

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.31988 of 2017

ORDER:

This writ petition is filed to declare the inaction on the part of the respondents 1 to 3 in taking steps to delete/denotify the land admeasuring Ac.3.96 cents in Sy.No.371/ 2 of Madhurawada Village, Visakhapatnam District, from the prohibited list sent by the 3rd respondent to the 4th respondent *vide* proceedings in Pc.No.1583/ 2014/ E1, dated 24.09.2016, by considering the representation, dated 15.05.2017, as wholly illegal, arbitrary and violative of Articles of the Constitution of India as well as the judgment of this Court. A consequential order directing the respondents to forthwith delete/ denotify the land from the said prohibited list is also sought.

2. I have heard the submissions of Sri Ch. Dhanamjaya, learned senior counsel appearing for the petitioners, and of the learned Government Pleader for Revenue appearing for the respondents. I have perused the material record.

3. The case of the petitioners is this:

'1st petitioner is the owner of 200 Sq.yards in Plot no.35 in Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed bearing document no.2484 of 2003, dated 22.08.2003. 2nd petitioner is the owner of 200 Sq.Yards in plot no.16 in Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed bearing document no.2796 of 2003, dated 11.09.2003. 3rd petitioner is the owner of 200 Sq.yards in plot no.15 Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed bearing document no.3363/ 2003, dated 17.10.2003. 4th petitioner is the owner of 338 Sq.yards in plot no.38 and of 380.55 Sq.yards in plot no.39 in Sy.No.371/ 2 of Madhurawada village and panchayat, having

acquired the same under registered sale deeds bearing document nos.2018/ 2003, dated 11.07.2003 and 2665/ 2003, dated 30.08.2003. 5th petitioner is the owner of 503 S.yards in plot no.41 in Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed bearing document no.2185/ 2003, dated 30.07.2003. 6th petitioner is the owner of 200 Sq.yards in plot No.33 in Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed bearing document no.2015/ 2003, dated 11.07.2003. 7th petitioner is the owner of 200 Sq.yards in plot no.34 in Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed bearing document no.2017/ 2003, dated 11.07.2003. 8th petitioner is the owner of 441.67 Sq.yards in plot no.41 in Sy.No.371/ 2 of Madhurawada village and panchayat, having acquired the same under a registered sale deed dated 30.08.2003. The copies of the sale deeds are filed along with the writ petition. Having purchased the respective plots in the lay out, the petitioners are continuing in continuous possession and enjoyment of the same from the dates of their respective purchases in their own right having title and interest and without any obstruction from any quarter. The land originally belonged to one P. Appala Swamy, S/o.Appanna, an ex-service man. He was granted patta *vide* Dr.No.1117/ 71, dated 30.10.1970, which was issued by the then Tahasildar basing on the letter addressed by the Sainik Board. The revenue authorities mutated the patta land in his name in the revenue records and issued pattadar pass book in his favour. The copy of the same is also filed by the writ petitioners. The adangals reflect his name as owner and possessor. After his demise, on 30.04.1976, his only son also died, on 07.03.1985. His daughter in law also died. Thereafter his grand daughter, Ch.V. Lakshmi Kumari, W/ o.Tirumalesu who was the only legal heir alienated Ac.2.64 cents in favour of Y. Ramanamma and an extent of Ac.1.32 cents in favour of Shaik Bade, that is, a total extent of Ac.3.96 cents in Sy.No.371/ 2 of Madhurawada

village under a registered document no.1071/ 1999, dated 03.09.1999, in terms of G.O.Ms.No.117 Revenue (Assignment I) Department, dated 11.11.1993. After such purchases, the said two persons formed a lay out and obtained lay out permission *vide* permit no.19/ 2003 in Rc.No.429/ 01/ GB, dated 08.10.2002, from Visakhapatnam Urban Development Authority (VUDA) and sold the said plots to different individuals. The petitioners purchased the above said plots under their respective sale deeds as stated above. While so, the petitioners, to their surprise, came to know that the 3rd respondent addressed a letter, dated 24.09.2016, to the 4th respondent by enclosing a final list of prohibited properties under Section 22-A (1) to (d) of Indian Registration Act and the list of irregular allotment of house site plots for his ready reference and to take further course of action. Except the said letter, there is no notification by the Government for keeping the lands under prohibited list under Section 22(A) of the Act. Therefore, the letter addressed by the 3rd respondent to the 4th respondent showing the lands of the petitioners in Sy.No.371/ 2 in the prohibited list is without jurisdiction, illegal, null and void. To prohibit the said land for alienation within the purview of Section 22(A) of the Act, there is no mention in the remarks column of the said list as to whether the subject land is a Government land. The remarks column in the list was kept blank without mentioning the nature of the land. A Full Bench of this Court in WA.No.343 of 2015 and batch held that the Government should notify in the official gazette of the State Government and shall forward along with the list of properties the copy of the relevant notification/ gazette to the concerned registering authorities under Section 22-A of the Act and shall also place the said notification/ gazette on the website of the State Government. In view of the said judgment of this Court, the husband of the 4th petitioner made an application to the 3rd respondent requesting to denotify the existing prohibition as against the property in Sy.No.371/ 2. He also made an application to the 3rd respondent for supply of copies relating to letter, dated 14.07.2016, to which

the final list of prohibited properties was enclosed and sent to the 4th respondent by the 3rd respondent. In the said furnished letter which was addressed by the District Collector, Visakhapatnam, to the Commissioner and Inspector General of Registration and Stamps, it was *inter alia* stated to the following effect: - 'In exercise of the powers conferred by Government notification of the Act, 19 of 2007, the list of prohibited properties under Section 22-(A)(1)(a) and the list of immovable properties owned by the State or Central Government under Section 22-(A)(1)(b) situated in Visakhapatnam Revenue Division covered by 10 Mandals including Visakhapatnam Rural Mandal are published in the District Gazettee vide issue no.75, dated 13.08.2014 calling for objections from the public. Certain objections have been received from various public. The Tahasildar concerned and RDO, Visakhapatnam were directed to thoroughly verify the objections with reference to connected revenue records and send reports. Accordingly, the Tahasildar, Visakhapatnam Rural and the RDO furnished their reports for each case. After verification of case to case, the final list of Madhurawada Village, Visakhapatnam Rural Mandal were enclosed requesting to issue necessary instructions to the Sub Registrar concerned and communicate orders to duly denotify the lands from the Government lands Register under Section 22-A of the Act.' The subject land is also mentioned in the above said list. Thus, the land in question is not at all Government land. It was originally assigned to an ex-service man and it was purchased by the persons, who laid out the property, from the legal heir of the original assignee. The petitioners purchased respective plots laid out with fond hope of constructing their houses. Though the 3rd respondent has addressed a letter to the respondents 1 & 2 to denotify the subject lands from the prohibited list in terms of the report submitted by the Tahasildar and the RDO, so far respondents 1 & 2 have not taken any action or steps to denotify the lands in Sy.No.371/2 from the prohibited list. Hence, the writ petition is filed.'

4. This Court, on 04.10.2017, while admitting the writ petition, granted the following interim order in WPMP.No.39380 of 2017: - '...If what is noticed above, is true, the Commissioner and Inspector General of Registration & Stamps, Amaravathi, Guntur District, is directed to take steps to de-notify the land admeasuring Ac.3-96 cents in Sy.No.371/ 2, Madhurawada, Visakhapatnam, from the list of prohibited properties, as requested by the District Collector, in his letter, dated 14.07.2016.'

5. Seeking to vacate the said orders, the respondents filed IA.No.1 of 2018. The case of the respondents 2 & 4 as stated in the counter affidavit filed by the 4th respondent, in brief, is this:

An extent of Ac.3.96 cents in Sy.No.371/ 2 of Madhurawada village was notified under Form III list of assigned lands under Section 5(1) of the A.P. Assigned land (Prohibition of Transfers) Act, 1977, vide RC.No.1583/ 2014/ E1, dated 24.09.2016. Subsequently, superseding all the previous lists issued by the revenue department in respect of Madhurawada village, the fresh list of properties prohibiting under Section 22-A(1)(a) to (d) in respect of Madhurawada village was communicated to the 2nd respondent; and, the same is endorsed and communicated to the Director and Inspector General of Registration and Stamps, AP, Vijayawada, vide endorsement, dated 14.06.2017, of the District Registrar, Visakhapatnam, duly deleting the Sy.No.371/ 2 of Madhurawada village from Section 22-A prohibited properties list. Of late, the said final list was communicated to the District Registrar, Visakhapatnam vide endorsement, dated 18.11.2017; and, the same in turn was communicated vide endorsement, dated 21.11.2017, of the District Registrar, Visakhapatnam, wherein the petitioners' property is included in the list of Form III, A.P. Assigned Lands (Prohibition of Transfer) Rules, 2007. As per Section 5(2) of the A.P. Assigned land (Prohibition of Transfers) Act, 1977, no registering officer shall accept for registration of any documents relating to the transfer of the lands mentioned in the above list. Further, in view of the Full Bench judgment

of this Court reported in 2016(1) ALT 550 once the list of prohibited properties were notified by the competent authority, it is for the affected party to approach the concerned to delete their property from the list of prohibited properties under Section 22-A of the Act. Therefore, unless the property is de-notified from the Government Lands' list, the registration cannot be entertained on the subject property. Hence, the interim order may be vacated and the writ petition may be dismissed.

6. I have carefully gone through the record including copies of registered sale deeds of the petitioners and the copy of the lay out plan. I have given earnest consideration to the submissions made in line with the pleadings, which are extracted supra, in detail.

6.1 In this regard, it is pertinent to refer to Section 22(A) of the Act which reads as under:

22-A. Documents registration of which is opposed to public policy.-(I) The State Government may, by notification in the Official Gazette, declare that the registration of any document or class of documents is opposed to public policy.

6.2 It is pertinent to note that the Supreme Court in the decision in Sri Nivasam Mutual Aided House Building Society Ltd. And Ors. v. State of Andhra Pradesh and Ors., [2018(3) ALT 42 (SC)] while dealing with Special Leave Petitions noted the answers given by the Full Bench of this Court to the questions formulated and remitted the matters to this Court with certain directions. However, in this case, the validity of Section 22-A of the Act is not under challenge and the issue involved is required to be resolved on facts discernable from the material on record. The issue is not about title and is about failure on the part of the respondents 1 and 2 to act upon the 3rd respondent's letter and to take the consequential steps. Be that as it may.

7. The petitioners are aggrieved of the inaction of the respondents 1 & 2 in the matter, despite their representation, dated 15.05.2017, and the 3rd respondent's letter, dated 24.09.2016, addressed to the 4th respondent. What

is to be noted is that in the said letter, dated 24.09.2016, of the District Collector, Visakhapatnam, addressed to the Joint Sub Registrar, Sub Registrar's office, Madhurawada, it is stated as follows:

'..it is to inform you that, the final list of Prohibited Properties u/s.22-A (1)(a) to (d) and Form-III under Section 5 of POT Act have been communicated to the Commissioner & IG, Registration and Stamps Dept, GoAP, Hyderabad.

It is further inform you that, the Joint Registrar, DCO, Visakhapatnam has conducted discrete enquiry in this regard and furnished the list of irregular allotment of House sites issued in favour of Non-members of NGGO society.

In view of the above, I herewith enclosed the Final list of Prohibited properties u/s.22-A (1)(a) to (d) and List of irregular allotment of house site Plots for your ready reference and to take further course of action.'

It is also to be noted that the list enclosed also contained the properties of the petitioners in Sy.No.371/ 2. Aggrieved thereof, the petitioners submitted a representation, dated 15.05.2017, for de-notifying their lands from the list. However, no action has been taken. The petitioners sought information under the provisions of the Right to Information Act. They were furnished a copy of the letter with Rc.No.3795/ 2007/ E1, dated 14.07.2016, of the then District Collector, Visakhapatnam, addressed to the Commissioner & Inspector General of Registration and Stamps, wherein the Collector stated to the following effect:

In exercise of the powers conferred by the Government Notification of the Act, 19 of 2017, the list of prohibited properties under Section 22-(A) (1) (a) and the list of immovable properties owned by the State or the Central Government under Section 22-(A)(1)(b) situated in Visakhapatnam Revenue Division covered by 10 Mandals including Visakhapatnam Rural Mandal are published in the District Gazette vide issue no.75, dated 13.08.2014, for calling objections from the public. On publication of Draft Gazette, certain objections have been received from members of the public. The Tahasildar concerned and the Revenue Divisional Officer, Visakhapatnam, have been directed to thoroughly verify the objections with reference to connected revenue records and send reports. Accordingly, the Tahasildar and the Revenue Divisional Officer had furnished their reports on case to case basis.

The said letter also discloses that after verification of the matter on case to case basis, the final list of Madhurawada (V), Visakhapatnam-R are enclosed to the said letter and a request was made by the Collector to the 2nd respondent, that is, Commissioner and Inspector General of Registration and Stamps to duly

denotify the lands from the Government lands register under Section 22A of the Act as per the said final list. In the final list recommending de-notification, the property of the petitioners in Sy.No.371/ 2 is also included is not in dispute. However, no steps were taken by the 1st and 2nd respondents pursuant to the said letter of the Collector. In that view of the matter, the petitioners are justified in questioning the inaction on the part of the respondents 1 to 3 in taking steps to denotify the lands in Sy.No.371/ 2 from the prohibited list sent by the 3rd respondent to the 4th respondent *vide* letter, dated 24.09.2016.

8. On the above analysis, this Court is of the considered view that the petitioners are entitled to the relief claimed as their property is found eligible for de-notification from the Government lands register under Section 22(A) of the Act, after thorough verification of the objections with reference to connected revenue records by the Tahasildar & Revenue Divisional Officer concerned.

9. In the result, the Writ Petition is allowed as prayed for.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

20.06.2018
Vjl