

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.45742 OF 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking for a writ of *Mandamus* to declare the Endorsement in L.P.R.E1/E-1464505/2018, dated 30.08.2018, issued by the 2nd respondent refusing to delete the land in an extent of Ac.2.38 cents in Survey No.118 of Vandram Village, Undi Mandal, West Godavari District, from the Prohibitory Lands List prepared and communicated under Section 22-A(1)(a) of the Registration Act, 1908, as arbitrary, illegal and contrary to G.O.Ms.No.279, Revenue (ASSN.I) Department, dated 04.07.2016, issued by the 1st respondent and the well-established legal principles, apart from being violative of the fundamental and constitutional rights guaranteed to the petitioner under Articles 14, 19 and 21 of the Constitution of India and consequently direct the 2nd respondent to delete the land in an extent of Ac.2.38 cents in Survey No.118 of Vandram Village, Undi Mandal, West Godavari District, from the prohibitory lands list under Section 22-A(1)(a) of the Registration Act, 1908, prepared and communicated by him.

2. Heard Sri V.R.Reddy Kovvuri, learned counsel appearing for the petitioner and learned Assistant Government Pleader for Revenue (A.P.) appearing for the respondents 1 to 4.

3. The case of the petitioner is that the subject land in an extent of Ac.2.38 cents in Survey No.118, situated at Vandram Village, Undi Mandal, West Godavari District, was assigned in favour of one Syed Mustaq Hussain, under Ex-Service Man Quota by the then Tahsildar, Bheemavaram, through the proceedings in R.Dis.No.D1/9/LD/76,

dated 11.07.1967. Since the date of assignment, the subject land was in the possession and enjoyment of the assignee namely Syed Mustaq Hussain without any interference from the respondents till his demise. Having recognized the possession and enjoyment of Late Syed Mustaq Hussain, the revenue records were mutated in his favour as Pattadar and Possessor of the subject land. As per the policy decision taken by the State Government and the Government Orders being issued by it from time to time, i.e., G.O.Ms.No.1117, Revenue (ASSGN-I) Department, date 11.11.1993, G.O.Ms.No.279, dated 04.07.2016, the assignees of the land assigned under Ex-Service Man Quota are entitled to alienate the same in favour of third parties after expiry of ten years period from the date of assignment as long as the genuineness of the assignment is not in dispute. Syed Mustaq Hussain alienated the same in favour of one Takkella Mahankalamma, who in turn has sold the same to the petitioner through Sale Deed bearing Document No.1458 of 2012, dated 29.06.2012. Prior to the purchase, the vendor of the petitioner Takella Mahankalamma made an application to the 3rd respondent seeking to issue NOC and the 3rd respondent in turn issued an Endorsement, dated 23.06.2012, to the effect that the subject land was assigned in the year 1967 under Ex-Service Man Quota as per G.O.Ms.No.742, Revenue (B) Department, dated 30.04.1963, and as per G.O.Ms.No.1117, Revenue (ASSGN-I) Department, date 11.11.1993, the assignees are free to sell away the assigned lands assigned under Ex-Service Man Quota after a period of ten years from the date of assignment and there is no objection to the registration of the land by the assignee. Basing on the Endorsement, dated 23.06.2012, the Sub-Registrar, Undi Mandal, has entertained the Sale

Deed, dated 29.06.2012, and registered the same in favour of the petitioner. Thereafter, the petitioner submitted an application under Section 4(1) of the A.P. Rights in Land and Pattadar Pass Book Act, 1971 (for short, 'the Act, 1971') and the 4th respondent, having adhered to the procedure envisaged under the Act, 1971, and the Rules made thereunder, mutated the name of the petitioner in the revenue records and also issued Pattadar Pass Book and Title Deeds in favour of the petitioner. While so, the legal heirs of the original assignee filed a suit in O.S.No.297 of 2012, on the file of the learned III Additional District Judge, Bheemavaram, West Godavari District, seeking to declare the Sale Deed bearing No.1458 of 2012, dated 24.06.2012, executed by Smt. T.Mahankalamma in favour of the petitioner is a collusive, sham and nominal document and the same does not bind on them and to deliver the possession of the subject land after evicting the petitioner from the same and to award arrears of Maktha Rs.86,400/- and also to award future Makthas and a sum of Rs.10,200/- towards damages and also future damages and costs of the suit. Thereafter, the legal heirs of the original assignee got amended the relief to declare them as the absolute owners of subject land and the said suit was dismissed on contest vide decree and judgment, dated 12.02.2016, and the said decree and judgment attained finality. While so, the 2nd respondent included the subject land in the list prepared by him under the purported exercise of powers conferred under Section 22-A(1)(a) of the Registration Act, 1908. Therefore, the petitioner was constrained to submit a representation and the same is registered as Application No.TTA011800022761 requesting the 2nd respondent to delete the same from the prohibitory lands list prepared and communicated

under Section 22-A(1)(a) of the Registration Act, 1908, but the 2nd respondent, through the impugned endorsement, refused to delete the same from the prohibitory lands list under Section 22-A(1)(a) of the Registration Act, 1908. Aggrieved by the same, the present writ petition is filed.

4. The fact that the subject land was assigned to Ex-Service Man on 11.07.1967 is not disputed and it is also stated in the impugned endorsement, but it is stated that assignee leased out the same to third parties in violation of assignment rules. Hence, cannot be deleted from list of prohibited properties. As on today, patta granted to Ex-Service Man is not cancelled and basing on same, registered Sale Deed, dated 29.06.2012, in Document No.1458 of 2012, is executed in favour of petitioner after 3rd respondent issued endorsement, dated 23.06.2012, stating subject property was assigned in the year 1967. G.O.Ms.No.279, dated 04.07.2016, is issued stating lands assigned to Ex-Service Man have to be deleted from the list of prohibited properties after the period of ten years. The relevant portion of the said G.O. is as under:

“6(ii). All such cases without dispute shall be deleted from the prohibitory list under Section 22-A of Registration Act, 1908 and furnished to the Registration Department.”

5. The suit in O.S.No.297 of 2012, filed by third parties against the petitioner, was also dismissed on 12.02.2016. In view of the same, the order passed is without any application of mind and an Officer like the District Collector is not expected to pass such an order without application of mind driving the petitioner to this Court and the order is passed mechanically without reference to the rights of the parties.

6. In view of the facts and circumstances of the case, the Writ Petition is allowed, as prayed for, and the impugned endorsement, dated 30.08.2018, is hereby set aside.

As a sequel thereto, miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

There shall be no order as to costs.

A.RAJASHEKER REDDY, J

Date: 17th December, 2018

Note: Issue C.C. in two (02) days.

(B/o.)
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HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.45742 of 2018Date: 17th December, 2018

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