THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CC. No.614 of 2018

IN/AND

I.A.Nos.1 and 2 of 2018

in

WP.MP.No.50136 of 2017

IN/AND

WP.No.40402 of 2017

COMMON ORDER:

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

2. Petitioners have assailed in the Writ Petition the inclusion by the respondents of petitioners' land in survey No.228 of Choutuppal Village, Bhongir District in the list of prohibited properties under Section 22A of the Registration Act, 1908 (for short 'the Act') and in refusing to receive, register and release documents presented by the petitioners in respect of the said land.

3. Petitioners contend that their grandfather, Mangali Narsaiah, had applied for assignment of land in the said survey number in 1955; that the Tahsildar, Choutuppal Mandal recommended for assignment, which was reiterated by the Deputy Collector vide proceedings dt.13.05.1955, and then the Collector, Nalgonda issued proceedings No.5439/55/B-3 dt.03.06.1955 assigning the subject land of Acs.18.00 gts in the said survey number to the petitioners'

grandfather. Petitioners allege that there was an attempt by the District Collector, Nalgonda vide proceedings dt.02.06.1985 to review and cancel the assignment to the petitioners' grandfather invoking Section 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli; petitioners' father and his brothers approached this Court by filing W.P.No.7843 of 1985; and this Court disposed of the said Writ Petition on 02.01.1988 directing the Revenue Divisional Officer, Nalgonda to conduct enquiry and submit a report to the District Collector, Nalgonda and also directed the respondents not to disturb the possession of the petitioners till the final orders are passed by the District Collector, Nalgonda.

4. Petitioners contend that thereafter the Revenue Divisional Officer, Nalgonda conducted enquiry and submitted a report dt.05.06.1989 to the District Collector reiterating that the subject land was assigned to the petitioners' grand father, Mangali Narsaiah, in 1955 vide proceedings RC No.5439/55/B-3, dt.03.06.1955 and that it was an unconditional assignment on payment of upset price equal to 16 times of the land revenue and the said assignment cannot be reviewed or revised.

5. Petitioners further contend that basing on the same, the District Collector, Nalgonda withdrew the proceedings

dt.02.06.1985 and since then petitioners are in peaceful possession and enjoyment of the same.

6. Petitioners contend that when they approached the 5th respondent for registration of a parcel of the subject land, which they intend to sell to perform the marriage of the 2nd petitioner's daughter, 5th respondent refused to receive and register it on the ground that the subject land was included in the list of prohibited properties under Section 22A of the Act.

7. Petitioners contend that assignments made prior to issuance of G.O.Ms.No.1406 dt.25.07.1958 in Telangana Area like the one made to the petitioners' grand father, on collection of market value, are not subject to any condition prohibiting alienation, and the respondents cannot include the same in the prohibited list under Section 22A of the Act and communicate it to the petitioner through 5th respondent.

8. On 12.12.2017 in W.P.MP.No.50136 of 2017 in W.P.No.40462 of 2017 this Court passed the following order:

> " The learned Government Pleader for Assignment takes notice for respondents.
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> Having regard to the order dt.05.06.1989 of 3rd respondent certifying that there was no condition prohibiting alienation in the deed of assignment granted to the original assignee by name V.Narsaiah, 2nd respondent could not have included the subject land in the list of prohibited properties which he communicated to 5th respondent under Section 22A of the Registration Act, 1908 and 5th respondent cannot refuse to register the same on the ground that it is included in such a list. Therefore, there shall be interim direction as prayed for."

9. Alleging that in spite of the said interim order, 5th respondent in the Writ Petition is not accepting the documents for registration, petitioners filed CC.No.614 of 2018.

10. In the meantime, respondents filed I.A.No.1 of 2018 and I.A.No.2 of 2018 to vacate the interim order dt.12.12.2017 granted by this Court.

11. The 4th respondent in the counter affidavit filed along with I.A.No.1 of 2018 denied that there was an assignment in favour of petitioners' grandfather on 03.06.1955 in respect of Acs.18.00 gts of land and stated that as per revenue records from1961 to 1962 for the first time his name was mentioned in the records as an assignee. While not denying that pattadar pass book and title deeds were issued to four sons of Mangali Narsaiah, after his death, after taking succession proceedings, it is contended that the same will not confer any right or title on the petitioners for the purpose of alienation. However, the 4th respondent did not dispute the report dt.05.06.1989 of the Revenue Divisional Officer, Nalgonda.

12. It is stated that the Joint Collector caused another enquiry to be made by the Revenue Divisional Officer, Bhongir under Section 166(B) of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli; that the Revenue Divisional Officer, Bhongir in his report dt.15.09.1990 stated that

assignment was made to petitioners' grand father in 1961-62; that G.O.Ms.No.1406 dt.25.07.1958 would apply and the land ceased to be alienable and was only heritable, and the respondents were justified in including the land in the register prepared under Section 22A of the Act by treating it as not alienable land.

13. In the counter affidavit filed along with I.A.No.2 of 2018, the 5th respondent reiterated the same. He also placed reliance on the judgment of the Full Bench in ***Vinjamuri Rajagopala Chary and others v. State of A.P.***[1]. It is denied that the petitioners had presented any document for registration and it is contended that if there is any refusal to register, there would be an order under Section 71 of the Act against which an appeal would lie under Section 72 and Section 77.

14. From the rival contentions of the parties, the question which arises is:

> "Whether the respondents were right in including the subject land of Acs.4.20 gts., in survey No.228 of Choutuppal Village, Bhongir District in the list of prohibited properties under Section 22A of the Act?

15. Petitioners had filed a copy of the order dt.03.06.1955 issued by the District Collector, Nalgonda in proceedings RC No.5439/55/B3 assigning Acs.18.00 gts of dry land in survey

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[1] 2016(1) ALT 550 (FB)

No.228 of Choutuppal to their grand father, Mangali Narsaiah.

16. Counter affidavit filed along with I.A.Nos.1 and 2 of 2018 make no reference to this document at all. That apart, the report dt.05.06.1989 of the Revenue Divisional Officer, Bhongir addressed to the District Collector, Nalgonda states that the Revenue Divisional Officer had enquired into the matter and his enquiry had revealed that said land was assigned to the petitioners' grand father on 03.06.1955. The said order also recites that the Revenue Divisional Officer has perused the assignment order and he had noticed that there were no conditions prescribed therein.

17. Even the proceedings dt.15.09.1990 of the Revenue Divisional Officer, Bhongir relied upon by the respondents in the counter affidavit do not support the respondents' plea that the assignment to petitioner's grandfather Mangali Narsaiah was made in 1961-62. On the contrary, it is stated therein that certain alienations did take place but through out the said order, it is stated that the Laoni Patta has been granted to Mangali Narsaiah for Acs.18.00 gts. in survey No.228. Merely because in the said report it is stated that there was an entry made in revenue records in 1961-62, it cannot be presumed that assignment of land to Mangali Narsaiah was in 1961-62.

18. How such report on 15.09.1990 can be relied upon by the respondents, when the officer who prepared it has not even seen the deed of assignment before giving the report, is not explained by the respondents.

19. It is not in dispute that a patta would be referred to as Laoni Patta only if there is an assignment of government land under the Laoni Rules, 1954 and such nomenclature would not be applied to the pattas granted after G.O.Ms.No.1406 came into operation with effect from 25.07.1958.

20. Therefore, the whole basis of the stand taken by the respondents that the assignment made to Mangali Narsaiah was not in 1955 but was after the issuance of G.O.Ms.No.1406 dt.25.07.1958, is without any basis.

21. It is not disputed by the Government Pleader for Revenue that assignments made prior to 25.07.1958 had no condition prohibiting alienation, and the said condition was imposed only under the said G.O. with effect from 25.07.1958. Thus, there was no impediment at any point of time for alienation of this land and that was why even the report dt.15.09.1990 recorded that some alienations were made by the family of Mangali Narsaiah of small bits without any problem. Consequently, the land in question could not have been placed by respondents in the prohibitory list of properties notified under Section 22A of the Act.

22. The judgment of the Full Bench referred to in the counter affidavit filed by the 5th respondent had been challenged in the Supreme Court in SLP No.15009 of 2016 and an order has been passed by the Supreme Court on 19.04.2018 directing this Court to decide the validity of Section 22A and also to decide each case individually on its own merits. So the said decision is not an impediment to this Court to hold in petitioner's favour.

23. In this view of the matter, the Writ Petition is allowed with costs of Rs.1,000/- each to be paid by the 1st respondent to the petitioners; the respondents are directed to delete the subject land of Acs.4.20 gts., in survey No.228 of Choutuppal Village, Bhongir District from the list of prohibited properties under Section 22A of the Registration Act, 1908; and the 5th respondent is directed to receive, register and release the documents presented by the petitioners in respect of the subject land or portion thereof, without raising any objection that the said land was included in the list of prohibited properties under Section 22A of the Act, subject to compliance of other formalities under the Indian Stamp Act, 1899 and the Registration Act, 1908. Consequently, I.A.Nos. 1 and 2 of 2018 are dismissed.

24. Having regard to the final order passed in the Writ Petition today, and in view of the denial of the respondents in the Contempt Case that documents are presented for

registration by the petitioners, I am not inclined to punish the respondents for contempt and the Contempt Case is thus closed. However, the respondents in the Contempt Case are directed to comply with the final order passed in the Writ Petition without fail, if not, petitioners are given liberty to file a fresh Contempt Case. No order as to costs in the Contempt Case.

25. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

13th July, 2018.
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