HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.22471, 22487 and 22489 of 2019

Date : 12.2.2020

WRIT PETITION No.22471 of 19

Between:

M/s United land Marks Private limited
A company registered under the Companies Act 1956
having its office at 216127 Prashant Nagar Colony Opp
Survey of India Uppal Hyderabad 500 039 represented
by its Director P S Parthasarathy S/o Late P S Rao Aged
about 54 years

Petitioner

And

State of Telangana and 5 others
Rep by its Principal Secretary Revenue Registration
Department Secretariat Hyderabad

Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos.22471, 22487 and 22489 of 2019

COMMON ORDER:

The prayer in these three writ petitions and the grievance agitated in the writ petitions, being the same, they are disposed of by this common order.

2. Petitioners claim that they have purchased land to an extent of Ac.50.00 each out of total extent of Ac.373.22 in survey No. 613, Nadargul village, Saroornagar mandal (presently Balanagar mandal), Ranga Reddy district and the said extent of land was registered in their favour vide document numbers 635, 637 and 636 dated 5.2.2016 respectively. According to petitioners, they have applied to the Revenue Divisional Officer, Kandukur Division, third respondent for conversion of their land from agricultural to non agricultural purposes. This application was forwarded to the Tahsildar by the Revenue Divisional Officer but Tahsildar in turn vide his letter dated 6.9.2019 informed the Revenue Divisional Officer that the said land is included under Section 22(A) of the Registration Act, 1908, and since the land is included in the prohibited list of properties, request of the petitioners for conversion for non agricultural purposes cannot be granted till 'No Objection Certificate is issued and de-notification from the prohibited list of properties exercise is undertaken.

3. When the writ petitions were instituted in all the three writ petitions, petitioners prayed to grant the following relief:

> "…pleased to issue a writ or order or direction more preferably in the nature of Writ of Mandamus declaring the inaction on part of the respondents 5 and 6 herein in not deleting the property of the petitioner admeasuring Ac 50.00 Gts in Sy No 613 of Nadergul Village Balapur Mandal Ranga Reddy District from the list of properties prohibited for registration under Sec 22-A (1) of the Registration Act is highly illegal arbitrary and unconstitutional being violative of Articles 14, 21 and 300A of the Constitution of India and also violative of principles of natural justice and consequently direct the respondents 5 and 6 herein to delete the property admeasuring Ac 50.00 gts in Sy No 613 of Nadergul Village Balapur Mandal RR District belonging to the petitioner from the list of properties prohibited for registration the register of which is maintained by the 6th respondent herein under Sec 22 (A) of the Registration Act and pass…"

3.1. From the averments made in the affidavits, the main grievance expressed by the petitioners was against inclusion of the subject land in the prohibited list of properties and sought direction to the respondents 5 and 6/registering authorities to delete the property from the list of prohibited properties.

3.2. On 26.9.2019, the Revenue Divisional Officer communicated his decision rejecting request for conversion of agricultural land for non agricultural purposes.

3.3. Petitioners filed I.A.No.2 of 2019 in the respective writ petitions praying to amend the pleadings and prayer in the writ petitions. They sought for introduction of paragraph 6 (A) in the affidavits filed in support of all the writ petitions. Through said paragraph petitioners state about rejection of their request for conversion of agricultural land for non agricultural purposes. Thereafter, petitioners sought to amend paragraph-9 by replacing the entire paragraph 9 with new averments. In paragraph-9 as originally filed, the grievance expressed was against non-deletion of the subject property from the prohibited list of properties by the registering authorities. By the amendment now brought out, they contend that the third respondent's decision rejecting the conversion application as illegal, arbitrary and unconstitutional.

3.4. Petitioners also sought amendment of the main prayer. By way of amendment they have challenged the orders of the Revenue Divisional Officer dated 26.09.2019 rejecting the request for conversion and seek consequential direction to the Revenue Divisional Officer to grant permission to convert petitioners' land from agricultural to non- agricultural purposes. They also sought amendment of the interim prayer and by this amended prayer they seek direction to third respondent Revenue Divisional Officer to grant permission to convert the petitioners' land from agriculture to non agricultural purposes.

4. In the affidavits filed in support of the writ petitions, petitioners trace the history of flow of title. According to petitioners as per Khasra Pahani for the years 1960-61 to 1965-66 and 1971-72 and 2015-16 the land in Survey No. 613, Nadargul village is shown as Jagir land and Sri Shivraj Bahadur was shown as pattedar. Legal heirs of Sri Shivraj Bahadur filed O.S.No.155 of 2005 in the Court of Principal District Judge, Ranga Reddy at L.B.Nagar claiming right over the said property and sought to rectify the revenue records by incorporating their names as owners and in possession of the land. The said suit was dismissed vide

judgment dated 30.4.2007. Challenging the said judgment, A.S.No.274 of 2007 was instituted in this Court. This Court by judgment and decree dated 19.12.2011 allowed the appeal setting aside the judgment and decree dated 30.4.2007 passed by the trial Court. Petitioners further contend that the Government delivered possession of the land to an extent of Acs.373.22 in Survey No.613, Nadargul village to the then A.P. Industrial Infrastructure Development Corporation (after bifurcation presently known as Telangana Industrial Infrastructure Development Corporation) for developing a hardware park. The then APIIC challenged the judgment and decree of this Court in A.S. No. 274 of 2007 before the Supreme Court in C.A. No. 2963 and 2964 of 2013. The Apex Court vide judgment dated 9.10.2015 dismissed the said appeals. Petitioners therefore contend that their vendors perfected title to the above extent of agricultural land and on execution of the deeds of conveyance the title has validly passed on to them.

5. Heard learned senior counsel Sri Vedula Venkataramana for petitioners and learned Special Government Pleader appearing on behalf of learned Advocate General.

6.1. According to learned senior counsel, in view of the judgment rendered by the High Court in A.S.No.274 of 2007 affirmed by the Supreme Court, the property absolutely vested in the vendors and there is no more dispute on the title claim of original pattadar Sri Shivraj Bahadur and having lost the appeal suit before this Court and affirmed by the Supreme Court, it is no more open to the State to treat the said land as prohibited property and continue to reflect the land in the list of prohibited properties.

6.2. He would further submit that the report of the Tahsildar informing the Revenue Divisional Officer about the status of the land as included in the list of prohibited properties and that No Objection Certificate (NOC) is required to process the applications for conversion is illegal.

6.3. He would submit that based on said report, rejection of request of petitioners to grant the permission for conversion of the agricultural land for non- agricultural purposes by the Revenue Divisional Officer is ex-facie illegal, contrary to the provisions of The Telangana Agricultural Land (Conversion For Non Agricultural Purposes) Act, 2006 (Act, 2006) and would amount to non application of mind.

6.4. He would further submit that including the subject land in the prohibited list and rejecting the request for conversion is ex-facie illegal, arbitrary and unconstitutional.

7.1. *Per contra,* according to learned Special Government Pleader, if petitioners are aggrieved by order rejecting application for conversion of agricultural land for non-agricultural purposes, they ought to have availed remedy of appeal under Section 8 of the Act, 2006, and when alternative remedy of appeal is available, writ petitions are not maintainable and are liable to be dismissed on this ground alone.

7.2. He would further submit that as land is included in the list of prohibited properties under Section 22-A (1)(D) of the Act, 1908, if petitioners are aggrieved by such inclusion they have to apply for deletion before the competent authority as held by the Full Bench of this Court in **Vinjamuri Rajagopala Chary v. State of Andhra Pradesh**[1].

7.3. Having regard to the pleadings raised and prayers sought in I.A.No.2 of 2019 filed in each of the three writ petitions, learned Special Government Pleader submitted that Sri Shivraj Bahadur was holding land to an extent of Ac.1012.21 in Nadargul village. He has also drawn attention to the provisions of The Telangana Land Reforms (Ceiling On Agricultural Holdings) Act, 1973 (Act, 1973), to contend that unless a declaration is filed under the Act and determination of extent of holding is made by the Tribunal with demarcation of standard holding, pattadar cannot alienate the land. According to learned Special Government Pleader, pattadar of the land cannot hold such huge extent of agricultural land.

7.4. The original pattadar/legal heirs have not filed declaration as contemplated by Section 8 of the Act, 1973 before executing several General Power of Attorneys in favour of Karim Alladin and without filing any declaration as required by Section 8 1) of the Act, sale of land is not permissible and, therefore, alienation of land by pattadar / legal heirs is *ex facie* illegal. He would therefore submit that as they are void transactions, no right flow to the

[1] 2016 (1) ALT 570 (F.B)

petitioners and therefore petitioners cannot resort to the conversion of this agricultural land for non agricultural purposes.

7.5. He would submit that under Section 18 (1) the persons who claimed to have acquired agricultural land subsequently by way of registered deed of conveyance are also required to file declarations before competent authority under the statute. He would submit that no such declaration was filed either by the original pattadar/his legal heirs, or General Power of Attornery holder or subsequent purchasers. He would submit that unless proceedings under the Act, 1973 are concluded, status of the agricultural land cannot be changed and unless and until the issue is finalized, property has to be continuously shown as prohibited property under Section 22 (A) (1) (D) of the Registration Act.

7.6. He would submit that having come to know that declaration under the Act, 1973 were not filed, notices were issued on 18.11.2019 calling upon the pattadar/ legal heirs/GPA holders and petitioners to furnish requisite details.

7.7. He would submit that only to overcome the mandatory requirements of the statute, petitioners are trying to obtain orders for conversion for non-agricultural purposes. Court in exercise of power of judicial review cannot permit the petitioners to circumvent the law. He would therefore justify the order of the Revenue Divisional Officer rejecting the application for conversion.

8. In reply, learned Senior Counsel would submit that by the time Act, 1973 came into force, Government was claiming the land and till judgment was rendered by Hon'ble Supreme Court on 9.10.2015, there was no occasion for pattadar/ legal heir the petitioners to claim the subject land as belonging to them and to file declaration under the Act, 1973. He would submit that family of the pattadars is very big and all of them put together are entitled to retain entire extent of Acs.373.22 guntas of land in Sy.No.613 of Nadargul village. Merely because declaration was not filed land do not loss the status of private patta land and pattadar of land is competent to deal with his land according to his choice and preference. He would therefore submit that the subject land is not hit by provisions of Act, 1973 and therefore learned Special Government Pleader cannot contend that alienation of the land is illegal. He would further submit that the reasons assigned by the Revenue Divisional Officer in the impugned order are not valid in law and therefore question of petitioners availing the remedy of appeal does not arise.

9. Section 8 of the Act, 1973 requires a person, who is holding agricultural land on the notified date together with any land transferred to him on or after 24.1.1971 by any means, to file declaration before the Tribunal. According to explanation III, standard holdings in case of wet land is 4.05 hectors (Ac.10.00) and dry land is 10.12 hectors (Ac.25.00).

10. According to Section 18, even after the notified date if a person has acquired agricultural land in any manner including as usufruct, mortgage or lease, marriage or adoption or alteration of classification of the land etc., and if total extent of land held by such person or by all members of a family unit in the aggregate exceeds the prescribed holding limit, such person or family unit should file declaration under Section 8 of the Act. Explanation I appended to Section 18 stipulates that number of members of the family unit should be reckoned with reference to date of such acquisition. According to explanation II the expression within “Notified date” should be construed as date of acquisition of land.

11. Section 19 imposes restriction on registration of deeds of conveyance. It requires that person who presents documents for registration should give a declaration that the holding of the transferor does not exceed the prescribed limit. It mandates the Registering authority not to accept any document for registration, if the document is not accompanied by the declaration. It also mandates the Registering Authority to forward one copy of the declaration to the jurisdictional Revenue Divisional Officer. According to sub section 6, if it appears to the Tribunal or Revenue Divisional Officer that transaction has taken place in contravention of the provisions of the Act, shall cause notice, consider explanation offered and take appropriate decision.

12. A cumulative reading of relevant provisions of the Act would make it clear that land holder is required to file a declaration of the

extent of land owned by him or his family unit. On filing such declaration, the Tribunal would assess how many standard holdings the family of the pattadar can have and if it is established that land is in excess of the standard holdings, would declare that the excess land would vest in the State. The provisions of the Act enable the declarant to surrender land of his choice. In the absence of surrender of excess land by land holder, it is permissible to the competent authority to identify the land from out of the extent of land owned by the pattadar and take possession. It is seen that the determination of standard holding is not restricted to notified date under the Act and whenever a person acquires agricultural land and such acquisition results in exceeding standard holding of himself or the family unit, he must file a declaration. In either of the contingencies, unless such declaration is filed and proceedings are concluded, no transaction should take place in the land and any such transaction would amount to contravention of the provisions of the Act and in such a case it can also result in initiation of prosecution against the owner of the land.

13. Further, section 17 of the Act prohibits alienation. According to this section no person whose holding, and no member of the family unit, where the holding of all the members of which in the aggregate, is in excess of the ceiling area, shall not alienate his holding or in part there of by any means; cannot resort to conversion of agricultural land into non agricultural land until he

or the family unit has furnished declaration under Section 8; and extent of land to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal; and order has been passed by the Revenue Divisional Officer, taking possession of the land in excess of the ceiling area and a notification is published under Section 16. It declares that any alienation etc made in contravention of the provisions of the Act shall be null and void and any conversion made shall be disregarded. Thus, unless a declaration is made, retainable land is identified and excess land, if any, is taken possession by the State, the pattadar cannot assert the land as belonging to him and undertake transactions, such as alienation of the land.

14. In the cases on hand, petitioners assert that their vendor were pattadars and owned large extent of land in Survey No. 613, Nadargul village, out of which, each of the petitioners have purchased Ac.50.00 of land. According to petitioners, the land in Sy.No.613 was claimed by the Government as Government land. Curtains were drawn on the litigation on 9.10.2015 when Hon'ble Supreme Court rendered judgment affirming the decision in A.S.No.274 of 2007. From the assertion of the learned senior counsel, it can be safely assumed that the vendors of the land were all along claiming that land belong to them or at least they became absolute owners of the land when decision was rendered by this Court in A.S.No.274 of 2007 and on 9.10.2015 when Supreme Court dismissed the Civil Appeals against the judgment in

A.S.No.274 of 2007. According to learned Special Government Pleader, pattadar owned Acs.1012.21 guntas of land in Sy.No.613, pattadar claimed to own Ac.373.22 and the pattadar/ his legal heirs have not filed declaration under Section 8.

15. As per the standard holding, a person can retain wet land to an extent of 4.05 hectors (Ac.10.00) and dry land to an extent of 10.12 hectors (Ac.25.00). That being so, it appears even land in survey no.613 is far in excess of the standard holding/s. Therefore, a declaration under Section 8 is mandatory by the pattadar/ legal heirs/ General Power Attorney holder/ petitioners. Leaving aside declaration on larger extent of land, it is not stated by petitioners as to whether for the land in survey no. 613, declaration was already filed by the original pattadar/legal heirs. According to learned Special Government Pleader, no such declaration was filed. Suffice to note that if pattadar was assessed earlier on other land, over and above Ac.373.22 in survey no.613, and Tribunal determined the standard holding he/his family unit can retain, the same also has to be factored in assessing the retainable land in survey no.613.

16. As to what is the family unit of pattadar, how many persons in the family having regard to the cut off date fixed on such claims are entitled to claim a separate standard holding in their favour and what extent of land out of Ac.373.22 would become the standard holding retainable by the family and what amount of land would become excess land, etc are all aspects in nebulous state. At

any rate, these are the aspects for the competent authority to look into and take decisions if a declaration is filed or on a sue-moto initiation of proceedings and Court cannot dwell into these aspects at this stage. In the absence of clarity on extent of land retainable by the pattadar/ legal heirs, petitioners cannot assert that the extent of land purchased by them is free from the mandate of Act, 1973.

17. In the counter-affidavit, deposed by Sri Ch.Ravinder Reddy, Revenue Divisional Officer of Kandukur Division, it is asserted that the pattadar/legal heirs have executed several registered General Power of Attorneys on various extents in favour of Sri Karim Alladin covering Acs.266.19 guntas of land and have also sold balance land. In addition to pattadar(s) filing declaration, even in the case of GPA holder as interest is created in his favour, he has to file declaration under Section 18(1) of the Act. As a corollary, petitioners being subsequent purchasers, they are also required to file declaration under Section 18(1). This assertion of the Revenue Divisional Officer is not denied.

18. Further, though pleadings in the writ petitions when instituted were on inclusion of the subject land in the list of prohibited properties, by filing I.A.No.2 of 2019, the pleadings are amended and initial grounds and prayer against such inclusion is given up. As asserted in the counter-affidavit the land in Sy.No.613 is included in the list of prohibited properties. Since the land is included in the list of prohibited properties, it is not permissible to

register deeds of conveyance. It is not known how conveyance deeds were registered. However, no opinion is expressed as petitioners gave up their initial challenge.

19. In the counter-affidavit, it is also asserted that no declaration was filed by vendors before the registering authority as required by Section 19(1) of the Act, 1973. From the covenants of sale deeds filed by petitioners, it is seen that there is no mention about such declaration and copy of declaration was not appended to the sale deed. As per Section 19, it is mandatory to file such declaration and registering authority should refer the issue to the Revenue Divisional Officer. It is specifically asserted that no reference of such declaration was made to the Revenue Divisional Officer, which contention is not denied.

20. The mutation order dated 24.09.2016, on which heavy reliance is placed, also gives an interesting reading. The Tahsildar does not deal with aspect of whether land in issue was affected by Act, 1973, more so, when mutation was sought on large extent of land which was part of larger extent of land and extensive reliance was placed on decree granted in A.S.No.274 of 2007. He claims to have written letter to the District Collector and also sought opinion of Government Pleader, but has not received response. However, it appears he elicited information only with reference to implementation of decree. He also records that he was compelled to accept mutation request as there was threat of contempt

proceedings and heavy pressure was brought upon him by parties. These aspects put cloud on entire exercise.

21. The infirmities noticed above go to the root of the issue. For the afore stated reasons, I do not see any error in the decision arrived at by the Revenue Divisional Officer rejecting the request of the petitioners for conversion of Agricultural land for non agricultural purposes. Accordingly, writ petitions are dismissed. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 12-2-2020
TVK

HONOURABLE SRI JUSTICE P. NAVEEN RAO

<u>WRIT PETITION Nos.22471, 22487 and 22489 of 2019</u>

Date:12-02-2020