

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.43734 OF 2018

O R D E R

Aggrieved by the action of the 4th respondent – Sub Registrar in not receiving and register the document presented by the petitioner in respect of the subject land admeasuring Ac.0.27 1//2 cents in Sy.No.59-1A of Thumukunta Village, Hindupur Mandal, Anantapur District and insisting for production of 'No Objection Certificate' from revenue authorities, the present writ petition is filed.

The case of the petitioner is that the subject land was an assigned land and the assignee mortgaging the property with PACS, Kotipi Village, Hindpur Mandal, raised loan. As the mortgagee failed to repay the loan, the Deputy Registrar, A.D.C.C. Bank Ltd., Anantapur, auctioned the subject land under Rule 52 of Co-operative societies Act, VII of 1964. One Mr. J.V. Anil Kumar, s/o J.V.Venkataswami, purchased the property in the public auction, as he was the highest bidder and sale certificate was issued to him. The 2nd respondent – District Collector, vide proceedings in Rc.No.E2/6500/2006 dated 19.10.2006, issued no objection and the said Anil Kumar, who was the auction purchaser, sold the subject property to the petitioner vide document No.576/2017 dated 08.02.2017. Now the grievance of the petitioner is that when the petitioner intends to sell the subject property, the 4th respondent is not receiving and registering the same on the ground that the subject land is included in the list of prohibited properties under Section 22-A of the Registration Act, 1908. Hence, the writ petition.

Heard the learned counsel for the petitioner and the learned Assistant Government Pleaders for Revenue and Registration and Stamps.

A Division Bench of this in ***SUB-REGISTRAR, SRIKALAHASTI, CHITTOOR DISTRICT v. K.GURAVIAH¹***, considering similar facts and circumstances, held that assigned lands mortgaged with the District Co-operative Central Bank, shall not be treated as alienation and when the mortgaged property is put in public action by the bank on failure of mortgagee in payment of mortgage amount, the auction purchaser becomes the lawful owner of the land and the sale of the said property by the auction purchaser, to third parties, cannot be questioned. The Division Bench further held that Sub-registrar cannot refuse to register the land on the ground that the assigned lands cannot be alienated and that Section 5 of the A. P. Assigned Lands (Prohibition of Transfers) Act, 1977, would not come in the way of parties in matter of registration of document. The relevant portion of the order is as under:

19. Let us consider the provisions of 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 the 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.

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22. In view of the above facts, in our opinion, the learned Single Judge was justified in allowing the petition by directing respondent No.1 to register the sale deed in accordance with the law as Section 5 of the Act would not come in way of the parties in the matter of registration of the document.

Another learned single Judge, in similar facts and circumstances, in W.P.No.20630 of 2012 dated 09.07.2012, held as under:

¹ 2009(2) ALD 250(DB)

“It is no doubt true that the land was assigned at one point of time and that Section 22-A of the Registration Act as amended through Act 19 of 2007 prohibits registration of documents pertaining to assigned lands. However, the land was mortgaged in favour of the Primary Agricultural Co-operative Society, Chintalapudi and once it was brought to sale, it loses the character of assigned land. Such transactions are exempted under Section 6 of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977. In W.P.No.14750 of 2007, this court took the view that once an assigned land was brought to sale by a Co-operative Bank, the prohibition contained under Section 22-A of the Registration Act does not apply for them. The same was upheld by a Division Bench of this court in W.P.No.950 of 2007.

Hence, the writ petition is allowed, as prayed for.”

Learned Assistant Government Pleaders for Revenue, and Registration and Stamps, does not dispute the above decisions of this court and the applicability of the same to the facts of the present cases.

In view of the facts and circumstances of the case, the *lis* in the present writ petition is squarely covered by the above decisions of this court and hence the same is allowed directing the respondents to receive and register the document presented by the petitioner in respect of the subject property, if the same is in order as per provision of the Indian Stamp Act, 1899 and the Registration Act, 1908 and the Rules made there under; and not prohibited for registration by any order/injunction/attachment, passed by a court, or competent authority.

Interlocutory applications pending, if any, shall stand closed. No costs.

A.RAJASHEKER REDDY,J

DATE:11—12—2018
AVS