(2005) 07 AP CK 0089

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23645 of 2004

Kunchanapalli Mysooraiah APPELLANT

Vs

Sub-Registrar and Others RESPONDENT

Date of Decision : 11-07-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Registration Act, 1908 — Section 22A

Citation : AIR 2005 AP 453 : (2005) 5 ALD 581 : (2005) 5 ALT 616

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : A. Srinath, for the Appellant; Government Pleader for Revenue, for the Respondent

Final Decision : Allowed

Judgement

B. Seshasayana Reddy, J.—This writ petition has been filed with a prayer to issue a writ of mandamus by declaring the action of the respondents in refusing to deliver the duly completed registered document P.69/2002 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

2. The petitioner owns an agricultural land to an extent of Ac.1.43 cents in S.No. 42-6 2A situated at Kadapa Sahar, Kadapa having purchased the same under a registered sale deed dated 2-7-1968. The revenue authorities have issued pattadar pass book in his favour and his name has been mutated in adangal. He sold an extent of 0.30 cents out of Ac.1.43 cents to Bepari Abdul Jabbar of Kadapa and he presented a sale deed dated 31-10-2002 to the Joint Registrar, Kadapa for registration. He paid the stamp duty and necessary charges for registration of sale transfer. But the Sub-Registrar, Kadapa has neither registered the sale deed nor returned the document. He retrained the document on the plea that the Mandal Revenue Officer addressed a letter dated 13-6-2000 stating that certain lands in S.No. 42 of Kadapa Sahar were classified, as per the village accounts of Kadapa Sahar, as Water Spread Area, Rastha, AW etc. Hence, this

writ petition questioning the action of the respondents in not registering the sale deed presented by the petitioner.

3. 1st respondent-Sub-Registrar, Kadapa District has filed counter-affidavit. It is stated in the counter-affidavit that the document which is submitted for registration pertains to lands in S.No. 42-B-2A which has been classified as Water Spread Area. In view of the letter of the Mandal Revenue Officer, Kadapa dated 13-6-2000 addressed to the Sub-Registrar, the document presented by the petitioner was not registered.

4. Heard learned Counsel appearing for the petitioner and learned Government Pleader for Revenue appearing for respondents.

5. Learned Counsel appearing for the petitioner submits that the 1st respondent has no authority or jurisdiction to refuse to register and release the document once the requisite stamp duty is paid. He further submits that 1st respondent has no power to go into the question of title as long as the Government has not issued any notification u/s 22A of the Registration Act and the 1st respondent is bound to release the documents, of course after satisfying himself as to the identity of the persons who have executed their documents. He placed reliance on the judgment of this Court in Raghu Praveen v. RDO, Kakinada, 2003 (3) LS 90.

6. Learned Government Pleader appearing for Revenue for the respondents on the other hand submits that the lands said to have been purchased by the petitioner have been classified as Water Spread Area, as per the communication received by the 1st respondent from the Mandal Revenue Officer, Kadapa, and thus the 1st respondent is justified in withholding the document.

7. It is not in dispute that the petitioner purchased Ac.1.43 cents situated in Kadapa Sahar under a registered sale deed dated 2-7-1968 vide registered document No. 1417 of 1968. He sold 0.30 cents out of Ac.1.43 cents to Bepari Abdul Jabbar of Kadapa and presented the documents before the Joint Sub-Registrar, Kadapa for registration. The only reason offered by the 1st respondent for not registering the document is that he received communication from the Mandal Revenue Officer, Kadappa stating that S.No. 42-B-2A has been classified as Water Spread Area. I deem it appropriate to refer the relevant portion of the counter-affidavit and it is thus:

"The document which is submitted for registration pertains to lands in Survey No. 42 B-2A but the entire land in Survey No. 42 B-2 admeasuring Ac.2-43 cents is classified as Water Spread Area. The Writ Petition No. 19527 of 2002 and the Writ Appeal No. 1492/04 filed by the State do pertain to assigned lands in Sy.No. 42 B-3. The learned Single Judge directed the registration authorities for registration of the documents as there is no notification issued u/s 22-A of the Registration Act, 1908. The said order was challenged by the Sub-Registrar, Kadapa in W.A.No. 1492 of 2004 and the Hon''ble High Court suspended the order in writ petition as the lands are assigned lands and they are prohibited under Act 9 of 1977. The land for which the petitioner is seeking registration is not assigned land as per revenue records but the lands are classified as Water Spread Area. In view of the letter of the Mandal Revenue Officer, Kadapa dated 8-6-2000 addressed to Sub-Registrar, the document presented by the petitioner was not registered. It is true that there is no notification issued u/s 22-A of the Registration Act to my knowledge. However, as the land covered under sale deed is a Water Spread Area of a Government land, the question of registration of the said document will not arise. It is not true to say that I have refused registration in the light of the orders in W.A.No. 1492 of 2004. Further allegations of the petitioner that the Sub-Registrar, Kadapa has registered some documents pertaining to Sy.No. 42 of Kadapa Sahar is incorrect and misleading. The Sub-Registrar, Kadapa has not registered any document relating to Sy.No. 42 after the communication from the Mandal Revenue Officer, Kadapa dated 13-6-2000 was received."

8. The Government is vested with the power u/s 22-A of the Registration Act to notify to the registering authority the details of the properties in respect of which, the registration shall not be effected. Except in a case where a property is notified u/s 22A of the Registration Act, the registering authority has no power to refuse to register a document presented to him as regards the property within his jurisdiction, if the document is otherwise in order and if there is no dispute as to the identity of the executant. In Mandadi Nirmala and another Vs. District Collector, Hyd. and others, , a Division Bench of this Court while dealing with a case where the registering authority refused to register the document on the ground that the proceedings relating to the subject-matter of the document were pending in the Land Grabbing Court, speaking for the Bench, Sri Justice P. Venkatrama Reddy (as he then was) observed as under :

"We therefore, direct the Sub-Registrar to consider the question of registration of the documents in the light of the Registration Act after referring to the objection raised by the Mandal Revenue Officer and to pass appropriate orders according to law. In case it is decided to register and release the documents, appropriate endorsements shall be made on the documents referring to the factum of objection by the Revenue Department and the overruling of objection. It is made clear that the alienations in question will be subject to the result of Land Grabbing Case said to be pending in the Special Court."

Therefore, the dispute as to the title or pendency of proceedings does not confer any right on the registering authority to withhold the document. The satisfaction for the purpose of registration has to be wholly in terms of the provisions of the relevant Acts and not beyond that. Since no notification has been issued by the Government u/s 22A of the Registration Act in respect of Survey No. 42, the action of the respondents in withholding the document presented by the petitioner for registration is not legal and proper and the same is unsustainable.

9. Accordingly this writ petition is allowed directing the respondents to consider and process the document presented by the petitioner and release the same if it

is found to be otherwise in order and if proper stamp duty and registration fee is paid.

