

(2012) 12 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 30526,24468, 33025, 33461, 34075, 34099, 34545, 34905, 34965, 35338, 35441, 35473, 35598, 35737, 35868, 35997, 36084, 36430, 36471, 36859, 37359, 37906, 28461, 34231, 35505, 38844, 30016, 32176, 33370, 33453, 33535, 33923, 34535, 3459

Raavi Satish

APPELLANT

Vs

The State of Andhra Pradesh and others

RESPONDENT

Date of Decision : 31-12-2012

Acts Referred:

Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 — Section 2, 2(1), 5(2)
Registration Act, 1908 — Section 71, 72

Citation : (2013) 2 ALD 1 : (2013) 1 ALT 774

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Roy Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—Broadly, these cases arise on account of the action of the Registering Officers of the Registration and Stamps Department in different parts of the State of Andhra Pradesh in not receiving and registering sale deeds or other documents executed for transfer of immovable properties. The acts of refusal are based on different reasons. When some of these cases came up before this Court on 14-11-2012, this Court has noticed alarming rise in the number of cases being filed with the complaint of non-registration of the properties in recent times. This Court has also noticed that most of the cases of refusal to register are due to reasons, which this Court has, on many earlier occasions, held as unsustainable and falling outside the scope of the provisions of Section 22A of the Registration Act, 1908 (for short "the Act"). That even though the law is well settled on several aspects, the Registering authorities have been again and again raising the same objections for registration of the properties

which were earlier rejected by this Court. As the spate of the litigation was continuing unabated, as evident from the fact that in the year 2012 itself, as many as 3360 Writ Petitions, which constitute almost 10% of the total number of Writ Petitions filed in that year, this Court felt that it is high-time that a quietus must be placed on this unnecessary and avoidable litigation. A detailed interim order was made on 14-11-2012 wherein this Court has made a broad classification of the cases based on the reasons for rejection to register the properties and directed the Principal Secretary (Revenue), to lay down specific criteria to be followed by the Sub-Registrars in the State based on the decided case law.

2. A counter-affidavit was filed by the Principal Secretary, Revenue Department, on perusal of which this Court has expressed its dissatisfaction as he has sought to point out that he has no control over the Registration and Stamps Department, which is headed by a separate Principal Secretary and without whose involvement it is not possible to lay down guidelines. This Court has adjourned the cases with the direction to both the Principal Secretaries of Revenue and Revenue (Stamps & Registration) Departments to make a joint exercise for framing the guidelines. A further affidavit was filed by the Principal Secretary to the Government, Revenue Department, wherein he has inter alia requested for an adjournment by stating that as per the A.P. Government Rules and Secretariat Instructions, the issues pertaining to policy decisions which have administrative importance, have to be circulated to the Hon'ble Chief Minister. As this Court was convinced that in view of the settled legal position on various aspects it was quite unnecessary for the issues to undergo the above mentioned process suggested by the Principal Secretary, Revenue Department, and instead this Court itself can pronounce a Judgment in the light of the well settled legal position, the cases were heard at length. On the direction of this Court, the learned Government Pleader has categorized the cases on the basis of the nature of the reasons for refusal to register the properties and furnished the list to the Court.

3. I have heard the learned counsel for the petitioners and the learned Government Pleader for Revenue.

4. Before advertng to the different categories of cases, it is felt necessary to give a brief historical background leading to the present litigation.

5. Section 22A of Act was incorporated by the Legislature of the State of Andhra Pradesh by Act 4 of 1999. The said provision, as it stood then, read as under:

22-A: Documents registration of which is opposed to public policy:-

(1) The State Government may, by notification in the Official Gazette, declare that, the registration of any document or class of documents is opposed to public policy."

(2) Notwithstanding anything contained in this Act, the registering officer shall

refuse to register any document to which a notification issued under sub-section (1) is applicable.

6. The above reproduced provision was a reproduction of some of the State amendments to the Act and the same is ipsissima verba of the Rajasthan State Amendment (Act 16 of 1976). A Division Bench of the Rajasthan High Court, *Basant Nahata Vs. The State of Rajasthan and Others*, has declared Section 22A of the Act as unconstitutional and has accordingly struck down the said provision. The Supreme Court has affirmed the said Judgment in *State of Rajasthan and Others Vs. Basant Nahata*, The Supreme Court, in the said Judgment, has however observed that the Legislature of a State may lay down as to which acts would be immoral being injurious to the society and that such a legislation being substantive in nature must receive the legislative sanction specifically and cannot be made through a subordinate legislation or executive instructions.

7. Challenge to Section 22A of the Act, as inserted by the A.P. State Amendment, was made in this Court as well. Following the Judgment of the Supreme Court in *State of Rajasthan (2-supra)*, this Court in its Judgment dated 7-12-2005 in W.P. No. 14099/2003 & batch, has struck down Section 22A of the Act. Taking a cue from the observations of the Supreme Court referred to above on the power of the Legislature to make legislation of substantive nature and to overcome the Judgment of this Court which has struck down Section 22A of the Act, the A.P. State Legislature has passed Act 19 of 2007, which re-introduced Section 22A of the Act, with a different phraseology. The said provision reads as under:

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 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.

(2) For the purpose of clause (e) of sub-section (1), the State Government shall publish a notification after obtaining reasons for and full description of properties furnished by the District Collectors concerned in the manner as may be prescribed.

(3) Notwithstanding anything contained in this Act, the registering officer shall refuse to register any document to which a notification issued under clause (e) of sub-section (1).

(4) The State Government either suo motu or on an application by any person or for giving effect to the final orders of the High Court of Andhra Pradesh or Supreme Court of India may proceed to denotify, either in full or in part, the notification issued under sub-section (2).

8. This re-inserted Section 22A of the Act has now become the breeding ground for litigation, for, the Revenue authorities at the levels of Tahsildar or District Collector, have been preparing what are known as "lists of prohibited properties for registration" and sending the same to the Sub-Registrars concerned, who are the Registering authorities, and the District Registrars. The Registering authorities have been strictly following these lists and refusing even to receive the documents, leave alone, registering them, if the transactions under the documents pertain to immovable properties included in the prohibitory lists. The Registering authorities have not been mindful whether any notification is published prohibiting registration as envisaged u/s 22-A(1)(e) of the Act and they have been giving undue weight to the opinion of the Revenue authorities on the aspect whether the property belongs to the Government, or Charitable or Hindu Religious Institutions and Endowments, or Wakfs or the Local Bodies. This unilateral assumption by the officials of the Registration & Stamps, and the Revenue Departments and refusal to receive and register the documents on that basis, is resulting in the aggrieved parties bee-lining this Court day in and day out. This Court has in many a case conclusively adjudicated the issues and the Judgments therein have attained finality. Notwithstanding the legal position settled by this Court on different aspects, the Registering officers have been ignoring these Judgments and driving the parties to approach this Court again and again.

9. One or the other of the following reasons for which the Registering authorities/Sub-Registrars, have been refusing to receive and register the documents:

(a) that the Re-Settlement Register (RSR) contains dots against the column "owner/occupant of the land";

(b) that the Registers maintained by the Revenue Department have described the lands as Assessed Waste Dry (AWD);

(c) that the lands are assigned lands;

(d) that the lands belong to the Hindu Religious or Charitable Endowments, Wakfs, Christian Missionaries and Local Bodies.

10. It is pertinent to notice the Judgment of this Court in *T. Yedukondalu Vs. The Principal Secretary to Government, Department of Revenue, Stamps and Registration, Secretariat of A.P. and Others*, wherein a learned Judge of this Court has considered the re-enacted provisions of Section 22A of the Act vis-à-vis the lands which are claimed to belong to the Government. While repelling the argument advanced on behalf of the State Government that in respect of the documents falling under clause (b) of Section 22A(1) of the Act no notification is required to be issued under sub-section (2) thereof, the learned Judge held as under:

The argument of the learned Government Pleader is that there is no necessity to publish a notification in respect of the subject land u/s 22A(2) of the Registration Act, 1908 as Section 22A(1)(b) would have application and not Section 22A(1)(e). However this contention, if accepted, would mean that all lands claimed to be Government lands which are sold by any private party can be brought within the ambit of Section 22A(1)(b). Such a construction would render superfluous Section 22A(1)(e) to the extent it speaks of prohibition of registration of documents pertaining to lands in which the State Government may have avowed or accrued interests.

That, obviously, could not have been the intention of the legislature. Further, clause (b) of Section 22A(1), on a plain reading, indicates that it relates to prohibition of registration of documents in the context of the executants thereof not being statutorily empowered to execute them. Thus, the said clause would not have application in a case where the Government claims a particular land to be its own on the basis of revenue records or otherwise. Had that been so, there would have been no necessity for clause (e) of Section 22A(1) of the Act of 1908, which states that there shall be a prohibition of registration in respect of documents pertaining to properties in which the State Government has avowed or accrued interests, which would be adversely affected by such registration. Thus, where the State Government stakes a claim that a particular land belongs to it and seeks to put in place a prohibition with regard to registration of documents in respect thereof, the same would invariably fall within Section 22A(1)(e) of the Act of 1908 alone and the Government must necessarily publish a notification u/s 22A(2) of the Act giving full description of the property concerned. The sanctity of such a notification is spelt out by Section 22A(3) of the Act of 1908 which places an embargo upon the Registering Officers from registering any document falling within the ambit of the notification. In the present case, there is no dispute that no such notification has been published u/s

22A(2) of the Act of 1908 in respect of the subject land.

11. In *Gaddam Lingaiah Vs. The District Collector, Kadapa* W.P. No. 38148/2012, dated 11-12-2012, this Court has distinguished the two categories of documents falling under clauses (b) and (e) of Section 22A(1) of the Act, and held as under:

...A list sent by the Tahsildar or the District Collector to the registering authority showing the properties as belonging to the Government does not have the same efficacy or binding force as a notification issued under sub-section (2) of Section 22A of the Act. Notwithstanding the inclusion of the properties in the list of the revenue officials, the registering authority shall apply its mind to the material that may be placed by the private party as well as the revenue officials and arrive at its own conclusion.

12. This Court further held:

Instances galore where the persons, who are recognized as rightful owners not only by being allowed to purchase under registered documents decades ago but also by using the pattadar passbooks, are being deprived of their right to transfer the properties by way of sale, mortgage etc. While the efforts of the official functionaries for protecting the Government properties always deserve to be appreciated, in the guise of such protection, they cannot be permitted to harass the innocent citizens by driving them to the courts again and again by styling the private lands as Government lands without any shred of evidence in support thereof...

13. It was also further held:

If respondent Nos. 1 to 3 really felt that the property in question is the Government land, it defies any logic and reason as to why they have been keeping quiet without recovering the property from the petitioner. Far from doing so, the rights of the petitioner were well recognized by them by issuing pattadar passbooks as far back as the year 1994. This Court is unable to comprehend as to by merely preventing registration, will the Government gain anything? Except curtailing the right of a private party to enjoy the property as he likes, it results in nothing. Only at the time of registration, the revenue authorities appear to be preventing registration without doing anything further to safeguard and protect the so called Government properties and to recover the possession thereof. This attitude of the revenue authorities being supported by the registering authorities is creating a situation where needless litigation is being promoted driving the citizens to resort to needless and frivolous litigation.

Time and again this Court has been holding that mere registration of the document will not create any title in the purchaser, unless such title is vested in the vendor himself.

While preventing registrations on frivolous objections, Government is only denying itself of the revenue without doing anything else. As observed above, there are no instances where the possession of the properties, which are found

to be in the Government list, is sought to be recovered by the revenue authorities. Not only that the litigants are vexed with this sort of litigation, but this court feels that it is time that litigation of this nature is put an end to. Unless the Chief Secretary of the State of Andhra Pradesh intervenes and finds a proper solution to this vexed problem, the litigation of this nature may continue unabated.

14. Where a notification as envisaged under sub-section (2) of Section 22A of the Act is issued, the Registering authority has no option except to refuse to register the document in view of the prohibition contained in sub-section (3) thereof. However, in the absence of a notification, even if any communication is sent by the Revenue authorities claiming the land as belonging to the Government, such a communication does not bind the Registering authority. The Registering authority can, at best, consider whether any material in support of the claim of the Revenue Department is available and take appropriate decision u/s 71 of the Act after considering the material that may be submitted by the party presenting the document to substantiate his plea that the land is a private land. In the absence of a notification, the Registering officer cannot refuse to receive the document by elevating the status of the "prohibitory lists" sent by the Revenue Department to that of statutory notifications issued under sub-section (2) of Section 22A of the Act.

15. With this legal position in view, let me now consider each of the categories of cases.

16. Cases relating to RSR dots: The following Writ Petitions pertain to this category where the Sub-Registrars concerned have either refused to receive the documents or register the same after receiving such documents only on the ground that the relevant column of the RSR relating to ownership, contains dots:

W.P. Nos. 24468, 33025, 33461, 34075, 34099, 34545, 34905, 34965, 35338, 35441, 35473, 35598, 35737, 35868, 35997, 36084, 36430, 36471, 36859, 37359, 37906, 28461, 34231, 35505 and 38844 of 2012.

17. Judicial precedents are not wanting on the aspect whether the RSR containing dots in the ownership column, constitutes conclusive proof of title. In P. Suresh and Another Vs. A.P. State and Others, this Court considered the issue as to whether the refusal of registration only on the basis of the entry in the RSR to the effect that the land belongs to the Government, is sustainable? This Court has answered the said question in the negative by observing that the land cannot be treated as belonging to the Government on the basis of an entry made in the RSR in the year 1909 without taking into consideration various subsequent registered sale transactions in respect of the said land.

18. In Shaik Ali and Others Vs. District Collector, Chittoor and Others, I had an occasion to deal with this aspect. Referring to earlier case law, I have held, at para-5, as under:

This court in P. Suresh and Another Vs. A.P. State and Others, K.M. Kamulla Basha Vs. District Collector, Chittoor (W.P. No. 27249 and 28393 of 2007, dt. 16-2-2009, Meda Subbarayudu Vs. Sub-Registrar, Rayachoty (W.P. No. 11675/2008, dt. 30-7-2008) and S. Zakhir Vs. District Collector, Anantapur (W.P. No. 19419/2008, dt. 16-2-2009) held that mere entries in R.S.R. do not constitute conclusive proof of title. In a recent Judgment in Shaik Dudekula Pyari Jan @ Lal Bi and others Vs. The Revenue Divisional Officer, Madanapalli (W.P. No. 6016 of 2010, dt. 2-7-2010), this Court reiterated this position following the above mentioned Judgments of this Court.

19. On the strength of the above quoted reasoning, this Court held that mere entries in the RSR or A-Register will not offer conclusive proof of ownership of the land and the action of the Sub-Registrar in refusing to receive and register the document was declared as illegal. I have also considered this issue in another Judgment in Madiga Papanna Jammanna Vs. State of Andhra Pradesh and Others, , wherein at paras 5, 6 and 7, it was held as under:

On many occasions, this Court had considered the effect of entry in the R.S.R. In a recent Judgment, which was rendered on the basis of the previous Judgments, in W.P. No. 6016/2010, dated 2-7-2010, this Court has held as under:

In the present case, except for stating that entries in the Village Account R.S.R. of Doddipalli Village indicate the lands in Survey No. 1969/2, 1972, 1969/1B and 1971 as Government lands, there is no other basis for the revenue authorities to stake a claim over the lands. To the contrary, the evidence on record, being registered transactions dating back to 1942, 1938, 1959 and 1972, as the case may be, clearly negates the unilateral claim of the revenue authorities that this land is Government land. It is of course for the Government to assert and prove its title if it chooses to do so, in a properly constituted proceeding before the appropriate forum in accordance with law. Without doing so, it is not open to the revenue authorities or the registration authorities to deny persons claiming rights over such land on the basis of mere revenue entries. The action of the Respondents in treating the subject land as Government land and the action of the registration authorities in refusing to receive and register documents in respect of this land is therefore unsustainable in law.

The learned Assistant Government Pleader for Revenue submitted that since there is a dispute regarding title, the Petitioner will have to get his title declared by approaching the competent civil court.

I am afraid, I cannot accept this contention. In view of the settled legal position that mere entry in R.S.R. will not constitute proof of title and in the absence of any other revenue record showing the land as Government land, it cannot be said that there is a dispute regarding title. At any rate, mere registration of a conveyance deed does not create title in the transferee. If the Government feels that the property belongs to it, it can always avail appropriate remedy to assert its title and claim the property. Mere registration of the sale deed would not

come in the way of the Government in asserting its right and availing appropriate remedy.

(Emphasis added)

20. Despite pronouncement of the legal position in unequivocal terms as noted above, regrettably, the Sub-Registrars concerned have been refusing to receive and register the documents based on the RSR entries. Even though the directions given in each of these cases were with reference to the parties who approached the Court, still the Judgments operate as precedents and consequently they bind the State and all its functionaries. There cannot be any excuse whatsoever for the Sub-Registrars who are not parties to the cases already decided, to ignore the law laid down by this Court and repeat the same illegality as committed by the other Registering officers whose actions in refusing to register the documents on the said ground were declared as illegal by this Court. As the refusal of registration by the concerned Sub-Registrars in these Writ Petitions is based only on the RSR entries, their action is in the teeth of the Judgments of this Court referred to above. Accordingly, the action of the Sub-Registrars concerned in refusing to receive and register the documents in these Writ Petitions is declared as illegal.

21. Cases relating to Assessed Waste Dry (AWD) lands: The following Writ Petitions fall under this category:

W.P. Nos. 30016, 32176, 33370, 33453, 33535, 33923, 34535, 34596, 34604, 34898, 34959, 35476, 35483, 36918, 36937, 37291, 38067, 39740, 37607, 33282, 33267, 33272, 33872, 34254, 34969, 34523, 35257 and 35166 of 2012

22. This category of cases also falls in the previous category, the only difference being, instead of showing dots, the relevant RSR entries in the respective cases, classified the lands as "AWD". In each of these cases, the petitioners claim that the lands are private lands and in support of their plea, they have filed documents such as Adangals/Pahanies/Pattadar Passbooks. In Gaddam Lingaiah (4-supra), this Court observed as under:

As noted above, it is the specific case of the petitioner that the revenue record clearly shows that the land is a private land. In support of his plea that it was a private land, the petitioner filed a copy of the Register of Holding, a perusal of which would show that the name of Guduru Rachaiah is shown as the owner of the property admeasuring Ac. 4.84 cents in Sy. No. 147/2. This extract shows that the same has been issued by the Office of the Sub-Registrar. The petitioner has also filed a copy of the pattadar passbook issued by the Mandal Revenue Officer as far back as 30.06.1994. It is not disputed that the petitioner has purchased the property under a registered sale deed on 12.04.1972. In the face of this overwhelming documentary evidence to show that the petitioner is the owner of the property, the only ground on which respondent No. 5 declined to register the sale deed and respondent No. 4 confirmed the refusal order of respondent No. 5 is that in the list furnished by the then Tahsildar in the year

2007, the property was shown as AW belonging to the Government. Respondent Nos. 4 and 5, being the independent functionaries exercising powers and discharging duties under the provisions of the Registration Act, 1908 (for short "the Act"), are bound to act independently by exercising their mind without being blindly guided by the instructions of the Tahsildar or the other revenue officials of the District. The mere fact that in the opinion of the Tahsildar, the property is the Assessed Waste belonging to the Government and he has accordingly included the property in his list sent to the registering authority would not make the land truly belonging to the Government. A list sent by the Tahsildar or the District Collector to the registering authority showing the properties as belonging to the Government does not have the same efficacy or binding force as a notification issued under sub-section (2) of Section 22A of the Act. Notwithstanding the inclusion of the properties in the list of the revenue officials, the registering authority shall apply its mind to the material that may be placed by the private party as well as the revenue officials and arrive at its own conclusion.

23. A question often troubles this Court, namely, that if the lands which are proposed to be transferred belong to Government, why then no steps are being taken by the executive apparatus to recover possession of such lands by following due process of law? In none of the cases before this Court, is any plea raised by the respondents that any effort is made to recover possession, or that at least, there are proposals to recover possession of the lands in question. As held by this Court time and again, mere registration of a property will not create title in the vendee which otherwise does not exist in its vendor and that by merely preventing registration, neither the Revenue nor the Registering authorities would be doing any favour to the Government towards protecting the public properties. If these lands really belong to the Government, no explanation is forthcoming from the respondents as to why they have allowed several registrations to take place in respect thereof. In my opinion, the Registering authorities have no power to refuse registration of the lands only on the basis of the entries in the RSRs or similar revenue record showing the same as "AWD" unless notifications are published in respect of these lands u/s 22A(3) of the Act.

Assigned lands:

(a) Cases relating to the lands assigned to the landless poor persons:

24. W.P. Nos. 30526, 27915, 32179, 32408, 33956, 34197, 34202, 34513, 34521, 34544, 34559, 34611, 34732, 34820, 34821, 34828, 34830, 35019, 35058, 35156, 35499, 36083, 31426, 32030, 32055, 34774, 35043, 35344, 35559, 35808, 38385 and 32690 of 2012 fall in this category.

25. It is conceded by the learned Government Pleader for Revenue that in all these cases which pertain to lands situated in the non-Telangana Area, assignments were made either prior to the issuance of G.O.Ms. No. 1142, dated 18-6-1954, or no evidence exists as to the actual dates of assignment. It is not

in dispute that in respect of the lands situated in the Andhra Area (non-Telangana Area), a condition prohibiting transfer of lands was incorporated for the first time under G.O.Ms. No. 1142, dated 18-6-1954. In respect of the lands situated in the Telangana Area, such a condition was first incorporated under G.O.Ms. No. 1406, dated 25-7-1958. Dealing with the lands situated in the Telangana Area, a Division Bench of this Court in Letter sent from Plot No. 338, Letter sent from Plot No. 338 Vs. The Collector and District Magistrate and The Secretary to Government of Andhra Pradesh, Revenue Department, , on an exhaustive consideration of the legal position held that unless the patta granted to the assignee contained a condition against non-alienation, the land covered by such patta does not fall within the definition of "assigned land" u/s 2(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (Act 9 of 1977). The Division Bench has also taken note of the fact that the assignments are of two types, namely, assignment on payment of market value, and assignment to landless poor persons, and that only in the latter category of cases that the bar imposed on alienation under the provisions of Act 9 of 1977 would apply.

26. In Akkem Anjaiah and Akkem Sailamma Vs. The Deputy Collector and Tahsildar, The Revenue Divisional Officer, The District Collector and The State of Andhra Pradesh had an occasion to consider a similar issue as was dealt by the Division Bench in Letter sent from Plot No. 338 (8-supra). In the said case, this Court held that as the assignment patta was granted prior to the issuance of G.O.Ms. No. 1406, dated 25-7-1958, the initial burden lies on the Revenue officials to show that the patta contained a condition against alienation of the land and that unless the Revenue officials are first satisfied that the land is an "assigned land" within the meaning of subsection (1) of Section 2 of the Act 9 of 1977, no proceedings for cancellation of the assignment for alienation of the assigned land can be initiated.

27. In P.V. Rajendra Kumar and Another Vs. Government of Andhra Pradesh and Others have held, at para-4, as under:

... The term "assigned land" is defined by Section 2(1) of the Act to the effect that the lands assigned by the Government to the landless poor persons under the rules for the time being in force subject to the condition of non-alienation and includes lands allotted or transferred to landless poor persons under the relevant law for the time being in force relating to land ceilings. In order to attract the bar of registration, the land must be an assigned land within the above mentioned definition. Unless the patta under which the assignment is made contains a condition of non-alienability, such land cannot be treated as assigned land within the provisions of the Act....

28. In several Judgments, various learned Judges of this Court have taken similar views (See: K.M. Kamallula Basha and others Vs. District Collector, Chittoor District, Chittoor and others 2009 (3) ALD 385, The A.P. State Electricity Board Employees Union, Madanapalli Division, Madanapalli Vs. The Joint Collector, Chittoor W.P. No. 19258 of 1998, dt. 14-9-2007 and D. Parthasaradhi

Sarma Vs. Government of A.P., Revenue (Assn. II) Department W.P. No. 27217 of 2003, dt. 15-4-2008). The above noted judgments are only illustrative of a slew of Judgments in which the above mentioned consistent view is taken by this Court. Most unfortunately, the precedential value of these Judgments is persistently being ignored by the Revenue officials as well as the Registering authorities. While on one hand the Revenue authorities, such as, Tahsildars, Revenue Divisional Officers, and in some cases even District Collectors, have been sending the lists styling them as "prohibitory lists" by including the lands which are not notified u/s 22A(2) of the Act without verifying whether the assignment was made prior to issuance of G.O.Ms. No. 1142, dated 18-6-1954, or G.O.Ms. No. 1406, dated 25-7-1958, or that the lands were assigned on payment of market value, or assigned to political sufferers or ex-servicemen or freedom fighters, in whose cases prohibition of alienation only for a limited period of ten years is imposed, on the other hand, the Registering authorities have been refusing to receive the documents unless the party who sought to present the document produces No Objection Certificate (NOC) from the Revenue authorities. This fundamentally flawed approach of both the Revenue and the Registering authorities, has become the root cause for sprouting up of the litigation, and I am afraid, unless the flood gates are closed, there is a danger of this litigation reaching morbid proportions.

(b) Assignments made to Ex-servicemen/Political sufferers:

29. W.P. Nos. 33218, 33442 and 35225 of 2012 fall under this category. The Government of Andhra Pradesh issued G.O.Ms. No. 743, Revenue (B) Department, dated 30-4-1963 wherein it has provided for assignment of lands to an extent of Ac. 2-50 wet or Ac. 5-00 dry, to the Ex-servicemen. The said G.O. also contained a condition to the effect that the lands assigned shall not be sold or otherwise alienated for a period of ten years. When the Ex-servicemen assignees started applying for NOCs for alienation of the lands assigned to them after expiry of the stipulated period of ten years, the Commissioner, Land Revenue, addressed letter No. B1/3155/93, dated 18-9-1993, to the Government to clarify as to whether the former can sell the lands assigned to them after the expiry of ten years. Accordingly, the Government issued G.O.Ms. No. 1117, Revenue (Assignment-I) Department, dated 11-11-1993, whereby while modifying G.O.Ms. No. 743, dated 30-4-1963, it has clarified that the Ex-servicemen are free to sell away their assigned lands after a period of ten years. In Ande Narasimha Rao Vs. State of Andhra Pradesh W.P. No. 38504/2012, dt. 21-12-2012, this Court has, in some detail, considered both these G.Os. and observed as under:

The petitioner is an ex-serviceman, who was granted a DKT patta in respect of the above mentioned land. On 25-1-1993, when the petitioner sought to sell the said land and presented sale deed for registration, respondent No. 6 refused to receive the same on the ground that the same is covered by a DKT patta containing prohibition on transfer of the land. Feeling aggrieved by the said

action, the petitioner filed the present Writ Petition.

In support of his plea that he is entitled to transfer the land in question 10 years after the assignment was made, he has placed reliance on G.O.Ms. No. 1117, dated 11-11-1993. A perusal of the said G.O. shows that the State Government has earlier issued G.O.Ms. No. 743, Revenue (B) Department, dated 30-4-1963, whereunder conditions were framed for assignment of the lands in favour of ex-servicemen. One such condition was to the effect that the lands assigned shall not be sold or otherwise alienated for a period of 10 years. In order to clarify the said condition, the State Government issued G.O.Ms. No. 1117, dated 11-11-1993, whereunder G.O.Ms. No. 743, dated 30-4-1963, was modified and a positive condition was incorporated to the effect that the ex-servicemen are free to sell away their assigned lands after a period of 10 years. In other words, the condition, which was in the form of prohibition against alienation for a limited period of 10 years was modified by incorporating a positive condition by permitting sale of lands of ex-servicemen on the expiry of 10 years period after assignment. Thus, the purport of both the G.Os. is the same though the form in which the condition was incorporated varied.

A perusal of the DKT patta granted to the petitioner shows that the land was assigned to him in his capacity as ex-serviceman. However, unfortunately, the assignment patta has not incorporated the condition as envisaged by G.O.Ms. No. 743, dated 30-4-1963. Instead, condition No. 1 therein has prohibited transfer of the property while permitting enjoyment of the same by inheritance. Despite existence of the said condition, the petitioner is still entitled to the benefit of G.O.Ms. No. 1117, dated 11-11-1993, which was issued a few months after issuance of patta in favour of the petitioner, as the said G.O. has, in categorical terms, permitted the ex-servicemen to sell away their assigned lands after 10 years.

30. It is not disputed that in W.P. No. 35225/2012, an extent of Ac. 4-72 cents in Sy. No. 4-2 of Bukkarayasamudram village and Mandal, Anantapur District, was assigned to one Koppalakonda Venkata Swamy, an Ex-serviceman. He has sold away the land to Smt. M. Lakshamma w/o. Venkataramudu through registered document No. 3008/1971. The said M. Lakshamma sold an extent of Ac. 0-50 cents to one C. Govind Reddy under registered document No. 6361/1992, Ac. 1-00 to G.M.H. Guptha through registered document No. 4101/1991, Ac. 0-40 cents to Viswa Bharathi Steels Pvt. Ltd., and Ac. 1-20 cents to the BSNL. When some of the purchasers sought to sell the properties, the Sub-Registrar, Anantapur insisted on NOC from the Revenue authorities. Similar is the case in W.P. No. 33442/2012 wherein an extent of Ac. 2-00 in Sy. No. 395/1 at Srikantapuram village Polam, Hindupur Mandal, Anantapur District, was assigned to one C.A.B. Murthy, the husband of the petitioner, under patta No. DAR Dis. 132/86(RR), dated 8-6-1978. When she intended to sell the said land, the Sub-Registrar, Hindupur, is stated to have insisted on production of NOC from the Revenue authorities. It is not in dispute that the lands were assigned more than

10 years back. In the light of the order in Ande Narasimha Rao (14-supra) as reproduced above, there is no legal impediment for transfer of the lands involved in both these Writ Petitions and the Registering officers have committed a serious illegality in refusing to receive and register the documents.

31. In W.P. No. 33218/2012, an extent of Ac. 10-00 in Sy. No. 310/2 of Ananthapalli Revenue village and Mandal, West Godavari District, was assigned to one Vedantham Venkata Subrahmanyam @ Vedantha Kavi, under Political Sufferers' quota by the Tahsildar, Tadepallegudem, vide Roc. No. A2-20/LD/79, dated 13-2-1970 on collection of market value as fixed by the Government in 20 annual installments, without interest. After the demise of the assignee, his wife and two children sold the property to the petitioner under registered sale deed dated 4-12-2007. When the petitioner wanted to sell the property, the Sub-Registrar, Ananthapalli Mandal, West Godavari District, insisted on production of NOC.

32. Clause (iv) of para (3) of Order-15 of the Board Standing Orders defined "political sufferers" as persons who had gone to jail for a period of six months in connection with Indian Independence as a result of taking part in the following movements inaugurated by the Indian National Congress or under its sanction:

1. Non-Co-operative Movement, 1921.
2. Nagpur Flag Satyagraha.
3. Saimon Commission Boycot 1928-29.
4. Salt Satyagraha 1930.
5. Civil Disobedience Movement 1932.
6. Individual Disobedience Movement 1932.
7. Individual Disobedience Movement 1940-41.
8. Quit India Movement of 1942.
9. Hyderabad Congress Movement started for integration of Hyderabad State with the Union Government leading to police action of September 1948.

33. By G.O.Ms. No. 1745, Revenue Department, dated 28-8-1959, the Government of Andhra Pradesh has deleted the following conditions which were till then incorporated in the assignments granted to political sufferers:

- (a) that the lands assigned should not be alienated for a period of ten years;
- (b) that cultivation should be by the assignee or members of his family or with hired labour under the supervision of himself or members of his family but the lands cannot be leased out or sub-let;
- (c) that where the land is resumed for purpose of project or any public purpose no compensation will be paid to the assignee for any improvements made by him.

34. Paragraph-2 of the said G.O. specifically permitted the political sufferers to sell away the lands assigned to them without imposing any conditions. Despite the said G.O. being in force, the Revenue officers concerned have been granting assignments to political sufferers in the standard format which are generally applicable to the landless poor persons without deleting the condition prescribing prohibition on transfer of lands. In the face of the policy decision of the State Government contained in G.O.Ms. No. 1745, dated 28-8-1959, such a condition is not enforceable. Accordingly, I hold that the political sufferers are free to sell the lands assigned to them without any prohibition or inhibition. The respondents in this Writ Petition were therefore wholly unjustified in objecting to the sale of the properties.

(c) Assignments made to Freedom fighters:

35. Even though the present batch of cases does not involve the cases of Freedom fighters, as several cases concerning refusal to receive and register the documents pertaining to the assignments made to them are being filed before this Court, it is felt appropriate to deal with this category of cases as well.

36. Under G.O.Ms. No. 1045, Revenue (Asn. I) Department, dated 15-12-2004, prohibition on alienation by the Freedom Fighters contained in G.O.Ms. No. 185, Revenue (Asn. I) Department, dated 11-3-1997 and G.O.Ms. No. 917, Revenue (Asn. I) Department, dated 31-10-1997, was lifted, and para-3(3) of the said G.Os. which contained prohibition was substituted with the following clause: "The Freedom Fighters are free to sell away their assigned land and house sites after a period of ten years". Therefore, as in the cases of ex-servicemen, the lands assigned under the Freedom Fighters quota could be sold after ten years of assignment.

(d) Assignments made on collection of market value:

37. In Letter sent from Plot No. 338 (8-supra), the Division Bench held that one of the aspects to be kept in mind is the nature of the occupancy rights, namely, whether they were granted on collection of market value or free of market value. The Division Bench drew a distinction between the assignments made to the landless poor persons and the assignments made on payment of market value and held that only in the former category, the land falls within the definition of "assigned land" u/s 2(1) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977.

38. If the assignment was made on market value, there can be no justification to curtail the right of the assignee to transfer the property forever and that if the assignment contains a condition prohibiting transfer for a specified period, the assignee cannot be permitted to transfer the land in contravention of such condition. In such cases, documents shall be registered after the expiry of the period stipulated prohibiting the transfers.

39. Cases relating to NOCs: The following cases fall under this category: W.P.

Nos. 34018, 34635, 34662, 35110, 35144, 35165, 35183, 35235, 38221 and 38231 of 2012.

40. The scheme underlying Section 22-A of the Act does not authorize the Registering officers to insist on NOCs from the Revenue Department. From the detailed discussion undertaken above, it is evident that unless a notification is published under sub-section (2) of Section 22-A of the Act, no fetters can be placed on the Registering authorities to register the documents unless the claim made by the Revenue authorities is supported by clear evidence to show that the properties sought to be registered belong to the Government and the documents fall within the category of clause (b) of Section 22-A(1) of the Act. Therefore, the concept of insistence on NOCs from the Revenue authorities is alien to the Act. As the instances of insistence on NOCs by the Registering authorities were on the rise, this Court has taken exception to such insistence on the part of the Registering authorities. As a result of the same, the Principal Secretary to the Government, Revenue (Regn. I) Department, issued Memo No. 49938/Regn/1/A1/2012-4, dated 6-12-2012, to the following effect:

The attention of the Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh is invited to the references cited. He is requested to issue instructions to all the Registering Officers not to ask for NOCs from the Revenue Authorities before registration of prohibited properties and not to act on any such NOC.

Any exclusion from the list furnished earlier should strictly be by way of a modification/exclusion list signed by the District Collector himself and sent to the Commissioner and Inspector General of Registration and Stamps as laid down in the reference No. G1/19131/2007, dated 14-9-2007 of Commissioner and Inspector General of Registration and Stamps, Andhra Pradesh.

41. When cases of similar nature have come up before this Court after 6-12-2012, the learned Government Pleader for Revenue has assured this Court that with the issuance of the above mentioned Memo, the Sub-Registrars have no longer been insisting on production of NOCs and that if and when the documents are presented, they will be received without insisting on NOCs and dealt with under the provisions of Section 71 of the Act. On the basis of these assurances, this Court has disposed of several Writ Petitions with the direction to the Registering authorities to receive the documents without insisting on production of NOCs by the parties and process the same u/s 71 of the Act. It was further directed that if the Registering authorities find no legal impediment for registering the properties, they shall do so, subject to the parties presenting the documents complying with the provisions of the Registration Act, 1908 and the Indian Stamp Act, 1899, and that conversely, if the Registering authorities find legally sustainable objections for registering the documents, they shall pass appropriate orders u/s 71 of the Act and communicate the same to the parties, who, if feel aggrieved by such orders, shall be free to file appeals u/s 72 of the Act.

42. For all the above mentioned reasons, all these Writ Petitions are allowed.

43. In order to see that the litigation of this nature is curbed once and for all, I feel it not only appropriate, but also imperative to issue the following directions, which shall be of general application throughout the State of Andhra Pradesh and govern all transactions of registration, to take place in future:

(A) The Registering officers shall not insist on production of NOCs as a condition for receiving the documents for registration.

(B) The Registering officers shall not refuse to receive the documents for registration only on the ground that the properties were included in the prohibitory lists sent by the Revenue authorities, for reasons such as that the ownership column of the RSR contains dots, or that the lands are shown as AWD lands in the Revenue Records or that the lands are assigned lands.

(C) In cases of entries in RSRs containing dots or describing the lands as AWD, unless a notification has been issued u/s 22-A(2) of the Act, the Registering officers shall not refuse to receive and register the documents. The registration of such documents, however, shall be without prejudice to the right of the Government and its functionaries to initiate appropriate proceedings for recovery of possession of the properties covered by such documents, if in their opinion they belong to the Government.

(D) In cases of assigned lands, if there is clear proof to the effect that such assignments were made prior to the issuance of G.O.Ms. No. 1142, dated 18-6-1954 in the Andhra Area and G.O.Ms. No. 1406, dated 25-7-1958 in the Telangana Area, the Registering officers shall receive and register the documents, notwithstanding the fact that the properties were included in the prohibitory lists sent by the Revenue authorities. In respect of the documents involving properties assigned subsequent to the issuance of the above mentioned G.Os., in view of the embargo contained in Section 5(2) of the A.P. Assigned Lands (Prohibition of Transfers) Act, 1977, the Registering officers shall make an endorsement while refusing to receive the document specifying the reason. If the parties feel aggrieved by such orders, they are entitled to avail appropriate remedy as available in law.

(E) Wherever there is no specific evidence that assignments of lands were made subsequent to the issuance of G.O.Ms. No. 1142, dated 18-6-1954 in the Andhra Area and G.O.Ms. No. 1406, dated 25-7-1958 in the Telangana Area, benefit of doubt should be extended in favour of the parties who intend to transfer the lands. In such cases, the Registering officers shall write to the Revenue authorities to produce proof of the fact that the assignments were made subsequent to 18-6-1954 or 25-7-1958, as the case may be, within a stipulated time. If within such time, the Revenue authority concerned fails to send such proof, the Registering officers shall register the documents.

(F) In cases of documents pertaining to assignments made to Ex-servicemen and

Freedom fighters, the Registering officers must consider whether ten years period has expired from the date of assignment and shall register the documents if the said period has expired. In other cases, the Registering officers shall pass an order u/s 71 of the Act and communicate the same to the parties concerned.

(G) In cases pertaining to assignments made to Political Sufferers, the assignees or the persons claiming through them are entitled to transfer the lands by sale or otherwise without any restrictions and the Registering officers shall receive and register the documents whenever they are presented.

(H) Where assignments are made on payment of market value, the Registering officers shall not refuse to register unless the assignment deed stipulated any period during which the land shall not be sold and the stipulated time has not expired.

(I) In cases of alienation of properties which are claimed to belong to Religious and Charitable Endowments falling under the A.P. Hindu Religious Institutions and Endowments Act, 1987, or Wakfs falling under the Wakfs Act, 1995, unless relevant material is available before the Registering officers to show that they are owned by such Institutions, registration of the documents shall not be refused. Even if evidence is available to show that the properties sought to be alienated belong to the Institutions referred to above, the Registering officers shall receive the documents, pass orders assigning reasons for rejection and communicate the same to the parties concerned, who shall be free to assail such orders by availing the remedy of appeal u/s 72 of the Act.

(J) In cases where notifications are issued under subsection (2) of Section 22-A(1) of the Act prohibiting registration of the documents pertaining to the properties falling under clause (e) of sub-section (1) of Section 22-A of the Act, the Registering officers shall make an endorsement while refusing to receive the document specifying the reason for such refusal. Needless to observe that if the parties feel aggrieved by such rejection orders, they can avail appropriate remedies as available in law.

44. The above directions shall bind all the Revenue authorities and the Registering officers in the State of Andhra Pradesh, irrespective of whether they are parties to this batch of Writ Petitions or not. Violation of the above directions by the officers concerned will be viewed as contempt of Court. If such instances come to the notice of this Court, it may exercise the option of initiating contempt proceedings suo motu against such officers even though they are not parties to these cases.

45. The Principal Secretaries of the Departments of Revenue and Revenue (Registration & Stamps), Government of Andhra Pradesh, shall circulate this Judgment to the officers under their respective jurisdictions under separate circulars to be issued in this regard. As a sequel to disposal of the Writ Petitions, all the pending miscellaneous applications filed for interim relief in these Writ Petitions, are disposed of as infructuous.