



IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE M. SATYANARAYANA MURTHY

WRIT APPEAL No.921 of 2021

(Through physical mode)

The State of Andhra Pradesh,
Rep. by its Principal Secretary,
Revenue Department, A.P. Secretariat,
Velagapudi, Guntur District, and others.

.. Appellants

Versus

Sri Y. Prabhakar Naidu, S/o. Subbaiah,
aged about 72 years, R/o D.No.7/631,
Anjaneya Nagar, Badvel Village and Mandal,
Y.S.R. Kadapa District.

.. Respondent

Counsel for the appellants : Mr. B. Sesibushan Rao, GP,
for Additional Advocate General

Counsel for the respondent : Mr. M. Delhi Babu

ORAL JUDGMENT

Dt: 03.01.2022

(per Prashant Kumar Mishra, CJ)

By this writ appeal, the appellants would call in question the order dated 17.02.2021 passed by the learned single Judge in W.P.No.3504 of 2021. By the said order, the writ petition filed by the respondent herein was disposed of directing the appellant Nos.2 and 3 herein (respondent Nos.2 and 3 therein) to consider the respondent/writ petitioner's representation dated 09.10.2019 and delete the subject land from the prohibited property list and communicate the same to the sixth appellant/sixth respondent, who, in turn, on such communication, was directed to receive the sale deed proposed to be presented by the respondent/writ petitioner in respect of the



subject land, process and register the same if it is otherwise in accordance with the provisions of the Registration Act, 1908 (for short, 'the Act of 1908') and the Rules made thereunder, and release the same to the respondent/writ petitioner as per law.

2. Brief facts, which are necessary for the purpose of disposal of the present appeal, are as under:

Originally, the land admeasuring Ac.5.36 cents in Sy.No.2 of Rangasamudram Village, Porumamilla Mandal, YSR Kadapa District, was assigned to one Bandala Narayana, in the year 1978. The original assignee mortgaged the said land to the District Cooperative Central Bank Limited, Kadapa (hereinafter referred to as 'the bank'). Upon his failure to repay the loan amount, the mortgaged land was sold by the bank in public auction, in execution of the Award dated 22.03.1993 on the file of the Deputy Registrar/Officer on Special Duty of the bank. In the said public auction, the land was purchased by one V. Jayarami Reddy and the sale was confirmed vide registered document dated 17.05.1997. Subsequently, the respondent/writ petitioner purchased an extent of Ac.3.36 cents (hereinafter referred to as 'the subject land'), out of the total land of Ac.5.36 cents, from the auction purchaser, under registered sale deed dated 26.02.2011, on issuance of No Objection Certificate by the Revenue Divisional Officer, Rajampeta. The respondent/writ petitioner was also issued pattadar passbook and title deed vide khata No.1741, for the subject land. Later on, the respondent/writ petitioner sought to sell the subject land in order to meet his medical expenses and approached the sixth respondent - Sub-Registrar, Badvel, for registration of the sale. However, the sixth respondent refused to entertain registration stating that the subject land was included in the prohibited property list under Section 22A(1)(e) of the Act of 1908. Thereupon, the



respondent/writ petitioner made an application to the concerned authorities on 09.10.2019 for deletion of the subject land from the prohibited property list and after conducting enquiry, favourable recommendations were made by the fifth and fourth respondents vide reports dated 18.12.2019 and 07.03.2020 respectively. Despite the same, the second and third respondents failed to take necessary action, necessitating filing of the writ petition by the respondent/writ petitioner.

3. The learned single Judge has disposed of the writ petition with the directions as noted above, on the strength of the law laid down by the Division Bench of the erstwhile High Court of Andhra Pradesh in **Sub Registrar, Srikalahasti, Chittoor District v. K. Guravaiah**, reported in **2009(2) ALD 250 (DB)**, wherein it was held that when the original assignee mortgaged the land assigned to him in favour of a bank or a financial institution or a co-operative society under the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act of 1964'), and if the mortgager fails to repay the loan, the consequences provided in the Transfer of Property Act, 1982, would naturally follow, in that, it is permissible to put the land to public auction under the said Act and recover the loan due to the financial institution by way of sale and that the land loses the character of assigned land and such sale would be valid in law.

4. Mr. B. Sesibushan Rao, learned Government Pleader attached to the office of the learned Additional Advocate General-I, appearing for the appellants, would draw our attention to the judgment of the Hon'ble Supreme Court in **Papaiah v. State of Karnataka**, reported in **(1996) 10 SCC 533**, particularly, paragraph 8 thereof, to argue that any alienation of assigned land is opposed to public policy and such alienation is void and the purchaser does not get any valid right, title or interest thereunder. Learned



Government Pleader, therefore, contends that the order of the learned single Judge, directing the authorities to delete the subject land from the prohibited property list and to register the sale deed sought to be presented by the respondent/writ petitioner, is not in accordance with law and the same is liable to be set aside.

5. On the other hand, Mr. M. Delhi Babu, learned counsel for the respondent/writ petitioner, supports the order under appeal stating that the mortgage of the subject land in favour of the bank and subsequent sale of the same by the bank in favour of the vendor of the respondent/writ petitioner being valid and the subject land having lost its character as assigned land on mortgage with the bank, the learned single Judge has rightly passed the order under appeal.

6. We have considered the submissions made by the learned counsel on either side and perused the materials on record.

7. There is no dispute that the subject land, which was part of the assigned land under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 (for short, 'the Act of 1977'), was mortgaged to the bank by the original assignee in the course of a loan transaction and when the original assignee committed default in repayment of loan amount, the subject land was sold in public auction and such sale was confirmed and subsequently, the respondent/writ petitioner purchased the same from the auction purchaser under a registered sale deed.

8. Section 2(1) of the Act of 1977 deals with the definition of 'assigned land' and the same along with Explanation thereto reads as under:

"2. Definitions:- In this Act, unless the context otherwise requires, -



(1) "assigned land" means 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; and the word "assigned" shall be construed accordingly;

Explanation:- A mortgage in favour of the following shall not be regarded as an alienation, namely:-

- (i) the Central Government, or the State Government or any local authority.
- (ii) any co-operative society registered or deemed to be registered under the Andhra Pradesh Co-operative Societies Act, 1964; and
- (iii) any bank which includes –
 - (a) the Agricultural Development Bank;
 - (b) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934;
 - (c) the State Bank of India constituted under the State Bank of India Act, 1955;
 - (d) a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959; and
 - (e) a corresponding new bank constituted under Section 3 of the Bank Companies (Acquisition and Transfer of Undertakings) Act, 1970;"

9. Thus, when mortgage of an assigned land in favour of a co-operative society registered or deemed to have been registered under the Act of 1964 does not amount to alienation, in terms of Explanation to Section 2(1) of the Act of 1977, mortgage of the subject land in favour of the bank, which is a co-operative society under the provisions of the Act of 1964, cannot be considered as illegal. Once the mortgage in favour of the bank is considered as legal and valid, the consequences provided for recovery of mortgage



money would follow, including sale of mortgaged property by the bank, and in such circumstance, the land would lose the character of assigned land. Further, it is to be noted that Section 6 of the Act of 1977 exempts application of the said Act to the assigned lands held on mortgage by the State or Central Government, any local authority, a co-operative society, a scheduled bank or such other financial institution owned, controlled or managed by a State Government or the Central Government, as may be notified by the Government in this behalf. In that view of the matter, the bar under Section 3(2) of the Act of 1977 would not apply to the subject land.

10. In view of the above discussion and having regard to the facts and circumstance of the case on hand, we are of the considered opinion that the proposition laid down in **Papaiah's** case (supra), relied upon by the learned Government Pleader appearing for the appellants, would not apply to the case on hand. On due consideration, we do not find any error in the order of the learned single Judge in relying upon the decision in **K. Guravaiah** (supra) and issuing directions for deletion of the subject land from the list of prohibited properties and for registration of the sale deed sought to be presented by the respondent/writ petitioner and no interference is warranted therewith in this appeal.

11. Accordingly, the writ appeal is dismissed. Pending miscellaneous applications, if any, shall stand closed. No costs.

PRASHANT KUMAR MISHRA, CJ **M. SATYANARAYANA MURTHY, J**

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