold for recovery of the same, and that such a sale is valid in law. He contends that once there is a sale of the said land on 06-01-2003 in favour of late Sri Chebathina Anthony, S/o. Chebathina Ananda Rao in E.P.No.3474 of 2002-03, the property ceased to be the property of the State and the said individual gets valid title over the property; and as the petitioners herein are the legal heirs of the said Chebathina Anthony, the respondents are estopped from contending that the land is Government land and cannot be alienated.

6. No reference is made by the learned Government Pleader to the law declared by this Court in **K.Guravaiah** (1 supra). In the said judgment, this Court held that when the original assignee mortgaged the land assigned to him in favour of a bank or a financial institution or cooperative society under A.P. Cooperative Societies Act, 1964 and if the money is not paid, the consequences provided in the Transfer of Property Act, 1982 would naturally follow; that it is permissible to put the said land to public auction under the said Act and recover the land dues to the financial institution by way of sale; and such a sale is valid in law. It also held that as per Section 2 (1) of the A.P. Assigned Lands (Prohibition

¹ 2009(2) ALD 250

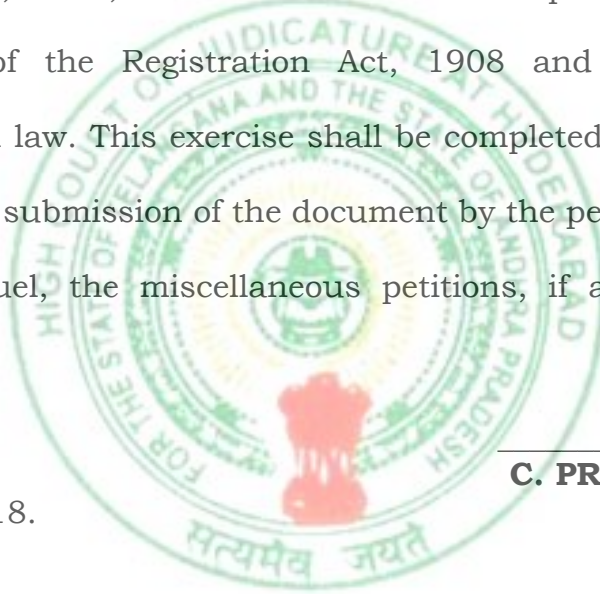
of Transfers) Act, 1977, mortgage in favour of a bank or a cooperative Society does not amount to alienation.

7. Therefore the Writ Petition is allowed with a direction to the respondents to delete the land of the petitioners from the prohibitory list issued by the respondents 3 to 6 under Section 22-A of the Registration Act, 1908 forthwith; the petitioners are directed to present the document for registration before 6th respondent within one week from the date of receipt of a copy of this order; on submission of the said document, 6th respondent shall consider the same for the purpose of registration strictly in accordance with the provisions of Stamp Act, 1899 and Registration Act, 1908, without reference to the prohibitory list under Section 22-A of the Registration Act, 1908 and then proceed in accordance with law. This exercise shall be completed within four weeks from the date of submission of the document by the petitioners. No costs.

8. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Dated:28.08.2018.
Gk

C. PRAVEEN KUMAR, J



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