

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.41414 of 2018

ORDER:

The case of the petitioners is that they are the members of the 1st petitioner-society. Since they are collectively aggrieved by the action of respondents in not registering the small plots of land which was purchased by the 1st petitioner-society in an auction conducted by the Debt Recovery Tribunal (DRT) in the year 2008 for recovery of bank loan and the sale certificate was registered by the 3rd respondent. That an extent of Ac.5-40 cents of land in Sy.No.2042/2 situated in Kodur Village, Kodur Mandal, was granted to Late Sri Pothuraju Parthasarathi in the year 1955 under Freedom Fighters quota. After his demise, the patta was mutated in favour of his son by name P.Pratap in the year 1989. Said Pratap sold the land to one Sri Robert Naidu, who mortgaged the said land for obtaining loan from Bank of Baroda. Since said Robert Naidu failed to pay, the Bank of Baroda initiated recovery proceedings and DRT No.2, Chennai has conducted auction of mortgaged property. The 1st petitioner purchased the said land of Ac.5-40 cents in public auction held on 24-11-2006 for Rs.75,30,000/- in execution of Certificate No.26/2005, dated 05-04-2005 issued in O.A.No.619/2001 by the Presiding Officer, DRT No.2, Chennai under Section 19(22) of the Recovery of Debts due to banks and other Financial Institutions Act, 1993. The Certificate of Sale of subject property bearing No.01/2007, dated 05-01-2007, was issued by DRT.No.2, Chennai. The same was

communicated to the 3rd respondent to register the same in favour of the 1st petitioner-society and subject property was registered in favour of the 1st petitioner-society vide Doc.No.1/2008, dated 16-04-2008. The 1st petitioner-society made the subject land into small plots and executed various sale deeds in favour of petitioners and except petitioner No.15, other petitioners got registered the same in different extents vide different sale deeds mentioned in the writ affidavit. When the petitioner No.15 has purchased 244.44 square yards from the vendor Sri K.Sridhar Babu and presented the sale deed dated 15-11-2017, the 3rd respondent refused registration of the same. Said Sridhar Babu purchased 122.22 square yards of land from the 1st petitioner-society through registered sale deed vide document No.1591/2009 and from one K.Suresh Babu an extent of 122.22 square yards vide document No.1692 of 2009, dated 20-08-2009 who in turn purchased the same from the 1st petitioner-society earlier. The 3rd respondent has refused the registration of the sale deed vide his Ref.No.48/2017, dated 18-11-2007 on the ground that Sy.No.2042/2 admeasuring Ac.5-40 cents is government land. Hence the document registration is prohibited under Section 22-A(1) (a) of the Registration Act, 1908. As per revenue records the land in question was assigned to Freedom Fighter late Sri P.Parthasarathi in the year 1955 and after his demise, the patta of the land was mutated in favour of his son by name P.Pratap in the year 1989. Further the said land was given as security for obtaining loan from Bank of Baroda and due to

default in payment and pursuant to the judgment of Debt Recovery Tribunal-2, Chennai, the said land was put to public auction on 24-11-2006 and the 1st petitioner-society has purchased the same for a valuable consideration of Rs.75,30,000/- and a sale certificate was issued and the same was registered in favour of their society. The 1st petitioner-society has divided the land into about 60 small plots for the benefit of its members who are small traders and sold the same. Aggrieved by action of respondents in including the subject land in the list of prohibited properties, the present writ petition is filed.

Heard Sri M.S.Prasad, learned Senior Counsel for the petitioners, who submits that original land was allotted to freedom fighters and several transactions took place by way of registered sale deeds and petitioners 2 to 15 purchased the same from the 1st petitioner-society by way of registered sale deeds and when the original assignee committed default, the same was auctioned by the bank.

On the other hand, learned Assistant Government Pleader for Revenue produced written instructions and the fact that property was purchased through auction is not disputed in the same. But it is stated that the land in sy.No.2042 of Kodur village was formed from Sy.No.1599A, which is classified as 'River Poramboke' with an extent of Ac.101-80 cents as per Resettlement Register. It is also stated that the land in Sy.No.2042/2 extent of Ac.5-40 cents of Kodur was assigned to Sri Pothuraju Parthasaradhi under freedom fighter quota vide

DKT.No.91/DKT/59, dated 02-09-1955. From the records of Tahsildar office, Railway Kodur, it is noticed that the land in question was not assigned to Sri Pothuraju Parthasaradhi under freedom fighters quota. At present the land is under the control and possession of the private individual using as mango market yard. The fact of assignment is also not disputed seriously. Copies of sale certificate issued by Chennai Debts Recovery Tribunal are also filed in material papers at page Nos 16 and 17 and the same was not disputed in the written instructions. The assignment in favour of private individuals is not disputed and sale certificate issued by DRT is also not disputed.

In the judgment of **the Government of Andhra Pradesh rep.by its Prl.Secretary, Revenue Department (Assignments) v. T.Krishna Murthy** in W.A.No.955 of 2017, dated 17-09-2018, while confirming the order passed by this Court in WP.No.2310 of 2012, dated 17-04-2017 Division Bench of this Court held in para No.7 as under:

“ Once mortgages are created by the assignees of Government lands and when those mortgages stand with the support of the exclusionary provision in the definition of ‘assigned land’ in Act, 1977, it cannot be contended that the mortgagees are not eligible to bring the mortgaged property to sale for the purpose of recovering the amounts paid under the mortgage. There is no inhibition in Act, 1977, or is there any principle referable to the provisions of the T.P. Act, which results in any such embargo. That being the position, the eligibility of the mortgagee to bring the property to sale leads to the resultant issuance of the sale certificate in terms of Sub-Rule 14 (v) of Rule 52 of the A.P. Co-

operative Societies Act, which enjoins, among others, that such certificate of sale shall be conclusive evidence of the fact of purchase, in all courts and tribunals where it may be necessary to prove it and no proof of the seal or signature of the Registrar of the district shall be necessary unless the authority before whom it is produced shall have reason to doubt its genuineness. The said statutory provision making the sale certificate as conclusive proof necessarily obliges the statutory authorities under the different provisions of law to act upon such sale certificates.

In the judgment of **Sub-Registrar, Srikalahasti, Chittoor District v. K.Guravaiah** (2009 (2) ALD 250(DB) in W.A.No.950 of 2007 while confirming the order passed by this Court in WP.No.14750 of 2007, dated 26-07-2007, Division Bench held in para No.19 as under:

“ Let us consider the provisions of Section 5 of the Assigned Lands Act in the light of the facts of the present case. In the present case, as stated hereinabove, it was open to the original assignees of the land to mortgage the land to the bank by virtue of the definition of Section 2(1). If the mortgage in favour of the bank was not alienation, there was no restriction with regard to mortgaging the assigned land in favour of the bank. Thus, the mortgage was valid. As the mortgage money was not repaid to the bank, the bank sold the land after following due process of law and thereby the petitioner became a lawful owner of the land in question. In view of the above fact, in our opinion, provisions of Section 5 would not operate because the prohibition is on registration of any document relating to transfer or creation of any interest in assigned land. In the instant case, the transaction in pursuance of which the land had been purchased by the petitioner was valid and not contrary to the provisions of the Assigned Lands Act. In such a case, in our opinion, if

the concerned party had approached the District Collector for obtaining prior permission, the District Collector was bound to accord necessary permission in favour of the person seeking such permission. At the most, the authorities could have approached the District Collector for seeking permission under Section 5 and in that event, the District Collector was bound to give permission in view of the fact that the bank, admittedly a co-operative society registered under the provisions of the Co-operative Societies Act, could have become a mortgagee in respect of the assigned land.”

In view of the facts and circumstances and law laid down in the judgments cited supra, which squarely applicable to the facts and circumstances of the case, the writ petition is allowed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

A.RAJASHEKER REDDY,J

05-12-2018

Note:
Issue CC in ten days.
B/o.
Nvl



