

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

+ Writ Petition Nos.28300 of 2007, 16254 of 2008, 9141, 13034, 13035 of 2009, 15193 of 2011 and 21187 of 2021 and Writ Appeal Nos.232 of 2012 and 474 of 2013

% Dated: 19.10.2023

M/s. Invecta Technologies Private Limited,
and others.

... Petitioners/appellants

v.

\$ Government of Andhra Pradesh,
Represented by its Secretary,
Stamps and Registration Department,
Secretariat buildings, Hyderabad,
and others.

... Respondents

! Counsel for the petitioners/appellants :-

W.P.No.28300 of 2007 : Mr. P.Prabhakar Reddy

W.P.Nos.16254 of 2008, : Mr. E.Madan Mohan Rao
9141 of 2009 Learned Senior Counsel

W.P.Nos.13034 and 13035 : Mr. V.Hari Haran
of 2009 Learned Senior Counsel

W.P.Nos.15193 of 2011 : Mr. Karri Suryanarayana

W.A.No.232 of 2012 : Mr. B.S.Prasad,
Learned Advocate General

W.A.No.474 of 2013 : Mr. B.Mayur Reddy,

Learned Senior Counsel
representing Mr. Abu Akram,
Learned counsel for Telangana State Wakf Board.

W.P.No.21187 of 2021 : Mr. A.M.Qureshi
Learned Senior Counsel;

^ Counsel for the respondents : Mr. B.S.Prasad,
Learned Advocate General

Mr. B.Mayur Reddy, Learned Senior Counsel,
representing Mr. Abu Akram,
Learned counsel for
Telangana State Wakf Board.

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (2005) 12 SCC 77
2. (1998) 8 SCC 188
3. (2015) 5 SCC 421
4. (2020) 6 SCC 411
5. 1992 Supp (3) SCC 147
6. 2016 (2) ALD 236 (FB) : 2015 SCC OnLine Hyd 407
7. (2003) 5 SCC 239
8. (2008) 5 SCC 580
9. (2010) 6 SCC 499
10. (2011) 9 SCC 1
11. AIR 1963 SC 1241
12. (2009) 8 SCC 431
13. AIR 1964 SC 1135
14. (1972) 1 SCC 421
15. (2004) 12 SCC 673

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**Writ Petition Nos.28300 of 2007, 16254 of 2008, 9141,
13034, 13035 of 2009, 15193 of 2011 and 21187 of
2021 and Writ Appeal Nos.232 of 2012 and 474 of 2013**

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

(i) BACKGROUND:

The Registration Act, 1908 (hereinafter referred to as, “the Act”) was amended by the State Legislature by Act No.4 of 1999. Section 22A of the Act was inserted by Act No.4 of 1999 in the erstwhile State of Andhra Pradesh. The aforesaid provision reads as under:

22A. 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 subsection (1) is applicable.

2. The State of Rajasthan had also enacted a *pari materia* provision namely Section 22A which was inserted by Rajasthan Amendment Act No.16 of 1976, in the Registration Act, 1908. The validity of the aforesaid provision was considered by the Supreme Court in **State of Rajasthan vs. Basant Nahata**¹. The Supreme Court held that the expression “public policy” used in Section 22A by Rajasthan Amendment Act No.16 of 1976 was vague and uncertain and does not provide guideline to the delegate and suffers from vice of excessive delegation.

3. The validity of Section 22A of the Act incorporated by the State Legislature in the erstwhile State of Andhra Pradesh was also challenged in W.P.No.14099 of 2003 and batch. A Bench of this Court, in view of the law laid down by the Supreme Court in **Basant Nahata** (supra), struck down Section 22A of the Act as applicable to the erstwhile State of Andhra Pradesh. The judgment rendered by the Bench of this Court was affirmed by the Supreme Court, as

¹ (2005) 12 SCC 77

the SLP preferred by the State Government was dismissed.

(ii) FACTS:

4. Thereafter, the State Legislature enacted Act No.19 of 2007, by which again a new provision namely Section 22A was inserted in the Registration Act, 1908.

5. In this batch of writ petitions, validity of Section 22A 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 is under challenge. Therefore, all the writ petitions were heard together and are being decided by this common order. For the facility of reference, facts from W.P.No.9141 of 2009 are being referred to.

6. The petitioner vide sale deed dated 19.11.2017 purchased the land measuring Acs.3.10¼ guntas in survey Nos.674, 714 and 715/A situate at Devarayamjal Village, Shameerpet Mandal, Ranga Reddy District (hereinafter referred to as 'the subject land') from one P.Suseela. According to the petitioner, since 1955, the subject land is a

patta land held by the vendors of the petitioner and their predecessor.

7. The petitioner presented the aforesaid sale deed for registration. However, the same was not received for registration. Thereupon, petitioner filed a writ petition, namely W.P.No.21545 of 2007 in which by an order dated 26.11.2007, a Bench of this Court issued a direction to the authorities to receive the document as per the provisions of the Act and passed necessary orders. Thereupon, Sub Registrar, Shameerpet by an order dated 18.02.2008 received the document but refused to register the sale deed on the ground that the subject land belongs to a temple as notified vide G.O.Ms.No.810, dated 14.10.2004. It was further held that the State Government has prohibited the registration of the document and the same cannot be registered without the permission of the Endowment Commissioner. The petitioner thereupon filed an appeal before the District Registrar who by an order dated 12.03.2009 dismissed the appeal.

8. The petitioner in the writ petition has sought a relief that Section 22A of the Act, as incorporated vide Act No.19 of 2007, with effect from 20.06.2007 be struck down. The petitioner has sought quashment of orders passed by the Sub Registrar as well as the District Registrar and seeks a direction to respondent No.3 to register the sale deed dated 19.11.2007 executed in favour of the petitioner.

(iii) SUBMISSIONS BY PETITIONERS:

9. Learned Senior Counsel for the petitioner submitted that Section 22A of the Act is violative of Section 17 of the Act and therefore, is repugnant to the Registration Act, 1908 which is a parliamentary legislation. It is further submitted that no Presidential assent has been granted to A.P.Act No.19 of 2007 and therefore, the same is void under Article 245 read with Article 254(1) of the Constitution of India.

10. It is further submitted that the State itself is a juristic person and has a right to hold the property under the Constitution of India. Therefore, the State itself cannot

decide its title. It is further submitted that Section 22A of the Act amounts to issuing a permanent injunction restraining registration of the documents under the Act. It is further submitted that right given to the petitioner under Section 17 of the Act cannot be taken away by Section 22A of the Act and therefore, Section 22A of the Act is arbitrary, discriminatory and is violative of Articles 14 and 300A of the Constitution of India. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **Basant Nahata** (supra), **State of Kerala vs. Travancore Chemicals and Manufacturing Company Limited**², **Union of India vs. Dileep Kumar Singh**³ and **Managing Director, Chattisgarh State Cooperative Bank Maryadit vs. Zila Sahkari Kendriya Bank Maryadit**⁴.

11. Learned Senior Counsel for the petitioners in W.P.No.21187 of 2021 submits that Section 22A is arbitrary and the same is repugnant to Sections 17, 49, 70 to 73 and

² (1998) 8 SCC 188

³ (2015) 5 SCC 421

⁴ (2020) 6 SCC 411

76 of the Act. It is further submitted that Section 22A of the Act does not begin with *non-obstante* clause and therefore, other provisions of the Act will have effect. It is also argued that Section 22A of the Act is violative of Article 300A of the Constitution of India. It is contended that Section 22A of the Act is contrary to the scheme of the Registration Act. In support of the aforesaid submissions, reliance has been placed on a decision of the Supreme Court in **Dr. A.K.Sabhapathy vs. State of Kerala**⁵.

12. Learned counsel for the petitioners in W.P.Nos.13034 and 13035 of 2009 and W.A.No.474 of 2013 have adopted the submissions made by the learned Senior Counsel for the petitioners in other writ petitions.

(iv) SUBMISSIONS MADE ON BEHALF OF STATE:

13. On the other hand, learned Advocate General has submitted that legislative enactment can be challenged only on two grounds, namely lack of legislative competence and violation of fundamental rights guaranteed under the

⁵ 1992 Supp (3) SCC 147

Constitution. It is further submitted that amending Act No.19 of 2007 which has inserted Section 22A in the Registration Act, as applicable to State of Telangana has been made in exercise of powers under Entries 6 and 7 of the Concurrent List of Seventh Schedule of the

Constitution of India and has been enacted after receiving the assent of the Hon'ble President of India. Therefore, the State Legislature has legislative competence to enact the same.

14. It is further submitted that Section 22A of the Act prohibits the authorities from carrying out registration of certain documents as mentioned in Section 22A(1)(a) to (e) of the Act and does not give any authority to any officer of the State or institution to sit in a decision over the legality or illegality of any document and decide the same. Therefore, it is argued that the contention that Section 22A of the Act is violative of Article 300A of the Constitution of India is misconceived. It is urged that the challenge to the provision on the ground that same is violative of principles of natural justice is misconceived as no adverse order affecting any

person's right can be passed by the registering authority under Section 22A of the Act and an aggrieved person can always pursue the remedy under Section 22A(4) of the Act.

15. It is contended that object of Amendment Act is to protect the State against the fraud and forgery in the registration of documents of transfer. It is further contended that the impugned provision furthers the object of the Act by protecting the *bona fide* purchaser from losing his hard earned money. It is also contended that Section 22A of the Act does not prevent any person from dealing with his property and all that it prohibits, is registration of document falling within the clauses of property covered under subsection (1) of Section 22A of the Act. Reference has been made to paragraph 116 of the Full Bench decision of this Court in **Vinjamuri Rajagopala Chary vs. Revenue Department**⁶. In support of the aforesaid submissions, reliance has been placed on the decisions in **State of West Bengal vs. E.I.T.A India Ltd.**⁷, **Seema Silk**

⁶ 2016 (2) ALD 236 (FB) : 2015 SCC OnLine Hyd 407

⁷ (2003) 5 SCC 239

& Sarees vs. Directorate of Enforcement⁸, Goa Glass Fibre Limited vs. State of Goa⁹ and K.T.Plantation

Private Limited vs. State of Karnataka¹⁰.

(v) SUBMISSIONS MADE ON BEHALF OF WAKF BOARD:

16. Learned Senior Counsel for the Wakf Board in W.A.No.474 of 2013 while referring to various paragraphs of the judgment of the Full Bench of this Court in

Vinjamuri Rajagopala Chary (supra) has submitted that Section 22A of the Act should be interpreted in the manner in which the same has been interpreted by the Full Bench and it is so interpreted that there is no scope of any arbitrariness.

(vi) REJOINDER BY PETITIONERS:

17. Learned Senior Counsel for the petitioners in W.P.No.21187 of 2021 by way of rejoinder submits that blanket prohibition of registration of the documents is

⁸ (2008) 5 SCC 580

⁹ (2010) 6 SCC 499

¹⁰ (2011) 9 SCC 1

contrary to Sections 17, 49, 70 to 73 and 76 of the Act and Section 22A of the Act is contrary to the scheme of registration.

(vii) ANALYSIS:

18. We have considered the rival submissions made on both sides and have perused the record. In exercise of powers under Entries 6 and 7 of the concurrent list of the Constitution, the Parliament has enacted the Registration Act. The Act is enacted to consolidate the enactments in relation to registration of documents.

19. Section 17 of the Act enumerates the documents of which registration is compulsory. Section 17 of the Act is extracted below for the facility of reference:

17. Documents of which registration is compulsory:

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this

Act came or comes into force, namely:--

- (a) instruments of gift of immovable property;
- (b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;
- (c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and
- (d) leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;
- (e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:

Provided that the State Government may, by order published in the Official Gazette, exempt from the operation of this sub-section any lease executed in any district, or part of a district, the terms granted by which

do not exceed five years and the annual rents reserved by which do not exceed fifty rupees.

(1A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A.

(2) Nothing in clauses (b) and (c) of subsection (1) applies to--

- (i) any composition deed; or
- (ii) any instrument relating to shares in a joint stock Company, notwithstanding that the assets of such Company consist in whole or in part of immovable property; or
- (iii) any debenture issued by any such Company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder to the security afforded by a registered instrument whereby the Company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

- (iv) any endorsement upon or transfer of any debenture issued by any such Company;
or
- (v) any document other than the documents specified in sub-section (1A) not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or
- (vi) any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding; or
- (vii) any grant of immovable property by Government; or
- (viii) any instrument of partition made by a Revenue Officer; or
- (ix) any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or
- (x) any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or

- (xa) any order made under the Charitable Endowments Act, 1890 (6 of 1890), vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or
- (xi) any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money; and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or
- (xii) any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue-Officer.

Explanation.--A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or even to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.

(3) Authorities to adopt a son, executed after the 1st day of January, 1872, and not conferred by a will, shall also be registered.

20. Thus, from a perusal of Section 17 of the Act, it is evident that it does not confer any right on the person to seek registration of document, but only enumerates the documents of which registration is necessary.

21. Section 49 of the Act deals with effect of nonregistration of documents required to be registered. Section 71 of the Act mandates the Sub Registrar refusing to register the document to record the reasons. Section 72 of the Act provides for an appeal against the orders of Sub Registrar refusing to register on the ground other than denial of execution to the registrar. Section 73 of the Act provides for application to register where Sub-Registrar refuses to register on the ground of denial of execution. Section 76 of the Act prescribes that the Registrar shall make an order refusing to register a document.

22. The provisions of the Act in its application to the erstwhile State of Andhra Pradesh, which have been adopted by the State of Telangana, were amended by Act

No.19 of 2007. In **State of West Bengal vs. Union of India**¹¹ and in **A.Manjula Bhashini vs. A.P.Women's**

¹¹ AIR 1963 SC 1241

Cooperative Finance Corporation Limited¹²,

the Supreme Court approved the use of Statement of objects and reasons for the purposes of understanding the background and the antecedent state of affairs leading up to the legislation and the mischief sought to be remedied by the statute. It has further been held that the facts stated in the Statement of Objects and Reasons appended to any legislation are evidence of legislative intent and indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. However, plain meaning of a provision cannot be restricted or controlled with reference to Statement of Objects and Reasons.

23. Now we may advert to the Statement of Objects and Reasons of the amended Act, which read as under:

STATEMENT OF OBJECTS AND REASONS

Section 22-A of the Registration Act, 1908 in its application to the State of Andhra Pradesh has been incorporated by Act 4 of 1999 to empower the

¹² (2009) 8 SCC 431

Government to notify the registration of such documents or class of documents as opposed to public policy and to reject their registration.

The High Court of Andhra Pradesh in W.P.No.14099/2005 and batch cases issued orders declaring the provisions of Section 22-A of the Registration Act, 1908 inserted by the Registration (Andhra Pradesh Amendment) Act, 1999 (Act 4 of 1999) as unconstitutional and struck down the said Section 22-A on the ground that the public policy is not defined precisely, following the judgment of the Supreme Court of India in the case of the State of Rajasthan vs. Basant Nahata ((2005) 7 SCALE 164) WHEREIN Section 22-A of the Registration Act, 1908 in its application to the State of Rajasthan was struck down.

While striking down the said provision, the Hon'ble Supreme Court observed as follows:-

“The legislature of a State, however, may lay down as to which acts would be immoral being injurious to the society. Such a legislation being substantive in nature must receive the legislative sanction specifically and not through a subordinate legislation or executive instructions.

The phraseology ‘opposed to public policy’ may embrace within its fold such acts which are likely to deprave, corrupt or injurious to the public morality and thus, essentially should be a matter of legislative policy.”

In order to overcome the deficiencies as observed by the Hon'ble High Court keeping in view of the observations of

Supreme Court and to avoid the illegal transactions of transfer of property relating to Government, Religious and Charitable Institutions etc., it has been decided to amend the Registration Act, 1908 suitably by specifying the classes of documents prohibiting them from registration. It has also been decided to validate the notification declaring a class of documents as opposed to public policy and consequently refusal of the same for registration during the period from 01.04.1999 to the date of the commencement of the present Amendment Act by inserting a validation provision.

This Bill seeks to give effect to the above decision.

(viii) SECTION 22A OF 2007 ACT:

24. Section 22A of the Act is extracted below for the facility of reference:

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).

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 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.

26. The preamble to the Act No.19 of 2007 i.e., the Amendment Act, reads as under:

The following Act of the Andhra Pradesh Legislative Assembly which was reserved by the Governor on the 19th January, 2007 for the consideration and assent of the President received the assent of the President on the 28th May, 2007 and the said assent is hereby first published on the 8th June, 2007 in the Andhra Pradesh Gazette for general information:-

27. Thus, from a perusal of the preamble to the Amendment Act, it is evident that the amendment has

received the assent of Hon'ble the President on 28th May, 2007, and was published in the Andhra Pradesh Gazette on 8th June, 2007. Therefore, the contention that Section 22A of the Act is void under Article 245 read with Article 254(1) of the Constitution of India is misconceived.

(ix) INTERPRETATION OF SECTION 22A BY FULL BENCH:

28. A Division Bench of this Court while dealing with the issue of interpretation of Section 22A of the Act noticed that there are five judgments of single Benches of this Court dealing with Section 22A of the Act and the view taken in all the five judgments is not similar. Therefore, the Division Bench of this Court by an order dated 05.08.2015 made a reference to a Full Bench of this Court. Thereupon, Section 22A of the Act was interpreted by the Full Bench of this Court in **Vinjamuri Rajagopala Chary** (supra). The Full Bench in paragraphs 46 and 47 of its decision has noted that intention of the Legislature while enacting the Amendment Act is to provide for orderliness, discipline and

public notice with regard to the transactions relating to immovable property and protection from fraud and forgery of documents of transfer. The Full Bench held that Section 22A of the Act has to be analysed by dealing with its constituent elements and by harmoniously reading it as a whole and in conjunction with the other relevant provisions. The Full Bench recorded its conclusions with regard to various clauses of Section 22A of the Act, which are extracted below:

(i) Clause (a) of sub-section (1) of Section 22A of the Act prohibits registration of a document in relation to transfer of immovable property, the alienation or transfer of which is prohibited under any statute of the State or Central Government. It was held that once a particular property/land finds place in the list of prohibited land/properties, the Registrar concerned is bound under the law to refuse registration of the document dealing with such property. In such an eventuality, the only option left to the parties to the document is to approach an appropriate forum and seek appropriate relief.

(ii) In paragraph 69, the Full Bench observed that a list of prohibited lands/properties under Section 22A of the Act is sent to the Registrar, he shall make it clear that the forwarded list pertains to lands/properties covered by clause (a) of sub-section (1) of Section 22A of the Act and shall also mention the statute under which the transaction is prohibited.

(iii) While dealing with clause (b) of sub-section (1) of Section 22A of the Act, it was held that the aforesaid clause is intended to convey the clear meaning where the properties are owned by the State or Central Government and with regard to such ownership got title vested in their favour by virtue of the undisputed document of ownership or Act of legislation under which they own the property. Thus, clause (b) will cover not only the cases where title document of such property is in the name of State or Central Government or otherwise undisputed or there could be no controversy, but even other properties such as

roads, lakes, tanks, historical monuments, etc., undisputedly belong to State or Central Government, as the case may be, and on account of such ownership, if any document is executed by any person, the aforesaid clause requires that such document shall not be registered except when a person statutorily empowered executes such document.

(iv) While interpreting clause (c) of sub-section (1) of Section 22A of the Act, it was held that the aforesaid clause provides that immovable properties of Charitable and Religious Endowments are required to be entered in a prescribed Register, the certified extract of which needs be supplied to any applicant under Section 43 of the Endowments Act. It was further held that there is a finality attached to the entries in the Register until the contrary is proved. It was further held that if a property is either not entered in the prescribed register or gazetted, and if its ownership is in dispute or the process of entering the property in the prescribed

register is incomplete for any reason, the endowment/wakf concerned, perhaps may have to take steps either for its notification under subsection (2) of Section 22A showing their “avowed” or “accrued” interest therein or obtain appropriate order from appropriate forum, prohibiting the transaction in respect of such property.

(v) While dealing with clause (d) of sub-section (1) of Section 22A of the Act, it was held that the aforesaid clause does not present any difficulty as there will be final declarations/orders under the two enactments. Under the aforesaid provision, any documents or class of documents pertaining to agricultural or urban lands declared as surplus either under the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or the Urban Land (Ceiling and Regulation) Act, 1976, are prohibited from registration. It was further held that the said provision does not present any difficulty as there will be final declarations/orders under the two enactments.

(vi) While dealing with clause (e) of Section 22A(1) of the Act, it was held that the provision should be given fair, pragmatic, commonsense and purposive interpretation so as to fulfil the object of the enactment. The provision intends to cover not only attached property but also the property in which Central and State Government is having avowed and accrued interest.

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.

30. Thereafter, the Full Bench in paragraphs 155 and 156 of its decision held as follows:

155. Further, as noticed earlier the State Government is empowered either *suo motu* or on application to consider the grievances against inclusion of any property in the prohibitory list under Section 22-A of Registration Act and is also empowered to de-notify either in full or in part the notification issued under sub-section (2). In our opinion, the redressal mechanism is available only with respect to notifications published relating to the properties falling under clause (e) of Section 22-A. Hence, any grievance of the parties with reference to the properties covered by clauses (a) to (d) will have to be questioned by the aggrieved parties only by appropriate proceedings before a competent Court and the adjudication by such Court would be final. Further, so far as notified properties falling under clause (e) are concerned, the redressal mechanism under subsection (4) of Section 22-A would be able to effectively address the grievance provided the mechanism thereunder is effective, expeditious, fair, and judicious. Thus, in order to make an effective redressal mechanism, we deem it appropriate to direct the respective Governments of both the States to constitute a Committee or establish a Forum within time frame, may be comprising of Principal Secretary of Revenue, Director of

Survey and Land Records and a retired Judicial Officer of the rank of a District Judge which shall meet periodically to consider the grievances of the persons affected by the notifications. The Committee shall be empowered to examine relevant records and then pass a reasoned order either accepting or rejecting the grievance by either confirming/deleting/modifying any such property from the notified list of properties. In our view, such orders passed by the Committee shall be binding on the State as well as on the aggrieved person and in the event of any of them being aggrieved thereby, they shall have to approach a competent Court of Law for redressal of their grievance.

156. We, thus, summarize our conclusions and issue directions as follows : -

- (i) The authorities mentioned in the guidelines, which are obliged to prepare lists of properties covered by clauses (a) to (d), to be sent to the registering authorities under the provisions of Registration Act, shall clearly indicate the relevant clause under which each property is classified.
- (ii) Insofar as clause (a) is concerned, the concerned District Collectors shall also indicate the statute under which a transaction and its registration is prohibited. Further in respect of the properties covered under clause (b), they shall clearly indicate which of the Governments own the property.
- (iii) Insofar as paragraphs (3) and (4) in the Guidelines, covering properties under clause (c) and (d) are concerned, the authorities contemplated therein shall also forward to the registering authorities,

along with lists, the extracts of registers/gazette if the property is covered by either endowment or wakf, and declarations/orders made under the provisions of Ceiling Acts if the property is covered under clause (d).

- (iv) The authorities forwarding the lists of properties/lands to the registering authority shall also upload the same to the website of both the Governments, namely *igrs.ap.gov.in* of the State of Andhra Pradesh and *registration.telangana.gov.in* of the State of Telangana. If there is any change in the website, the State Governments shall indicate the same to all concerned, may be by issuing a press note or an advertisement in prominent daily news papers.
- (v) No notification, contemplated by sub-section (2) of Section 22A, is necessary with respect to the properties falling under clauses (a) to (d) of subsection (1) of Section 22-A.
- (vi) The properties covered under clause (e) of Section 22-A shall be notified in the official gazette of the State Governments and shall be forwarded, along with the list of properties, and a copy of the relevant notification/gazette, to the concerned registering authorities under the provisions of Registration Act and shall also place the said notification/gazette on the aforementioned websites of both the State Governments. The Registering authorities shall make available a copy of the Notification/Gazette on an application made by an aggrieved party.

- (vii) The registering authorities would be justified in refusing registration of documents in respect of the properties covered by clauses (a) to (d) of subsection (1) of Section 22-A provided the authorities contemplated under the guidelines, as aforementioned, have communicated the lists of properties prohibited under these clauses.
- (viii) The concerned authorities, which are obliged to furnish the lists of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, and the concerned Registering Officers shall follow the guidelines scrupulously.
- (ix) It is open to the parties to a document, if the relevant property/land finds place in the list of properties covered by clauses (a) to (d) of sub-section (1) of Section 22-A, to apply for its deletion from the list or modification thereof, to the concerned authorities as provided for in the guidelines. The concerned authorities are obliged to consider the request in proper perspective and pass appropriate order within six weeks from the date of receipt of the application and make its copy available to the concerned party.
- (x) The redressal mechanism under Section 22-A(4) shall be before the Committees to be constituted by respective State Governments as directed in paragraph-35.1 above. The State Governments shall constitute such committees within eight weeks from the date of pronouncement of this judgment.

- (xi) Apart from the redressal mechanism, it is also open to an aggrieved person to approach appropriate forum including Civil Court for either seeking appropriate declaration or deletion of his property/land from the list of prohibited properties or for any other appropriate relief.
- (xii) The directions issued by learned single Judges in six judgments (W.P.No.2775 of 2009, dated 15.03.2011; W.P.Nos.20050 of 2011 and batch, dated 08.09.2011; W.P.No.26566 of 2011, dated 18.01.2013; W.P.No.30526 of 2012 and batch, dated 31.12.2012; W.P.No.31409 of 2014, dated 29.01.2015 and W.P.No.24587 of 2014 and batch 01.06.2015) or any other judgments dealing with the provisions of Section 22-A, if are inconsistent with the observations made or directions issued in this judgment, it is made clear that the observations made and directions issued in this judgment shall prevail and would be binding on the parties including the registering authorities under the Registration Act or Government officials or the officials under the Endowments Act, Wakf Act and Ceiling Acts.
- (xiii) If the party concerned seeks extracts of the list/register/gazette of properties covered by clauses (a) to (e) of Section 22-A (1), received by the registering officer on the basis of which he refused registration, it shall be furnished within 10 days from the date of an application made by the aggrieved party.

- (xiv) Registering officer shall not act and refuse registration of a document in respect of any property furnished to him directly by any authority/officer other than the officers/authorities mentioned in the Guidelines.
- (xv) Mere registration of a document shall not confer title on the vendee/alienee, if the property is otherwise covered by clauses (a) to (e), but did not find place in the lists furnished by the concerned authorities to the registering officers. In such cases, the only remedy available to the authorities under clauses (a) to (e) of sub-section (1) of Section 22-A is to approach appropriate forums for 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.

(x) WHETHER SECTION 22A OF THE ACT IS VIOLATIVE OF ARTICLE 14:

32. We may now deal with the challenge to Section 22A of the Act on the ground that the same is violative of Articles 14 and 300A of the Constitution of India. It is trite law that a party invoking protection of Article 14 has to make an averment with details to sustain such a plea and has to

adduce material to establish the allegations made and the burden is on the party to plead and prove that its right under Article 14 of the Constitution of India has been infringed. (See **State of Uttar Pradesh vs. Kartar Singh**¹³ and **Dantuluri Ram Raju vs. State of Andhra Pradesh**¹⁴). It is equally well settled legal proposition that in the absence of any pleading, the challenge to the constitutional validity of a provision has to be rejected *in limine* (See **State of Haryana vs. State of Punjab**¹⁵).

33. In W.P.No.9141 of 2009, in paragraph 7, the petitioner has made an averment with regard to challenge to Section 22A of the Act. The relevant extract of paragraph 7 reads as under:

There are no guidelines which is the government property or endowment property etc. The registering authority simply stating a particular land as government land/endowment and can refuse the registration. The provision does not provide for any redressal nor is any guideline provided treating a particular property as government land or endowment land. Section 22A is discriminatory, arbitrary and in

¹³ AIR 1964 SC 1135

¹⁴ (1972) 1 SCC 421

¹⁵ (2004) 12 SCC 673

violation of Article 14 of the Constitution of India and violates the right of the petitioner to hold the property as provided under Article 300A of the Constitution of India.

34. In W.P.No.28300 of 2007, in paras 8 and 9, following averments have been made.

8. It is further submitted that the amended provisions of Section 22A as per the Act 19 of 2007 enabled for the classification of the prohibited document into 4 classes without any reason or basis. There is no reasonable machinery in provided relating to the classification under the Act. Therefore, the classification is arbitrary, unjust, discriminatory. Therefore, the Section 22A of the Act 19 of 2007 is totally *ultra vires* and unconstitutional, which is liable to be struck down by this Hon'ble High Court.

9. It is submitted that even otherwise upon information furnished by the District Collector, issuing notification by the State Government for prohibiting the registration of document also unilateral and arbitrary power confessed on the authorities without giving any opportunity to the persons, who are holding title and possession and therefore, the same is being excessive, arbitrary and liable to be set aside.

35. Thus, the petitioners have not made an averment with details to sustain the plea and have not adduced any material to establish the allegation about infraction of Article

14 of the Constitution of India. The petitioners, therefore, have failed to discharge their burden.

36. Section 17 of the Act enumerates the documents of which registration is compulsory. Thus, Section 17 does not confer any right on any person to seek registration of document. Section 22A, which provides registration of certain documents, no way constitutes any infraction of legislative mandate contained in Section 17 of the Act.

Therefore, the contention that Section 22A of the Act is violative of Section 17 of the Act and is, therefore, arbitrary is misconceived. Similarly, the argument that Section 22A of the Act is repugnant to Sections 49, 70 to 73 and 76 of the Act also does not deserve acceptance.

37. Article 300A of the Constitution mandates that no person shall be deprived of his property save by authority of law. The refusal to register the documents referred to in Section 22A of the Act by no stretch of imagination can be said to be violation of right to hold the property. The Registration of a document does not create any title. The

action of non-registration of a document under Section 22A does not prevent a person of the right to enjoy his property. The contention that Section 22A of the Act violates Article 300A is therefore misconceived.

(xii) GUIDELINES ISSUED BY STATE GOVERNMENT FOR EXERCISE OF POWER UNDER SECTION 22A OF THE ACT:

38. The State Government has, vide Circular Memo No.G1/19131/05, dated 14.09.2007, issued guidelines for exercising powers under clauses (a) to (d) of Section 22A(1) of the Act. The aforesaid guidelines are reproduced below:

Section 22-A Certain guidelines
[Circular Memo No.G1/19131/05, dt.14-09-2007]

Sub: Registration and Stamps Department - Registration (A.P. Amendment) Act 2007 - Act No.19 of 2007 relating to Section 22-A - Certain Guidelines issued Regarding.

The Government have notified through G.O.Ms.No.863 Revenue (Reg.I) Department, dt.20.06.2007 bringing the Registration (A.P. Amendment) Act 2007 into force from 20.06.2007. The amendment relates to Section 22-A which prohibits registration of certain documents. In pursuance of the Government notification of the Act No.19 of 2007, the following guidelines and directions are issued to all concerned to implement the provisions of the Act:

(1) S.22-A(1)(a):2 For the purposes of Section 22-A (1)(a) all the *District Collectors shall furnish lists of properties prohibited under the statutes to the Registering Officers having jurisdiction over such property and also the District Registrar, Deputy Inspector General (R & S) concerned and to Commissioner & Inspector General of Registration and Stamps in the proforma appended in Annexure I under proper acknowledgment. Subsequent additions, if any also shall be sent in the same manner. The list must be signed by Collector/Joint Collector of the District.*

Any deletions or modifications to these lists should be sent to Commissioner and Inspector General of Registration and Stamps, who in turn will furnish the same to the concerned Registering Officers having jurisdiction over such property, for necessary action.

(2) Section 22-A(1)(b): For the purposes of Section 22A(1)(b), the *District Collectors shall furnish the lists of immovable properties owned by the State or Central Government as the case may be to the Registering Officers having jurisdiction over such property and also the District Registrar, Deputy Inspector General (R & S) concerned and Commissioner & Inspector General of Registration and Stamps in the proforma appended in Annexure II. The list must be signed by the concerned authorised representative of Central/State Government as the case may be.*

All authorization for presentation and execution of documents executed by the persons statutorily empowered to do so shall be accompanied by Government orders issued

by the concerned department/ Ministry of the State or Central Government along with signature of the person so authorised to present or execute the documents duly attested by the District Collector.

Any deletions or modifications to these lists should be sent to Commissioner and Inspector General of Registration and Stamps, who in turn will furnish the same to the concerned Registering Officers having jurisdiction over such property, for necessary action.

(3) Section 22-A(1)(c): For the purposes of Section 22A (1)(c) *the lists of properties owned by religious and charitable endowments falling under the purview of the A.P.*

Charitable and Hindu Religious Institutions and Endowments Act, 1987 or under the Wakf Act, 1985 to the Registering Officers having jurisdiction over such property and also the District Registrar, Deputy Inspector General (R&S) concerned and Commissioner & Inspector General of Registration and Stamps in the proforma appended in Annexure-III. The list must be signed by Commissioner, Endowments or Secretary, Wakf Board, as the case may be.

All authorizations by the persons statutorily empowered to alienate these properties shall be accompanied by notification issued by the concerned Administrative Department in Government and the signature attested by the concerned Head of the Department.

Any deletions or modifications to these lists should be sent to Commissioner and Inspector General of Registration and Stamps, who in turn will furnish the same to the concerned

Registering Officers having jurisdiction over such property, for necessary action.

(4) Section 22-A(1)(d) : for the purposes of Section 22A (1)(d) *lists of land declared as surplus lands under the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 or the Urban Land (Ceiling and Regulation) Act, 1976 shall be furnished by the Revenue authorities (Not below the rank of RDO) and the Special Officer and Competent Authority under ULC Act concerned as the case may be to the Registering Officer having jurisdiction over such property and also to the District Registrar, Deputy Inspector General and Commissioner & Inspector General of Registration and Stamps in the proforma appended in Annexure IV.*

Any deletions or modifications to these lists should be sent to Commissioner and Inspector General of Registration and Stamps, who in turn will furnish the same to the concerned Registering Officers having jurisdiction over such property, for necessary action.

(5) *All the Registering Officers and the District Registrars on receipt of the intimations/notifications from the Authorised Officers as mentioned above, under sub-sections (a) to (d) of Section 22-A (1) shall enter them in the prohibited property registers maintained electronically and also manually and confirm the fact of having made the entries to the Commissioner & Inspector General of Registration within fifteen (15) days from the date of receipt of the intimations/notifications.*

(6) All the intimations or notifications forwarded by the Authorised Officers, in this regard to the concerned Registering Officers/District Registrars shall be filed in a separate new file book (It shall be a PERMANENT REGISTER) titled as intimations/notifications of prohibited properties under Section 22-A and *also publish such details on web site duly updating the information from time to time. The deletions/modifications to these lists forwarded by the C&IG, shall also be filed in the same file book in chronological order.*

(7) RECONCILIATION: DIGs will be responsible for ensuring that details available with Registering Officers are reconciled with details available with his/her and DR office once in a quarter (January, March, June, Sept.). A periodical report will be sent to C&IG Office along with the list in Jan. and June every year. *The DIG, shall certify that all the entries are made in prohibited registers maintained by the officers electronically and manually and no document was registered during this period affecting the prohibited properties.*

(8) Registration done between 1.4.99 and 20.6.07: All the registrations completed between 1st April, 1999 up to the commencement of Act 19 of 2007 i.e., 20.06.2007, disregarding the prohibitions under Section 22A notifications, shall be invalidated by making Contra entries under the concerned entry in Volume and Indexes, electronically, under intimation to parties concerned by RPAD/AD. The Registering Officers shall immediately refuse to register the documents which are kept pending during the above period since the re-enacted Act has validated all

the notifications issued by the Government basing on the previous provisions of Section 22-A.

(9) Refusals: All refusals under Section 22-A(3) and invalidations under Section 22-A(3/5) shall be entered in book 2 Volume, and an extract of the entry shall be furnished to the person presenting the documents after duly recording the reasons for the refusal or the invalidation in the endorsements. *The endorsements or refusal order should disclose the details of intimation/notification through which the subject properties are liable for refusal or registrations.*

(10) *For the classes of documents mentioned in clause (e) of Section 22-A(1) the State Government will notify the properties.* Whenever such notifications are issued by the Government, the Registering Officers shall file them in the above prescribed file register and also make necessary entries in the prohibition registers maintained by them electronically and manually.

(emphasis supplied)

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.

42. In view of preceding analysis, we do not find any merit in these writ petitions. The same fail and are hereby dismissed. The writ appeals are allowed.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

19.10.2023

Note: LR copy to be marked.

(By order)

vs/pln