

(2011) 03 AP CK 0088

Andhra Pradesh High Court

Case No: Writ Petition No. 27752 of 2009

T. Yedukondalu

APPELLANT

Vs

The Principal Secretary to
Government, Department of
Revenue, Stamps and
Registration, Secretariat of A.P.
and Others

RESPONDENT

Date of Decision: March 15, 2011

Acts Referred:

- Registration Act, 1908 - Section 22A, 22A(1), 22A(2), 22A(3), 71

Citation: (2011) 4 ALD 43 : (2011) 8 RCR(Civil) 1306

Hon'ble Judges: Sanjay Kumar, J

Bench: Single Bench

Advocate: Karri Suryanarayana, for the Appellant; G.P. for Revenue, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Sanjay Kumar, J.

The Petitioner assails the action of the Sub-Registrar of Stamps and Assurances, Shameerpet, Ranga Reddy District, the third Respondent, in not entertaining documents for registration in respect of his land in Survey No. 956 of Jawahar Nagar Village and Gram Panchayat, Shameerpet Mandal, Ranga Reddy District.

2. It is the case of the Petitioner that he purchased an extent of Ac.5.00 cents in Survey No. 956 of Jawahar Nagar Village in the year 2007. Being desirous of selling the said land, the Petitioner approached the registration authorities but was informed that registration of documents in respect of the said land was prohibited. It is his case that his land is neither Government land nor assigned land and that prohibition in respect of registration could not be applied to it. Hence, the present

writ petition.

3. The Sub-Registrar, Shameerpet, the third Respondent, stated in her counter that the Petitioner had applied for information as to the market value of the land in Survey No. 956 of Jawahar Nagar Village and that her office had informed him that the subject land was Government land and therefore no value exists in respect thereof in the basic value register. She further stated that the District Collector, Ranga Reddy, under letter dated 08.07.2008 furnished the District Registrar, Ranga Reddy, the second Respondent, with a list of Government lands. As per this list, Survey No. 956 was notified as Government land. Reliance was placed upon G.O. Ms. No. 786, Revenue (Registration-I) Department, dated 09.11.1999, a notification issued under the old Section 22A of the Registration Act, 1908 (for brevity, "the Act of 1908"). According to the Sub-Registrar, Shameerpet, notwithstanding the substitution of Section 22A of the Act of 1908 under Act No. 19 of 2007, the notifications issued under the erstwhile provision would still continue to operate. She concluded by stating that the Petitioner had not presented his document for registration and therefore no cause arose for filing the present writ petition.

4. The learned Government Pleader for Revenue, appearing for the Respondent authorities, while reiterating the above stand, contended that it was not necessary for the Government to issue a notification u/s 22A(2) of the Act of 1908, as it presently stands. It is his case that once Government land is involved, Section 22A(1)(b) would apply and not Section 22A(1)(e) of the Act of 1908. He further argued that the notification issued under the erstwhile Section 22A of the Act of 1908 vide G.O. Ms. No. 786 dated 09.11.1999 would continue to operate in view of the validating clause in Act No. 19 of 2007 and therefore, the prohibition put in place there under in respect of Survey No. 956 of Shameerpet Mandal, Ranga Reddy District, would continue to be operative notwithstanding the substitution of the provision. He further stated that as the Petitioner had not presented his document for registration, occasion did not arise for him to file the present case and that, if the Petitioner presented his document it would be considered and necessary action would be taken u/s 71 of the Act of 1908.

5. This Court, however, does not find merit in the contentions advanced by the learned Government Pleader.

6. With regard to the objection as to the maintainability of the writ petition, the counter filed by the Sub-Registrar, Shameerpet, makes it clear that the Petitioner's document, if presented for registration, is bound to be rejected. That being so, this Court is not impressed with the submission that the Petitioner should be driven to suffer an order u/s 71 of the Act of 1908 and again made to approach this Court thereafter. Once the stand of the Respondents is apparent, this Court is not barred from considering the issue notwithstanding the fact that the Petitioner did not present his document for registration as yet. In any event, the cause of action arose upon the refusal by the registration authorities to furnish to the Petitioner the

market value of the subject land, which would be necessary for him to present his document for registration with the required stamp duty.

7. Section 22A of the Act of 1908, as it presently stands, reads as under:

22A. 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.

(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. Prior to its substitution under Act No. 19 of 2007, Section 22A read as under:

22A.(1) Documents registration of which is opposed to Public policy:-- 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.

9. Pertinent to note, "public policy" no longer finds mention in the substituted Section 22A of the Act of 1908.

10. 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.

11. 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 of 1908 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.

12. The other submission of the learned Government Pleader that the earlier notification issued vide G.O. Ms. No. 786 dated 09.11.1999 under the erstwhile Section 22A of the Act of 1908 would continue to operate, must inevitably fail. Section 22A of the Act of 1908, as it stood prior to its amendment under Act No. 19 of 2007, was struck down by this Court. Further, as it presently stands, Section 22A

of the Act of 1908 does not speak of "public policy" as a ground for prohibiting registration of documents. The validation clause in Act No. 19 of 2007, upon which much reliance has been placed by the Respondents, reads as under:

3. Validation:--

Notwithstanding anything in any judgment, decree or order of a Court, Tribunal or any other authority to the contrary no notification declaring that the registration of any document or class of documents is opposed to public policy and the refusal of the same for registration u/s 22A of the Principal Act during the period with effect from 1st April, 1999 being the date of the commencement of the Registration (Andhra Pradesh Amendment) Act, 1999 (Act 4 of 1999) upto the date of the commencement of the Registration (Andhra Pradesh Amendment) Act, 2006 substituting new Section 22A in the Principal Act, shall be deemed to be invalid and the refusal for registration of the said document deemed to have been validly refused for registration, and accordingly:--

(a) no suit or other proceeding shall be maintained or continued in any Court against the State Government or any person or authority whatsoever for the purpose of registration; and

(b) no Court shall enforce any decree or order directing to register.

13. Without going into the validity of the above validation clause, which is under challenge in separate proceedings pending before this Court, the scope and import of the clause may be noted. The clause merely speaks of validating the notifications issued under the old provision and the refusal to register documents on the basis thereof, between the two stipulated dates 01.04.1999 and the date of substitution of Section 22A. The clause does not have the effect of validating for all times to come notifications issued under the erstwhile invalidated Section 22A of the Act of 1908. Once the very foundation for the notification, being the old provision, vanished it is ludicrous to contend that the notification issued on the basis of such provision would continue to survive independently. This aspect is further exemplified by the fact that the Annexure to G.O. Ms. No. 786 dated 09.11.1999, in which the subject land in Survey No. 956 of Shameerpet Mandal finds mention, speaks of registration of documents pertaining to immovable properties being prohibited on the ground that they are opposed to public policy. As mentioned supra, this ground is no longer available under the substituted Section 22A of the Act of 1908. It is therefore not open to the Respondents to contend that the notification in G.O. Ms. No. 786 dated 09.11.1999 stipulating a prohibition as to registration of documents on the ground that they are opposed to public policy continues to operate.

14. It may be noticed that the issues raised in this writ petition have been tried and decided by this Court earlier. In [P. Suresh and Another Vs. A.P. State and Others](#), and *K.M. Kamallula Basha v. District Collector Chittor* (2009) 3 ALD 385, this Court held that mere entries in the revenue records would not constitute proof of the

Government's title. I had occasion to deal with the issue in D. Bharathmma v. State Of Andhra Pradesh (2010) 5 ALD 444 and Shaik Dudekula Pyari Jan @ Lal Bi v. The Revenue Divisional Officer, Madanapalli Writ Petition No. 6016 of 2010 dated 02.07.2010, wherein I held that unless a notification u/s 22A(2) read with Section 22A(1)(e) is published, the Government cannot claim that the land in question belongs to it and seek to stall registration of documents in respect thereof. I also held that without putting in place a prohibition sourced in law, it is not open to the authorities to stall the registration of documents. Thereafter, in [Shaik Ali and Others Vs. District Collector, Chittoor and Others,](#), this Court again reiterated this position.

15. Viewed thus, the stand of the Respondents that the subject land in Survey No. 956 of Jawahar Nagar Village and Gram Panchayat, Shameerpet Mandal, Ranga Reddy District, should be treated as land in respect of which documents cannot be entertained for registration, notwithstanding the fact that no notification has been issued u/s 22A(2) of the Act of 1908 in respect thereof, cannot be countenanced.

16. The Writ Petition is accordingly allowed directing the Sub-Registrar, Shameerpet Mandal, Ranga Reddy District, the third Respondent, to receive, register and deliver in accordance with the due procedure the documents presented by the Petitioner in respect of the subject land. No order as to costs.