

THE HONOURABLE SRI JUSTICE D.RAMESH

WRIT PETITION NO.5238, 4436, 3231 OF 2022

COMMON ORDER:

Since the issue involved in all the three writ petitions is one and the same, the writ petitions are being disposed of together with a common order.

W.P.NO.5238 of 2022:

This Writ Petition is filed challenging the action of the respondents particularly the 6th respondent/District Registrar, Guntur District in keeping the petitioners property to an extent of Ac.0-22 cents equalling to 1064 Sq.Yards out of total extent of Ac.11-30 cents in Sy.No.141, D.No.94-24-1766 with assessment No.1021117688 of RCC building at Nallapadu Village, Guntur District under the online prohibited properties list is illegal and arbitrary.

W.P.No.4436 of 2022:

This Writ Petition is filed challenging the impugned letter dated 01.12.2021 addressed by the 3rd respondent to the 4th respondent requesting to issue suitable instructions to all concerned not to entertain any transactions/documents with regard to the property registered in the Sale Deed vide Document NO.3629 of 2017 i.e., in respect of the land in Sy.No.387P (Survey number wrongly typed as SY.No.388) to an extent of Ac.18.00 cents situated at Bogapuram Village and Mandal, Vizianagaram District on the ground that investigation is pending in Crime No.330 of 2017 on the file of Sarpavaram Police Station, registered for the offences under Sections 353, 384, 420, 506 r/w 34 IPC as illegal and arbitrary and consequently to set aside the impugned letter dated 01.12.2021 of the 3rd respondent.

W.P.No.3231 of 2022:

This writ petition challenging the action of the respondent No.6 keeping the petitioners' property to an extent of Ac.1-65

cents out of total extent of Ac.2-17 cents in Sy.No.911/2 of Atmakur Mandal, SPSR District under the online prohibited properties list in pursuance of the proceedings addressed by the 5th respondent/Assistant Commissioner, Endowment Department, Nellore District issued vide Rc.No.A1/ ACEDNL-ADMN/714/2019-1 dated 22.08.2019 inter alia directing the 7th respondent Sub-Registrar (Assurances), Atmakuru Mandal, SPSR Nellore District to prohibit the registration of the total landed property to an extent of Ac.2-17 cents which includes their total extent of Ac.1-65 cents situated in Su.No.911/2 of Atmakuru, SPSR Nellore District under Section 22 A (1) (C) of the Registration Act, 1908 and consequentially keeping the petitioners property under the prohibited property list on the file of the 6th respondent/District Registrar inspite of the specific written and online applications dated 22.06.2021 and 03.01.2022 is being illegal, arbitrary and unconstitutional.

2. Heard Sri G.Suryam and Sri M.Durga Prasad learned counsel appearing for the writ petitioners and learned Government Pleader for Revenue, Government Pleader for Endowments, Government Pleader Stamps and Registration appearing for the respondents.

The brief facts of the case are in W.P.no.5238 of 2022:-

3. The petitioners in the writ petition are the absolute owners and possessors in an extent of Ac.00-22 cents equalling to 1064 Sq. yards out of total extent of Ac.11-30 cents in Sy.No.141, D.No.94-24-1766 with assessment No.1021117688 of RCC building at Nallapadu Village, Guntur District as per the will executed by father of the 1st petitioner, late Sri Chakka Ramakrishna Rao dated 18.02.2006. Originally said subject property was purchased by the grandfather of the 1st petitioner late Chakka Gurunadham, son of Chakka Narasimha Rao vide registered sale deed No.244/1941 dated 17.01.1941 registered on the file of Sub-registrar office, Guntur. After

his demise, said property was fallen to the share of his father late Chakka Ramakrishna Rao, as 4th item in the –schedule vide memorandum of partition dated 16.09.1985, during the life time of his parents, they are entitled for the income only derived from the said property without any sale, gift , long period rents and etc., and after the death, the said extent is to be inherited equally to him and his late brother ie., 532 Sq.Yards each. After expiry of the father of the 1st petitioner on 13.11.2020 and also brother of the 1st petitioner on 29.04.2020, the petitioners herein are in continuous possession and enjoyment of the subject property by paying property tax to the Municipal Corporation of Guntur.

4. While that being so, for the purpose of their business the subject property was put as collateral security to obtain loan from Union Bank of India, Main Branch at Guntur in the year 2000 and when the petitioners went to the bank for renewal of the said loan, the bank authorities took objection that the property has been kept in Prohibitory list by the 6th respondent under Section 22A (1) (c) of the Registration Act, 1908, thereby stated that they cannot renew the loan on the said property . The petitioners have not received any communication whatsoever, with regard to the enlisting of the said property under Section 22-A of the Act. On verification, they came to know that this properties are kept under Prohibitory list of the 5th respondent vide their notification dated 29.06.2015, issued at the behest of the Assistant Commissioner of the said Temple alleged to have been claiming that the entire extent of Ac.11-30 cents is alleged to have been belongs to the temple. The petitioners have made an online application on 12.01.2022 vide TATTA012200081228 requesting to delete their property from the Prohibitory list under

Section 22 (A)(1) (c) of Registration Act, 1908 [for short 'the Act']. Despite, their application no action has been taken by the authorities concerned. Hence, they filed the present writ petition.

The brief facts of the case in W.P.No.4436 of 2022:

5. One Balaga Prakash Rao purchased the land in Sy.No.387P in an extent of Ac.18.00 cents situated at Bhogapuram Village and Mandal, Vizianagaram District under registered sale deed No.3629 of 2017, dated 19.9.2017 registered at Bhogapuram for a valuable sale consideration of Rs.1,80,00,000/- from one Akula Govinda Rajulu, S/o. Late Rama Rao, since then he is in possession and enjoyment of the aforesaid land and his name was also mutated in the revenue records. Subsequently, the land owner with an intention to develop the land into house plots, entered into a Development Agreement cum Irrevocable General Power of Attorney dated 5.11.2018 in respect of the land in Sy.No.387P to an extent of Ac.18.00 cents situated at Bhogapuram village and Mandal, Vizianagram District in favour of the petitioner company herein to develop the land into house plots by obtaining necessary permissions and approvals from VMRDA and other competent authorities for development of the aforesaid land. In pursuance of the said agreement, the petitioner company paid Rs.55 Lakhs towards security deposit and also agreed that after obtaining the necessary permissions and approvals from the competent authority for the purpose of development of the house plots to enter supplementary agreement with the sharing ratio of 50:50 among the learned counsel for the petitioner and owner of the land.

6. After entering into the development agreement-cum- GPA dated 05.11.2018, the petitioner submitted an application for approval of layout to the Bhogapuram Grampanchayat and paid Rs.4,91,000/-.

Accordingly, the Bhogapuram village approved the layout of the petitioner as per the plan submitted by the petitioner and addressed a letter dated 19.01.2019 to the Metropolitan Commissioner, VMRDA for technical approval. The VMRDA accorded the technical approval and the petitioner paid Rs.28,21,624/- towards betterment charges and other incidental charges to the VMRDA. The VMRDA approved the layout in respect of the aforesaid land vide proceedings LP No.20/2018/1167/VMRDA/ DPMS. The petitioner also mortgaged to an extent of Ac.12535 Sq. yards of house plots to VMRDA by executing registered Deed of Mortgage vide Doc.No.1026/2019 dated 2.2.2019 and entered into supplementary agreement dated 1.4.2021 vide Doc.No.2470 of 2021 registered at SRO, Bhogapuram in pursuance of the Development agreement entered between the parties dated 19.9.2017.

7. Contention of the petitioner Company is that they have invested huge funds for obtaining the sanction of layout from the competent authorities and also for the development of the land as per the approved layout dated 1.3.2019. While the matter stood thus, the 3rd respondent addressed impugned letter dated 1.12.2021 to the 4th respondent requesting to issue suitable instructions not to entertain any transactions/documents with regard to the property registered in the Sale Deed vide Document No.3629 of 2017 of SRO, Bhogapuram in respect of land in Sy.No.388 [which was wrongly typed] to an extent of Ac.18.00 cents situated at Bhogapuram Village and Mandal, Vizianagaram District on the ground that the investigation is pending in Crime No.330/2017 of Sarpavaram Police Station, East Godavari District, registered on the complaint of one Govidna Rajulu Akula. The 3rd respondent, being a police officer has no jurisdiction to

address and instruct the registering authorities not to entertain the documents pending investigation of the crimes. In fact, the petitioner approached the 5th respondent i.e., the Joint Sub Registrar, Stamps and Registration Department, Bhogapuram on 31.01.2021 for issuance of Market Value Certificate in respect of the House plots in Sy.No.387P to an extent of Ac.18.00 cents situated at Bhogapuram Village and Mandal, Vizianagaram District for presentation of documents for registration executing in favour of the prospective purchasers. But the 5th respondent refused to issue the market value certificate stating that the 3rd respondent addressed a letter dated 01.12.2021 requesting not to entertain any documents/transactions in respect of the land covered in Sale Deed No.3629/2017 and the 4th respondent in pursuance of the letter of the 3rd respondent, instructed the 5th respondent not to entertain any transactions or documents in respect of the aforesaid land. Thus, aggrieved by the action of the 4th and 5th respondent in refusing to entertain the documents presented by the petitioner to issue market value certificate, relying on the impugned letter dated 1.12.2021 of the 3rd respondent this writ petition is filed.

The brief facts of the case in W.P.No.3231 of 2022:

8. The petitioners are the absolute owners and possessors of their respective holding in Survey No.911/2 of Atmakur Mandal, SPSR Nellore District vide various settlement deeds and registered Sale Deeds. In the total extent of the subject property, an extent of Ac.0-46 cents with khatha No.1565 belongs to the 1st petitioner, an extent of Ac.0-23 cents with Khatha No.2253 belongs to the 2nd petitioner, an extent of Ac.0-23 cents with Khtata No.2598 belongs to the 3rd petitioner and an extent of Ac.0-67 acquired through registered Sale

Deed with Khatha No.2642 belongs to the 4th petitioner. Accordingly the petitioners' names were mutated in the revenue records, including that of 10(1) account to an extent of Ac.1-65 cents out of total extent Ac.2-17 cents in Survey No.911/2 of Atmakuru Village, SPSR Nellore District. The authorities concerned have also issued Title Deeds, pattadar passbooks and encumbrance certificates etc. in the name of the petitioners.

9. While that being so, for the purpose of their family needs and financial necessities the petitioners were constrained to sell the total extent of Ac.1-65 cents, by way of plots to 16 individuals, who are their vendees through registered sale deeds. The petitioners learnt that some third parties made complaint before the Lokayukta on 14.12.2020 making allegation that the subject lands are endowment lands belonging to the Allagandha Swamivari Temple, Atmakuru Town, which is also called as Sundara Raja Swami Temple, Atmakuru Town, and taking advantage of the said complaints before the Lokayuktha and also the alleged letter dated 17.08.2019 from the Mandal Incharge, Mee Intiki Mee Bhoomi, Atmakuru Mandal of SPSR Nellore District, the 5th respondent passed the impugned proceedings vide Rc.No.A1/ACEDNL-ADMN/714/2019-1 dated 22.08.2019 inter alia directing the 7th respondent Sub-registrar to keep their lands under prohibitory list as contemplated under Section 22-A (1) (c) of the Act, 1908.

10. Contention of the petitioners in the writ petition is that before passing the impugned proceedings by the 5th respondent/Assistant Commissioner, Endowment Department no prior notice has been given to the petitioners for being heard, only based on the alleged complaint made before the Lokayuktha, the 5th respondent

straightaway directed the 7th respondent/the Sub-Registrar (Assurances) to keep the subject property under prohibitory list provided under Section 22-A (1) (c) of Registration Act, 1908 which is violation of principles of natural justice. Hence, they filed the present writ petition.

11. In all the three writ petitions, learned counsel appearing on behalf of the writ petitioners mainly contended that the respondents have no authority or power to issue such impugned proceedings/letters without notifying the subject properties under Section 21-A of the Registration Act, 1908, based on the impugned proceedings/letters, the respondent authorities are not entitled to deny the registration of the subject properties of the petitioners.

12. Learned counsel appearing for the petitioners further contended that the unilateral communications/directions to the registering authorities are contrary to the principles of natural justice. In all these matters, before passing the impugned orders, the authorities have made no opportunity to the petitioners, or the petitioners were not heard before passing such orders, therefore, without giving notice, without giving any opportunity, the respondents have directed the registering authorities to keep the properties under Section 22 A (1) (c) of the Act, which is violation of principles of natural justice. Particularly, the 5th respondent/Assistant Commissioner of Endowment has no power or competency to issue directions to the Sub-Registrar to place the subject property under Section 22-A (1)(c) of Registration Act, without notifying the subject properties under prohibitory list.

13. It is not in dispute that in all the above three matters, no such notifications were issued or published as required under Section 22-A (1) or 22 A (2) of the Act.

14. Learned counsel for the petitioners further submitted that in an identical issue raised before this Court in **Pasuparthi Jayaram and others v. Government of Andhra Pradesh, rep. by its Commissioner, Endowments Department, Hyderabad and others**¹ and also in W.P.No.27864 of 2017 between the **Balabhadra Murali and The State of Andhra Pradesh rep by its Principal Secretary Registration and Stamps Department**, it is observed that for the Registration of a document, in the absence of a notification under Section 22-A(2) of the Act, the Endowments Department cannot communicate list of the properties allegedly owned by religious institutions by way of a letter and trace power to do so to Section 22-A(1)(c) of the Act.

15. In fact, in **Pasuparthi Jayaram's** case [cited supra], the Commissioner Endowments Department, A.P., vide proceedings dated 19.04.2010 requested various registration authorities in Chittoor District, indicating the particulars of immovable properties, allegedly belonging to certain different Mutts, Tirupati and requesting the Registration Authorities to desist from entertaining registration of documents in connection with those properties. Assailing the said proceedings the Writ Petition was filed and this court held that ***the notification dated 19.04.2010 addressed by the Commissioner of the Endowments Department of the State, therefore, proceeds on a complete misconception and misunderstanding of the scope of the above provisions of the Act. In the event the Religious/***

¹ 2013 (4) ALT 541

Charitable/Endowment/Wakf institution seeks to assert any right over a property, prohibition as to registration of documents relating to such property can operate only if a notification is issued under Section 22-A (2) of the Act of 1908 in connection with Section 22-A(1)(e) thereof. In the absence of a notification under Section 22-A (2), it is not open to the Endowments Department to communicate a list of properties allegedly owned by religious institutions by way of a letter and trace the power to do so to Section 22-A(1)(c) of the Act of 1908.

Accordingly said communication has set aside and the registration authorities were directed to transfer the documents presented by the petitioners therein.

16. Following the said judgment, again this Court in W.P.No.27864 of 2017 held that ***in the absence of any notification, refusal to register the impugned document is illegal and contrary to law.***

Based on the communication made by the Wakq Board the authorities have refused to entertain the documents, questioning the same said writ petition was filed. It is noticed that no notification was issued as mandated under Section 22-A of Act, thereby the order of refusal was held illegal and arbitrary. Even, no intimation was sent to the Sub-Registrar or Director General of Stamps and Registration about issue of any notification publishing list of properties covered by such notification, which includes the property in dispute. Accordingly the writ petition is allowed, directing the respondents to receive and register the documents presented by the petitioners therein.

17. In the instant cases, on perusal of the impugned proceedings in W.P.No.3231 of 2022, the Assistant Commissioner, Endowment Department, Nellore vide his letter dated 22.08.2019 requested the

Sub-Registrar of Assurances, Registration Department, Atmakuru, SPSR Nellore District, which reads as follows:

“So, the Mandal incharge, Mee intiki mee boomi, Atmakuru Mandal submitted a report to the Tahsildar, Atmakur Mandal to provide one Surveyor to fix the boundaries to the land in question as this land is included with 9 other acres wherein the house plots are layouted for sale the same to others. A letter also submitted to the Commissioner of Atmakur Municipality requesting not to approve lay out on this land as it is going to be prohibited from registration u/s.22(A)(1)(C). Hence, I therefore, request to prohibit the registration of the landed property i.e. Ac-217 cents in Sy.No.911/2 of Atmakuru from hereafter under Section 22(a)(1)(C).

18. In W.P.No.4436 of 2022, the impugned orders of the Sub-Divisional Police Officer, Kakinada Sub Division, to the Deputy General of Stamps and Registration Department, Vizanaiaaram, which reads as follows:

“..... based on the statement of Akula Govindarajulu with regard to the abduction and forcible execution of sale deed registration vide document No.3629/2017 of Sub-Registrar Office, Bhogapuram Vizianagaram District with the active support of the then Sub-Registrar namely Pandillapalli Ramakrishna by the remaining accused in this case basing on the statement of Akula Govindaraju the Section of law in Cr.No.330/2017 was altered into 353, 384, 420, 506 r/w 34 IPC on 21.09.2017 at 10.00a.m. and investigating into.

.... Hence, it is requested that suitable instructions may be issued to all the concerned that no to entertain any further transactions with regard to the property registered in the document No.3629/2017 of SRO, Bhogapuram in Survey No.388 an extent of Ac.18.00cents located at Bhogapuram village and Mandal Vizianagaram District, in the intestate of third parties, who without the knowledge of the case may incur financial losses by entering into any transaction.”

19. Learned counsel for the petitioners mainly claims that the source or power of the respondents to issue such impugned proceedings/orders, more so in the absence of any notification,

having been issued by the State Government prohibiting the registration or any other proceedings having statutory force. In spite of the property as specified in sub Clauses (a) to (e) of Section 22 A of the Act, 1908, the details of which are entered in the prohibitory Register maintained by the Registering Authority and such power to refuse to register the cases is only following Section 22-A of the Act, 1908.

20. For better appreciation, Section 22-A of the Act of 1908 extracted 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 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 interest.

(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.'

21. On perusal of the above provision, makes it clear that it indicate the circumstances, which the registering authority can refuse to register a document in so far the immovable properties covered under clause (1) (a) to (e) of Section 22 A of the Act. There is only upon issuance of notification under sub clause (2) of Section 22-A, registering Authority would derive power under Sub Section (3) of Section 22-A of the Act to refuse registration of the document presented. Till such notification is issued by the State Government mentioning the immovable property in respect of which no registration shall be entertained, the Registering Authority is required to register the documents, presented by the parties, pertaining to the immovable properties.

22. In all these cases, admittedly there are no notifications issued by the State Government prohibiting the registration of the subject properties. Admittedly as far as the impugned proceedings, in W.P.No.4436 of 2022, of the Sub-Divisional Police Officer, Kakinada Sub-Division is concerned, he is not the competent authority and he cannot write such a letter to the Registering authorities without having such powers conferred on him under statute.

23. Furthermore in W.P.No.3231 of 2022 the communication by the Assistant Commissioner, Endowment Department, Nellore vide impugned letter dated 22.08.2019, is without jurisdiction since no such power is vested with the authorities, as construed by this Court in the above referred two judgments. *In the absence of a notification under Section 22-A (2), it is not open to the Endowments Department to communicate a list of properties allegedly owned by religious institutions by way of a letter and trace the*

power to do so to Section 22-A(1)(c) of the Act of 1908. In view of the same, the registering authorities cannot keep the properties under the prohibited list on the communication addressed by the Commissioner, Endowment Department, without there being a notification issued by the government under Section 22 A (2) of the Act.

24. Considering the provisions of the Act and in view of the observations made by this Court in ***Pasuparthi Jayaram's*** case and in the W.P.No.27864 of 2017, the impugned letter dated 01.12.2021 in W.P.No.4436 of 2022 and the proceedings/letter dated 22.08.2019 in W.P.No.3231 of 2022 are set aside. The respondents/registration authorities concerned in the writ petitions are directed to receive and register the documents presented by the petitioners in accordance with the provisions of the Act.

25. Accordingly, the three writ petitions are disposed of. There shall be no order as to costs.

As a sequel, miscellaneous applications pending, if any, shall also stand closed.

JUSTICE D. RAMESH

Date: 17.06.2022
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