(2012) 09 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21836 of 2012

P. Srinivasulu Mudaliar and Others APPELLANT

Vs

The Sub-Registrar, Renigunta, Chittoor District and Others RESPONDENT

Date of Decision : 07-09-2012

Acts Referred:

Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 — Section 6, 6(c)(1)

Citation : (2013) 1 ALT 345

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : S. Niranjan Reddy, for the Appellant; V.T.M. Prasad, the Learned Standing Counsel for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy

1. This writ petition is filed seeking direction by way of mandamus to declare the action of the first respondent in not registering and releasing the document presented by the first petitioner in relation to the land admeasuring Acs. 11.95 cents in Survey No.6 of Tukiwakam Village of Renigunta Mandal in Chittoor District basing on the letters in Rc. No.KGT-31/2007, dated 26.12.2007, Rc. No.N1/34576/2007, dated 11.12.2008 and Rc. No.N1/27520/2009 dated 19.04.2010 addressed by the respondents 3 and 5 as illegal and arbitrary, and contrary to the provisions of the Registration Act, 1908. The case of the petitioner is as under:

Sri Kandala Govindacharyula Trust, Gopalapuram Matam, Chinna Bazar Street, Tirupati (hereafter, the Trust) is purely a private trust. It was endowed with the land admeasuring Acs. 29.85 cents in Survey No.6 situated at Tukiwakam Village of Renigunta Mandal in Chittoor District (hereafter, the Trust land). The trustees of the Trust passed a resolution dated 30.6.1981 authorising Sri Kandala Vijaya Raghavan (hereafter, the Life Trustee) to execute sale deeds in respect of the

Trust land in favour of various persons. Sri Konneti Natarajan Mudaliar, who is the father of the first petitioner, purchased an extent of Acs. 11.95 cents covered by Survey No.6 situated at Tukiwakam Village of Renigunta Mandal in Chittoor District (hereafter, the subject land) forming part of the Trust land, by separate registered sale deeds. He purchased an extent of Acs. 10.00 through registered document bearing No.7677 of 1981, dated 29.12.1981; an extent of Acs. 1.20 cents through registered document bearing No.1138 of 1983, dated 21.2.1983; and an extent of Acs. 0.75 cents through registered document No.3993 of 1985, dated 21.6.1985. Sri Mudaliar had become absolute owner and possessor of the subject land. It is stated that after demise of his father on 02.7.1997, the first petitioner is in continuous and uninterrupted possession and also perfected his title to the subject land. The Trust land, excluding the subject land, was sold to third parties and the said lands were divided into house plots. About hundred houses have come in that area and it has now become a residential colony. Precisely, it is the case of the petitioners that the entire Trust land covered by Survey No.6 had been sold to Sri Natarajan Mudaliar and others.

2. After death of his father on 02.7.1997, the first petitioner offered to sell the land to petitioners 2 to 5 and they have entered into agreements of sale dated 10.3.2010, 24.2.2011 and 25.1.2012. The petitioners 2 to 5 have paid substantial amounts to the first petitioner towards part consideration. When they have approached the first respondent - Sub-Registrar, Renigunta for registration of regular sale deeds, he informed them that the subject land is shown in the list of properties prohibited for registration, in view of the letter Rc.No.KGT-3/2007, dated 26.12.2007 addressed by the fifth respondent to the first respondent.

3. It is the case of the petitioners that the Trust was originally registered on 09.7.1898 vide document No.851 of 1898 and it was brought u/s 6(c)(1) of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereafter, the Act 30 of 1987) on 13.4.1995 and the Trust was handed over to the Endowments Department on 09.12.1996. An Executive Officer was appointed to represent the Trust and in such representative capacity he has addressed letter dated 26.12.2007 to the first respondent not to allow any transaction in respect of the lands covered by Survey No.6 i.e., the Trust land. The petitioners contend that there is no valid reason for inclusion of subject land in the list of properties prohibited for registration as the father of the first petitioner purchased the subject land through registered sale deeds in 1981, 1983 and 1985. The remaining lands in Survey No.6 were sold to the third parties. There was unanimous resolution by the trustees authorizing the Life Trustee to execute the sale deeds in respect of the Trust land covered by Survey No.6 of Tukiwakam Village, Renigunta Mandal in Chittoor District and, therefore, the subject land does not belong to the Endowments Department so as to include the same in the list prohibiting registration u/s 22A of the Registration Act. Only such properties, which vest with the Trust as on the date of notification u/s 6 of the Act 30 of 1987, would be brought u/s 22-A of the Registration Act. By virtue of the sales effected during the years 1981, 1983 and 1985, the subject land is

no longer the Trust property and without examining such facts, the respondents 3 and 5 arbitrarily and illegally included the private lands for prohibition of registration and accordingly issued the letters to the first respondent.

4. The third respondent - Commissioner of Endowments, has filed counter affidavit stating as follows. The Trust is published u/s 6(c)(1) of the Act 30 of 1987 vide the Commissioner''s proceedings issued in Rc.No.J3/20993/90, dated 13.4.1995 and the Executive Officer was appointed u/s 29 of the Act 30 of 1987 vide G.O.Rt. No.1951, dated 09.12.1996. Since then the Trust is under the administrative control of the Endowments Department and the Executive Officer has been looking after the day-to-day administration of the Trust. Prior to that, the Trust was under the administrative control of the trustees. As there were certain allegations as to the mismanagement of the Trust and unauthorized alienation of the Trust land, the Government constituted a House Committee on 16.5.1995 to probe into the matters. The House Committee enquired into the matter in detail and submitted its report on 30.9.1998 observing that the intention of the Founder of the Trust was not to alienate the Trust land to any person, but it was deviated and the Trust land situated in Survey No.6 of Tukiwakam Village of Renigunta Mandal in Chittoor District was illegally sold. The Committee, therefore, recommended to furnish the list of lands held by the Trust to the Sub-Registrar requesting him not to make any registration in respect of the Trust land. As the sales effected in the years 1981, 1983 and 1985 were in respect of the land covered by Survey No.6, without prior approval of the Commissioner of Endowments, such sales are null and void.

5. A separate counter affidavit is filed by the fifth respondent - the Executive Officer of the Trust. It is stated that the land admeasuring Acs.29.85 cents covered by Survey No.6 of Tukiwakam Village (herein referred as, the Trust land) is part of the wider extent admeasuring Acs.30.77 cents belongs to the Trust and the same is mentioned in the Property Register. It is stated that the subject land admeasuring Acs.11.95 cents is part of Acs.29.85 cents (the Trust land). The remaining extent of Acs.0.92 cents is covered by Survey Nos.24/2, 25/2, 758/2, 762/2, 763/2, 764/2 and 892/2 of Tukiwakam Village, for which there is no dispute in this writ petition. While denying the allegation of the petitioner that the Trust is a private trust, it is stated that Sri P.K. Vijayaraghavan, the Life Trustee of the Trust, seems to have alienated a portion of the land in T.S. No.6 and that he had no right or title as per the trust deed dated 09.7.1898. The resolution of the trustees dated 30.6.1981 authorising the Life Trustee to execute sale deeds is contrary to the trust deed, as such the sale deeds obtained by the third parties have no sanctity in the eye of law. The sale deeds in respect of the land admeasuring Acs. 29.85 cents in Survey No.6 (the Trust land) executed by the Life Trustee during 1981 to 1985 are without prior approval of the Commissioner of Endowments and, therefore, they are void as per the provisions of the Act 30 of 1987.

6. A reply affidavit is filed on behalf of the petitioners. It is stated that the Trust

is neither a charitable institution nor its property belongs to the Endowments Department before it was brought within the purview of the Department. The provisions of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1966 (the Act 17 of 1966) are also not applicable for the properties that were alienated by the Life Trustee and, therefore, there was no need for obtaining any approval from the Commissioner of Endowments. As the sale deeds were executed by the Life Trustee in respect of the Turst land pursuant to the resolution of the trustees, the subject land is no more the property of the Trust. Basing on the letters of respondents 3 and 5 addressed to the first respondent, in the absence of any notification as contemplated u/s 22-A(1)(e) of the Registration Act, it is not open for the first respondent to refuse documents for registration of the subject land.

7. Heard Sri S. Niranjan Reddy, learned counsel for the petitioners, learned Government Pleader for Revenue appearing for the first respondent, learned Government Pleader for Endowments appearing for the respondents 2 to 4, and Sri V.T.M. Prasad, learned Standing Counsel for the fifth respondent.

8. With a view to avoid alienation of land belongs to the Government, Religious Institutions and Wakfs under the Wakf Act, 1995, Section 22-A is inserted into the Registration Act by way of A.P. Act No.19 of 2007 with effect from 20.6.2007. As per the said amended provision, various classes of documents as mentioned in Section 22-A(1)(a) to (e) are prohibited for registration. They read as under.

22-A Prohibition of 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 on Agricultural Holdings) Act, 1973 or the Urban Land (Ceiling and Regulation) Act, 1976;

(e) any documents or class of documents pertaining to the property 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.

9. A perusal of the aforesaid provisions would show that for class of documents relating to the properties covered by Section 22-A(1)(a), (b), (c) and (d) of the Registration Act, there is prohibition for registration, even without issuing any notification. But for the class of documents covered by Section 22-A(1)(e), the State Government is empowered to issue notification prohibiting registration of the documents relating to the properties in which avowed or accrued interests of Central and State Governments, Local Bodies, Educational, Cultural, Religious and Charitable Institutions is likely to adversely affect.

10. In the case on hand, it is not in dispute that originally the Trust was registered on 09.7.1898 vide document No.851 of 1898. The trustees of the Trust unanimously passed a resolution on 30.6.1981 authorising the Life Trustee to execute sale deeds in respect of the Trust land situated in Survey No.6. Pursuant to such resolution, the sale deeds were executed by the Life Trustee in favour of the father of the first petitioner during 1981 to 1985 in respect of the subject land admeasuring Acs. 11.95 cents in Survey No.6. The remaining Trust land situated in Survey No.6, excluding the subject land, is carved out into residential plots wherein more than hundred houses have come up and now it is a residential colony.

11. It is to be noticed that the Trust was notified u/s 6(c)(1) of the Act 30 of 1987 vide Endowment Commissioner''s proceedings in Rc.No.J3/20993/90, dated 13.4.1995. Thereafter, the Trust is under the administrative control of the Endowments Department and an Executive Officer was appointed vide G.O. Rt. No.1951, dated 09.12.1996. Here, it is to be noticed that though the sales were effected by way of registered sale deeds as early as in the years 1981, 1983 and 1985, at any point of time, no steps were taken either by the Trust or the Endowments Departments to nullify such sale deeds or to take back possession of the subject land. It is the contention of the petitioners that the Trust is purely a private trust but not a charitable institution and, therefore, the provisions of the Act 17 of 1966 are not applicable to the Trust and, therefore, there was no need to take prior approval from the Commissioner of Endowments for registration of the sale deeds. Further, in the counter filed by the Commissioner of Endowments, it is no where mentioned as to any steps that were taken against the vendor of the first petitioner''s father or to nullify such sale deeds on the ground that they are not preceded by the prior approval of the Commissioner. Even in the counter affidavit filed by the fifth respondent-Trust, except pleading that resolution dated 30.6.1981 authorising the Life Trustee to execute the sale deeds in respect of the Trust land covered by Survey No.6 is contrary to the trust deed dated 09.7.1898, nothing appears showing that any steps were taken to nullify such sale deeds. When the Trust land was transferred

by way of sale deeds as early as in the years 1981, 1983 and 1985 by putting the purchasers in possession, in the absence of taking any steps to nullify such sale deeds or to take back the possession of the Trust land, it is not open for the respondents to plead that the fifth respondent-Trust still continues to own the subject land covered by Survey No.6.

12. From a careful perusal Section 22A of the Registration Act, a clear distinction is drawn between Sub-section (1)(c) and Sub-section (1)(e) of Section 22A. The class of documents that are prohibited for registration u/s 22-A(1)(c) of the Registration Act is with regard to immovable property owned by the Government, Religious and Charitable Endowments falling under the purview of the Act 30 of 1987 or Wakfs falling under the Wakfs Act, 1995. To prohibit registration of such class of documents, no notification is required to be issued by the Government. But, with regard to class of documents covering the properties, in which there is avowed or accrued interest of Central and State Government, Local Bodies, Educational, Cultural and Religious Institutions, notification is contemplated u/s 22-A(1)(e) of the Registration Act. A comprehensive reading of the provisions under Sections 22-A of the Registration Act, it is amply clear that with regard to lands owned by the Government and Religious Institutions, straightaway they are prohibited for registration, and with regard to lands where there is avowed or accrued interests of Central or State Government or Local Bodies, Cultural or Religious Institutions, notification is contemplated under Sub-section (1)(e) of Section 22-A of the Registration Act.

13. When it is the case of the petitioners that the Trust land was sold by registered sale deeds as early as in the years 1981, 1983 and 1985 and without taking any steps to nullify such sale deeds or to take back possession of Trust land from the purchasers, by resorting to the provisions under the Act 30 of 1987, it is not open for the respondents to claim that the lands covered by Survey No.6 of Tukiwakam Village of Renigunta Mandal in Chittoor District still continue to be the properties of the fifth respondent Trust. The claim of the first petitioner in respect of the subject land is bona fide, pursuant to the registered sale deeds executed in the year 1981, 1983 and 1985. Therefore, the Government or any Religious Institution cannot claim the subject land is still owned by them. In view of the above, without taking any steps for nullification of the sale deeds executed by the Life Trustee in favour of the father of the first petitioner, the respondents cannot prevent transfer of the subject land in favour of the petitioners 2 to 5.

14. The purpose and object of newly amended provision u/s 22-A, into the Registration Act, is to prevent transfer of land belonging to Government and Religious Institutions. At the same time, whenever there is a bona fide claim with regard to title and possession by any third party, such claim cannot be curtailed merely on the ground that such land belonging to either Government or Religious Institutions. The complicated questions with regard to title and possession cannot be gone into by the respondents by preventing transfer of lands in

exercise of the power u/s 22-A of the Registration Act. When there is a bona fide claim by a private person in respect of immovable property of the Government or Religious Institution or any Local Body, covered by Section 22-A(1)(c) of the Registration Act, it is for such Government, Religious Institution of Local Body to approach competent forum or Court to establish their right. But the claim of the bona fide purchaser cannot be deprived of, by preventing transfer of lands making communications to the Registering Authorities. It is also to be noticed that the sale deeds were executed as early as in 1981, 1983 and 1985 and since last 31 years the father of the first petitioner and after his death the first petitioner are in continuous possession of the subject land. At this point of time, respondents cannot create any cloud on the title of the first petitioner either by disputing the validity of the resolution authorizing the Life Trustee to execution of sale deeds or on the ground that such sales were effected without prior approval of the Commissioner of Endowments.

15. For the aforesaid reasons, this Court is of the view that there is no basis or authority for the respondents 3 and 5 to address letters to the first respondent for prohibiting transfer of the subject land admeasuring Acs.11.95 cents in Survey No.6 situated at Tukiwakam Village of Renigunta Mandal in Chittoor District, by the first petitioner in favour of the petitioners 2 to 5. The writ petition is, therefore, allowed with a direction to the first respondent to receive the documents that may be presented by the petitioners with regard to the subject land and consider the same for registration, without reference to the letters in Rc.No.KGT-31/2007, dated 26.12.2007, Rc.No.N1/34576/2007, dated 11.12.2008 and Rc.No.N1/27520/2009 dated 19.04.2010 addressed by the respondents 3 and 5 to the first respondent - Sub Registrar, Renigunta, and release the same. However, it is made clear that it is open to the Registering Authority to verify whether the documents are in accordance with the provisions of the Registration Act, 1908 and the Stamp Act, 1899. The writ petition is allowed, with the directions as indicated above. As a sequel, the miscellaneous petitions if any stand closed.