

(2009) 04 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4633 of 2008

Hanumanthu Krishna Rao and Others

APPELLANT

Vs

The Sub-Registrar, Ponduru and Another

RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987
— Section 87
Registration Act, 1908 — Section 22A, 22A(1)

Citation : (2009) 4 ALD 249 : (2009) 4 ALT 511 : (2009) 2 APLJ 339

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : V.H.V.R.R. Swamy, for the Appellant; G.P for Revenue and G.P. for Endowments, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The petitioners challenge an endorsement dated 27-02-2008, made by the 1st respondent, through which, he refused to register a document presented by the petitioners, for sale of land in Sy. No. 154/21 of Kushalapuram Village, Etcharla Mandal, Srikakulam District.

2. The petitioners state that Ac.6.26 cents of land in Sy. No. 154/21 was owned by one Sri Jaga Datt Dave, and after his death, it devolved upon his four sons, viz., Sridatt Dave, Durgadatt Dave, Haridatt Dave and Ramadatt Dave, respondents 3 to 6 herein. It is stated that the four brothers mentioned above, executed an Agreement of sale-cum-General Power of Attorney in favour of Smt. Hanumanthu Sunitha, Budumuru Varalakshmi and Gudimella Sailaja, and the three ladies, in turn, have executed a sale deed in favour of the petitioners on 20-12-2005, in respect of the land.

3. The petitioners divided the land into plots. They intended to sell the plot of 133.33 sq.yards in favour of one, Sri Velamala Venkata Rao. Accordingly, they executed a sale deed on 12-02-2008, and presented the same before the 1st

respondent for registration.

4. The Assistant Commissioner of Endowments, Srikakulam, the 2nd respondent, and the Management of Sri Patha Anjaneya Swamy Temple, informed the 1st respondent that the land belongs to them. The 1st respondent kept the document pending and assigned No. P4 of 2008. He addressed a letter dated 15-02-2008 to the purchaser under the document, Mr. Venkata Rao, informing that, claim was made to the land, on behalf of the Temple, and in view of Section 22-A of the Registration Act, 1908 (for short "the Act"), the document cannot be registered. The addressee of the letter was informed that, if no reply comes from him, registration is refused.

5. The third petitioner submitted a detailed representation dated 19-02-2008. They traced the background in which, they purchased the land, and ultimately it was urged that the Temple has no claim over it. It was mentioned that the office of the 1st respondent registered several documents, in relation to the land in Sy. No. 154/21, and that there is no justification in refusing the registration of the document presented by them. Through the impugned endorsement, the 1st respondent held, that in view of the prohibition contained u/s 22A(1)(c) of the Act, the document cannot be admitted to registration. The petitioners contend that, except making a bald claim, the 2nd respondent did not place any material before the 1st respondent, to establish that the land belongs to the Temple, and that there was no basis to invoke Section 22-A of the Act, to the facts of the case. The 1st respondent filed counter-affidavit, justifying the impugned endorsement. It is stated that once there is a claim on behalf of the Temple, the only alternative for the petitioners is to seek a declaration, either by filing a suit, or by instituting the proceedings u/s 87 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short "the Endowments Act").

6. In his counter-affidavit, the 2nd respondent stated inter alia that the land of Ac. 6.26 cents in Sy. No. 154/21 together with several other extents, is held by Sri Anjaneya Swamy Temple, and the petitioners tried to grab the same. According to him, the petitioners do not derive any right, particularly when the so-called original owners themselves disputed the agreement of sale. He has also furnished the particulars of the manner in which, the land was being enjoyed by the Temple. Respondents 3 to 6 filed a counter-affidavit, stating that agreement of sale dated 20-12-2005 was cancelled by them on 02-06-2005 itself, and thereafter, several proceedings have ensued. Sri V.H.V.R.R. Swamy, learned Counsel for the petitioners submits that his clients have derived valid right and title over the land, and there is no justification for the 1st respondent in refusing registration of the document. He contends that the 2nd respondent, or for that matter any other authority, is not conferred with the power to determine the title in respect of the landed properties, and the 1st respondent is not justified in denying the registration on the strength of the letter received from the 2nd respondent. He places reliance upon certain judgments in Mallaram Govindamma

and Another Vs. The District Collector and Others, , Guthula Satyamma and Others Vs. Rudraraju Venkataraju and Others, and Vallabhaneni Subba Rao and others Vs. Collector, Hyderabad Dist. and others, .

7. Learned Government Pleaders for Revenue and Endowments Departments submit that the land was endowed to Sri Anjaneya Swamy Temple, and the prohibition contained under Sub-section (1) (c) of Section 22-A of the Act squarely gets attracted. Sri P. Veera Reddy, learned Counsel for the respondents 3 to 6 states that the petitioners did not derive any right or title over the property, inasmuch as the agreement of sale in favour of their vendor was cancelled way back on 02-06- 2005.

8. The document presented by the petitioners herein in respect of 133 sq.yards of land, out of land in Sy. No. 154/21 was initially given a pending number by the 1st respondent. On receiving a communication from the 2nd respondent, that the land belongs to Sri Anjaneya Swamy Temple, the 1st respondent addressed a letter dated 15-02-2008 to the purchaser, under the document. A reply however was given by the 3rd petitioner herein. Ultimately the 1st respondent took the view that the document cannot be admitted to registration, in view of the prohibition contained u/s 22A(1)(c) of the Act.

9. The petitioners based their rights vis--vis the land on a sale deed dated 20-12-2005, executed by Smt. Hanumanthu Sunitha, Budumuru Varalakshmi and Gudimella Sailaja. Even according to the petitioners, the only source of title for their vendor is an agreement of sale dated 17-01-2004, executed by respondents 3 to 6. In their counter-affidavit, respondents 3 to 6 stated that the said agreement was cancelled on 02-06-2005 itself. Therefore, a serious doubt exists, as to the very entitlement or capacity of the petitioners to sell any part of the land in Sy. No. 154/21. The principle, that no man can convey a better title, than what he possesses; gets attracted. That, however, is a different aspect, and not in the domain of the 1st respondent.

10. The A.P. State Legislature amended the Registration Act, 1908 by adding Section 22-A. To the extent it is relevant, for the purpose of this case, it reads as under.

11. Section 22-A: Prohibition Registration of certain documents:- (1) The following classes of documents shall be prohibited from registration, namely:

(a) documents relating to transfer of immovable property, the alienation or transfer of which is prohibited under any statute of the State or Central Government;

(b) documents relating to transfer of property by way of sale, agreement of sale, gift, exchange or lease in respect of immovable property owned by the State or Central Government, executed by persons other than those statutorily empowered to do so;

(c) documents relating to transfer of property by way of sale, agreement of sale,

gift, exchange or lease exceeding (ten) 10 years in respect of immovable property, owned by Religious and Charitable Endowments falling- under the purview of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 or by Wakfs falling under the Wakfs Act, 1995 executed by persons other than those statutorily empowered to do so.

(d) Agricultural or urban lands declared as surplus under the Andhra Pradesh Land Reforms (Ceiling and Regulation) Act, 1976;

(e) Any documents or class of documents pertaining to the properties the State Government may, by notification prohibit the registration in which avowed or accrued interests of Central and State Governments, Local Bodies, Educational, Cultural, Religious and Charitable Institutions, those attached by Civil, Criminal Revenue Courts and Direct and Indirect Tax Laws and others which are likely to adversely affect these interests.

12. The provision extracted above imposes a bar against registration of the documents, in relation to the categories of lands, mentioned in clauses (a) to (e) of Sub-section (1). The lands owned by religious institutions are covered under Clause (c). The 2nd respondent made an emphatic claim over the land and the same was acted upon by the 1st respondent. The petitioners insist that unless there is a clear determination, or adjudication in favour of the Temple, as regards the land, Section 22-A of the Act cannot be invoked.

13. Section 22-A of the Act brings about a typical situation. It virtually prevents and precludes the Registering Authority from admitting a document, in relation to category of lands, that fall into clauses (a) to (e) of Sub-section (1). The present provision is substantially different from the one, which existed till recently, and was set aside by this Court. u/s 22-A, which existed before the present amendment, the bar operated, in relation to the lands that are mentioned in a notification be published in a gazette. Such a requirement is done away with, under the extant provision.

14. Once the Registering Authority come to know, or is informed that the subject- matter of a document presented before him for registration is a land, falling into any of the categories mentioned in clauses (a) to (e) of Section 22-A(1), he has no option, except to desist from registering the document. He cannot embark upon, or undertake any enquiry, as to the validity, legality or propriety of the claims, vis--vis the land, or its character. For instance, if he is informed that the subject-matter of a document presented before him for registration is a land owned by the State or Central Government, he cannot undertake any enquiry into the correctness of such claim. He can do nothing more than refusing registration and leave it to the parties to seek adjudication before appropriate forum. So is the case with the lands, that fall into any other categories.

15. The 1st respondent received a specific claim from the Endowments Department, vis--vis the land, which is sought to be sold by the petitioners.

Howsoever meritorious the claim of the petitioners may be, the 1st respondent cannot enquire into the same. Any such attempt would be outside the scope of his powers under the Act. The only alternative for the petitioners is, to seek adjudication as to the nature and character, or even title over the land. That can be either by filing a suit or by instituting proceedings u/s 87 of the Endowments Act. They cannot insist upon the 1st respondent to give a ruling in their favour, touching upon the character of the land, or its title.

16. It is true that in *Mallaram Govindamma v. The District Collector* (1 supra), and other judgments, it was held that a letter addressed by a Government Authority to the Sub-Registrar with a request, not to register the document cannot be acted upon, and the refusal of registration on the strength of such communication is illegal. Those judgments, however, were rendered, at a time, when Section 22-A of the Act was not there on the statute book. The introduction of that provision brings about a substantial change in the legal regime, governing the subject. The validity of that provision is not in challenge. Therefore, the ratio laid down by this Court, and other Courts, in the judgments referred to above, does not apply to the facts of this case.

17. The writ petition is accordingly dismissed. It is, however, left open to the petitioners to work out their remedies by filing a civil suit, or by instituting the proceedings u/s 87 of the Endowments Act. There shall be no order as to costs.