

**\* THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

**+ REVIEW I.A. No.2 of 2023 IN/AND WRIT PETITION No.18418 of 2020**

**% Dated 01-02-2024**

Between:

# Afzal Hussain

S/o.late Ahmed Hussain,  
R/o.Plot No.187, Phase-II, Kamalapur Colony,  
Hyderabad-500073 and others.

... Petitioners

and

\$ State of Telangana,  
Represented by its Principal Secretary,  
Department of Revenue, Telangana Secretariat,  
Hyderabad and others.

....Respondents

! Counsel for the Appellant : Mr. M.Srinivas

^ Counsel for the respondents : G.P. for Revenue and  
Mr.Abu Akram for R-2

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 2002 AP 313

**THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR****Review I.A. No. 2 of 2023****In/and****W.P. No.18418 of 2020****ORDER:**

This application has been filed seeking to review the order dated 29.08.2023 passed in W.P. No.18418 of 2020 by this Court on the ground that the learned Judge has traveled beyond the scope of the writ petition hence, there is an error apparent on the face of the record calling for review.

2. The learned Senior Counsel Sri E.Madan Mohan Rao appearing for the petitioners submitted that the petitioners holds more than Ac.100.00 guntas of land in Sy.Nos.32, 35, 42, to 46 70, 72 to 75, 78 to 80, 82 to 84 and 173 situated in Injapur village, Hayathnagar Mandal, Ranga Reddy District and their names have been recorded in the Revenue Records, including Dharani portal as owners and pattadars and they were already issued Occupancy Rights Certificate under the provisions of the Inams Abolition Act, vide Proceedings No.L/907/1986, dated .01.1989 to an extent of Acs.90.00 guntas out of which, the subject matter of the writ petition relates to Acs.24.29 guntas situated in Injapur village, which has been wrongly included under Section 22-A(1)(c) of the Registration Act, 1908, as per A.P. Gazette No.6-A, dated 09.02.1989, which was already set aside in the case of **B.Gowra Reddy Vs.**

**Government of Andhra Pradesh**<sup>1</sup> on the ground that enquiry was not conducted as required under Section 4(3) of the Wakf Act.

3. It is further submitted that this Court in W.P. Nos.5938 of 2006 and batch vide common order dated 11.02.2021 has held that the notification dated 09.02.1989 issued by the Waqf Board is one without jurisdiction and thereby was pleased to set aside the notification dated 09.02.1989. The same has also been confirmed by the Hon'ble Division Bench of this Court in W.A.No.318 of 2021 vide common judgment dated 12.11.2021.

4. It is further submitted that in W.P. No.42345 of 2017 and batch wherein challenged the 6-A notification dated 09.02.1989 issued by the State, insofar as it relates to the respective lands of the petitioners therein situated in different survey numbers of Injapur village, Hayath Nagar Mandal, Ranga Reddy District and this Court, while taking into consideration the **Gowra Reddy's** case allowed the writ petitions with the following direction.

“In view of the above settled principle of law as already laid down by this Court in the judgments mentioned above, the present writ petitions are also allowed and the impugned Gazetted notification No.6-A dated 09.02.1989 is hereby set aside to the extent of the lands held by the petitioners and which are subject matter of the present writ petition only. Consequently, the registration

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<sup>1</sup> AIR 2002 AP 313

authorities shall receive, process, register and release the deed of conveyance sought to be presented in respect of the subject lands.

Accordingly, all the writ petitions are allowed to the extent indicated above. However, this order does not in any way preclude the Wakf Board from asserting its right, title and interest before appropriate authority, without prejudices to the law of limitation.”

5. On behalf of the respondent No.2, Waqf Board, counter affidavit has been filed, *inter alia*, stating that some of the writ petitioners have filed suit in O.S. No.138 of 2012 renumbered as O.S. No.484 of 2016 seeking for a relief to declare the Gazette notification No.6-A dated 09.02.1989 as illegal and void to the extent of serial No.2819 to an extent of Acs.68.10 guntas + Acs.7.38 guntas, which is pending on the file of Waqf Tribunal since 2012 when an efficacious relief is available to protect the lands covered under various survey numbers the writ petitioners would have sought for protection of their legitimate rights through the Tribunal constituted under Section 83 of the Waqf Act, 1995 as envisaged in O.S. No.484 of 2016. It is further stated that the claim of the writ petitioners assailing the validity and correctness of Gazette notification is barred by limitation and earlier to that a survey has been conducted in respect of the claim of the properties by the Waqf survey Commissioner appointed by the United Andhra Pradesh which determined the suit schedule property is a part and parcel of Waqf

properties. It is further stated that the claim of the writ petitioners with an extent of Acs.24.29 guntas is with ambiguity and their claim for exclusion of Acs.24.29 guntas from the prohibited list is quite unsustainable as no boundaries were stated nor did they state the survey numbers to an extent of Acs.24.29 guntas nor its exact location. However, the present writ petition subject land is only confined to an extent of Acs.24.29 guntas. Further, an additional counter affidavit has also been filed stating that all the survey numbers mentioned by them in fact are covered by notified Gazette waqf properties.

6. However, the learned Standing Counsel Sri Abu Akram, appearing for the 2<sup>nd</sup> respondent, Waqf Board, submitted that the said batch of writ petitions were allowed only to the extent of the petitioners' lands therein and the State Waqf Board had also preferred an appeal in Special Leave Appeal vide SLA (C) No(s).4166-4175 of 2022 against the common judgment dated 12.11.2021 passed in W.A. Nos.318 of 2021 and batch wherein the Hon'ble Supreme Court vide ad-interim order dated 12.09.2022 directed the respondents therein not to create any third party right.

7. The learned Senior Counsel Sri Madan Mohan drawn the attention of this Court to the order dated 12.11.2021 passed in W.A. No.318 of 2021 and submitted that the ad-interim order dated 12.09.2022 passed by the Hon'ble Apex Court is in respect of the lands situated in the

Mamidipalli village but not the lands situated in Injapur village. This submission has not been disputed by the learned Standing Counsel.

8. Heard the learned counsel on either side and perused the material made available on record.

9. The W.P. No.18418 of 2020 has been filed with the following prayer:

“to declare the action of the 3<sup>rd</sup> respondent Sub-Registrar in keeping the Petitioner’s land to an extent of Ac.24.29 guntas, situated at Injapur Village, Hayathnagar Mandal, Ranga Reddy district in the prohibition register, maintained under Section 22-A (1) (c) of the Registration Act referring to the AP.Gazette No.6-A, dated 09/02/1989 as arbitrary, unjust and illegal and violative of the petitioners right under Article 14, 19, 21 and 300-A of the Constitution of India, apart from the right’s under the provisions the Transfer of property Act and Registration Act.”

10. Along with the said writ petition, the petitioners also filed I.A. No.1 of 2020 with the following prayer:

“This Hon’ble Court may be pleased to direct the 3<sup>rd</sup> Respondent Sub-Registrar to consider the Petitioners representation dated 14/9/2020 for rectification of the mistake crept in the prohibition register i.e., inclusion of petitioners land to an extent of Ac.24.29 guntas, situated at Injapur village, Hayathnagar Mandal, Ranga Reddy District, pending disposal of the Writ Petition in the interest of justice.”

11. This Court vide order under review dated 29.08.2023 disposed of the W.P. No.18418 of 2020, with the following direction, which reads as under:

*“The District Registrar, Ranga Reddy District, is directed to secure the representation dated 14.09.2020 that was submitted by the petitioners to the Sub-Registrar Vanasthalipuram. On securing the representation, to hear all the parties concerned, take the assistance of respondent No.5-Revenue Divisional Officer, Hyderabad East Division, if necessary, conduct a joint survey, if required, after giving notice to all the parties concerned and demarcate the property, which belongs to the Waqf Board and the property, if any, belongs to the petitioners and pass appropriate orders basing on the representation dated 14.09.2020. The entire exercise to the extent possible be completed within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.”*

12. Admittedly, subject Gazette No.6-A, dated 09.02.1989 has been set aside in W.P. No.9378 of 2009 on 06.02.2012 and the said order has been confirmed in W.A. No.1010 of 2012 on 07.11.2013 to the extent of petitioners therein. It is apposite to note here that the Hon'ble Supreme Court in SLA (C) No(s).4166-4175 of 2022, preferred against the common judgment dated 12.11.2021 passed in W.A. Nos.318 of 2021 and batch, vide ad-interim order dated 12.09.2022 directed the respondents therein not to create any third party right, however, it is to be noticed that the

said order applies only to the lands situated in the Mamidipally village but not the lands situated in Injapur village and the said fact was not disputed by the learned Standing Counsel for the respondent No.2.

13. Apart from the above and for better appreciation of the case, it is significant to note here that the Division Bench of this Court rendered common judgment in W.P. No.28300 of 2007 and W.A. No.232 of 2012 and batch dated 19.10.2023 wherein examined the validity of Section 22-A of the Act as incorporated in the Registration Act, 1908 vide A.P. Amendment Act No.19 of 2007 with effect from 20.06.2007 and held at para 25, 29, 31, 39, 40 and 41 as under:

“25. Thus, from perusal of the Statement of Objects and Reasons, it is evident that Section 22A of the Act has been incorporated to empower the Government to notify the registration of such documents or class of documents as opposed to public policy and to reject their registration. The Act has been amended to overcome the deficiency pointed out by a Division Bench of this Court and the Supreme Court in *Basant Nahata* (supra) and to avoid illegal transactions of transfer of property relating to Government, religious and charitable institutions. The object of the provision is to protect the vacant lands as well as the properties in which State Government has either avowed or accrued interest, properties belonging to local bodies as well as religious and charitable institutions and wakfs. With rapid increase in population and industrialisation, the prices of land available for agriculture and human inhabitation have skyrocketed. The



land mafia 24 and unscrupulous elements are grabbing the land and encroaching the public and private properties and are also executing the registered documents affecting immovable properties of third parties. The aforesaid activity of grabbing vacant lands is a social evil which is sought to be remedied by enacting Section 22A of the Act.

29. It was further held that sub-section (4) of Section 22A of the Act provides a remedy to an aggrieved party to approach the State Government for deletion of his property from the notification. It has further been held that if any such application is made, the competent authority has to afford an opportunity of hearing and an opportunity to produce materials/documents in support of such a claim. The claim made by an aggrieved person has to be dealt with by a speaking order. It has further been held that in case such an application is made under Section 22A(4) of the Act, the same has to be decided within a period of three months. It has also been held that the mechanism provided under Section 22A(4) of the Act shall not preclude the parties to file any other appropriate proceeding, including civil suit, for similar or appropriate relief.”

31. However, the Full Bench of this Court in **Vinjamuri Rajagopala Chary** (supra) has not dealt with the issue of validity of Section 22A of the Act, but the interpretation of Section 22A of the Act binds this Court.

39. Interpreting the aforesaid guidelines, the Full Bench of this Court in paragraph 101 has held as under:

101. The guidelines, thus, provide the procedure for preparing lists of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A and as to who is supposed to forward such list and to

whom. Clauses (a) & (b) provide that it is the District Collectors alone shall furnish lists of properties “prohibited under the statutes” of immovable properties owned by the State and Central Governments. It further provides that the list should be forwarded to registering officers having jurisdiction over such property and also to the District Registrar, Deputy Inspector General (R&S) concerned and to the Commissioner and Inspector General of Registration and Stamps in the proforma appended as Annexure I and II to the guidelines under proper acknowledgment. Even deletions and modifications to these lists also are required to be sent to these authorities. These guidelines, in our opinion, need to be followed scrupulously. In other words, lists of properties covered under clauses (a) & (b) of Section 22-A (1) of the Registration Act shall be furnished only by the District Collectors to the aforementioned authorities under the Registration Act. The concerned registering officer, Registrar or Sub-Registrar as the case may be, shall act on the lists of properties covered by clauses (a) & (b) only and only when the list is forwarded to them by the District Collectors. Thus, the question of forwarding of lists of properties covered by clauses (a) & (b) by the officers of different departments to the registering authorities directly does not arise and if the registering officers receive any lists directly from different departments, officers of the Government (other than the District Collectors), he is not expected to look into such lists and act upon them. The officers of different departments

should forward their list to the District Collector, who in turn is expected to examine the list and after having satisfied of its correctness may forward it further to the aforementioned authorities. In short, the District Collector is not expected to act as postmen. If list of prohibited property is received by the registering officer directly, the registering officers at the most can return such lists to the concerned department requesting them to forward it through the concerned District Collectors, who, under the Guidelines, are enjoined with the duty of furnishing the lists to the authorities mentioned above in the office of Registration and Stamps.

40. The Full Bench of this Court in **Vinjamuri Rajagopala Chary** (supra), after taking note of aforesaid guidelines, in para 137 held as under:

137. Therefore, this notification which provides guidelines to the District Collectors for furnishing reasons and description of property prohibited from registration takes adequate care to prevent abuse and misuse of clause (e) of Section 22A(1) of the Registration Act. Hence, the apprehensions expressed before us are misplaced and do not need countenance. Further, the notification either in part or full is always subject to the Judicial Review. Therefore, in view of the adequate safety measures provided under Section 22A, in particular sub-sections (2) and (4) thereof insofar as clause (e) of sub-section (1) is concerned and the guidelines insofar as clauses (a) to (d) are concerned, in our opinion, any such misuse or

abuse is subject to review by the Government and also judicial review and therefore, there is no possibility for any misuse or abuse and any such acts of misuse and/or abuse are amenable for correction.

41. The authority has to exercise the power under Section 22A of the Act in consonance with aforesaid guidelines. Therefore, the contention that exercise of power under Section 22A of the Act is unbridled or unfettered does not deserve acceptance. Even otherwise, a mere possibility of misuse of a provision would not invalidate the same.

14. In the case on hand, the main grievance of the petitioners is that the petitioners' lands to an extent of Acs.24.29 guntas situated at Injapur village is kept under the prohibitory list under Section 22-A of the Act vide Gazette No.6-A dated 09.02.1989. Admittedly, the said Gazette No.6-A dated 09.02.1989 has been set aside by the erstwhile High Court of Andhra Pradesh in the case of **Gowra Reddy** (supra) and the subject lands pertains to Injapur village and the order passed in SLA (C) No(s).4166-4175 of 2022 pertains to the lands situated at Mamidipally village and the same is not disputed by the Wakf Standing Counsel.

15. Learned Government Pleader for Stamps and Registration also did not dispute the same.

16. Further, it is also noticed from the record that the petitioners, along with the writ petition, filed an application in I.A. No.1 of 2020 wherein sought a direction to the 3<sup>rd</sup> respondent, sub-Registrar to consider the petitioners' representation dated 14.09.2020 for rectification of the mistake crept in the prohibition register i.e. inclusion of petitioners' land to an extent of Acs.24.29 guntas, situated at Injapur village, Hayathnagar Mandal, Ranga Reddy District.

17. I.A. No.3 of 2023 in Review I.A. No.2 of 2023 in W.P. No.18418 of 2020 has been filed seeking direction to the respondents No.3 and 4 to entertain registrations in respect of the Acs.24.29 guntas situated in Sy.Nos.32, 35, 42 to 46, 70, 72 to 75, 78 to 80, 82 to 84 and 173 situated in Injapur village, Hayathnagar Mandal, Ranga Reddy district.

18. In view of the aforesaid facts and circumstances and as specifically pointed out by the learned Senior Counsel that the true and correct facts were not properly considered in the order dated 29.08.2023 while the directions and the relief given in the said order has no bearing on the prayer sought for in the writ petition, this Court deems it appropriate to recall and modify the order dated 29.08.2023.

19. Accordingly, having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side, the order under review dated 29.08.2023 is hereby recalled and that this

writ petition is disposed of directing the 3<sup>rd</sup> respondent, Sub-Registrar, Vanasthalipuram, Ranga Reddy District, to consider the representation of the petitioners dated 14.09.2020, stated to have been made for rectification of the mistake crept in the prohibition register i.e. inclusion of petitioners land to an extent of Acs.24.29 guntas situated at Injapur village, Hayathnagar Mandal, Ranga Reddy District in the prohibition register in terms of Section 22-A (4) of the Registration Act, taking into consideration the judicial pronouncements rendered in W.P. No.9378 of 2009, W.A. No.1010 of 2012, W.A. No.318 of 2021 and SLA No.4166-4175 of 2022 and also keeping in mind the observations made hereinabove in terms of the Division Bench orders passed in W.P. No.28300 of 2007 and W.A. No.232 of 2012 and batch dated 19.10.2023 and pass appropriate orders, in accordance with law, within a period of four (03) months, from the date of receipt of a copy of this order.

20. It is made clear that this Court has not expressed any opinion on the title of the subject properties. It is also to be noted that in case if any proceedings are pending on the subject lands before any Forum, it is left open to the parties to file any other appropriate proceedings, including civil suit, for similar or appropriate relief asserting their rights on title and possession before the appropriate Forum as available under law.

21. Since a direction has been issued to the authorities to consider the representation dated 14.09.2020 of the petitioners, this Court is not inclined to pass any specific orders in I.A. No.3 of 2023 at this point of time.

22. Accordingly, Review I.A. No.2 of 2023 is allowed and the order under review dated 29.08.2023 is recalled and accordingly the writ petition is disposed of. There shall be no order as to costs.

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

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**JUSTICE N.V. SHRAVAN KUMAR**

**Date: 01.02.2024**

**Note:** L.R. copy be marked.

B/o.

Tssb/**LSK\***